

**RECORD OF COMMENTS:
COUNTRY GROUP C: DESTINATIONS OF DIVERSION CONCERN
(RIN 0694-AD93)**

Published in the *Federal Register*

[72 FR 8315](#)

Comments Due: March 12, 2007

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That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of the Middlesboro—Bell County.

* * * * *

Issued in College Park, Georgia on February 13, 2007.

Mark D. Ward,

Group Manager, System Support Group, Eastern Service Center.

[FR Doc. 07–857 Filed 2–23–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 740

[Docket No. 0612242560–7024–01]

RIN 0694–AD93

Country Group C: Destinations of Diversion Concern

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Department of Commerce's Bureau of Industry and Security (BIS) is considering amendments to the Export Administration Regulations (EAR) to further the national security interests of the United States by designating Country Group C for countries that are "Destinations of Diversion Concern." This amendment would establish license requirements for exports and reexports to countries that represent a concern for the diversion of items subject to the EAR. BIS by this notice requests comments on Country Group C.

DATES: Comments are due no later than close of business March 12, 2007.

ADDRESSES: Comments should be sent to publiccomments@bis.doc.gov, fax (202) 482–3355, or to Regulatory Policy Division, Bureau of Industry and Security, Room H2705, U.S. Department of Commerce, Washington, DC 20230. Please refer to regulatory identification number (RIN) 0694–AD93 in all comments, and in the subject line of e-mail comments. Comments on the collection of information should be sent to David Rostker, Office of Management and Budget (OMB), by e-mail to David_Rostker@omb.eop.gov, or by fax to (202) 395–7285.

FOR FURTHER INFORMATION CONTACT: Sharron Cook, Office of Exporter Services, Bureau of Industry and Security, Telephone (202) 482–2440.

SUPPLEMENTARY INFORMATION:

Background

The Department of Commerce seeks to address the threat to national security caused by the illicit transshipment, reexport, and diversion in international trade of items subject to the EAR. Through government-to-government and government-to-industry outreach, the Department of Commerce encourages transshipment countries to strengthen their international export control practices.

This effort includes both government-to-government cooperation and U.S. Government cooperation and information-sharing with the private sector. To strengthen government-to-government cooperation, the Department of Commerce has worked with its counterpart agencies to: (1) Develop or strengthen export control regimes, (2) promote information and data exchanges, and (3) strengthen cooperation and facilitate enforcement. Specific initiatives to develop export control capabilities have included technical assistance in the areas of legal framework and licensing procedures and practices, enforcement training, and industry outreach. To strengthen cooperation and facilitate enforcement, the Department of Commerce has posted export control attachés to serve as liaisons in many of these areas, and has sought agreements and other government-to-government cooperation in certain destinations.

The Department of Commerce has also concentrated on outreach to key companies involved in forwarding, processing, and transporting goods through transshipment points, *i.e.*, freight forwarders, integrators, air cargo carriers, and shipping lines. The Department of Commerce has sought to enhance cooperation with these private sector entities via informal meetings, the establishment of communication channels to facilitate information sharing, the establishment and sharing of "best practices," and by working with the foreign trade zone board to address transshipment issues.

The diversion of items subject to the EAR could augment the capabilities of terrorists and state sponsors of terrorism, and significantly undermine international counterproliferation efforts. The illegal diversion of such items could also compromise the effectiveness of U.S. export control laws. In recent years, diversions have contributed to a number of major cases involving the violation of U.S. export control laws for dual-use goods.

Request for Comment

Consideration of designating Country Group C to identify "Destinations of Diversion Concern" is part of the Department of Commerce's effort to strengthen the trade compliance and export control systems of countries that are transshipment hubs. By working to strengthen those systems, the Department of Commerce seeks to enhance international security and confidence in international trade flows. Country Group C would identify those countries of diversion concern, based on certain criteria including, but not limited to:

- Transit and transshipment volume;
- Inadequate export/reexport controls;
- Demonstrated inability to control diversion activities in this destination;
- Government not directly involved in diversion activities; and
- Government unwilling or unable to cooperate with the U.S. in interdiction efforts.

