

1. BXA Background

The Bureau of Export Administration (BXA) administers and enforces laws and regulations which govern exports of dual-use commodities, technology and software from the United States and its territories and reexports of such items from third countries. In addition, BXA regulates certain activities of U.S. persons related to proliferation concerns. BXA has the responsibility of implementing the Clinton Administration's commercial encryption policy and will be responsible for compliance by the U.S. business community with the Chemical Weapons Convention. BXA investigates violations of export controls and implements the antiboycott provisions of the Export Administration Act. BXA is responsible for a variety of programs related to maintaining a strong U.S. defense industrial base. BXA also participates in the efforts of the U.S. government to assist many of the new independent states of the former Soviet Union, the Baltics and Central Europe in developing effective export control systems.

2. Fiscal Year 1997 Highlights

Export Controls in the 21st Century

BXA's export control agenda for the 21st century is focused on preventing the proliferation of weapons of mass destruction while seeking to promote U.S. competitiveness in the global marketplace. BXA recognizes that U.S. industry cannot successfully compete internationally if an export control system does not reflect a changed security environment. The Administration continues to take important actions to remove unnecessary obstacles to exporting and strengthen multilateral regimes. The Administration has actively involved industry as part of its public-private partnership effort.

Export Licensing Liberalizations

The Clinton Administration continues to make major progress in eliminating unnecessary and ineffective export controls and streamlining the export control process. It has simultaneously strengthened the implementation and enforcement of those export controls which are still required to combat proliferation and protect other U.S. national security and foreign policy interests while easing or eliminating unnecessary controls. These actions have greatly reduced obstacles for exporters.

BXA, through multilateral efforts, liberalized export controls for oscilloscopes and certain transient recorders which substantially reduce the paperwork burden by decreasing the number of license applications exporters and reexporters are required to submit for oscilloscopes. U.S. manufacturers hold over 70 percent of the world market share for oscilloscopes in an international market estimated at \$50 to \$100 million per year, with most of the manufacturing done in the United States.

Earlier this year, the Administration announced the liberalization of the encryption licensing policy for banks and financial institutions and for highly formatted financial-specific encryption items used by financial institutions and others to generate secure, private electronic

transactions. This follows the December 1996 publication of an interim rule transferring certain encryption items from the U.S. Munitions List administered by the State Department to the Commerce Control List. This rule implemented the Administration plan to promote a worldwide key management infrastructure with the use of key escrow and key recovery encryption items.

BXA has simplified export controls on mixtures that contain traces of controlled precursor chemicals to permit exports of many common commercial products, such as dry cleaning solvents, while maintaining license requirements for mixtures that contain significant quantities of precursor chemicals. BXA published a rule adding South Korea to the Australia Group (AG). Membership in the Australia Group exempts exports of certain AG-controlled chemicals to South Korea from license requirements, thereby decreasing the overall licensing burden on U.S. exporters.

BXA published a rule introducing a licensing review policy for the approval, on a case-by-case basis, of certain exports to human rights organizations, news bureaus, and individuals and non-governmental organizations engaged in activities that promote democratic activity in Cuba. This change will allow the U.S. government to support the Cuban people and encourage democratic activity without removing license requirements on exports to this embargoed country.

Commodity Jurisdiction

BXA continues to make progress in the transfer of nonmilitary items from the State Department's Munitions List to the Commerce Control List. This effort ensures that U.S. exporters of such items are not unduly burdened by overly restrictive licensing policies. On September 29, 1997, BXA published a regulation transferring jurisdiction from the Department of State to the Department of Commerce, of satellite fuel, ground support equipment, test equipment, payload adapter/interface hardware, and replacement parts for the preceding items, when included with a specific commercial communications satellite launch. This follows the October 21, 1996 transfer of jurisdiction of certain commercial communications satellites and certain hot section technology for the development and production of commercial aircraft engines to the Commerce Control List. This rule also imposed national security and foreign policy controls on certain commercial communications satellites and hot section technology for development, production or overhaul of commercial aircraft engines and clarifies the jurisdiction for developmental aircraft designed for civilian use.

