RECORD OF COMMENTS: EFFECTS OF FOREIGN POLICY BASED EXPORT CONTROLS

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dispositions in person in the Docket Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone number 1 (800) 647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the Office of the Regional Air Traffic Division, Northwest Mountain Region, Federal Aviation Administration, Airspace Branch ANM–520, 1601 Lind Avenue, SW., Renton, WA 98055.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy related aspects of the proposal. Communications should identify Docket No. FAA–2003–16214; Airspace Docket 02–ANM–11, and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit, with those comments, a self-addressed stamped postcard on which the following statement is made: "Comments to Airspace Docket No. FAA–2003–16214; Airspace Docket 02–ANM–11." the postcard will be date/time stamped and returned to the commenter.

Availability of NPRM

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov*. Recently published rulemaking documents can also be accessed through the FAA's web page at *http://www.faa.gov* or the Superintendent of Document's web page at *http://www.access.gpo.gov/nara*.

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, 1601 Lind Avenue, SW., Renton, WA, 98055. Communications must identify both document numbers for this notice. Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedures.

The Proposal

This action amends Title 14 Code of Federal Regulations, part 71 (14 CFR part 71) by adding additional Class E airspace at Kalispell, MT. This additional airspace extending 1,200 feet or more above the surface of the earth is necessary to provide additional controlled airspace for the containment and safety of IFR flights transitioning between Helena, MT, and Kalispell/ Glacieer Park International Airport Kalispell, MT.

Class E airspace areas are published in Paragraph 6005 of FAA Order 7400.9L, dated September 2, 2003, and effective September 16, 2003, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be published subsequently in this Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11013; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9L, Airspace Designations and Reporting Points, dated September 2, 2003, and effective September 16, 2003, is amended as follows:

Paragraph 6005 Class E airspace extending upward from 700 feet or more above the surface of the earth.

* * * * *

ANM MT E5 Kalispell, MT (Revised)

Kalispell/Glacier Park International Airport, MT
[Lat. 48°18′41″ N., long. 114°15′19″ W.]

Smith Lake Non Directional Beacon (NDB)

[Lat. 48°06′30″ N., long. 114°27′41″ W.]

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Kalispell/Glacier Park International Airport, and within 4.8 miles each side of the 035° and 215° bearings from the Smith Lake NDB extending from the 7-mile radius to 10.5 miles southwest of the NDB; that airspace extending upward from 1,200 feet above the surface bounded by a line from lat. 47°30′00″ N., long. 112°37′30″ W.; to lat. 47°43′30″ N., long. lat. 112°37′30″ N., long. 48°07′30″ N., long. 113°30′00″ W to lat. 48°30′00″ N., long. 113°30′00″ W.; to lat. 48°30′00″ N., long. 116°03′35″ W to lat. 47°30′00″ N., long. 114°54′23″ W.; thence to point of origin; excluding Kalispell/Glacier Park International Airport Class D airspace, Class E2 airspace, and that airspace within Federal Airways airspace area.

* * * * *

Issued in Seattle, Washington, on October 2, 2003.

John L. Pipes,

Acting Assistant Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 03–26560 Filed 10–20–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Chapter VII

[Docket No. 031003247–3247–01]

Effects of Foreign Policy-Based Export Controls

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Request for comments on foreign policy-based export controls.

SUMMARY: The Bureau of Industry and Security (BIS) is reviewing the foreign policy-based export controls in the Export Administration Regulations to determine whether they should be modified, rescinded or extended. To

help make these determinations, BIS is seeking comments on how existing foreign policy-based export controls have affected exporters and the general public.

DATES: Comments must be received by November 21, 2003.

ADDRESSES: Written comments (three copies) should be sent to Sheila Quarterman, Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, P.O. Box 273, Washington, DC 20044. Alternatively, comments may be e-mailed to Sheila Quarterman at *SQuarter@bis.doc.gov.*

FOR FURTHER INFORMATION CONTACT: Joan Roberts, Director, Foreign Policy Controls Division, Bureau of Industry and Security, Telephone: (202) 482–4252. Copies of the current Annual Foreign Policy Report to the Congress are available at *http://www.bis.doc.gov/news/2003/ForeignPolicyReport/Default.htm* and copies may also be requested by calling the Office of Strategic Trade and Foreign Policy Controls.

SUPPLEMENTARY INFORMATION: The current foreign policy-based export controls maintained by the Bureau of Industry and Security (BIS) are set forth in the Export Administration Regulations (EAR), parts 742 (CCL Based Controls), 744 (End-User and End-Use Based Controls) and 746 (Embargoes and Special Country Controls). These controls apply to a range of countries, items and activities including: high performance computers (§ 742.12); certain general purpose microprocessors for "military end-uses" and "military end-users" (§ 744.17); significant items (SI): hot section technology for the development, production, or overhaul of commercial aircraft engines, components, and systems (§ 742.14); encryption items (§ 742.15 and § 744.9); crime control and detection commodities (§ 742.7); specially designed implements of torture (§ 742.11); certain firearms included within the Inter-American Convention Against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives, and Other Related Materials (§ 742.17); regional stability commodities and equipment (§ 742.6); equipment and related technical data used in the design, development, production, or use of missiles (§ 742.5 and § 744.3); chemical precursors and biological agents, associated equipment, technical data, and software related to the production of chemical and biological agents (§ 742.2 and § 744.4) and various chemicals included in those controlled pursuant to the Chemical Weapons Convention (§ 742.18); activities of U.S. persons in transactions related to missile technology or chemical or biological weapons proliferation in named countries (§ 744.6); nuclear propulsion (§ 744.5); aircraft and vessels (§ 744.7); embargoed countries (part 746); countries designated as supporters of acts of international terrorism (§§ 742.8, 742.9, 742.10, 742.19, 746.2, 746.3, 746.4, and 746.7); specified items intended for Libyan aircraft (§ 744.8); certain entities in Russia (§ 744.10); and individual terrorists and terrorist organizations (§§ 744.12, 744.13 and § 744.14). Attention is also given in this context to the controls on nuclear-related commodities and technology (§§ 742.3 and 744.2), which are, in part, implemented under section 309(c) of the Nuclear Non Proliferation Act.

Under the provisions of section 6 of the Export Administration Act of 1979, as amended (EAA), export controls maintained for foreign policy purposes require annual extension. Section 6 of the EAA requires a report to Congress when foreign policy-based export controls are extended. The EAA expired on August 20, 2001. Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp., p. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 7, 2003 (68 FR 47833, August 11, 2003), continues the EAR and, to the extent permitted by law, the provisions of the EAA, in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701–1706 (2000). The Department of Commerce, insofar as appropriate, is following the provisions of section 6 in reviewing foreign policy-based export controls, requesting public comments on such controls, and submitting a report to Congress.

In January 2003, the Secretary of Commerce, on the recommendation of the Secretary of State, extended for one year all foreign policy-based export controls then in effect.

To assure maximum public participation in the review process, comments are solicited on the extension or revision of the existing foreign policy-based export controls for another year. Among the criteria considered in determining whether to continue or revise U.S. foreign policy-based export controls are the following:

1. The likelihood that such controls will achieve the intended foreign policy purpose, in light of other factors, including the availability from other countries of the goods, software or technology proposed for such controls;

2. Whether the foreign policy purpose of such controls can be achieved through negotiations or other alternative means;

3. The compatibility of the controls with the foreign policy objectives of the United States and with overall United States policy toward the country subject to the controls;

4. Whether reaction of other countries to the extension of such controls by the United States is not likely to render the controls ineffective in achieving the intended foreign policy purpose or be counterproductive to United States foreign policy interests;

5. The comparative benefits to U.S. foreign policy objectives versus the effect of the controls on the export performance of the United States, the competitive position of the United States in the international economy, the international reputation of the United States as a supplier of goods and technology; and

6. The ability of the United States to enforce the controls effectively.

BIS is particularly interested in the experience of individual exporters in complying with the proliferation controls, with emphasis on economic impact and specific instances of business lost to foreign competitors. BIS is also interested in industry information relating to the following:

1. Information on the effect of foreign policy-based export controls on sales of U.S. products to third countries (*i.e.*, those countries not targeted by sanctions), including the views of foreign purchasers or prospective customers regarding U.S. foreign policy-based export controls.

2. Information on controls maintained by U.S. trade partners. For example, to what extent do they have similar controls on goods and technology on a worldwide basis or to specific destinations?

3. Information on licensing policies or practices by our foreign trade partners which are similar to U.S. foreign policy-based export controls, including license review criteria, use of conditions, requirements for pre and post shipment verifications (preferably supported by examples of approvals, denials and foreign regulations).

4. Suggestions for revisions to foreign policy-based export controls that would (if there are any differences) bring them more into line with multilateral practice.

5. Comments or suggestions as to actions that would make multilateral controls more effective.

6. Information that illustrates the effect of foreign policy-based export controls on the trade or acquisitions by intended targets of the controls.

7. Data or other information as to the effect of foreign policy-based export controls on overall trade, either at the firm level or at the level of individual industrial sectors.