As a result of being placed into Country Group C, the licensing policy would likely change for items going to any country designated as a "Destination of Diversion Concern." Such changes could include changes in License Exception eligibility (Part 740 of the EAR), License Requirements and Licensing Policy (Part 742 of the EAR), and End-User and End-Use Based Controls (Part 744 of the EAR). The result of these changes could mean that more license applications might be required; more stringent license review policies might be implemented, which could result in less approvals or more conditions on licenses; authorizations may be delayed because of increased end-user checks; or authorizations may decrease because of diversion risks for such countries.

Rulemaking Requirements

This advance notice of proposed rulemaking rule has been determined to be significant for purposes of E.O. 12866.

Christopher A. Padilla,

Assistant Secretary for Export Administration.

[FR Doc. E7–3252 Filed 2–23–07; 8:45 am]

BILLING CODE 3510–33–P

From: "Scott Barney" <scott.barney@hittite.com>
To: <publiccomments@bis.doc.gov>
Date: Wed, Feb 28, 2007 12:58 PM
Subject: (RIN) 0694-AD93

County Group C: Destination of Diversion Concern

With regards to this proposed rule.

Why would BIS/Commerce submit this proposed rule without providing a preliminary list of countries that might be listed under Country Group C?

We would like to comment, but we have no clue if any countries that will be listed are current countries that we export to.

Regards,

Scott E. Barney
Import/Export Compliance Manager
Hittite Microwave Corporation
20 Alpha Road
Chelmsford, MA 01824 U.S.A.
Phone: 978.250.3343 Ext. 1155 Fax: 978.250.3373
www.hittite.com

From: Julie Holland <JHolland@extremenetworks.com>
To: "'publiccomments@bis.doc.gov'" <publiccomments@bis.doc.gov>
Date: Thu, Mar 1, 2007 2:36 PM
Subject: Country Group C Proposal

In regard to the Country Group C Proposal;

The concept is clear - however it would be difficult to discern the impact this proposal would have on companies without a tentative list of countries that you are considering to be placed in this category. Can you please advise us all of the tentative countries that would be placed under Country Group C - only then can we provide pertinent feedback.

thanks, Julie Holland

Julie Holland, Compliance Manager
Extreme Networks, 3585 Monroe St, Santa Clara, CA 95051
Ph# 408-579-3312 Cell# 408-230-7587 Fax# 408-579-2910
email: jholland@extremenetworks.com



مجلس تجارة دبي
دبي
D U B A I
CHAMBER OF COMMERCE & INDUSTRY

Fax: +1 202 482 3355 فاكس:

Date: 11 March 2007 التاريخ:

To: Regulatory Policy Division
Bureau of Industry and Security إلى:

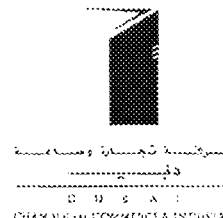
From: Dubai Chamber of Commerce & Industry من:

Subject: (RIN) 0694-AD93: Comments of Dubai Chamber of
Commerce Industry on Proposed "Country Group C" for
countries that represent a concern for the diversion of items
subject to the Export Administration Regulations الموضوع:

Notes: ملاحظات:

Encl: Pages including this Sheet 4 المرفقات. عدد الصفحات بالإضافة إلى الصفحة الأولى

For information please contact +971 4 2028778 للاستفسار والمناقشة يرجى الاتصال على:



Date: March 11, 2007

Regulatory Policy Division
 Bureau of Industry and Security
 Room H27505
 U.S. Department of Commerce
 Washington, D.C. 20230

Re: (RIN) 0694-AD93: Comments of Dubai Chamber of Commerce Industry on Proposed "Country Group C" for countries that represent a concern for the diversion of items subject to the Export Administration Regulations.

Dear Assistant Secretary Padilla:

On behalf of the Dubai Chamber of Commerce and Industry (DCCI) we are filing these comments on the Bureau of Industry and Security Advance Notice of Proposed Rulemaking (ANPR) published in the Federal Register February 23, 2007.

