



Appendix B: Regulatory Changes in Fiscal Year 2004

Multilateral Regimes

Australia Group

On March 18, 2004, BIS published a rule implementing the understandings reached at the June 2003 plenary meeting of the Australia Group (AG) by adding 12 viruses and two bacteria to the list of AG-controlled human and zoonotic pathogens or toxins and making a conforming change based on the addition of enterohaemorrhagic *Escherichia coli*, serotype O157 and other verotoxin producing serotypes. This rule also implemented an AG intersessional decision, which was adopted after the June 2003 AG plenary meeting, by adding two viruses to the list of AG-controlled animal pathogens. Finally, this rule updated the list of States Parties to the Chemical Weapons Convention (CWC) by adding nine countries that had become States Parties to the CWC.

Missile Technology Control Regime

On May 4, 2004, BIS published a rule amending the Commerce Control List to reflect changes to the Missile Technology Control Regime (MTCR) Annex agreed to at the September 2003 MTCR Plenary held in Buenos Aires, Argentina.

Nuclear Suppliers Group

As a result of the admission of Kazakhstan to the Nuclear Suppliers Group (NSG), BIS published a rule on October 22, 2003, adding Kazakhstan to Country Group A, Column A:4, which identifies the member countries of the NSG, and to the definition of "Nuclear Suppliers Group." The NSG member countries have agreed to establish export licensing procedures for the transfer of items identified on the Annex to the "Nuclear-Related Dual-Use Equipment, Materials, and Related Technology List," which is published by the International Atomic Energy Agency.

Wassenaar Arrangement

On April 29, 2004, BIS published a rule revising certain entries controlled for national security reasons in Categories 1, 2, 3, 4, 5 Part I (telecommunications), 5 Part II (information security), 6, and 7 to conform with changes in the List of Dual-Use Goods and Technologies maintained and agreed to by governments participating in the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies (Wassenaar Arrangement). In addition, this rule added guidance as to how to calculate the Composite Theoretical Performance (CTP) for computer systems with 'non-uniform memory access' (NUMA) architecture, and to define NUMA.

On December 10, 2003, BIS published a rule to make the necessary changes to the Commerce Control List to implement revisions to the Wassenaar Arrangement List that were agreed upon in the December 2002 meeting, to make necessary revisions to reporting requirements and License Exception GOV restrictions, and to add a statement of understanding for medical equipment.

India

On January 12, 2004, President Bush announced the Next Steps in Strategic Partnership (NSSP) with India. The proposed cooperation outlined in the NSSP will progress through a series of reciprocal steps that build on each other, including steps related to enhancing cooperation in peaceful uses of space technology and steps to create the appropriate environment for successful high-technology commerce. On September 22, 2004, BIS published a rule implementing three initial steps the United States has agreed to take under the NSSP. These steps are: (1) removing the Indian Space Research Organization (ISRO) Headquarters, Bangalore, from the

Department of Commerce Entity List; (2) removing certain export license requirements for the seven ISRO subsidiaries listed on the Entity List; and (3) establishing a presumption of approval for all items not multilaterally controlled for nuclear proliferation reasons going to the “balance of plant” portion of Indian nuclear facilities subject to International Atomic Energy Agency safeguards (Rajasthan 1 & 2 and Tarapur 1 & 2).

Sanctions

Angola

On January 22, 2004, BIS published a rule removing from the EAR references to sanctions on Angola administered by the Department of the Treasury’s Office of Foreign Assets Control (OFAC). In response to United Nations Security Council (UNSC) resolutions regarding the conflict in Angola, the President, by Executive Order, directed the Department of the Treasury to maintain sanctions on the National Union for the Total Independence of Angola (UNITA). On December 9, 2002, the UNSC terminated the sanctions previously imposed on UNITA. On May 6, 2003, consistent with the UNSC action, the President terminated the relevant Executive Orders, effectively ending U.S. sanctions.

Cuba

On June 22, 2004 (to be effective June 30, 2004), BIS published a rule placing new limits on gift parcels and personal baggage and revising licensing policy regarding vessels and aircraft going to Cuba. It placed new restrictions on the permitted contents of gift parcels, the frequency with which they may be sent and the donees to whom they may be sent. It also limited personal baggage under a Commerce license exception to 44 pounds for most travelers to Cuba. It stated that BIS will consider on a case-by-case basis applications for vessels and aircraft on temporary sojourn to deliver humanitarian goods or services, or consistent with U.S. foreign policy interests. These changes implement certain recommendations in the May 2004 Report to the President from the Commission on Assistance to a Free Cuba.

Iraq

On July 30, 2004, BIS published a rule implementing the reversion to the Department of Commerce, from the Department of the Treasury, of the licensing responsibility for exports and reexports to Iraq of items subject to the Export Administration Regulations (EAR). This rule was consistent with United Nations Security Council Resolutions 1483 (2003) and 1546 (2004), which lifted the comprehensive United Nations trade embargo imposed on Iraq, but retained an embargo on arms and related material and their means of production.

On July 30, 2004, BIS published a rule revoking General Order No. 3 of the EAR. General Order No. 3 had imposed a license requirement for exports and reexports of all items on the Commerce Control List destined to or for Shaykh Hamad bin Ali bin Jaber Al-Thani and listed entities related to or controlled by him. This rule also removed a related provision of the EAR.