Electronic Security Interests

BXA is responsible for implementing President Clinton's commercial encryption policy to promote the growth of electronic commerce and secure communications worldwide while protecting the public safety and national security. These efforts include the development of the rationale and the new regulatory framework for the transfer of jurisdiction for licensing commercial encryption products from State's U.S. Munitions list to Commerce's Control List, liberalized treatment for recoverable products, and implementation of a new program involving

review and oversight of commitments by encryption manufacturers to build and market key recovery products.

The Chemical Weapons Convention

BXA will oversee U.S. business community compliance with the Chemical Weapons Convention which entered into force on April 29, 1997. In carrying out its responsibilities under the treaty and implementing legislation, BXA will publish new regulations, conduct industry outreach activities, develop an information management system to comply with the treaty's reporting requirements, and manage international inspections at U.S. commercial facilities. BXA, in conjunction with the Arms Control and Disarmament Agency (ACDA), has sponsored a number of CWC industry outreach programs to inform industry of its rights and obligations under the CWC, including the completion of declarations and on-site inspection protocols.

Harmonizing Multilateral Export Controls

BXA continues to work to harmonize multilateral lists and list interpretations to increase transparency and consistency, and to maintain a level playing field for U.S. companies. BXA supports the expansion of transparency and information exchange in the Wassenaar Arrangement, which focuses on exports of arms and sensitive dual-use equipment and technologies. BXA is participating in the standardization of the control language of the Nuclear Suppliers' Group dual use control list to conform with the European Union, Wassenaar, and Missile Technology Control Regime control lists. A substantial majority of members of the multilateral non-proliferation regimes now have "catch-all" controls, which were first advanced by the United States to help prevent weapons of mass destruction and missile proliferation. BXA also participates in on-going international discussions of the U.S. encryption initiative.

Defense Trade Advocacy

As part of our role in defense advocacy and support for U.S. industry impacted by defense downsizing, BXA continued to work with the interagency community on defense advocacy issues. BXA coordinates its efforts with the Trade Promotion Coordinating Committee and the International Trade Administration's Advocacy Center. In FY 1997, BXA defense advocacy efforts supported sales of \$2-3 billion. Examples include support for the \$740 million F-100 Aegis Radar System sale to Spain and the \$700 million sale of the Kaman Seasprite helicopter to Australia and New Zealand.

U.S. Defense Diversification

During FY 1997, BXA continued to implement its U.S. defense diversification programs to provide assistance to the defense industry which has been negatively impacted by defense downsizing. BXA's Resource Matching Program offers a series of workshops designed to provide a variety of defense export and manufacturing information to small and medium size

defense firms. The Competitive Enhancement and Needs Assessment Program targets defense subcontractors to determine which government services that would be most useful to firms diversifying their operations. In June 1997, one of the six Navy Best Manufacturing Practices (BMP) satellite centers in the U.S. at the Commerce Department. The purpose of the center is to provide government agencies and industry with information about how the BMP's resources can be used to improve the manufacturing competitiveness of U.S. companies.

Enhanced Proliferation Control Initiative

In December 1996, BXA implemented guidelines issued by the National Security Council to streamline the export licensing review process for entities of proliferation concern. The development of a list of entities through the "Is Informed" process arose from the Enhanced Proliferation Control Initiative (EPCI) begun in 1990 to stem the spread of missile technology as well as nuclear, chemical and biological weapons. This improved process has injected accountability, transparency and timeliness into the "Is Informed" process. Since February 1997, BXA has published several Commerce Department rules which added names to the "Entity List." Publishing this entity's list allows the U.S. government to identify for U.S. businesses some of the organizations and companies that may be involved in proliferation activities. Under EPCI, BXA has the authority to inform exporters individually or through published notices that a license is required for exports and reexports of normally uncontrolled goods and technology when there is an unacceptable risk of use in or diversion to activities related to nuclear, chemical or biological weapons or missile proliferation, even if the end user is not primarily weapons-related.