DCCI, located in Dubai, United Arab Emirates, represents 88,000 companies involved in the import and export of goods globally including from and to the United States of America. In 2006, the UAE imported nearly US \$ 12 billion of goods from the U.S.A, ranking as number one destination in the Middle East for U.S.A. exporters. As such we are concerned about the impact the ANPR might have on our member companies.

It is our view that developing a new "Country Group C for countries that represent a concern for the diversion of items subject to the EAR" is not likely to be effective in reaching the goal of furthering U.S. national security interests. Such countries are likely to be countries that are hubs for transshipment to a region due to their location and port facilities. As such, they are likely to receive and transship goods from a wide range of countries, perhaps including-- but not limited to-- the United States. If such a country is designated as a "diversion country" and strict licensing requirement are put on U.S. goods, such goods will likely be sourced from alternative countries other than the U.S. U.S. manufacturers may move some part of production to other countries for export to the "diversion country". It will merely change sourcing patterns away from U.S. goods. Unilateral tightening on U.S. exports, therefore, will not serve the purpose of enhanced security.



الجمهورية العربية المتحدة
دولة الإمارات العربية المتحدة
U A E
CHAMBER OF COMMERCE & INDUSTRY

If the goal of the proposed change in policy is to leverage U.S. allies such as the UAE into making their re-export policies stricter across the board for all re-exporters, this is also questionable. The regulation of re-exports should be established by the UAE without the threat from the U.S. Only the UAE knows the full impact of this regulation. If the regulation is too burdensome in the UAE, re-exports will simply go through another location than the UAE. The UAE is a strong ally of the U.S.A. and one that has been working closely with the U.S. on security issues. Only the UAE is able to judge the balance of concerns of for re-export relative to national security against the risk of the trade moving to another re-export location. In the Middle East, the UAE is the best location for this regional hub from a national security perspective and to force this hub into another location by demanding too strict regulation may in fact further deteriorate U.S. national security.

While we find threatening additional licensing as a misguided approach, it is our view that the UAE would not appropriately be designated as a Country Group C country. The UAE has worked closely with the U.S. to strengthen export regimes, promote information exchanges, and strengthen cooperation and facilitate enforcement. The UAE and the U.S. are engaged in government to government cooperation and progress. Nonetheless, the criteria for designation set out in the ANPR are so vague and discretionary that any country could be put into the category at any time. Factors such as "inadequate export/re-export controls," demonstrated inability to control diversion activities in this destination," and "government unwilling or unable to cooperate with the U.S. in interdiction efforts" are subjective and any change in personnel at the Bureau of Industry and Security could result abruptly in a change in designation. These criteria are just too vague and are a way to threaten without concrete evidence. At a minimum, the U.S. should be required to show that imposing the new licensing restrictions in a given instance would in fact result in enhance U.S national security.

DCCI believes that it is in the U.S. interest and the UAE's interest to work closely together to enhance national security globally. This goal is most efficaciously reached if the countries can work together to find the right balance between the strictest possible re-export rules for all imports into the UAE, not just those from the U.S., and not creating a system that is so burdensome that UAE will no longer be the regional hub for trade. With due respect, developing the threat of a hammer may not be the appropriate approach at a time when the U.S. and the UAE have just been through the Dubai Ports World matter and the suspended FTA.



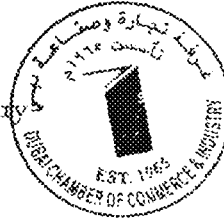
مجلس تجارة وصناعة
دبي
D U B A I
CHAMBER OF COMMERCE & INDUSTRY

With regard to this ANPR, the timing and publicity surrounding the announcement have not helped the situation in the UAE. The two countries are working together on the issue of diversion. The ANPR has come as a surprise to the Dubai business community and has not enhanced the trust relationship necessary to move forward together.

We would request that you withdraw the ANPR while we continue to quietly negotiate in this area. At this time there are some new bilateral business efforts through the U.S. Chamber of Commerce that may facilitate progress without resort to the approach outlined in the ANPR.