8. Suggestions as to how to measure the effect of foreign policy-based export controls on trade.

9. Information on the use of foreign policy-based export controls on targeted countries, entities, or individuals.

BIS is also interested in comments relating generally to the extension or revision of existing foreign policy-based export controls.

Parties submitting comments are asked to be as specific as possible. All comments received before the close of the comment period will be considered by BIS in reviewing the controls and developing the report to Congress.

All information relating to the notice will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, BIS requires written comments. Oral comments must be followed by written memoranda, which will also be a matter of public record and will be available for public review and copying.

Copies of the public record concerning these regulations may be requested from: Bureau of Industry and Security, Office of Administration, U.S. Department of Commerce, Room 6883, 1401 Constitution Avenue, NW., Washington, DC 20230; (202) 482–0637. This component does not maintain a separate public inspection facility. Requesters should first view BIS's Web site (which can be reached through *http://www.bis.doc.gov).* If requesters cannot access BIS's Web site, please call the number above for assistance.

Matthew S. Borman,

Acting Assistant Secretary for Export Administration.

[FR Doc. 03–26564 Filed 10–20–03; 8:45 am]

BILLING CODE 3510–33–P

POSTAL SERVICE

39 CFR Part 111

Sender-Identified Mail: Enhanced Requirement for Discount Rate Mailings

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise the *Domestic Mail Manual* (DMM) to require enhanced sender identification for all discount rate mailings.

DATES: Submit comments on or before November 20, 2003.

ADDRESSES: Mail or deliver written comments to the Manager, Mailing Standards, U.S. Postal Service, 1735 N. Lynn Street, Room 3025, Arlington, VA 22209–6038. Copies of all written comments will be available for inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, at the Postal Service Headquarters Library, 475 L'Enfant Plaza, SW., 11th Floor North, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Joel Walker, Mailing Standards, United States Postal Service, (703) 292–3648.

SUPPLEMENTARY INFORMATION: The Postal Service is proposing this enhanced requirement because sender identification of all discount rate mailings would serve as a tool in identifying the senders of a large portion of the mailstream. It could also facilitate investigations into the origin of suspicious mail.

As background, two congressional committees urged the Postal Service to explore the concept of sender identification, including "the feasibility of using unique, traceable identifiers applied by the creator of the mail piece." S. Rept. 107–212, p. 50; see also H. Rept. 107–575, p. 46. The President's Commission on the United States Postal Service recently recommended the use of sender identification for every piece of mail. "Embracing the Future," Report of the President's Commission on the United States Postal Service (July 31, 2003) pp. 147–8. Requiring sender-identification for discount rate mail is an initial step on the road to intelligent mail.

It should be noted that the pieces in most discount rate mailings already bear some evidence of the identity of the sender. The sender's identity usually can be determined via the postage payment method used by the mailer, since all discount rate mailings must have postage paid using permit imprints, precanceled stamps, or meter postage.

Except for a company permit imprint format, mailers who pay postage using regular permit imprints must display an indicia on each mailpiece that shows the permit imprint number and the city and state where the permit is held. Mailpieces bearing a company permit imprint (which do not require the indicia to show the permit imprint number and the city and state of issue) must display the sender's domestic return address on each mailpiece as stated in current DMM A010.4.3. Mailers who pay postage on their discount rate mailings using precanceled stamps also are required to display the sender's domestic return address on each mailpiece. For discount rate mailings that bear meter postage, the meter imprint or indicia on each mailpiece must contain information that can be used to identify the name and address of the meter license holder.

In this proposed rule, the Postal Service seeks to enhance mail security by requiring that all discount mail be "sender identified." Specifically, the Postal Service proposes revisions to the mailing standards in DMM E050, E110, E211, E610, and E710. The revision to DMM E050 would state that franked mail sent at discount rates would be considered sender-identified mail. The revisions to DMM E110, E211, E610, and E710 would require all discount rate mailings to meet a sender-identification requirement. Since many discount rate mailings already meet this requirement, the Postal Service proposal would have little impact on most discount rate mailers. However, it is likely that some discount rate mailers may need to change their current procedures to comply with the proposed sender-identification requirement. If the requirement is adopted, its effect would be slightly tighter requirements for identifying the sender of a discount rate mailing.

The proposed rule would further enhance existing requirements by specifically requiring that all discount rate mailings allow a reasonable means for identifying the sender of a mailpiece sent at a discount postage rate.

Under this proposal, sender-identified mail would include all mailpieces that are part of a First-Class Mail, Periodicals, Standard Mail, or Package Services mailing that is eligible for and claims any discounted postage rate. To be considered as sender-identified, each discount rate mailpiece would be required to meet one of the following requirements:

- Postage paid using a permit imprint or metered postage: If the permit imprint permit or meter license is not issued in the same name as that of the sender (*i.e.*, owner) of the mailpiece, one of the following requirements must be met:

(a) Each mailpiece must display a domestic return address that is the actual address of the sender (*i.e.*, owner) of the mailpiece such that it enables identification of the origin location or organization of the mailing.

(b) The permit imprint holder or meter licensee must maintain adequate records that indicate the actual name and address of the sender (*i.e.*, owner) of the mailpiece. The records must be

NATIONAL CHAMBER OF INDUSTRIES & COMMERCE, U.P.

Chief Patron His Excellency the Governor of U.P.

YOGENDRA KUMAR SINGHAL
PRESIDENT
✆ (O) 2621840, 2623541 (R) 2581882

ANIL VERMA
VICE PRESIDENT
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E-mail : ncic@sancharnet.in

Ref. No. : NCIC/2003-04/SCX/849 **Dated : 24th October, 2003**

To,

Ms. Sheila Quarterman,
Regulatory Policy Division,
Bureau of Industry and Security,
Department of Commerce, P.O. Box 273,
Washington, DC 20044,

Dear Madam,

Please refer to the website of Bureau of Industry and Security asking for comments on foreign policy based on Export Controls. We would like to point out that our most pertinent issue is that items falling under EAR 99 should be allowed for export from USA in view of the US High Technology Cooperation Group meeting and there should be no export licence requirement for these items. The EAR 99 items shold be freed from the purview of export licensing even for entity customers, in view of the "presumption of approval".

Most of the EAR 99 items are low technology consumer goods, simple machines, testing instruments, accessories and consumables of simple use. These items are not used in activities related to Nuclear, chemical or biological weapons or missile delivery system or weapons of mass destruction.

We have been given to understand that the US Govt. has denied export licence even for EAR 99 items under section 3 (2) B of the Export Administration Act, which restricts the export of goods and technology where necessary to further significantly the foreign policy of the United States or to fulfill its declared international obligations. It is U.S. Policy not to provide direct or indirect assistance to nuclear facilities or to nuclear activities in countries that do not provide full scope safeguards and / or that have not ratified the Nuclear Non-proliferation Treaty.

On July 3, 2003 a news items was published in the Economic Times, New Delhi confirming that the US is no longer asking India to sign Nuclear Non-proliferation Treaty or full scope safe guards and this decision has been made to promote the high technology trade relationship between USA and India. The foreign secretary of India Mr. Kanwal Sibal told reporters after the conclusion of the two days meeting of the INDO-US High Technology Group (HTCG).

From the above, it can easily be concluded that if the US is no longer asking India to sign Nuclear, Non-poliferation treaty or full scope safe guards, then the question of denial of export licence under section 3 (2) B does not arise. This means that all items which fall under EAR 99 items can easily be given an export licence. As it is, some 90% of the applications are being accepted and if the US is keen to do business with India and they should no longer insist on an export licence for EAR 99 items where there is already a presumption of approval in policy even for the entity customers. As the number of applications for EAR 99 items account for 40% so the removal of export licence for EAR 99 items even for supply to entity organization will reduce the work load and number of application for export licence for the U.S. Government.

The EAR 99 items are generally low technology goods and these do not have any material contribution towards Nuclear or Missile Programme. Such items are readily available from other countries also. In case USA would not sell their product to India then these items could be imported by the entity customer from some other countries as they are available from other sources. To be on the same level playing field with other counties, the US Govt. should not have any restriction to supply the goods when other countries can freely supply similar items. If the items are such that they can only be supplied from USA then there could have been some sort of material contribution. However, there is no material contribution because these EAR 99 items do not directly participate in a Nuclear or Missile programme. The EAR 99 items are not at all sensitive items and for this reason they are not on the commerce control list.

The US Govt. has directly identified at least 2500 items, which are on the commerce control list and it is advisable that only these items be controlled for export as these items are sensitive for Nuclear and Missile programmes. For these items, it may be worth to review and regulate the licence procedures.

We expect that the licence requirement, in case EAR 99 items should be totally dropped even for organization in the entity list. In case it is not possible for the US Govt. to accept our suggestions then we suggest the following modifications.

(i) US Government should allow collective export licence for EAR 99 items. In case of a high number of exports, it is possible that certain exporters may be granted a collective export licence instead of applying for several individual licences. The licence permits the export of a group of items to several consignees of the entity list.

