

I. EXPORT ADMINISTRATION OVERVIEW

1. BXA Background

As a bureau of the Department of Commerce, the Bureau of Export Administration (BXA) implements and enforces the Export Administration Act (EAA) and the Export Administration Regulations (EAR). BXA administers the EAA by developing export control policies, issuing export licenses, and prosecuting violators pursuant to the EAA. Pursuant to the EAA, BXA also enhances the United States security and economic prosperity by controlling exports for national security, foreign policy, and short supply reasons. Foreign policy controls limit the proliferation of chemical and biological weapons, missile technology and nuclear related items. Pursuant to other laws and regulations, BXA enforces the EAA's antiboycott provisions and works to enhance the defense industrial base and assist U.S. defense firms which have felt the impact of reduced defense spending. BXA also helps other countries develop export control systems comparable to the U.S. system and has assisted enterprises in the republics of the former Soviet Union in converting from defense to civil production.

The EAA lapsed on August 20, 1994, and the Department of Commerce is currently acting under the authority conferred by Executive Order No. 12924 of August 19, 1994, as extended by Presidential notices of August 15, 1995 and August 14, 1996. In the Executive Order, the President invoked his authority, including authority under the International Emergency Economic Powers Act, to continue in effect the system of controls that the United States had maintained under the EAA.

2. Fiscal Year 1996 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 the export control system does not reflect a changed security environment. Over the past year, the Administration has taken important actions to remove unnecessary obstacles to exporting and strengthen multilateral regimes. These actions include completion of our regulatory reform effort, license processing reform, export control liberalizations, and multilateral regime participation. At the same time, the Administration has actively involved industry representatives as part of its public-private partnership effort.

Regulatory Reform

On March 25, 1996, BXA achieved a regulatory reform milestone with the publication of the revised Export Administration Regulations (EAR). Work began in November 1993, when

BXA organized a Task Group to carry out the Trade Promotion Coordinating Committee (TPCC) recommendation to simplify and clarify the regulations to make them more user-friendly, especially to new-to-export companies. BXA worked in partnership with the business community on the comprehensive revision of the EAR. During the development of a proposed rule, BXA published four discussion packages and sought comments from industry and the public. The May 11, 1995 proposed rule reflected several new features based upon comments received from the public and BXA's own assessment of how the EAR could be improved. As a follow up, BXA conducted more than a dozen Regulatory Reform Fora around the United States which reached over 1,000 industry representatives. We also considered responses from over 80 commenters to the proposed rule. Since the publication of the interim rule, BXA continues to involve industry to address their comments and concerns. For example, BXA provided companies additional time to adjust their export control systems by allowing them to comply with either the prior regulations or the revised regulations until December 31, 1996.

License Processing Reform

In February, BXA implemented significant improvements in the export license system via Presidential Executive Order 12981, which was signed by President Clinton on December 6, 1995. These new procedures limit the application review time by other U.S. agencies, provide an orderly procedure to resolve interagency disputes, and establish further accountability through the interagency review process.

The Executive Order outlines the Secretary of Commerce's authority and discretion to require, review, and make final determinations with regard to export licenses submitted to the Department. In addition, all relevant government agencies have the opportunity to review dual-use license applications. E.O. 12981 reduces the time permitted to process license applications. No later than 90 calendar days from the time a complete license application is submitted, it will either be finally disposed of or escalated to the President for a decision. Previously, all license applications had to be resolved within 120 days after submission to the Secretary.

The Executive Order addresses previous Congressional concerns that all interested agencies should review export licenses applications. By providing strict time limits for license review and a "default to decision" process, it also ensures rapid decision making and escalation of license applications.

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 worked to protect other U.S. national security and foreign policy interests. These actions have greatly reduced obstacles for exporters.

On January 25, 1996, BXA published a revision of U.S. export controls on computers that adjusted them to fit the new international security environment and rapid technological change in the computer market. This followed President Clinton's October 6, 1995 announcement of the easing of restrictions on high performance computers. The rule benefits the international competitiveness of the U.S. computer industry and affects an estimated \$10 billion in exports.