Sincerely,

Hamad Buamim
Director General,
Dubai Chamber of Commerce & Industry





Baker Hughes Incorporated

2929 Allen Parkway
Suite 2100
Houston, Texas 77019-2118
Tel 713-439-8359
Fax 713-439-8272
Email: bryan.schillinger@bakerhughes.com

Bryan Schillinger
N. America Region Trade Director

Confidential Treatment Requested

March 12, 2007

Via e-mail: publiccomments@bis.doc.gov

Regulatory Policy Division
Bureau of Industry and Security
Room H 2705
U.S. Department of Commerce
Washington, D.C. 20230
C/O Sharon Cook, Office of Exporter Services

Re: Advance Notice of Proposed Rulemaking; Country Group C; RIN 0694-AD93

Dear Ms. Cook:

This letter responds to the Bureau of Industry and Security's Advance Notice of Proposed Rulemaking; Country Group C: Destinations of Diversion Concern; RIN 0694-AD93, appearing at 72 Fed. Reg. 8315 (Feb. 26, 2007).

Baker Hughes Incorporated ("Baker Hughes") understands the diversion concerns inherent in known transshipment hubs, and the benefits to national and global security that will be obtained by your proposal.

However, we respectfully submit that the risk of diversion is not present or is greatly diminished whenever a U.S.-headquartered company is shipping materials to itself or its affiliates located within such a location for internal use (i.e., not for resale) there or in a third country. For example, Baker Hughes ships oilfield service equipment around the world for its own use in providing oil drilling and/or production services. These "tools of the trade" generally remain under the control of an entity owned by Baker Hughes. Whether the equipment is routed through a transshipment hub does not change the fact that Baker intends to keep the merchandise under its control regardless of where it goes. The same low level of risk applies whenever a U.S. company is shipping support items (say, phones, routers, and retail-level desktop computers) for its own operations.

The risk of diversion is also not present if the goods are clearly destined at the time of shipment to a well-known and respected customer. For example, Baker Hughes may supply certain products to the same end-users again and again. To the extent that a specific, known and reputable customer is in mind when the goods are shipped, the normal risks of diversion are also minimized.

The risks in each of the above scenarios are further reduced whenever a U.S.-headquartered company is involved. The U.S.-headquartered company is obviously subject to the full gamut of export controls and related penalties as a legal person always subject to U.S. jurisdiction and enforcement. On the other hand, a foreign-headquartered company may have a chain of command extending to the very top of that company that, while legally required to abide by the EAR as a handler of items that are themselves subject to the EAR, will present a significantly higher risk of diversion due to its own lack of knowledge of U.S. export controls, corresponding lack of U.S. resources, and jurisdictional issues inherent in taking U.S. enforcement action against a foreign-headquartered company.

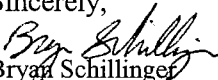
For this reason, as BIS forms the controls and standards related to Country Group C, we ask that you provide specific exceptions for U.S.-headquartered companies in situations where:

- (1) a U.S. headquartered company or its subsidiary is shipping to a foreign subsidiary or affiliate that intends to maintain control over the item as a "tool of trade" or as a support item for a reasonable duration,
- (2) the U.S. headquartered company or its subsidiary is shipping to a known bona fide end user contemplated at the time of the export, or
- (3) the U.S. headquartered company or its subsidiary is shipping to a foreign subsidiary or affiliate where the subsidiary or its affiliate intends to retain the item in inventory and, before reselling to any third party in any location in that country or another, evaluate all licensing requirements and apply for any needed licenses.

The above suggestions are similar in concept to "authorized end user" concept currently being considered as part of China licensing standards.

