



UNITED STATES DEPARTMENT OF COMMERCE
Under Secretary for Industry and Security
Washington, D.C. 20230

November 17, 2004

The Honorable Richard C. Shelby
Chairman, Committee on Banking,
Housing and Urban Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

I hereby report to the Congress the actions taken during the preceding 2-year period by the Department of Commerce's Bureau of Industry and Security, pursuant to Section 906(a)(1) of the Trade Sanctions Reform and Export Enhancement Act of 2000 (TSRA) (Title IX of Pub. L. 106-387). Section 906(c) of TSRA requires this report.

Sincerely,

A handwritten signature in black ink, appearing to read "Kenneth I. Juster".

Kenneth I. Juster

Enclosure



**DEPARTMENT OF COMMERCE REPORT ON ACTIONS TAKEN
PURSUANT TO SECTION 906(a)(1) OF THE
TRADE SANCTIONS REFORM AND EXPORT ENHANCEMENT ACT OF 2000**

Section 906(c) of the Trade Sanctions Reform and Export Enhancement Act of 2000 (TSRA) (Title IX of Pub. L. 106-387), as amended, requires that the appropriate federal government department or agency submit a report to the Congress, not later than two years from the date of enactment of TSRA, and every two years thereafter. This report is to address the operation of the licensing system under Section 906(a)(1) for the preceding two year period. Specifically, TSRA requires that the report include the following information: (1) the number and types of licenses; (2) the number and types of licenses approved; (3) the average amount of time elapsed from the date of the filing of a license application until the date of its approval; (4) the extent to which the department or agency effectively implemented the licensing procedures; and (5) a description of comments received from interested parties about the extent to which the U.S. Government effectively implemented the licensing procedures, after the applicable department or agency holds a public 30-day comment period.

Accordingly, the Bureau of Industry and Security (BIS) within the Department of Commerce (Commerce) is submitting this report covering its licensing activity relating to exports of agricultural commodities to Cuba from October 1, 2002, through September 30, 2004. This report also addresses Commerce actions relating to certain other countries subject to TSRA licensing during this period.

Cuba

To implement the TSRA requirements for exports of agricultural commodities to Cuba, Commerce created License Exception Agricultural Commodities (AGR). Under License Exception AGR, an exporter may submit prior notification of a proposed transaction to Commerce. The exporter may proceed with the shipment once Commerce confirms that no reviewing agency raised an objection to the transaction (confirmation is generally provided within 12 business days), provided the transaction meets all of the other requirements of the license exception. This expedited review process includes screening the ultimate recipient of the commodities to ensure that it does not promote international terrorism. Exports of medicine and medical devices to Cuba are not eligible for License Exception AGR and continue to be subject to the license application and review requirements of Section 6004(c) of the Cuban Democracy Act of 1992.

Licensing Statistics (Number, Types, Approvals, Processing Times)

The data in this report cover all License Exception AGR notifications and licensing activity for AGR-eligible commodities to Cuba from October 1, 2002, through September 30, 2004. As illustrated in the attached chart, Commerce received 416 notifications of proposed transactions pursuant to License Exception AGR during the reporting period, with 403 transactions approved

in an average of 12 business days. Nine notifications were returned without action in an average of three days. Commerce returned these notifications either because the proposed items for export were not eligible under AGR or because the filing was a duplicate. Commerce also converted four AGR notifications to license applications, based on an objection raised by one or more of the reviewing agencies.

Commerce also processed 207 license applications for AGR-eligible items. Commerce processed these cases following the licensing procedures as defined by Section 10 of the Export Administration Act of 1979, as amended (EAA), which is currently in lapse,¹ and Executive Order 12981. Commerce approved 195 license applications with an average processing time of 19 days and returned 15 cases without action in an average of 16 days. These included three of the four notifications that Commerce converted to license applications. In those three converted cases, Commerce returned the applications because the items were not eligible under TSRA. Commerce returned the other applications either at the request of the applicant or because the application was a duplicate. One notification that Commerce converted to a license application was denied after 99 days. Commerce converted the notification to a license application because agencies determined that the items were not TSRA-eligible. Commerce denied the application because the items were subject to a general policy of denial for Cuba as specified in Part 746.2(b) of the EAR. There were no other denials of TSRA-eligible cases during the reporting period.