On December 20, 1995, BXA expanded general license GLX treatment to semiconductor devices (integrated circuits), certain semiconductor manufacturing equipment, certain cellular phones containing encryption, and encrypted virus protection software programs. Industry has estimated that 139 billion semiconductors and 33 billion integrated circuits were sold worldwide in 1992. Less than one-third of these were produced by U.S.-owned firms. Industry believes that the availability of general license shipments for integrated circuits will significantly improve the global competitiveness of the U.S. semiconductor industry.

On March 25, 1996, BXA implemented a new licensing mechanism, the Special Comprehensive License, that will enhance the flexibility and competitiveness of U.S. international marketing operations. This new licensing option permits experienced, high-volume exporters to perform export activities under one license authorization.

On February 1, 1996, BXA published an interim rule amending a number of Export Control Classification Numbers (ECCNs) on the Commerce Control List in order to make the Nuclear Referral List conform more closely with the items contained in the Nuclear Suppliers Group (NSG) Annex published by the International Atomic Energy Agency. The NSG Annex is adhered to by the United States and other subscribing governments in the NSG. This regulation also made Poland, Argentina, New Zealand, South Africa and South Korea eligible for general license shipments of certain nuclear controlled goods to reflect their recent membership in the NSG.

On March 25, 1996, BXA updated the list of controlled biological items for the first time in three years. These changes included implementing new nomenclatures for several pathogens, modifying the wording and clarification of terms for biological items, liberalizing export controls on vaccines and immunotoxins, and revising technical parameters for fermenters, cross-flow filtration equipment, and chambers.

October 19, 1995, BXA issued the final rule to implement the Australia Group's (AG) three-tiered approach to chemical mixtures containing an AG-controlled chemical weapon (CW) precursor. This regulation provided relief to the chemical industry from the previous zero tolerance for chemical mixtures. An exporter can now export these types of mixtures under a License Exception to most destinations if it meets the de minimis threshold concentration on a solvent-free basis. It also streamlined controls and reporting requirements on sample chemical shipments.

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 and receive the appropriate consideration. The following are highlights of this initiative.

Communications Satellites and Hot Section Technology

On October 21, 1996, the Administration transferred jurisdiction on certain commercial communications satellites and certain hot section technology for the development and production of commercial aircraft engines from the U.S. Munitions List, administered by the State Department, to the Commerce Control List. This rule also expands national security and foreign policy controls on commercial communications satellites and hot section technology for development, production or overhaul of commercial aircraft engines and will clarify the jurisdiction for developmental aircraft designed for civil use.

Encryption

On December 30, 1996, BXA issued a regulation implementing the Administration's encryption policy announced by the Vice President on October 1, 1996. Key elements of the regulation include the transfer of commercial encryption items from the U.S. Munitions List to the Commerce Control List, liberalized treatment for recoverable products and a two-year transition period during which non-key recovery 56 bit DES or equivalent strength encryption products may be approved for export based on company commitments to build and market key recovery products and to support a key management infrastructure for electronic commerce.

Dispute Resolution

In FY 1996, the Administration completed its efforts to develop an efficient and transparent process to resolve disputes between the Departments of Commerce and State as to which agency has licensing jurisdiction over specific commodities. These new commodity jurisdiction procedures were implemented in the spring of 1996.

Enhanced Economic Analysis for Export Controls

The Department of Commerce continues its efforts to analyze the economic implications of export control regulations and policy options on U.S. industry. This includes analyses of the economic implications of controversial license applications headed for possible denial, imposition or extension of embargoes/sanctions, costs of maintaining existing controls on the competitiveness of a critical industry, and list reviews for each multilateral control regime. In

FY 1996, BXA conducted economic impact studies on a number of critical export control issues including potential export control liberalization for encryption products and reviewing the scope and international competitiveness of the U.S. biotechnology and pharmaceutical industries.