In addition, due to increased risks of diversion, we strongly encourage BIS to avoid a structure that allows U.S. organized, but foreign headquartered, companies to obtain licensing preferences over the foreign organized subsidiaries of U.S.-headquartered companies, as occurred under the previous License Exception USPL. Under USPL, Libyan nationals could hire an agent in the United States to organize a legal entity in the United States with a legal branch in Libya. Through this structure, the Libyan national could essentially export to itself under License Exception USPL. Conversely, most major U.S. headquartered companies, which generally use foreign organized subsidiaries to conduct business outside the United States due to local legal requirements and tax purposes, were not able to use License Exception USPL. Pragmatically, these foreign subsidiaries of U.S. headquartered companies were subject to a higher level of export controls than U.S. organized legal entities that had no U.S. person management or oversight.

Thank you for the opportunity to comment.

Sincerely,

Bryan Schilling

Endevco

March 12, 2007

Regulatory Policy Division
Bureau of Industry and Security
Room H2705
U.S. Department of Commerce
Washington, DC 20230

Dear Sir/Madam:

Endevco recognizes the challenges faced by the Bureau of Industry & Security (BIS) and the exporting community within the U.S. regarding the detection and avoidance of improper export diversion. For this reason, we are responding to BIS' February 26, 2007 *Advanced Notice of Proposed Rulemaking* addressing *Country Group C: Destinations of Diversion Concern*; hereafter "the Notice".

Endevco's Understanding of the Notice

The Notice is rather vague as to what measures will be employed to deal with the countries of concern (as of yet unnamed in the Notice) regarding improper diversion. The following paragraph in the Notice notes measures under consideration to deal with shipments through (not necessarily limited to shipments exported "to") these countries):

As a result of being placed into Country Group C, the licensing policy would likely change for items going to any country designated as a "Destination of Diversion Concern." Such changes could include changes in License Exception eligibility (Part 740 of the EAR), License Requirements and Licensing Policy (Part 742 of the EAR), and End-User and End-Use Based Controls (Part 744 of the EAR). The result of these changes could mean that more license applications might be required; more stringent license review policies might be implemented, which could result in less approvals or more conditions on licenses; authorizations may be delayed because of increased end-user checks; or authorizations may decrease because of diversion risks for such countries.

Endevco Corporation
30700 Rancho Viejo Road
San Juan Capistrano
California 92675-1748
USA

Tel: +1 949 493 8181
Fax: +1 949 661 7231
www.endevco.com
www.meggitt.com

We interpret this to say, in brief, that for those countries placed in Country Group C as proposed:

- License Exceptions may be limited;
- Licensing policy may change to require more applications and likely fewer approvals;
- More license conditions on those licenses which are approved;
- Delay in license reviews due to increased pre-shipment end-user checks
- More application denials based on diversion risk.

At the BIS Regulations and Procedures Technical Advisory Committee meeting on March 6, it was indicated that the above may be accomplished in part by placing a license requirement on all U.S. dual-use exports with an “AT” control, on all items subject to the EAR, or by other means. It was also made clear that the rule will apply to dual-use goods passing through countries of diversion concern, not just goods ending up in these countries. This should be made exceptionally clear in any upcoming Proposed Rule.

Improper diversion occurs with a (presumably) small number of shipments compared to the total number which may transit countries such as China, Cyprus, Hong Kong, Mexico, Pakistan, Singapore, and the United Arab Emirates---countries historically referenced by the Office of Export Enforcement to pose diversion concern. *Yet the policy changes as proposed above will impact all shipments transiting these countries, including those using reliable shippers going to reliable end-users (whether in the countries of diversion concern or otherwise).*

Evaluating Effective Policy Options: A Narrowly Tailored Proposal

In evaluating policy options, BIS should consider alternatives that will *narrowly and effectively target* those entities posing diversion risk. To date, BIS has utilized the “Unverified List” (hereafter “UL”) in conjunction with the “red flags” guidance presented in EAR Part 732 Supp. 3 to name entities of (presumably) end-use or diversion risk because U.S. authorities were not able to conduct pre- and/or post-shipment verifications.