Effectiveness of Licensing Procedures

Commerce effectively implemented the licensing procedures required by TSRA with regard to Cuba. The reviewing agencies have been able to adequately screen the transactions in order to effectuate the goals of the legislation while still providing for the ability to deny any licenses to entities within Cuba that promote international terrorism. At the same time, Commerce's processing of all notifications was consistent with the 12-business-day process created as part of License Exception AGR. Thus, the Commerce procedures are consistent with the requirements of Section 906(a)(1) of TSRA.

Public Comments

Based on the requirement set forth in Section 906(c)(5) of TSRA, Commerce provided a 30-day public comment period on the effectiveness of its licensing procedures for the export of agricultural commodities to Cuba. On September 28, 2004, Commerce published a *Federal Register* notice (69 FR 57894) and posted it on the BIS webpage. Commerce received three

¹ From August 21, 1994 through November 12, 2000, the Export Administration Act of 1979 (EAA) was in lapse. On November 13, 2000, the EAA was reauthorized by Pub. L. No. 106-508 and it remained in effect through August 20, 2001. Executive Order 13222 of August 17, 2001 (3 C.F.R., 2001 Comp., p. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 6, 2004 (69 Fed. Reg. 48763 (Aug. 10, 2004)), continues the Export Administration Regulations (EAR) in effect under IEEPA.

comments during the 30-day comment period, one from an agricultural trade association, one from a large trader and merchandiser of agricultural commodities, and one from a coalition concerned about the proliferation of unilateral foreign policy sanctions. All three commented that Commerce is doing an effective job handling the commodity export licensing. Two commented that the dual licensing jurisdiction between OFAC and Commerce is complicated and unnecessary. One recommended eliminating the licensing requirements entirely for agricultural commodities but, if this was not possible, urged that Commerce handle all licenses for Cuba. One suggested eliminating the license requirement for transport vessels, since TSRA does not require it. One of the coalition's member companies noted that agricultural products that it imported for research purposes, but not designated under the AGR exemption under TSRA, require OFAC rather than Commerce authorization, resulting in long processing times since the expedited TSRA procedures are inapplicable.

Other TSRA Countries

During most of this period, the Treasury Department's Office of Foreign Assets Control (OFAC) was responsible for licensing exports to Iran, Libya, and Sudan.² This included responsibility for processing TSRA-eligible cases for Iran, Libya, and Sudan.

On April 29, 2004, the Department of Commerce amended the Export Administration Regulations (EAR) to implement the President's April 23, 2004, decision to revise the U.S. sanctions against Libya. This rule, and a concurrent rule published by OFAC, also implemented the transfer of licensing jurisdiction from OFAC to the Department of Commerce for exports to Libya of items subject to the EAR. Consistent with the President's decision to lift the unilateral embargo on Libya, Commerce no longer requires a license for the export or reexport of these agricultural commodities, medicine, and medical devices classified as EAR99 to Libya that previously required a license. As a result, this report does not address Commerce licensing activities relating to exports and reexports of these items to Libya during this reporting period.