Multilateral Control System Participation

The Administration has sought to level the playing field for U.S. trade and enhance the effectiveness of controls by pursuing multilateral controls and harmonizing their implementation. We have undertaken several major initiatives to strengthen the multilateral export control regimes, which, in turn, will enhance U.S. exporters' ability to engage in legitimate trade and compete worldwide.

On July 12, 1996, representatives of 33 countries agreed to establish the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies. The Wassenaar Arrangement is the successor regime to the Coordinating Committee (COCOM), which was disbanded in March, 1994. The focus of the regime is on transparency in exports of arms and sensitive dual use equipment. The United States intends to work with regime members to further develop the regime by focusing on specific regions of concern, controlling additional products to countries of concern, expanding transparency and harmonizing national practices.

In FY 1996, BXA revised the Nuclear Suppliers Group control list to eliminate outdated controls, clarify the language controlling items to better reflect nuclear proliferation concerns, and minimize the differences in interpretation among NSG members.

BXA also completed the harmonization of the U.S. control lists with European Union (EU) control lists. By conforming the numbering system used to identify items controlled by the EAR with the numbering system used by the EU to identify such items, U.S. exporters are better able to streamline and standardize their own internal export control procedures. The Administration will continue its efforts to encourage other countries to adopt a uniform numbering system.

Alaskan North Slope (ANS) Crude Oil Exports

During FY 1996, BXA chaired an interagency review of the economic and environmental effects of lifting the ban on the export of Alaskan North Slope oil. The President used this review as the basis for his decision that ANS oil exports are in the national interest. On May 31, 1996, BXA established License Exception Trans-Alaska Pipeline (TAPS) which allows for exports of ANS crude oil under certain conditions. This trade liberalization measure provides U.S. exporters with the opportunity to develop a \$500 million annual foreign market for ANS crude oil.

Offsets in Defense Trade

During FY 1996, BXA completed the first Department of Commerce “Offsets in Defense Trade” report for the Congress under Section 309 of the Defense Production Act of 1950, as amended. This report provides detailed information and analysis on new offset agreements and offset transactions fulfilled by U.S. defense prime contractors during 1993 and 1994. There has long been concern that offset practices may be detrimental to the United States defense industrial base.

The 1996 TPCC report has outlined a policy on defense offsets that will help address the competitiveness issues that arise when U.S. companies are required either to subcontract large portions of follow-on work or to transfer technology in order to win critical contracts. BXA will play a leading role in addressing these offset issues.

Defense Trade Advocacy

As part of the Department of Commerce’s 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. Our defense advocacy efforts resulted in sales of \$4-5 billion in FY 1996. These successes include the \$325 million Kuwait National Guard armor personnel carrier competition and \$500 million fighter aircraft competition in Thailand.

U.S. Defense Diversification

During FY 1996, BXA continued to implement our U.S. defense diversification programs to provide assistance to the defense industry, which has been negatively impacted by defense downsizing. Our 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. Our Competitive Enhancement and Needs Assessment Program targets defense subcontractors to determine those government services that would be most useful to firms diversifying their operations.

BXA also began a new series of conferences entitled “Commercialization in Defense Technology,” which are designed to help small and medium size companies take advantage of emerging and existing technologies.

Enhanced Proliferation Control Initiative

In FY 1996, BXA continued its ongoing effort to clarify the “catch-all” provisions of the Enhanced Proliferation Control Initiative (EPCI), by developing a comprehensive proposal to streamline and better focus the existing process. The revised EAR accomplished one step by

defining “knowledge” of end-use or end-user that triggers a licensing requirement. Improving EPCI will positively affect U.S. nuclear, chemical/biological, and missile non-proliferation efforts and will reduce uncertainty among U.S. exporters regarding export controls.

On December 10, 1996, the National Security Council (NSC) reformed the "inform by" process under EPCI by placing it within the interagency review structure for export licenses. This initiative, which was proposed by Commerce, will improve the transparency and timeliness of the "informed by" process.