As BIS is now proposing in the Notice what may be aptly deemed much stronger measures, perhaps BIS has determined that the UL--with its current methodology—is not working sufficiently. Consider the following alternative methodology:

Instead of placing entire countries into Country Group C and capturing (impeding) thousands if not millions of transactions that are not problematic, place a license requirement on the export or reexport of all goods subject to the EAR involving any entity *on the UL* as a purchaser, intermediate consignee, original or ultimate consignee, end-user, or otherwise involved in the movement of any goods subject to the EAR (e.g., a freight forwarder).

- **Achieving The Desired Impact Without Cost to U.S. Industry**

The Endevco proposed methodology immediately above will narrowly target and *severely economically impair* those entities known to be involved in diversion activity. It will in fact make a “spectacle” of them placing great pressure on the entities themselves to come into compliance and halt any diversion related activities while also placing additional public pressure on their host national governments to take action so as not to be seen as encouraging WMD proliferation or support of terrorist related activities.

Recall the immediate impact of the India-Pakistan sanctions imposed in November 1998 with creation of the BIS Entity List. (Endevco recognizes this was done under authority of the Glenn Amendment in the Arms Export Control Act). Today, due in no small part to pressure exerted by U.S. export controls and public recognition, the Khan network in Pakistan has been fully exposed if not dismantled, and the U.S. is now expressly *encouraging* the peaceful nuclear development of India based on significant policy changes by the Indian Government. Consider that similar action under authority of the Export Administration Act (see below), can yield analogous results with respective governments in the matter of diversion.

Endevco’s proposed methodology will not impede or delay the vast amount of U.S. export trade through countries of diversion concern that in-fact is not diverted.

In candor, the measures proposed by BIS above seem equivalent to using a sledge hammer when a fly-swatter will do the job. Consider the tremendous global economic (competitive) *impact on U.S. industry* if entire countries are subjected to additional licensing requirements though no *transaction specific* “red flags” exist to suggest the risk of diversion. Foreign competitors, regardless of product line or classification, will instantly gain a huge competitive advantage in product delivery time over their U.S. counterparts.

- **The Endevco Proposal Avoids Political Fallout and Damage to U.S. Foreign Policy Interests**

From a foreign policy perspective, consider the negative impact of the BIS measures proposed on countries Endevco surmises will be candidates for Country Group C such as Pakistan, Singapore and the United Arab Emirates. These are significant U.S. allies in the War on Terror: Pakistan is a “Major Non-NATO Ally” under the ITAR (22 CFR 120.32); Singapore is adjacent to Malaysia and Indonesia, countries experiencing considerable insurgent and/or Al Qaeda activity; and the U.S. Central Command has military bases in the UAE (bordering the Persian Gulf), including Al Dhafra. A narrowly drawn, effective policy can ensure U.S. counter-diversion interests are met without endangering these crucial relationships.

Precedent for the Endevco proposed *methodology* (not to be confused with statutory precedent) is found in the BIS Entity List, first instituted in 1998 as noted above, where specific entities, not entire countries, are sanctioned for participation in activities of

concern. The various nonproliferation programs of OFAC instituted under Executive Order 13382 are also instructive, as well as the anti-narcotics sanctions. Does the Export Administration Act not provide authority for the action proposed by Endevo under §§ 5(l), 6, and 11?

- ***Container Security Initiative Participants Should Not be Punished in Return for Cooperation***

The U.S. Customs Container Security Initiative (CSI) was launched after the terrorist attacks on the U.S. in September 2001. In short, CSI facilitates screening and intelligence sharing between U.S. and foreign customs administrations at some fifty global ports¹. These ports include numerous ports in China (e.g., Shenzhen, Shanghai), Hong Kong, Singapore, and the United Arab Emirates (Dubai). CBP officers are stationed at foreign ports to screen cargo headed to the U.S., and foreign customs administrations are invited to station personnel in the U.S. to screen containers shipped to their respective countries from the United States.²

Singapore, for instance, has not only joined CSI, but has in just the last few years passed the Strategic Goods Act to prevent the proliferation of weapons of mass destruction, including substantial penalties for violations.³ It has publicly announced its intention to “work closely with foreign governments in intelligence gathering efforts and information exchange on related strategic goods offences”.⁴

Imposition of BIS proposed licensing policies noted above on countries such as China, Hong Kong, Singapore and the UAE will serve to punish the respective efforts of those countries to assist in the protection of U.S. security interests via participation in CSI. Such action would discourage other countries from joining the CSI initiative. Rather than punish such efforts and create a disincentive for new countries to join, BIS should consider engaging CBP to assess how CSI resources can be utilized to even greater effectiveness (perhaps with greater involvement of OEE) on an inter-governmental basis to detect, interdict and prevent improper diversion of goods.