(ii) The US Govt. should also provide a maximum amount licence issued to one exporter based on expected annual sale of EAR 99 items to one entity customer. The licence should permit shipment of one or several items to one consignee based on annual sales volume of the exporter.

(iii) Items falling under EAR 99 where the value is below of US$ 10000/- should be allowed for export to entity organization without insisting on an export licence or an end use certificate. Export of dual use items below a specific value limit is also allowed in other countries also.

(iv) Where the value is below US$ 20,000/- the exporter should be given general permission to export if they are provided with an end use certificate concerning the end use of the goods.

(v) Where the value of EAR 99 items is above US$ 20,000/-, the export licence application should be considered favourably and it should not be denied under section 3 (2) (b). Such applications should be disposed off in 15 days time.

We are requesting yourself for insisting to Govt. of USA for liberalizing their export policy for dual use items in respect of EAR 99 items for the following reasons:-

(a) It has been mentioned that 40% of the licence applications are for EAR 99 items only. With liberalization the number of applications will reduce and this in turn would mean less costs to the US Government.

(b) The export licensing statistics for fiscal year 2002 have not taken into account the EAR 99 items sold under transit trade transactions and traders.

(c) Export controls have lot of effect on overall trade. The trade would never grow in the regime of controls. Even in India there are no longer any controls on trade for export or import.

(d) A lot of US export goods have come to India prior to 1997 and now they are in need of replacement parts, consumables and other accessories. It would be a national wastage if these US goods do not function for want of spares and consumables which are not supplied from USA due to this embargo.

(e) A smaller machine could be an accessory to a bigger machine. The bigger machine will not function if the smaller will fail. Hence to make the system function, it needs a supply of the goods.

(f) Suppliers from other countries will come forward to supply these goods and thereby it will affect in INDO US Trade relationship. The trade of India with USA will eventually fall and decline. We are sure that you would not let this to happen.

We are sure that your honour would consider the genuine difficulties and you would consider our suggestions favourably so that the trade between US and India becomes 2 fold. The US Government should relax their export controls with respect to EAR 99 items as these are not sensitive goods or technologies. Such relaxation will stil continue to protect the national security and foreign policy interest of the 2 countries. Liberalization with respect to EAR 99 items would mean further increase of high technology trade.

Thanking you

Yours faithfully,
For **NATIONAL CHAMBER OF INDUSTRIES & COMMERCE,**

(P.K.VARSHNEYA)
CHAIRMAN, SCX & UNIDO

SHEILA QUARTERMAN - ICOTT Comments on the Renewal of Foreign Policy-Based Export Controls

From: "Hirschhorn, Eric" <EHirschhorn@winston.com>
To: <SQuarter@bis.doc.gov>
Date: 11/17/2003 4:35 PM
Subject: ICOTT Comments on the Renewal of Foreign Policy-Based Export Controls
CC: "Gerwin, Edward" <EGerwin@winston.com>, "Mario, Pastor" <PMario@winston.com>

<<Untitled.pdf>>

ICOTT INDUSTRY COALITION ON TECHNOLOGY TRANSFER
1400 L Street, N.W., Washington, D.C. 20005 Suite 800 (202) 371-5994

November 17, 2003

Ms. Shiela Quarterman
Regulatory Policy Division
Bureau of Industry and Security
U.S. Department of Commerce
P.O. Box 273
Washington DC 20044

Re: Effects of Foreign Policy-Based Export Controls, 68 Fed. Reg. 60050 (Oct. 21, 2003)

Dear Ms. Quarterman:

The Industry Coalition on Technology Transfer (ICOTT) is pleased to respond to the Department's request for comments on the renewal of foreign policy-based export controls.

In large measure these controls are unilateral in character. Therein lies their ineffectiveness. While there can be instances where unilateral controls are justified, they are rarer than the broad array of such United States controls would indicate. From the standpoint of effectiveness, unilateral controls are like damming half a river. The builder may take pride in the majesty of the dam but there is every bit as much water downstream as before the first shovelful of earth was turned. For this reason, unilateral controls should be invoked—or continued—only where the resulting injury to American workers and businesses can be justified when balanced against the symbolic character of the restrictions. "National security" includes economic as well as military security, and both of these elements must be taken into account in the administration of our export control system.

Another argument frequently advanced in support of unilateral controls is that their imposition is necessary while the United States seeks multilateral support. The historical record of this tactic has been mixed at best. At a minimum, controls imposed unilaterally under this rationale should be of limited duration unless sufficient multilateral control is achieved.

We urge that any controls that do not meet the foregoing criteria be removed.

Founded in 1983, ICOTT is a group of major trade associations (names listed below) whose thousands of individual member firms export controlled goods and technology from the United States. ICOTT's principal purposes are to advise U.S. Government officials of industry concerns about export controls, and to inform ICOTT's member trade associations (and in turn their member firms) about the U.S. Government's export control activities.

Sincerely,

Eric L. Hirschhorn
Executive Secretary

ICOTT Members

American Association of Exporters and Importers (AAEI)
Electronic Industries Alliance (EIA)
Semiconductor Equipment and Materials International (SEMI)
Semiconductor Industry Association (SIA)

cc: Hon. Kenneth Juster
Hon. John Bolton
Hon. Peter Lichtenbaum
Hon. Lincoln Bloomfield
Hon. Condolezza Rice

DC:332918.2

SHEILA QUARTERMAN - 68 FR 60050 Effects of Foreign Policy-Based Export Controls

From: "Lunsford, Sandra L." <sllunsford@fedex.com>
To: <SQuarter@bis.doc.gov>
Date: 11/19/2003 4:46 PM
Subject: 68 FR 60050 Effects of Foreign Policy-Based Export Controls
CC: "Vega, Matthew A." <mavega@fedex.com>

Dear Ms. Quarterman:

Attached are Federal Express Corporation's comments on the "Effects of Foreign Policy-Based Export Controls", as requested in the BIS notice published in the Federal Register on 10/21/03.

We are also sending to you overnight an original and 3 copies of our written comments.

Thank you for your time and consideration.

Regards,
Sandra Lunsford
Sr. Regulatory Affairs Representative
FedEx Express
901-434-8581

November 19, 2003

Sheila Quarterman
Regulatory Policy Division
Bureau of Industry and Security
Department of Commerce
P.O. Box 273
Washington, D.C. 20044

Re: Federal Express: Comments on October 21, 2003 Federal Register Notice Effects of Foreign Policy-Based Export Controls

Dear Ms. Quarterman:

Federal Express would like to thank the Bureau of Industry and Security ("BIS") for the opportunity to comment on the Effects of Foreign Policy-Based Export Controls, as requested in the BIS notice published October 21, 2003. These comments are submitted prior to the November 21, 2003 submission deadline.

IN-TRANSIT CONTROLS

Federal Express proposes that the Cold War relic 736.2(b)(8) ("General Prohibition Eight") be eliminated. This control on exports transiting countries deemed to be Cold War adversaries does not further any existing foreign policy objectives of the United States. General Prohibition Eight prohibits all exports or reexports through or transit through the subject countries[1] where a license is required for direct export or reexport to the country, unless a License Exception or license authorizes the export or reexport directly to the country of transit.

General Prohibition Eight imposes a significant administrative burden on Federal Express, a U.S. company engaged in a high volume of export and reexport shipments worldwide. With the end of the Cold War, Federal Express has opened a route between Hong Kong and France with a technical stop for refueling in Kazakhstan and uses Uzbekistan as a weather alternative. Federal Express also serves Russia through its Global Service Program (GSP) and is looking at expanding its business into several other former Soviet states. These former Soviet

[1] Albania, Armenia, Azerbaijan, Belarus, Bulgaria, Cambodia, Cuba, Estonia, Georgia, Kazakhstan, Kyrgyzstan, Laos, Latvia, Lithuania, Mongolia, North Korea, Russia, Tajikistan, Turkmenistan, Ukraine, Uzbekistan, and Vietnam.

states strive to engage in the international commercial community, and we understand it to be U.S. policy to generally facilitate and promote their doing so. They likewise serve as commercial links between the Western Hemisphere and commercial centers in the Middle East and Asia. Of the countries listed under General Prohibition Eight, only Cuba is subject to comprehensive U.S. sanctions. In addition to Cuba, North Korea is identified as a state sponsor of terrorism.

While these countries are subject to General Prohibition Eight other countries of concern, such as Iran and Syria, are not identified. This leads to an uneven application of U.S. foreign policy. On the other hand, aside from General Prohibition Eight, exports or reexports to for instance, Albania, are otherwise subject to policy controls similar to those imposed on exports or reexports to Barbados and Fiji.[2] In fact, Bulgaria falls under fewer policy-based controls on the Part 738 Country Chart than Barbados. In the post-Cold War period, it is arbitrary and cumbersome to maintain controls on transshipments through these countries that are as stringent as those imposed on Cuba and North Korea.