Industry Outreach

BXA’s Office of Exporter Services’ Exporter Counseling Division, Export Seminar Staff and Western Regional Offices located in Irvine and Santa Clara, California continued to conduct extensive outreach and counseling services during FY 1996. These offices advised industry and conducted seminars on export control and defense conversion issues. With the publication of the new Export Administration Regulations, BXA undertook a significant outreach effort to educate the exporting community. BXA developed comprehensive “Regulations Roll-Out” seminars which were held throughout the United States.

During FY 1996, BXA responded to over 173,000 telephone calls, directly counseled over 1,268 visitors in its offices, and organized or participated in seminars attended by over 5,700 participants. In October 1996, BXA’s Santa Clara office co-located with new U.S. Export Assistance Center in San Jose, California which provides a true "One-Stop-Shop” for small and medium sized business seeking international trade and finance information.

Improvements in Electronic Licensing System

BXA continues to make improvements in the technical capabilities of its export license system. In FY 1996, the Bureau introduced a PC-based forms processing and image management system which, along with the new multipurpose application form, enhances BXA’s ability to make quick and accurate licensing and commodity classification decisions. BXA is also developing an automated database which will provide an electronic image of all export requests and documentation as a replacement to an outdated microfiche system. Finally, the Bureau will undertake a comprehensive review of the export control automated support system to determine changing needs and requirements for the 21st Century.

BXA’s World Wide Web Site

In September 1996, BXA launched a BXA World Wide Web Page on the Internet. In developing the site, BXA recognized that this new avenue of information sharing offers an unique means to reach the international business community. With a World Wide Web presence on the Internet, BXA can provide guidance on a wide range of topics of interest to both established exporters and those new to exporting.

Customers accessing the site will find export fact sheets, information on BXA's programs, weekly highlights, information on seminars, press releases, links to other government export resources, and many other topics of interest. Response to the Web Page has been positive, and BXA continues to explore ways to develop the site and offer additional electronic services.

Industrial Capability Assessments

BXA worked on two major industrial capabilities research projects during FY 1996. A major project in its final stage of completion is an assessment of the capabilities and competitiveness of domestic supplier industries to the U.S. semiconductor industry. The goal of this assessment is to ensure that the domestic suppliers are able to meet the needs projected in the semiconductor industry's National Technology Roadmap for Semiconductors during the next fifteen years. BXA also initiated an assessment of the future viability of the ejection seat industrial base at the request of the Air Force.

3. Export Administration Organization

BXA's Export Administration (EA) comprises five offices. Three EA offices deal with a wide range of export control policy and licensing activities including: nuclear and missile technologies; chemical and biological technologies; and conventional arms, certain sensitive 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 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 the multilateral export controls under the Wassenaar Arrangement, which deals with conventional arms and related dual-use items. It also implements U.S. foreign policy controls such as crime control, anti-terrorism, and regional stability.

The Office of Nuclear and Missile Technology Controls (NMT) is responsible for all export control policy issues relating to the Nuclear Suppliers Group and Missile Technology Control Regime. It also has responsibilities associated with the licensing of exports controlled for nuclear or missile technology reasons.

The Office of Chemical and Biological Controls and Treaty Compliance (CBCTC) has overall responsibility for administering export controls and policy developments related to the multilateral Australia Group control regime (e.g. chemical precursors and biological agents). This office is the principal point of contact for U.S. industrial interests in the development of a legally binding protocol to the Biological and Toxin Weapons Convention and for the proposed Chemical Weapons Convention.

The Office of Strategic Industries and Economic Security (SIES) implements programs to ensure the U.S. defense industries can meet current and future national security requirements. It also facilitates diversification of U.S. defense related industries into civilian markets, promotes the conversion of military enterprises in the New Independent States to civilian applications, and analyzes the economic impact of U.S. export controls, other trade policies, and cooperative international defense agreements on U.S. industrial competitiveness.

The Office of Exporter Services (OExS) counsels exporters, conducts export control seminars, and drafts and publishes changes to the Export Administration Regulations. The office is responsible for licensing and compliance actions related to "special comprehensive licenses." It also processes license applications and commodity classifications.