Prevention of unauthorized diversion of exports subject to the EAR is an important and laudable objective in the promotion of U.S. national security and foreign policy objectives. Endevo supports these objectives, and proposes the above methodology as

¹ See U.S. Customs and Border Protection *Fact Sheet*, September 30, 2006 available at http://www.cbp.gov/linkhandler/cgov/border_security/international_activities/csi/csi_fact_sheet.ctt/csi_fact_sheet.doc.

² See prior note, page 4, *Does the U.S. offer reciprocity with CSI participating countries?*

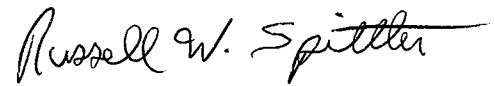
³ For an overview of Singapore’s strategic goods controls, see http://www.stgc.gov.sg/stgc/index.jsp?catName=46&artName=30&url=/html/6_Penalties.html; for a listing of penalties see

http://www.stgc.gov.sg/stgc/index.jsp?catName=46&artName=30&url=/html/51_Penalties.html.

⁴ See http://www.stgc.gov.sg/stgc/index.jsp?catName=46&artName=77&url=/html/3_Enforcement.html.

an effective anti-diversion tool in achieving U.S. security objectives without hampering legitimate trade.

Sincerely,

A handwritten signature in black ink that reads "Russell W. Spittler". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Russell W. Spittler, Esq.
Director of Government Relations

WISCONSIN PROJECT ON NUCLEAR ARMS CONTROL

March 12, 2007

U.S. Department of Commerce
Bureau of Industry and Security
Regulatory Policy Division
Room H2705
14th Street and Pennsylvania Avenue, NW
Washington, DC 20230

Attention: RIN 0694-AD93

RE: Comments on Advance Notice of Proposed Rulemaking – Country Group C: Destinations of Diversion Concern

Dear Sir or Madam,

The Wisconsin Project on Nuclear Arms Control submits the following comments in response to the Bureau of Industry and Security's February 26, 2007, Advance Notice of Proposed Rulemaking (72 Fed. Reg. 8315), which proposes to designate Country Group C in the U.S. Export Administration Regulations for countries that are "Destinations of Diversion Concern."

The Project is a non-profit organization that conducts outreach and public education to stop the proliferation of mass destruction weapons and their means of delivery. For more than twenty years, the Project has pursued its mission by advocating strong and effective export and transit controls worldwide. The Project commends the Commerce Department for considering whether to designate countries that are of diversion concern, and endorses such designations in principle.

There is no question that diversion of sensitive items compromises the effectiveness of U.S. export controls, undermines international counterproliferation efforts, and could help terrorists and their state sponsors. Particularly dangerous are transit hubs that do not check adequately what passes through their territory – through negligence or willful disregard. A stark example of this danger was provided recently by the revelations that the A. Q. Khan nuclear proliferation network trafficked its wares mostly through the United Arab Emirates (U.A.E.), which is one of the largest transit points in the world. The Wisconsin Project has documented more than two decades of diversions through the U.A.E. to India, Iran, Pakistan and other proliferant countries. This history is detailed in an article the Project published in the *New York Times* and in a chronology from the Project's *Risk Report* database, both of which are enclosed. These diversions from the U.A.E. continue to the present day.

The Bureau of Industry and Security (BIS) should use Country Group C to designate countries of diversion concern. In addition to the designation criteria listed in its notice, BIS should officially

consider the volume and proportion of trade between the potential designee and countries of concern for proliferation and/or terrorism, such as Iran. Licensing policy for designated countries should require license applications for more items, it should subject applications to more stringent review, it should add license restrictions, and should require more frequent and thorough end-user/end-use checks.