Furthermore, a number of the listed countries have entered into international agreements evincing their support of international export controls on items which pose an international security threat. Belarus, Bulgaria, Kazakhstan, Latvia, Russia, and Ukraine are listed in Country Group A Australia Group (Column A:3) and/or Nuclear Suppliers Group (Column A:4). These lists identify country members to international agreements establishing export controls on chemical/biological weapons proliferation and nuclear-related dual use items respectively. Participation in international agreements of this sort provides evidence that the national governments of at least some of the listed countries are amenable to international negotiations in the realm of export controls. To the extent the U.S. Government can articulate an existing foreign policy rationale for controlling in transit items to these countries, Federal Express believes that the foreign policy purpose of General Prohibition Eight controls could be achieved through negotiations with the national governments at issue.

The additional licensing requirements created under General Prohibition Eight for items transiting the subject countries result in over-inclusive and imprecise execution of undefined and possibly obsolete U.S. foreign policy objectives. In the global market General Prohibition Eight puts Federal Express at a disadvantage relative to its non-U.S. competitors who are not burdened by such excessive controls.

EMBARGOES

The various unilateral embargoes maintained by the Department of Commerce Bureau of Industry and Security ("BIS") should be revised to reflect the threats posed by each country and the appropriate controls in response to the threats posed. Specifically, selective "smart" sanctions should replace comprehensive economic sanctions imposed against Iran, Sudan, Cuba and Libya. The U.S. government could likely generate greater international support for

[2] Barbados and Fiji fall under Crime Control ("CC") Columns 1 and 3, whereas Albania falls under CC Columns 1 and 2.

economic sanctions where they are targeted address only specific activities of concern. Such international support would provide a stronger framework for enforcement of the sanctions, which in turn could lead to greater global security and would lead to a level international playing field for U.S. companies involved in international transactions.

Furthermore, the current administrative framework for imposing and implementing economic sanctions is confused by the concurrent jurisdiction exerted by BIS and the Department of the Treasury Office of Foreign Assets Control ("OFAC"). For instance, in the case of controls on exports or reexport to Iran, many of the BIS licensing requirements found in Part 746 are redundant with OFAC authorization requirements. BIS controls on exports and reexports to Sudan are largely redundant with OFAC's comprehensive embargo on exports and reexports to Sudan. BIS and OFAC regulations and guidelines are silent as to which agency has priority over licensing such transactions.

Federal Express recommends that both agencies revise their regulations to specify which agency has jurisdiction for each type of control on exports and reexports to embargoed countries. At a minimum the Export Administration Regulations ("EAR") should be revised to acknowledge the overlap with OFAC jurisdiction. Furthermore, to the extent certain transactions are intended to fall under the sole jurisdiction of BIS or OFAC, that intent should be stated in the regulations and guidelines of both agencies.

* * *

Federal Express appreciates this opportunity to comment. If you require additional clarification of the comments contained in this letter, please contact the undersigned.

Sincerely,

Matthew A. Vega
Senior Attorney
Regulatory and Industry Affairs
901-434-8574
mavega@fedex.com

#500436

SHEILA QUARTERMAN - Re: Foreign Policy-Based Controls

From: CYNTHIA AHRENDSEN <Cynthia.Ahrendsen@Sun.COM>
To: <SQuarter@bis.doc.gov>
Date: 11/20/2003 5:37 PM
Subject: Re: Foreign Policy-Based Controls

Hello,

Attached are Sun Microsystems comments on Foreign Policy-Based Controls, in response to the Federal Register solicitation of October 21.
A hard copy version of these comments has also been transmitted by mail.

from Hans Luemers

Sun microsystems

Ms. Sheila Quarterman
Regulatory Policy Division
Bureau of Export Administration
Department of Commerce
P.O. Box 273
Washington, DC 20044

Dear Ms. Quarterman:

Sun Microsystems again welcomes the opportunity to comment on the effects of foreign policy-based export controls, in response to the solicitation in the Federal Register of October 21, 2003. (Docket No. 0031003247-3247-01).

Sun feels that export controls can serve a valuable purpose in furthering US foreign policy objectives, including the important goal of slowing or halting the spread of weapons of mass destruction. However, we also feel that such controls must be focused, effective in depriving bad end-users of controlled items, and be demonstrated as having positive long and short-term impact on the behavior of potentially bad actors.

Sun feels that unilateral export controls on general-purpose commercial IT products and technology, whether they are imposed for foreign policy or other reasons, do not meet these critical tests.

While progress has been made in recent years in addressing the problem of US unilateral controls in both the foreign policy and national security categories, much work needs to be done. Consistent with last year's submission, Sun would like to focus on two areas of continuing concern, Section 744 Proliferation Controls, and controls on High Performance Computers.

1. Section 744 Proliferation Controls

In 1990, provisions were included in the Export Administration Regulations requiring that all items, listed or not, require prior government approval for export or reexport if there is "reason to know" that they will be used to support a proscribed proliferation activity (e.g., Section 744.2(a)). These provisions, collectively known as "EPCI" (the Enhanced Proliferation Control Initiative), were originally intended to stop shipments of recently decontrolled items.

In US regulations and compliance practice, the reach of EPCI is much broader than originally intended. EPCI restrictions logically imply screening requirements for all US-origin items, although screening is not explicitly addressed in US regulations. They are complemented by lists of proscribed entities issued by various US agencies, among which is the list of Entities of proliferation concern issued by BIS.

EPCI catch-all requirements, as their name suggests, do not discriminate and in theory apply to all items subject to the EAR, from pencils to high-performance systems. These

broad-based secondary controls have inserted substantial unnecessary cost in into export compliance for global IT companies.

Catch-all requirements magnify the internal control burden in a number of ways. Policies, procedures, and automated systems must be constructed to screen thousands of transactions involving uncontrolled or uncontrollable products, and techniques must be devised to stop transactions for which an exporter has "reason to know" that the ultimate end-use will involve weapons of mass destruction.

The complexity of effectively managing a catch-all screening system can be staggering. Sun, for example, makes approximately 7500 separately orderable items available to its customers. In the average week, Sun must process roughly 1500 sales orders involving these items placed in over 100 countries. This number does not include electronic commerce transactions.

The lack of specificity and discrimination in the EPCI rule poses serious problems not only for the US exporter, but for the Government as well. Spending substantial money and time on screening shipments of de minimis, irrelevant and uncontrollable items, or attempting to enforce compliance with such a system, detracts from the ability of both companies and enforcement authorities to enforce what really matters.

Extensive screening done without reference to control status is also incompatible with E-business models, which operate without human intervention and geographic boundaries. For products that are downloaded, the time required to manually screen, or to evaluate "false hits," directly translates into lost business, as potential customers instantly switch to a competitor.

The problem is not confined to downloads. An increasing proportion or E-commerce orders are placed online, even though physical delivery via more traditional modes is still required. In these modes, only very limited customer data is available. This data is distributed among multiple points in a complex multinational organization where manufacturing, order entry and distribution occur in different geographic locations or in different countries. Techniques must be devised to perform full export screening on all such transactions, regardless of control status; this process impedes and distorts the optimal design of such systems and thus affects overall competitiveness.

While catch-all controls do exist outside the US, there is wide variability in their implementation. For example, Article 4 of Council Regulation 1334/2000, which specifies catch-all requirements for members of the European Union, requires that national authorities be informed only if the exporter "is aware" that a shipment is destined for a proscribed end-use. While a more stringent standard ("grounds for suspecting") is permitted by this regulation at the discretion of national authorities, this lower threshold is the basis of catch-all systems among many major European exporters such as Germany.

A number of approaches could serve to improve the usefulness of EPCI controls and minimize the unnecessary competitive damage and cost to US exporters. For example, EPCI can work more effectively if US companies are provided with a complete, authoritative list of entities presenting proliferation concerns, including those end-users to whom exports were previously subject to enhanced controls (*i.e.*, export prohibition or licensing). As a matter of transparency, all negative end-user determinations should also be published, including the results of end-user licensing decisions and voluntary end-user reviews.

Existing EPCI procedures can be improved if the Commerce Department (1) processes voluntary company requests to screen individual end-users for a particular transaction in no more than 14 days, and (2) permits voluntary one-time end-user reviews and certifications so that companies can export to a given end-user, free of EPCI liability, until the exporter is notified otherwise.

Regular and predictable procedures should be established within the Government to provide authoritative review of potential proliferation entities, publish them, or remove them from published lists. The German and Japanese Governments now have proscribed lists that at some level are shared with their exporters. Subject to responsible review by the U.S., these could serve as a source for additional entities on the U.S. Entities List.

In addition, the Government has long asserted that intelligence "sources and methods" prevent many proliferation entities from being named on the US Entities List. While this is true in some cases, US companies with long experience in this area view this argument as greatly exaggerated.

In point of fact, entities that become subject to an individual licensing requirement, or for which a license is denied, know immediately that they are the targets of additional scrutiny. The failure to responsibly publish their names on an entities list simply allows them to seek equivalent commodities elsewhere, including from third party distributors of the very same product.