Libya

On April 29, 2004, BIS published a rule implementing the President’s April 23, 2004, decision to revise U.S. sanctions against Libya. This rule also implemented the transfer to the Department of Commerce from the Department of the Treasury of the licensing jurisdiction for exports to Libya of items subject to the EAR.

Syria

On July 30, 2004, BIS published a new General Order No. 2, implementing Section 5(a)(1) of the Syria Accountability and Lebanese Sovereignty Restoration Act of 2003 (the SAA), which required a prohibition on the export to Syria of all items on the Commerce Control List. The SAA also required that the President impose two or more of the six additional sanctions set forth in the SAA. One of the additional sanctions chosen by the President prohibited the export or reexport to Syria of products of the United States, other than food and medicine. This Order was issued consistent with Executive Order 13338 of May 11, 2004, which implements the SAA.

Licensing Jurisdiction and Control List Clarifications

Chemical Weapons Convention

On May 4, 2004, BIS published a rule correcting the description of certain precursor chemicals on the Commerce Control List to make it consistent with the list of “Schedule 2” chemicals under the Chemical Weapons Convention.

Computer and Microprocessor Technology

On October 24, 2003, BIS proposed to expand the availability of license exceptions for exports and reexports of computer technology and software, and microprocessor technology on the Commerce Control List. The goal of this proposed rule was to solicit public comments to assist BIS in evaluating the effect of the proposed amendments. In addition, this proposed rule requested industry to suggest alternatives for a different method or parameter for controlling exports of computers and microprocessors, and the technology and software therefor. (A final rule was published early in Fiscal Year 2005.)

Country Policy

On June 28, 2004, BIS published a rule removing the license requirements for certain regional stability items and for certain crime control items destined to Bulgaria, Estonia, Latvia, Lithuania, Romania, Slovakia, and Slovenia to reflect the accession of those countries to the North Atlantic Treaty Organization (NATO) on March 29, 2004. On April 20, 2004, BIS published a rule updating the Country Chart to add East Timor and the Democratic Republic of the Congo, establishing separate export licensing requirements for Aruba and Netherlands Antilles, and updating references to certain countries to reflect their officially recognized names.

Energetic Materials

On July 19, 2004, BIS published a rule removing from the Commerce Control List six chemicals that have been added to the United States Munitions List. It also added to the Commerce Control List one energetic chemical, Chemical Weapons Convention Schedule 3 chemical, one

group of oxidizers, and liquid pepper, all of which have been removed from the United States Munitions List.

Military Vehicles and Parts

On August 31, 2004, BIS published a rule clarifying the export controls on parts and components of certain military ground vehicles, adding a new class of vehicles to the Commerce Control List and providing guidance for classifying ground vehicles that are subject to the EAR and distinguishing those vehicles from those that are subject to the International Traffic in Arms Regulations.

“National Security” and “Regional Stability” Controls

On March 30, 2004, BIS published a rule amending the Commerce Control List to remove national security controls from and apply regional stability controls to four items. This rule is issued to make the EAR conform to the requirements of Section 5(c)(6)(A) of the Export Administration Act, which provides for expiration of unilateral national security controls after six months.

Penalty Guidance

On February 20, 2004, BIS published a rule on how BIS determines what penalty is appropriate for the settlement of an administrative enforcement case and when warning letters should be issued. It identified both general factors and specific mitigating and aggravating factors, which BIS typically considers. The guidance does not apply to antiboycott matters arising under part 760 of the EAR. It reflects BIS’s evaluation of the comments received on the proposed rule of September 17, 2003.

Protective Equipment

On May 6, 2004, BIS published a rule revising Export Control Classification Number (ECCN) 1A004 to conform to language in the Wassenaar Arrangement List of Dual-Use Goods and Technologies entry 1.A.4 (the Dual Use List) thereby imposing national security and anti-terrorism license requirements on those items. It also created a new ECCN 1A995 to impose antiterrorism controls on certain items that are excluded from that entry of the Dual-Use List.

QRS11 Micromachined Angular Rate Sensors

On February 9, 2004, BIS published a rule to transfer, coincident with the State Department's written commodity jurisdiction determination, licensing jurisdiction for QRS11-00100-100/101 Micromachined Angular Rate Sensors from the Department of State to the Department of Commerce when those sensors are integrated into an instrument system or aircraft, or are exported solely for integration into such a system. This rule also excluded systems or aircraft integrating QRS11-00100-100/101 sensors from eligibility for the *de minimis* provisions of the EAR, and excluded the sensors from license exception eligibility.

Simplified Network Application Processing (SNAP)

On November 12, 2003, BIS published a proposed rule that would require that a new version of BIS's Internet-based Simplified Network Application Processing System (SNAP+) be used to submit all export and reexport license applications (except those for Special Comprehensive Licenses), encryption review requests, classification requests and License Exception AGR notifications. It would also require that documents that must be submitted with those filings be "attached" as PDF files that, if they contain text, are text searchable. The proposed rule would also set forth the procedures for implementing SNAP+ and the responsibilities of users of the system. BIS solicited public comment on these proposals.