4. Technical Advisory Committees

The Technical Advisory Committees (TACs) have been chartered pursuant to statute since 1973 to provide advice and assistance from 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 1996, the Committees addressed more fully the technical issues regarding nonproliferation controls and foreign policy controls. The changing technical needs of BXA and the expanding role in these areas for BXA are the reasons for its increased reliance on the TACs for technical input in these two crucial areas.

FY 1996 TAC Activities

The Information Systems Technical Advisory Committee (ISTAC) addressed issues relating to Control List Categories 3, 4, and 5. The ISTAC's recommendations reflected the analyses done by its ad hoc working groups, which addressed export controls as they relate to the topics of computer interconnect technology, cryptography metrics, input/output interface trends, measurement of aggregate performance, and the 3-D graphics limit.

The Materials Technical Advisory Committee (MTAC) reviewed proposals regarding Control List Category 1. The status of various export control regimes was reviewed by Commerce representatives and discussed with members of the Committee. The MTAC addressed the following issues: the definition of "reaction vessel" in CCL 1B70E.a.1.a, the meaning of "disposal technology" for precursors and equipment in CCL 1E60C; consideration of lists of pathogens that may be used in conjunction with the Biological and Toxin Weapons Convention, the appropriateness and validity of sampling techniques for biological weapons challenge inspections, the parameters of propriety information, and equipment or processes indicative of biological

weapons capability or activity. The MTAC plans to continue advising on the Chemical Weapons Convention and The Biological and Toxin Weapons Convention, the Wassenaar Arrangement, the Missile Technology Regime, and the Nuclear Suppliers Group.

The Materials Processing Equipment Technical Advisory Committee (MPETAC) continued to make recommendations regarding Control List Category 2 changes, including advising on the wording within Technical Note 4, paragraph 2.B on the stated accuracy levels for machine tools and on the wording regarding the intent of the software note for paragraph 2.D.2.a. The MPETAC also made recommendations on machine tool controls as they relate to the Nuclear Suppliers Group and the Wassenaar Arrangement.

The Regulations and Procedures Technical Advisory Committee (RPTAC) broadened its focus, examining issues that included the following: changing conditions under the Executive Order on license processing, cryptography controls, screening requirements for exporters, and the disclosure of trade secrets to foreign nationals. The RPTAC continued deliberating and advising on the Automated Export System (Customs Service), the Enhanced Proliferation Control Initiative, and revisions to the Export Administration Regulations.

The Sensors and Instrumentation Technical Advisory Committee (SITAC), formerly the Sensors Technical Advisory Committee, supported revisions to Control List Categories 3 and 6. Among the issues the SITAC addressed were the following: export controls on oscilloscopes to countries outside the Nuclear Suppliers Group, the Executive Order on license processing, commodity jurisdiction of night vision equipment, and implementation of the Wassenaar Arrangement.

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. Among the issues the TransTAC reviewed were the following: key sector items within the Wassenaar Arrangement, hot section technology, developmental aircraft and commercial communications satellites, and foreign policy export controls. The TransTAC also supplied definitions that were used in the final ruling on jurisdiction of developmental aircraft; among those were terms regarding hot section technology, terms regarding civil derivative engines of military cores, and the meaning of "predominantly DoD funded."

President's Export Council
Subcommittee on Export Administration

The President's Export Council Subcommittee on Export Administration (PECSEA) continued to deliberate within the structure of its five task forces, which are the following: Unilateral Economic Sanctions, Enhanced Proliferation Control Initiative (EPCI), Principles of Exporting, Technology Advance, and Commodity Jurisdiction. Among the documents generated by the PECSEA and circulated within the Administration were a document on unilateral economic sanctions and a letter on the issues surrounding products and services using encryption

technology. The PECSEA prepared a draft of its Statement of Principles paper, which was forwarded to the President's Export Council for comments. The Subcommittee will continue to advise on jurisdictional issues, such as that for temporary export licenses.