Substantial differences exist in proscribed entity data originating from different agencies (e.g., geographic localization, presence or absence of addresses, etc.) that raise substantive issues of company compliance responsibility. As a result, an effort should be undertaken to standardize data formats and content for all proscribed entities (including Denied Parties, Specially Designated Nationals and Proliferation Entities), for more effective incorporation into automated company screening processes. Any such effort should include discussion with countries like Germany and Japan that also employ proscribed lists for their proliferation screening.

Another important improvement in EPCI implementation would be to establish a basic list-screening standard for EPCI compliance. Screening orders against an enhanced Proscribed Parties List including Proliferation Entities should be accepted as evidence satisfying the EPCI "reason to know" requirement for delisted (No License Required)

transactions. Such a "safe-harbor" approach would allow US companies to focus their compliance resources in areas with identified national security significance.

Finally, mitigating factors should be incorporated into EPCI enforcement. Mitigating factors based on the Federal Sentencing Guidelines should be consistently applied in the initiation of enforcement actions, and in assignment of warning letters and civil penalties in EPCI cases. This would result in a more cooperative and pro-active relationship between the enforcement and exporting communities, and a better use of enforcement resources.

The recently published Penalty Guidance in the Settlement of Administrative Enforcement cases makes great strides in setting out mitigating factors that would be of benefit in EPCI-related cases. However, as Sun pointed out in its written comments on this Proposed Rule, the Guidelines do not adequately address problems arising from technical and administrative violations incurred by high-volume exporters.

This flaw goes to the heart of EPCI enforcement, as the extremely broad scope of these controls gives rise to the potential of multiple minor violations in the course of tens of thousands of export transactions. The potential for such violations among high volume exporters, either as a result of technical failure or human errors, must be a factor in mitigation.

2. Section 742.12 on High Performance Computers

Controls on high performance computers encompass a number of objectives, including foreign policy. Ostensibly, these controls are primarily constructed to meet national security/non-proliferation goals. However, the Tier structure has substantially widened the scope and the objectives of controls.

While hardware controls on Tier II have been eliminated, the scope of Tier III controls continue to be problematic. Rather than being focused on countries of proliferation concern, Tier III contains 53 countries, many of which have military cooperation agreements with the US.

The scope of Tier III controls should be narrowed substantially in order to recognize the realities of the networked world and to discontinue the dangerous and counterproductive pretension that controlling commercial computing power will be either viable or effective in the coming years. A starting point would be to restrict Tier III to countries identified in the CIA's semiannual WMD report to Congress under Section 721 of the Intelligence Authorization Act for FY 1997.

In computer systems technology, the three Tier system continues to prevail, despite the elimination of Tier II for hardware exports. In the Federal Register notice of October 24, BIS proposed to place a cap of 150,000 MTOPS on transfers to countries and nationals outside of 22 countries that correspond to the former "Tier I" group, and a cap of 75,000 on Tier III.

While Sun agrees that a transition to a technology transfer regime based on License Exception CTP in this area is a very positive step, the country categories earmarked for differential treatments essentially bring back the old Tier II for technology. We do not think that this is justified on technical or strategic grounds. Essentially, the performance cap on all Tier I countries and their nationals should be removed for technology as it is for hardware, the technology cap for Tier III made consistent with hardware controls, and the number of Tier III countries reduced.

The US needs to substantially alter its policies in this area, to include elimination of performance metrics as the dominant control principle, and moving to greater emphasis on ensuring that the US military continues to expand its advantages in the integration and exploitation of information technologies.

We contend that some controls, if applied indiscriminately, can represent an outmoded and narrow view of US national interest that may no longer apply in today's global economic environment. Broad, indiscriminate application of EPCI controls and performance-based controls on IT are in this category, and should be subject to a fundamental top-down review.

We again appreciate the opportunity to comment on these specific aspects of US foreign policy controls.

Sincerely,

Hans Luemers, Director
International Trade Services,
Sun Microsystems

SHEILA QUARTERMAN - Foreign Policy-Based Export Controls: Comments

From: "Estes, Daniel P" <dpestes@sandia.gov>
To: "'SQuarter@bis.doc.gov'" <SQuarter@bis.doc.gov>
Date: 11/21/2003 11:20 AM
Subject: Foreign Policy-Based Export Controls: Comments

Dear Ms. Quarterman,

We hope that these comments are useful to creating an improved set of export control regulations.

Thank you

Daniel Estes
Cooperative Monitoring Center
Sandia National Laboratories
Albuquerque, NM USA
(505) 844-1401

<<DOC_Comments.doc>>

Ms. Sheila Quarterman
Regulatory Policy Division
Bureau of Industry and Security
Department of Commerce

Re: 15 CFR Chapter VII, Effects of Foreign Policy-Based Export Controls (October 21, 2003)

Dear Ms. Quarterman,

Thank you for soliciting public comments regarding the efficacy of foreign policy-based export controls. We have worked for several years securing dangerous pathogens at governmental bioscience laboratories and appreciate the chance to comment on these regulations. The following comments relate to exports controlled for reasons of biological weapons proliferation.

General Comments

Export controls work most effectively when they act in coordination with other federal laws. In reaction to the terrorist attacks of September 11th 2001 and the subsequent anthrax mailings, new rules have been instituted regarding the secure handling, transfer, and storage of certain microbiological agents and toxins. These materials, which have been determined to "pose a severe threat" to human, animal, or plant health, are listed in 42 CFR Part 73.4 (human "select agents"), 9 CFR Part 121.3 ("high consequence animal pathogens and toxins"), and 7 CFR Part 331.3 ("high consequence plant pathogens and toxins"). Pursuant to these regulations, the domestic lab-to-lab transfer of these agents and toxins must be approved by the appropriate federal agency (HHS/CDC for human select agents, USDA/APHIS for plant and animal agents, or either agency for overlap agents).

These new regulations do not address the international transfer of these agents. Rather, the regulations leave this issue, appropriately, as one best dealt with by the Commerce Department's Bureau of Industry and Security (BIS). But this separation of authority has left gaps in the system. Many microbiological agents that are currently subject to domestic controls are not subject to export control, and vice versa.

We recommend adding all HHS- and USDA-regulated agents to the CCL. While not all of these agents may be considered suitable for weaponization, it strikes us as incongruous that they should be subject to stringent domestic transfer regulations, but exempt from export controls. For example, a laboratory that ships Camel Pox oversees does not require an export license, but the same material, shipped down the street needs CDC authorization and a transfer license.

We believe that adding HHS- and USDA-regulated agents to the CCL will not cause undue or adverse affects to legitimate biomedical research. Because all biological

exports requiring a license are reviewed on a case-by-case basis, the vast majority of these exports will continue to occur unhindered. But although most biological exports are conducted for bona fide and legitimate research, exporting certain biological agents and toxins may still constitute a risk to national security by inadvertently contributing to biological weapons proliferation. Export controls aim to mitigate that risk. In today's world, where terrorism and technology could marry to create a mass-casualty biological weapon, regulating the export of dangerous pathogens and toxins is the responsible course of action for the BIS to take.

We recommend adding to the CCL the following list of HHS- and USDA-regulated pathogens:

- Akabane
- Bovine Spongiform Encephalopathy agent (Madcow disease)
- Camel Pox
- Cercopithecine Herpesvirus 1 virus (herpes B)
- Coccidioidies Immitis
- Coccidioidies Posadasii
- Cowdria Ruminantium
- Coxiella Burnetii
- Liverobacter Africanus
- Liverobacter Asiaticus
- Malignant Catarrhal Fever Virus
- Menangle Virus
- Mycoplasma Capricolum
- Peronosclerospora Philippinensis
- Phakopsora Pachyrhizi
- Plum Pox Potyvirus
- Ralstonia Solanacearum
- Sclerophthora Rayssiae
- Synchytrium Endobioticum
- Xanthomonas Oryzae
- Xylella Fastidiosa
- Variola Minor (Alastrim)

Thank you again for allowing these comments. Please feel free to contact us concerning any questions you may have.

Sincerely,

Reynolds M. Salerno and Daniel P. Estes
Sandia National Laboratories
Albuquerque, NM

SHEILA QUARTERMAN - Comments regarding regulatory/foreign policy on China & the aluminum scrap market

From: Alex Gross <AGross@jupiteraluminum.com>
To: "'SQuarter@bis.doc.gov'" <SQuarter@bis.doc.gov>
Date: 11/21/2003 5:01 PM
Subject: Comments regarding regulatory/foreign policy on China & the aluminum scrap market

Dear Sheila,
I've attached a letter from our company to you regarding the issue of China's ravaging of the U.S. scrap market for aluminum. Our letter is specific to aluminum, however, we are not alone in our dilemma. Though aluminum has been particularly hard hit, virtually every other metal from copper to steel is affected as well. We look forward to hearing from you.

Regards,

Alex Gross
Vice President
Jupiter Aluminum Corp.