Industry Outreach

In FY 1997, BXA continued to conduct extensive outreach and counseling services through the Office of Exporter Services Exporter Counseling Division, Export Seminar Staff and Western Regional Offices located in Irvine and Santa Clara, California. These offices advised businesses and conducted seminars on export control and defense conversion issues. In FY 1997, BXA responded to over 200,000 telephone calls, directly counseled over 1,300 visitors in its offices, and organized 84 seminars attended by over 6,500 participants. BXA held six of these programs overseas, reaching over 1,000 participants in Japan, Sweden, Austria, The Netherlands, France, and the United Kingdom. BXA also developed a new enhanced export seminar program to increase government-industry interaction on export policy.

BXA's Internet Website

BXA's Web Page on the Internet allows BXA to provide guidance on a wide range of topics of interest to both established exporters and those new to exporting. Since its debut in the fall of 1996, the number of visitors accessing the Website continues to grow. In FY 1997, BXA expanded its list of export fact sheets and specialized pages, based on input from the business community. Informative documents are available for downloading from the site, including the BXA Annual Report, the BXA Foreign Policy Report, Export Management System guidelines,

the summary of the second Annual Report on Offsets, and the President's Export Council Subcommittee on Export Administration's report on unilateral economic sanctions. In addition, exporters may now request export license application forms via the Internet. BXA continues to explore ways to develop the site to offer additional electronic services to the business community, including the ability to submit license applications via the Internet.

Export Management Systems

Earlier this year, BXA published its revised Export Management System (EMS) Guidelines. EMS is an optional program that companies may implement, as good business practice, to ensure compliance with the Export Administration Regulations (EAR). Working in close cooperation with industry, BXA revised the guidelines to assist companies with the establishment of internal procedures for screening exports. Establishing an EMS can greatly reduce the risk of inadvertently exporting to a prohibited end-use or end-user. BXA offers on-site EMS reviews of companies' written and operational programs and conducts EMS workshops and seminars to educate the export community on the various tools available to them to assist them in complying with the EAR.

Defense Industrial Base Assessments

BXA completed three major industrial base projects and initiated two new research efforts during FY 1997. The three completed projects are assessments of the U.S. semiconductor processing materials industry, conducted at the request of the semiconductor industry, the U.S. emergency aircraft ejection seat industry, a study sponsored by the U.S. Air Force, and a ball and roller bearing statistical handbook, a joint effort with the American Bearings Manufacturers Association. New research efforts have been initiated to study the optoelectronics industry, a study requested by that industry's trade association, and the high performance energetic materials industry, a project sponsored by the U.S. Navy.

3. Export Administration Programs

BXA's Export Administration is comprised of five offices under the Office of the Assistant Secretary. Three EA offices have responsibility for dealing with a wide range of export control policy and licensing activities, including dual-use nuclear and missile goods and technologies; dual-use chemical and biological goods and technologies; and commercial encryption policy, dual-use goods and technologies related to conventional arms, certain other dual-use sensitive goods and technologies and foreign policy controls. EA also has an office which focuses on strategic industries and economic security issues, and an office which focuses on EA's administrative, education and compliance responsibilities. This organizational structure allows BXA to formulate and implement timely policy changes, undertake quality analysis of licensing decisions, focus on issues of international competitiveness, and provide increased customer service.

The Office of Strategic Trade and Foreign Policy Controls (STFPC) is responsible for implementing multilateral export controls under the Wassenaar Arrangement, which deals with conventional arms and related sensitive dual-use goods and technology. The office has the lead within BXA for the development of encryption policy, the licensing of commercial encryption products and the regulation of key recovery agents. It is also responsible for the bilateral High Performance Computer Agreement and for implementing unilateral U.S. foreign policy controls for antiterrorism, regional stability and crime control.

The Office of Nuclear and Missile Technology Controls (NMT) administers U.S. multilateral and unilateral export controls on dual-use nuclear and missile goods and technology to prevent the spread of weapons of mass destruction. The office is responsible for all export control policy issues relating to the Nuclear Suppliers Group (NSG) and Missile Technology Control Regime (MTCR) and represents the Department in international negotiations on the export controls that are shared by member-nations of these regimes. It also has the responsibility for reviewing proposed exports of items subject to license requirements under the Enhanced Proliferation Control Initiative (EPCI).