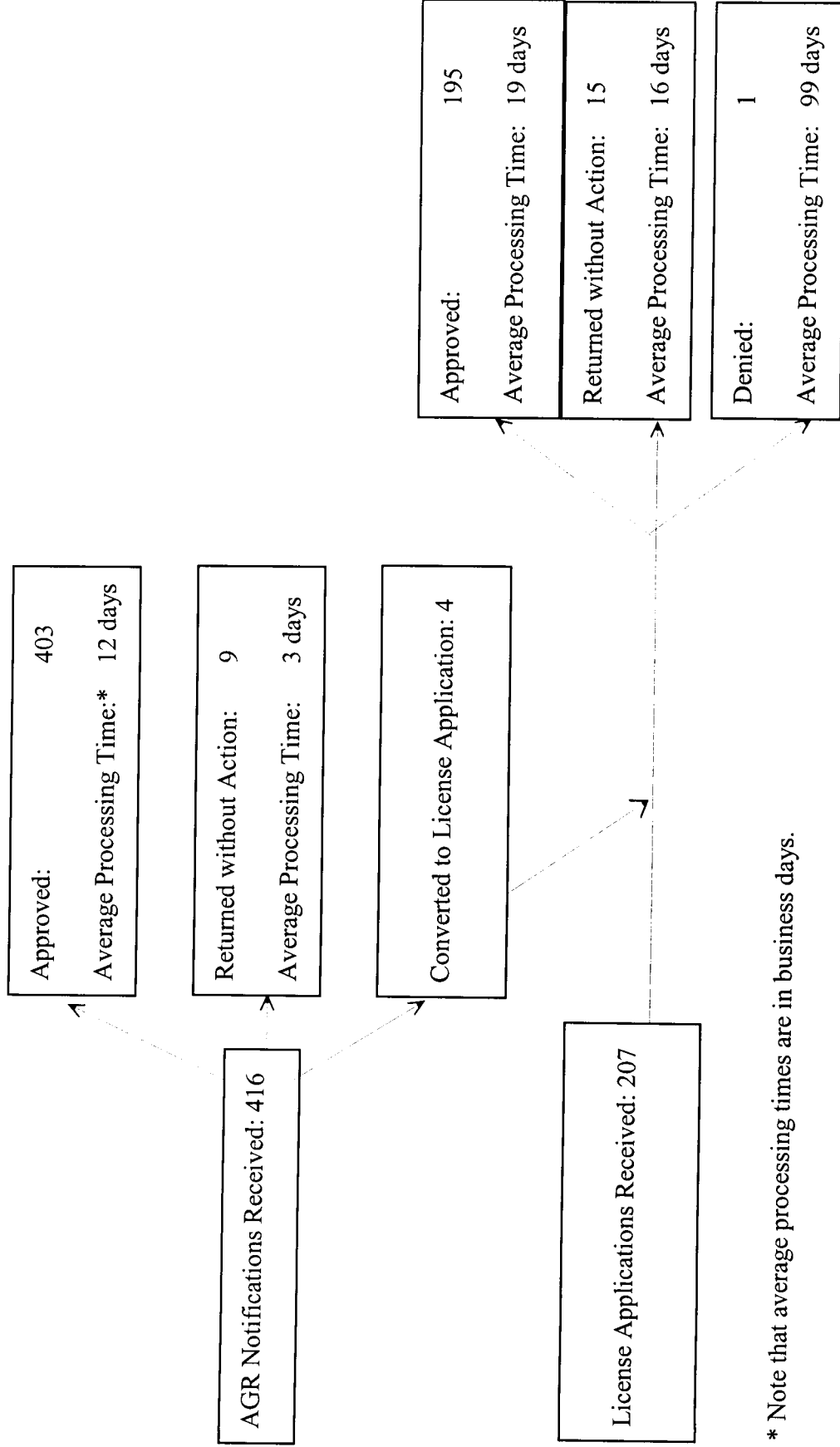
On May 14, 2004, the Department of Commerce also published a rule that implemented a unilateral embargo on Syria. Consistent with the President's decisions made to implement the Syrian Accountability and Lebanese Sovereignty Restoration Act of 2003 (Pub. L. 108-175), many commodities subject to TSRA – food and medicine – may continue to be exported to Syria without a specific export license. The Department of Commerce imposed an export licensing requirement on other TSRA-eligible commodities – non-food agricultural commodities and medical devices – with publication of the rule. Although Syria is now subject to a unilateral U.S.

² Iraq was subject to multilateral sanctions during most of the reporting period and was thus not eligible for the TSRA procedures. During the majority of this period, OFAC was the licensing agency for exports to Iraq. When export licensing jurisdiction for Iraq was transferred from OFAC to the Department of Commerce on July 30, 2004, Iraq remained ineligible for the TSRA procedures because agricultural commodities, medicines, and medical devices subject to TSRA generally could be exported to Iraq without a specific license.

embargo, exports of TSRA-eligible commodities are not eligible for the TSRA procedures, based on statutory provisions pertaining to Syria in Section 906(a)(2) of TSRA, as amended by Section 221 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA Patriot Act) (Pub. L. 107-56).

Biennial Report to the Congress on Activities Undertaken by the Department of Commerce Pursuant to Section 906(a)(1) of the Trade Sanctions Reform and Export Enhancement Act of 2000

Agricultural Commodities to Cuba: October 1, 2002 - September 30, 2004



* Note that average processing times are in business days.