Sheila Quarterman
Regulatory Policy Division
Bureau of Industry and Security
Department of Commerce
P.O. Box 273, Washington, DC 20044

Re: China Unfair Trade Practices Regarding Aluminum Scrap

Dear Sheila,

Jupiter Aluminum Corporation and many others within the scrap based industry have been aware for some time now and are quite concerned that China is buying up large portions of the United States aluminum scrap market through unfair trade practices and predatory pricing. Since the Bureau of Industry and Security is engaged in reviewing foreign export controls under the Export Administration Regulations, we are bringing this critical situation to your attention for action by our government. As you know, the Department of Commerce has statutory authority over United States export control laws, including to address situations in which the exportation of United States products result in injury to domestic entities or to an industry, as well as in which there is an adverse affect on domestic supply as to impair recycling. All of these adverse effects are present because of the wrongful acts of the Chinese government.

Our concerns are similar to that of the domestic copper industry and ISRI (Institue of Scrap Recycling Industries - who's letter is attached and quoted below), the scrap recycling trade group, in that a high percentage of all exports and a significant part of the entire scrap market are going to China. The Chinese government has artificially created an operating environment for its' manufacturing base that provides them with significant advantages which United States manufacturers simply do not and cannot have under United States law, which can be summarized as follows:

Value Added Tax – producers and importers receive rebates, which are in effect trade subsidies which 'result in buying prices for…scrap that sometimes exceed world-wide terminal market prices, such as those listed on the LME…' Apparently, 30% of this rebate goes to the importer, and 70% goes to the producer.

Fraudulent use of VAT - ISRI members report that commercial documents are being reported to reflect a lower value for the material being shipped into China resulting in a lower initial VAT tax being paid by the Chinese importer. Once the material is shipped to the Chinese consumers, the true value of the material is identified for VAT rebate purposes, giving the importer and producer additional economic benefits above and beyond the normal VAT benefits when buying the material.

Fraudulent Shipping Documents - Some shippers 'are instructed to load the container with the least valuable material at the back of the container so when it arrives in China for inspection, the bill of lading reflects a container that is full of this lower value material.' This practice facilitates the fraudulent VAT practice explained above.

Labor Exploitation - China relies heavily on extremely low cost manual labor to segregate unsorted scrap. Compared to the legal requirements for American companies,

the working conditions would be considered tantamount to slave labor. The regulatory environment under which their workforce operates is virtually non-existent, and the cost of maintaining this workforce is consequently very low compared to United States companies who are required to abide by Federal and State standards regarding the treatment of their employees, as well as OSHA standards for their safety.

Environmental Regulations - The largest Chinese scrap yards and smelters only are subject to loose environmental regulations based on how well they have developed a 'relationship' with their provincial enforcement agency, and they are watched by the Chinese central government. However, they all effectively subcontract out substantial portions of their operations to smaller yards and smelters which are not under this scrutiny, and therefore operate without any environmental restrictions thereby disproportionately increasing global emissions. This also creates an unfair cost advantage for the Chinese.

Currency Manipulation – The currency issues with China have been well documented and do not need to be repeated in detail. However, regardless as to which department has technical control of the issue, the Dept. of Commerce, Treasury, and all other appropriate government agencies need to work in a coordinated fashion to address this and all of the relevant issues which create an unfair and improper competitive advantage for China.

Subsidies including Non-Performing Bank Loans – China gives money to companies in order to build manufacturing facilities and provide working capital without requiring those companies to pay back the loans. This is a form of direct subsidy, and there may be other direct subsidies as well. There also are indications that the futures exchange in Shanghai subsidizes scrap purchases. However, verification of these matters are impossible for us due to the lack of transparency in China's markets.

All of these unfair and improper actions of the Chinese government create significant direct and indirect economic subsidies that make it impossible for United States companies to fairly compete for aluminum scrap.

Our complaints and concerns mirror many of the other industry segments in the United States. While the Chinese government claims that they are phasing out these subsidies and are implementing regulations, because of the lack of transparency and secrecy, We do not have access to the underlying Chinese market information and data, which makes it impossible to verify the claims made by the Chinese government. The lack of openness and transparency indicates that subsidies and lack of regulations still are ongoing, and will continue until fundamental structural changes are implemented. This approach to interpreting a lack of openness has been used by our government in other foreign policy situations, where it is apparent that an innocent foreign country would be forthcoming with information and access if the resulting disclosures would verify their position. Otherwise, an adverse inference must be drawn.

The effect on our domestic manufacturers has been and continues to be devastating. Scrap dealers in the United States are repeatedly telling their customers that there is an acute shortage of aluminum scrap, and at least a major portion of that shortage is due to increased exports to China. Much of the subsidized raw materials are then

converted to finished products and exported back to the United States, sold with the additional advantage of having an undervalued, manipulated currency with which to operate – thus destroying the next tiers of our manufacturing base. In the long run, this erosion of manufacturing in the United States also will threaten our national defense and national security as essential parts of our manufacturing capability are effectively destroyed. Since aluminum manufacturing is a vital element in many high tech industries, particularly defense, the situation becomes even more critical.

Experience of Jupiter Aluminum Corporation and U.S. Foreign Policy Implications- Jupiter Aluminum Corporation believes that based on our experience, the increasing purchase by Chinese entities of US aluminum scrap is causing Jupiter's supplies of aluminum scrap to be very tight with the corresponding substantial increase in the price of our raw materials. If this continues, such a pattern could drive our company out of business along with other companies in our industry. At that point, from a foreign policy/national defense standpoint, the United States would be left with no domestic secondary aluminum suppliers to support the U.S. defense program of which Aluminum not only has been a most critical component, but all indications are with the changing nature of our weapons systems, that the need for aluminum will increase dramatically in the years ahead. Thus, our government from a foreign policy standpoint must not allow this to happen and take whatever actions are necessary to stop it right now.

The Chinese government has no incentive to change today, and will not change unless the United States government takes strong proactive measure to address these trade inequities to ensure that China competes fairly and complies with United States and international trade rules. The Department of Commerce has a responsibility under our export control laws to address unfair trade practices resulting in the exporting of domestic material causing injury to domestic entities or to an industry, as well as in which there is an adverse affect on domestic supply impairing recycling. In this case, recycling of domestic aluminum scrap has been and continues to be seriously impaired. Significant injury has been and continues to be done to our nation's aluminum industry and the domestic companies in that industry.

I trust that the Department of Commerce will take vigorous corrective action, and if it would be helpful to you for me to come to Washington and discuss this matter with you, I would be delighted to do so.

Sincerely,

Dietrich Gross
President, Jupiter Aluminum Corp.

SHEILA QUARTERMAN - Effects of Foreign Policy-Based Export Controls

From: "Brendle, Thomas" <Thomas.Brendle@analog.com>
To: <SQuarter@bis.doc.gov>
Date: 11/24/2003 12:00 PM
Subject: Effects of Foreign Policy-Based Export Controls
CC: "Otoole, Dick" <Dick.Otoole@analog.com>, "Richards, Marcia" <Marcia.Richards@analog.com>

Ms Quarterman,

Attached are comments from Analog Devices, Inc. as requested in the Federal Register, October 21,2003.

<<EFFECTS OF FOREIGN POLICY Rev 3.doc>>

Regards,
Tom Brendle

Thomas M. Brendle
Export Compliance Specialist
Analog Devices, Inc.

thomas.brendle@analog.com
(781) 461-3547

EFFECTS OF FOREIGN POLICY-BASED EXPORT CONTROLS

Analog Devices, Inc. (ADI) is a world leader in the design, manufacture and marketing of high- performance analog, mixed-signal and digital signal processing (DSP) integrated circuits (ICs) used in signal processing applications. **ADI's** product line includes:

Data Converters: Analog-to-Digital and Digital-to-Analog
High-performance Amplifiers
Digital Signal Processors
Specialized Analog Functions including:
Radio Frequency, Transceiver and Interface, Power Monitoring and Management, Micromachined Products

Most of these products are EAR99 but some fall in CCL Categories 3, 4, and 5 with National Security as the "Reason for Control." These are Categories of foreign policy-based export controls. The Export Administration Regulations state at paragraph 742.4:

"It is the policy of the United States to restrict the export and reexport of items that would make a significant contribution to the military potential of any other country or combination of countries that would prove detrimental to the national security of the United States."

It is extremely difficult for ADI to comment on "the likelihood that such controls will achieve the intended foreign policy purpose..." of such controls when the intended policy purpose is vague and not clear. For example, when a denial states that "the Department of Commerce, in consultation with the Department of Defense, has concluded that the ultimate consignee is not an acceptable recipient at this time of U.S.-origin items controlled for national security reasons" yet the recipient is not on a denial list, then the company must simply trust the judgment of the U.S. Government and not attempt to assess whether the foreign policy purposes of the U.S. will be achieved. The company can hardly determine whether its export of Integrated Circuits will make a significant contribution to the military potential of the customer country.

Although the broad intent of the policy may be apparent, the means of translating it into specific control parameters is of necessity subjective and is not well defined. In the absence of decisive authority to identify and implement clear administrative guidance in connection with the review of a license application, delay and inconsistency are the result.