The Office of Chemical and Biological Controls and Treaty Compliance has overall responsibility for administering export controls and policy development relating to the Australia Group (e.g. chemical weapons precursors and biological agents). This office develops, implements and oversees U.S. industry requirements under the Chemical Weapons Convention, the Biological Weapons Convention and other relevant treaties. The office also carries out the provisions governing deemed exports to foreign nationals in the United States and executes BXA responsibilities in furtherance of its controls on exports for short supply reasons.

The Office of Strategic Industries and Economic Security (SIES) is the focal point within the Commerce Department for issues relating to the health and competitiveness of the U.S. defense industrial base. As such, SIES plays a leadership role in a wide range of issues which relate to both the national and economic security of the United States. Its efforts include assisting American companies to diversify from defense to commercial production and markets, promoting the sale of U.S. weapons systems to our allies, analyzing the impact of export controls on key industrial sectors, and conducting primary research and analysis on critical technologies and defense-related sectors.

The Office of Exporter Services (OExS) is responsible for counseling exporters, conducting export control seminars, and drafting and publishing changes to the Export Administration Regulations. It develops brochures and other written guidance to educate and train exporters, and to ensure compliance with the Export Administration. It is also responsible for licensing and compliance actions relating to the special comprehensive license, for administering the processing of license applications and commodity classifications and advisory committees and for implementing the End User Verification process through which U.S. exporters are informed of entities of proliferation concern.

4. Export Enforcement Programs

BXA's Export Enforcement (EE) arm is comprised of three offices: The Office of Export Enforcement (OEE), the Office of Enforcement Support (OES), and the Office of Antiboycott Compliance (OAC). OEE has eight field offices located throughout the continental United States. EE works to prevent the illegal export of dual-use items which are controlled for national security and other reasons and investigates alleged illegal export transactions. EE works with U.S. Attorneys and BXA's Office of Chief Counsel in seeking appropriate sanctions for violators.

OEE and OES personnel perform a variety of checks on export transactions which raise proliferation concerns. Special agents spot-check shipments, audit exporters' records, detain or seize suspect shipments, seek temporary denial orders, and carry out pre-license and post-shipment verifications. In cases of suspected or alleged violations, OEE special agents often work with the U.S. Customs Service, the FBI, and the Treasury Department's Office of Foreign Assets Control. OEE, in conjunction with the Department of Justice and the Commerce Department's Office of Chief Counsel, pursues criminal and administrative prosecution of cases.

OEE's mission also involves educating export control personnel and businesses about compliance with U.S. export control regulations, the proliferation threat from rogue nations, and the need for businesses to be more fully aware of their responsibilities under the U.S. export control system. OEE provides export control technical assistance to Foreign Commercial Service personnel and foreign export control officials.

The Office of Antiboycott Compliance enforces the antiboycott provisions of the EAR, provides advice to the public, and issues reports on foreign boycotts. The EAR prohibits U.S. persons from complying with certain aspects of unsanctioned foreign boycotts against countries friendly to the United States. OAC conducts investigations of alleged violations, prepares cases for settlement, and provides support in criminal prosecution or administrative litigation of cases. OAC also monitors international boycott developments.

5. Nonproliferation and Export Control Cooperation Programs

The Nonproliferation and Export Control Cooperation (NEC) office coordinates BXA's activities in support of U.S. export control cooperation programs with the former republics of the Soviet Union and other new states in the Central Asian and Caucasian regions, and the Baltic and Central European states. The NEC team conducts technical exchanges to assist those nations in developing their own effective export control systems with the goal of preventing terrorist and rogue nations from obtaining weapons of mass destruction and other sensitive materials. The technical exchanges are focused on the following five functional areas of export control cooperation: legal and regulatory foundations, licensing procedures, enforcement mechanisms, industry-government relations, and system administration and automation support.

4. Technical Advisory Committees

The Technical Advisory Committees (TACs) have been chartered pursuant to statute since 1973 to provide advice and assistance for U.S. industry regarding the creation and implementation of export control policy. The TACs advise the Department of Commerce on proposed revisions to the U.S. and international export control lists, on worldwide availability and utilization of production technology, and on export control regulations and procedures.

During FY 1997, the Committees addressed technical and administrative issues regarding nonproliferation controls and foreign policy controls. BXA continued to rely on the Committees as a valuable source of information and advice on regulatory and policy matters.

6. FY 1997 Technical Advisory Committee Activities

The Information Systems Technical Advisory Committee (ISTAC) addressed issues relating to Control List Categories 3, 4, and 5. The ISTAC forwarded to BXA comments and proposals on the following topics: export regulation changes and subsequent Composite Theoretical Performance (CTP) level changes for certain license exceptions for exports of computers, key escrow and key management of encryption items, the effects on U.S. industry of unilateral controls vs. multilateral controls, the impact on U.S. industry of controls on technical data, controls for low technology level items, and the restrictions put on licenses for transfers of technology to foreign nationals who are not permanent residents of the United States (deemed exports).

The Materials Technical Advisory Committee (MTAC) reviewed proposals regarding Control List Category 1. The MTAC provided comments and advice regarding the Chemical and Biological Weapons Conventions, the Wassenaar Arrangement, the Missile Technology Control Regime, and the Nuclear Suppliers Group. The MTAC also submitted to BXA draft reports on centrifuges for nuclear fuel processing and on the Biological Weapons Convention Protocol. The MTAC commented on the technical parameters for ECCN 2A292 (pipes and valves). The MTAC reviewed a draft regulation for implementation of the Chemical Weapons Convention and submitted written comments.

The Materials Processing Equipment Technical Advisory Committee (MPETAC) made recommendations regarding proposed revisions to Control List Category 2. A Committee member presented information on license processing delays on 5-axis machine tools. The MPETAC approved a post-shipment visit document proposed by the Department of Energy. The MPETAC agreed with the content of a White Paper on machine tools prepared by technical experts from five countries participating in the Wassenaar Arrangement, and pursued interagency discussion of this issue.

The Regulations and Procedures Technical Advisory Committee (RPTAC) made recommendations on a range of issues, including the following: the "deemed export" rule, encryption policy, the Enhanced Proliferation Control Initiative, Customs' Automated Export System, the license review process, regulations implementing the Wassenaar Arrangement, text revisions for the Export Administration Regulations, changes to the Foreign Trade Statistics Regulations, and unilateral foreign policy controls.

The Sensors and Instrumentation Technical Advisory Committee (SITAC) focused on a relaxation of export controls on oscilloscopes and on the commodity jurisdiction process. The SITAC also provided comments on Entity List implementation. After a corporate presentation on licensing requirements for ECCN 6C002, the SITAC concluded that it could recommend revisions to the control parameters for that entry.

The Transportation and Related Equipment Technical Advisory Committee (TransTAC) advised the Department regarding commodities and technical data within Control List Categories 7, 8, and 9. The TransTAC reviewed the "hot section" technology issue and submitted related definition statements to BXA. The TransTAC also reviewed Wassenaar Arrangement documents and gave input on a number of key items. The Committee provided considerable support for the Department during commodity jurisdiction negotiations on developmental aircraft and commercial communication satellites.

President's Export Council Subcommittee on Export Administration

The President's Export Council Subcommittee on Export Administration (PECSEA) deliberated within the structure of its task forces, which included the following: Unilateral Economic Sanctions, Enhanced Proliferation Control Initiative (EPCI), Principles of Exporting, Technology Advance, and Commodity Jurisdiction. The PECSEA prepared an extensive report, "Unilateral Economic Sanctions: A Review of Existing Sanctions and Their Impacts on U.S. Economic Interests with Recommendations for Policy and Process Improvement", which was submitted by the President's Export Council to the President in June. The report has since been circulated extensively.