It must be assumed that the purposes of the U.S. Government are less to deny specific applications for ICs such as weapons guidance or radars or command, control and communications, and more to maintain the technological lead the U.S. enjoys in these areas. Again, the determination to control must be exercised by the Government based on its own judgment, as is the case in fact, and not on the results of any query of industry. This assumption comes from the appearance that control parameters for products are reviewed and "the bar raised" in keeping with improvements in technology rather than in keeping with applications of this technology.

When the foreign customer (e.g. China) needs a component for a specific application, a slightly less adequate, but useable, one can be found on the international market when the better part is denied by the U.S. Government. In these cases, the foreign customer prefers to avoid the licensing requirements of the U.S. and buy elsewhere, and U.S. business is lost. ADI cannot document a precise value of such losses but estimates that, in the 12-14 bit Converter area, between $15-20 million is at risk in each of the coming years. The effectiveness of U.S. controls may limit certain 12 and 14 bit converters from being shipped directly to China but, internationally, converters are widely available on the open market and the effectiveness of U.S. controls is questionable.

The extensive inter-agency coordination and the time consuming, often inefficient and potentially inconsistent reviews that characterize the United States licensing process have led to delays of 2 to 3 years in gaining approval (or denial) of license applications. Such delays are highly detrimental and very costly to American industry and are viewed with considerable disdain by potential foreign customers. The subjective nature of this process is readily seen in the time required to achieve a U.S.Government position.

If it is to compete effectively in a very aggressive marketplace, industry must plan ahead and achieve economies throughout its development, manufacturing and supply chain operations. An 8 to 12 week wait for approval or denial of a license is inconvenient but somewhat understandable; a 2-3 year wait loses all efficiencies of production and supply chain and, inevitably, loses a customer. This has been the experience of ADI. At stake according to IMS Research is a projected market in Asia for the 4 years from 2004-2007 of $661 Million just for 12-14 bit converters. The projected market for the same time period for 16 bit converters is $935 Million.

On occasion, the resources, manpower and time devoted to pursuing license approval have matched that which could and would have sufficed to develop and bring on line a new product! U.S. industry needs and deserves a much more efficient and better coordinated Government structure if it is to prevail in this competitive market. We have been told that *our foreign competition enjoy far more favorable and supportive relationships with their Governments! L*arge returns to American industry are at stake; our Government should be a clear, decisive, well briefed and efficient partner.

Because our technology is consistently 2-3 years ahead of our international competition, it is difficult to compare their governments' controls with ours. ADI sees very little indication that their government controls impact our foreign competitors. The delays created by U.S. Government controls effectively cost us the lead which our technology achieves and which could capture added market share. This leaves the playing field level or slanted again in favor of our competition. Finally, a very devastating criticism would be that U.S. Government controls that introduce such delays effectively *reduce incentive for American industry to maintain its technological lead in such areas.*

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October 21, 2003

Ms. Sheila Quarterman
Regulatory Policy Division
Bureau of Industry and Security
Department of Commerce
PO Box 273
Washington, DC 20044

Subject: Effects of Foreign Policy-Based Export Controls

Reference: Federal Register Notice Vol. 68, No. 203, October 21, 2003

Dear Ms. Quarterman:

Please accept this letter on behalf of the Sensors and Instrumentation Technical Advisory Committee (SITAC) in response to the referenced request for comments on the effects of foreign policy-based export controls.

Of the controls subject to extension, those of most concern to the industry represented by the SITAC are the Regional Stability (RS) controls outlined in Part 742.6 and applying to commodities in categories 6A002, 6A003, 6E001 and 6E002, all related to commercial night vision and thermal imaging equipment. Part 742.6 states that these controls are

"maintained in support of the U.S. foreign policy to maintain regional stability".

The legitimacy of RS controls has been a longstanding topic with the SITAC. It is widely felt that RS controls and, in particular, the RS1 country list have little to do with regional stability concerns. We expounded upon this at some length in our letter regarding this topic of October 2002. Having written to your office on this topic for three years running, we are sensitive to being repetitive. Yet, all the comments of the past two years are still pertinent and on target. Consequently, we haven chosen this year to attach our October 2002 letter and focus this letter on what has changed over the past years. We request that you review our 2002 letter and consider the following new comments.

Criteria 4 and 5 cited in the Federal Register notice address the reaction of other countries to foreign policy-based controls in the US, how those reactions affect the true efficacy of the US controls as well as how the controls affect the position of the US in the international economy. There are relatively new developments regarding these criteria.

When the SITAC first raised its concerns about RS controls by responding to a similar request for comment in late 2000, we were able to speak in general terms about the ill effects these controls might have on the US thermal imaging industry. We cited the growth of the market for dual use uncooled thermal imaging products and the fact that US manufacturers were constrained by US export controls, opening the door for development of technology and products abroad. With the benefit of three years hindsight, we can now see all too clearly how these predictions have come true.

Whereas we had previously cited the threat of growing detector manufacturing capability in France fueled by US export constraints, we can now point to the realization of that threat.

In the past few years, a French company, ULIS has been formed to produce and market uncooled thermal imaging detectors or Focal Plane Arrays (FPAs). This company has made the transition from startup to full production manufacturer selling thousands of FPAs this year. In 2003, the Japanese company NEC has launched commercial production of its uncooled FPAs incorporating them in cameras made by NEC Sanei. These cameras formerly used FPAs manufactured in the US. FPA technology developments elsewhere in Japan, in Belgium and in Israel are potentials for future competitive threats.

The US government typically rationalizes lack of concern for such developments by citing that these countries possessing the basic technology are members of the Wassenaar Arrangement and are, thus, controlling exports of their products similarly to the US. This is often referred to as the "level playing field" concept. The writer served on a conference panel with representatives of NEC at an industry conference in 2001. During that panel discussion, NEC presented data comparing the months required to get US export licenses for re-export of the US content in their cameras vs. the few days required to obtain an export license from their own government. The motivation to cut out the US connection was obvious to all. We now see the reaction of one powerful company to our RS controls.

A parallel development of the past three years is the availability of uncooled thermal imaging cameras produced in non-Wassenaar countries using technology under no US export control. Opgal in Israel has produced uncooled thermal imaging cameras for several years using ULIS detectors. In China (PRC), an entire industry has been created in the past three years. At a September 2003 trade show in China, five domestic camera producers unheard of in 2000 were showing production uncooled FPA cameras. These companies, Dali, Wuhan Guide, SAT, Associated Technology and North China Research Institute of Electro-Optics, all seem to use the ULIS FPAs. While the US restricts exports to the EU and other closest allies ostensibly under guise of concern for the regional stability in those countries, a new industry is developed in the PRC! It is presumed that the PRC might be an intended target of RS controls. If not a direct target, the PRC offers a possible path for products to target countries. Thus any rational view by the US government must regard this as an example of failure to achieve the foreign policy objective.

The Federal Register request for comment expresses an interest in information regarding controls maintained by US trade partners and information regarding their licensing policies and practices. To build on the information above, the American Council for Thermal Imaging (ACTI), an industry trade group formed in 2002, is investigating these topics. ACTI has regular interface with the BIS Office of Strategic Trade and Foreign Policy. We have already established that EU countries do not restrict exports of dual use thermal imaging cameras within the EU.

Your request for comment also asks for "suggestions as to how to measure the effect of foreign policy-based export controls on trade". The story told above about growth of

competing industry abroad suggests an excellent metric, as each FPA or camera sold is one lost by US industry. The resources of the US government would be well served to assemble sales estimates for the foreign suppliers.

Finally your request solicits suggestions for "revisions to foreign policy-based controls that would bring them into line with multilateral practice." We have seen one result of the multilateral practice above in the citing of the industry growth in the PRC. The SITAC does not suggest creating a similar wide-open situation for US technology. However, we have long proposed a change of control criterion in 6A002, 6A003, 6E001 and 6E002 to RS2 vs. RS1. This change would put our industry on a level playing field with European competitors at least in sales to the EU and our closest allies, eliminating a large regulatory competitive advantage that our Wassenaar partners have over us at this time.

In closing, the SITAC offers these summary comments.

1. **RS control of thermal imaging and night vision technology is not accomplishing an enhanced regional stability in many of the stable countries on the RS1 list. Instead they serve only to limit US industries opportunities in these countries.**

2. **Rapid growth of the foreign industry is hard evidence of the effect of RS controls on trade and US industry's participation therein.**

3. **The Secretary should consider moving category 6 items from RS1 to RS2 controls as a first step to reconsidering RS controls in entirety. This would not only address the level playing field but also decrease BIS caseload by decontrolling exports to countries where stability is not at risk.**

We thank BIS for the opportunity to comment.

Respectfully submitted,

Stanley F. Kummer
Chair
Sensors and Instrumentation Technical Advisory Committee

Enclosure

Enclosure to Letter on Foreign policy-based Export Controls

November 21, 2003

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October 30, 2002

Ms. Sheila Quarterman
Regulatory Policy Division, Office of Exporter Services
Bureau of Industry and Security
Department of Commerce
PO Box 273
Washington, DC 20044

Subject: Effects of Foreign Policy-Based Export Controls

Reference: Federal Register Notice of September 27, 2002

Dear Ms. Quarterman:

The Sensors and Instrumentation Technical Advisory Committee (SITAC) respectfully submits this letter in response to the referenced request for comments on the effects of foreign policy-based export controls. The SITAC appreciates the opportunity to comment. The Committee also appreciates the fact that comments it submitted in 2001 figured prominently in Chapter 3 of the BIS ***2002 Report on Foreign Policy Export Controls.*** Although no changes were made as a result, it is good to know that our inputs are being read and repeated!

The six recommended criteria are essentially the same as included in the request of a year ago. Alas, none of the issues facing the industry have gone away. So, much of what follows is repeated from our 2001 comments. Some additional comments about foreign competition have been added. The current request lists nine additional guidelines for input. We attempt to address those where we have pertinent information.

Of the controls subject to extension, those of most concern to the industry represented by the SITAC are the Regional Stability (RS) controls outlined in Part 742.6 and applying to commodities in categories 6A002, 6A003, 6E001 and 6E002, all related to commercial night vision and thermal imaging equipment. Part 742.6 states that these controls are

"maintained in support of the U.S. foreign policy to maintain regional stability".

Over the past year, the SITAC has continued to question the legitimacy of RS controls applied to thermal imaging technology. The effects of world events on our licensing system have interrupted this dialog and forced the thermal imaging industry to fight for the basic right to export, even within what it deems to be inappropriate RS controls. The comments below are all directed toward RS controls.

1. **Will the controls achieve the intended foreign policy purpose, in light of other factors, including the availability from other countries of the goods or technology proposed for such controls?** It is important to note that Category 6 is subject to RS Column 1 controls, that is to say exports are controlled to all countries except Canada. By treating all regions with the exception of Canada as being

potentially unstable this would seem to dilute the focus on regions where stability may truly be in question. Further it is important to note that Category 6 technologies have been the subject of significant turmoil and unpredictability in the licensing process over the past several years. This has created a ripe environment for foreign sources pursuing similar technology. The proliferation of image intensifier night vision devices from non-Wassenaar countries in recent years is easily recognized due to their presence in the US consumer market. In the area of infrared (IR) thermal imaging devices, foreign sources are growing in size and number. The past year has seen a remarkable increase in the presence of foreign competition. A French focal plane array manufacturer reports several thousand units produced this year and a capacity to produce 25,000 units per year. Several thermal camera makers in the People's Republic of China have become very visible in the past year. Previously reported efforts in the UK and Japan continue to grow. These are the fruits of RS controls that limit the ability of US exporters to meet the worldwide demand. Distributors in the EU advise that intra-EU exports of uncooled IR cameras are unrestricted creating greater advantage for European suppliers.

2. **Can the foreign policy purpose of such controls be achieved through negotiations or alternative means?** The SITAC believes the purpose as stated in the EAR is not served in this case so, if served, must be served by alternative means.

3. **Are the controls compatible with the foreign policy objectives of the US and with overall policy of the US toward the country subject to the controls?** The SITAC believes that with respect to our closest allies, specifically those countries included in RS1 but not included in RS2, the controls are not compatible with the stated objective. These are not countries or regions whose stability can be threatened by export of these commodities. It is abundantly clear that a top current US foreign policy objective is to build a large international coalition to combat terrorism in both offensive and defensive terms. The public message from our government is that we must share resources and intelligence among this coalition to fight a common foe. Much of the RS-controlled equipment is sought after by law enforcement, fire-fighting and security organizations throughout the world. By restricting our allies' access to available US technology our calls for cooperation seem hollow.

4. **Is the reaction of other countries to such controls by the US likely to render the controls ineffective in achieving the intended foreign policy purpose or be counterproductive to the US foreign policy interests?** The reaction of other countries includes attempts to seize the market opportunity created by restricting the availability of US technology while the US industry demonstrates the growing commercial application of this technology. This is clearly counterproductive and diminishes the effectiveness of the US controls. The growth of the foreign industry in the past year demonstrates the ineffectiveness in achieving the foreign policy purpose.

5. **Does the effect of the controls on the export performance of the US, the competitive position of the US in the international economy, the international reputation of the US as a supplier of goods and technology, or the economic**

well-being of individual US companies and their employees and communities exceed the benefit to US foreign policy objective? The SITAC's opinion is that the negative effects on US companies far exceed the perceived benefit to the foreign policy objective. The policy encourages a dismantling of the US industry. It is, again, difficult to separate the effect of the RS controls from the overall condition of the US export licensing system with respect to Category 6 application of these controls, but the damage to US companies is undeniable. To earn and/or maintain a reputation as reliable suppliers, US companies in commercial businesses must be able to provide predictable and timely delivery of products. This is simply not possible, a fact that is well recognized by experienced distributors and customers in foreign countries. The unpredictability of the process strains the credibility of US suppliers. The defense press has reported instances of foreign governments discouraging the purchase of US controlled items due to export difficulties. US companies have been successful in creating explosive growth in the use of thermal imaging in firefighting. This growth has gained the attention of firefighters and manufacturers throughout the world. The US suppliers have been severely restricted in their attempts to export firefighting cameras, even to NATO countries, creating an open door for other countries to fill the demand. There are similar situations in other markets.

6. **Is the US able to enforce the controls effectively?** Given fixed resources, US enforcement ability is directly proportional to the number of commodities controlled and number of controlled destinations. Proliferation of questionable controls diminishes US enforcement ability.

The application of RS controls is further explained in EAR 742.6.b Licensing Policy as follows.

> *(1) Applications to export and reexport items described in paragraph (a)(1)* ***(i.e. RS1 items)*** *of the section will be reviewed on a case-by-case basis to determine whether the export or reexport could contribute directly or indirectly to any country's military capabilities in a manner that would alter or destabilize a region's military balance contrary to the foreign policy interests of the United States.*

Over the past year, the US Defense Department (DoD) has led an effort to place tighter controls on thermal imaging products. This is manifested in more restrictive license conditions, denials of cases identical to previously approved cases and more escalation of cases resulting in significant licensing delays. This is further manifested by attempts to place additional, previously uncontrolled thermal imaging technologies such as silicon focal plane arrays under control. It seems apparent that the reasons for tightened controls have to do with perceived threats to US forces rather than the possibility for destabilizing the balance of foreign countries. Thus RS controls seem misapplied to this industry.

Foreign customers for US thermal imaging products are burdened by what they see as overly restrictive conditions, lack of confidence in their abilities to do business responsibly and unpredictable delays in gaining access to US products. European

customers are receptive to European sources due to the openness of intra-EU markets to exports of their products.

Many more prominent US trading partners apply controls that are ostensibly similar to those of the US because of their participation in the Wassenaar Arrangement. However, there is no analog to RS controls in the Wassenaar Dual Use Control List and the similarities are incomplete. As cited above, the EU seems to allow uncontrolled export of these items between countries of the EU.

The SITAC investigated licensing processes in two countries during the past year. A party from the UK presented a license case study at a SITAC meeting and showed license processing times to be approximately half the best cycle times in the US system. The case in point was also devoid of the extensive license conditions common to US licenses in this arena. Another data point came from a Japanese exporter who reported license cycle times of a few days or about one-tenth the best US cycle times. It should be noted that US thermal imaging cases are frequently handled out of normal cycles extending the average time for such a license to well beyond the best cycle times used for comparison above.

The SITAC continues to recommend that the Secretary move Category 6 commodities presently controlled under RS Column 1 to RS Column 2. This would have the effect of putting the US industry on similar footing with its competition in commerce with our closest allies.

The effect of RS controls on trade or acquisitions by intended targets of the controls is most readily demonstrated by the rapid growth of foreign competition within and without the Wassenaar Arrangement as cited above. The success of the last year has not only spawned new markets and competitors in countries like China but it has given historical US customers a credible alternative. This is most problematic with non-US manufacturers currently integrating US technology. Several such manufacturers are openly using or preparing to use the French technology source citing US export difficulties as the principal reason. In one sense, the effect of RS controls can be directly measured by the growth of these foreign sources. At one time, US technology was the only serious offering. That position has eroded and the rate of erosion during the past year is sobering. However, the controls on US technology have retarded the application and market development for many years making the total effect in lost business impossible to measure.

In closing, the SITAC offers these summary comments.

1. **RS control of thermal imaging and night vision technology is inconsistent with stated and implied foreign policy goals. The concerns addressed by US licensing may be more closely related to national security or some other control criterion.**

2. **The application of RS controls in this case has contributed directly to the loss of ground by the US industry to foreign competition.**

3. **It is difficult to separate the effect of RS controls from the overall effectiveness of the US licensing process in assessing challenge to the US industry.**

4. **The Secretary should consider moving category 6 items from RS1 to RS2 controls as a first step to reconsidering RS controls in entirety. This would not only address fairness issues but also allow a decrease in BIS caseload by decontrolling exports to countries where stability is not at risk.**

Once again, we thank BIS for the opportunity to comment and for the attention given to past comment from the SITAC.

Very truly yours,

Stanley F. Kummer
SITAC Co-chair

Cc: Bill Wells, SITAC co-chair