The Wisconsin Project recommends that the United Arab Emirates be among the first countries designated in Country Group C. Such a listing, accompanied by effective U.S. export restrictions, may prompt the U.A.E. to move toward implementing export and transit controls.

We are grateful for the opportunity to present our views.

Respectfully submitted,

Arthur Shulman
General Counsel
Wisconsin Project on Nuclear Arms Control



Nukes 'R' Us

By Gary Milhollin and Kelly Motz

The New York Times
March 4, 2004, p. A31

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WASHINGTON - America's relations with Pakistan and several other Asian countries have been rocked by the discovery of the vast smuggling network run by the Pakistani nuclear scientist Abdul Qadeer Khan. Unfortunately, one American ally at the heart of the scandal, Dubai in the United Arab Emirates, seems to be escaping punishment despite its role as the key transfer point in Dr. Khan's atomic bazaar.

Dubai's involvement is no surprise to those who follow the murky world of nuclear technology sales. For the last two decades it, along with other points in the emirates, has been the main hub through which traffickers have routed their illegal commerce to hide their trails. Yet the United States, which has depended on the emirates as a pillar of relative stability in the Middle East and, since 1991, as a host to American troops, has done little to pressure it to crack down on illicit arms trade.

In the wake of the Khan scandal, Washington has at least acknowledged the problem. President Bush singled out SMB Computers, a Dubai company run by B. S. A. Tahir, a Sri Lankan businessman living in Malaysia, as a "front for the proliferation activities of the A. Q. Khan network." According to the White House, Mr. Tahir arranged for components of high-speed gas centrifuges, which are used to enrich uranium so it can be used in nuclear weapons, to be manufactured in Malaysia, shipped to Dubai and then sent on to Libya. (In its investigation, the Malaysian government implicated another Dubai company, Gulf Technical Industries.)

American authorities say that Mr. Tahir also bought centrifuge parts in Europe that were sent to Libya via Dubai. In return for millions of dollars paid to Dr. Khan, Libya's leader, Col. Muammar Qaddafi, was to get enough centrifuges to make about 10 nuclear weapons a year.

Why ship through Dubai? Because it may be the easiest place in the world to mask the real destination of cargo. Consider how the Malaysian government is making the case for the innocence of its manufacturing company. "No document was traced that proved" the company "delivered or exported the said components to Libya," according to the country's inspector general of police. The real destination, he said, "was outside the knowledge" of the producer. One can be certain that if the Khan ring's European suppliers are ever tracked down, they will offer a similar explanation.

Dubai provides companies and governments a vital asset: automatic deniability. Its customs agency even brags that its policy on re-exporting "enables traders to transit their shipments through Dubai without any hassles." Next to Dubai's main port is the Jebel Ali free trade zone, a haven for freewheeling international companies. Our organization has documented 264 firms from Iran and 44 from

rogue regimes like Syria and North Korea.

With the laxity of the emirates' laws, there is simply no way to know how many weapon components have passed through. But consider some incidents that our organization has tallied - based on shipping records, government investigations, court documents, intelligence reports and other sources - over the last 20 years.

. In 1982, a German exporter and former Nazi, Alfred Hempel, sent 70 tons of heavy water, a component for nuclear reactors, from Sinochem in China to Dubai. The shipping labels were then changed to mask the transaction, and 60 tons of the heavy water were forwarded to India, where it enabled the government to use its energy-producing reactors to create plutonium for its atomic weapons program. The other 10 tons went to Argentina, which was interested in atomic weapons at the time.

. In 1983, Mr. Hempel sent 15 tons of heavy water from Norway's Norsk Hydro, and 6.7 tons from Techsnabexport in the Soviet Union, through the emirates to India.

. In 1985 and 1986, Mr. Hempel sent 12 more tons of Soviet heavy water to India that were used to start the Dhruva reactor, devoted to making plutonium for atomic bombs. (The details of these transactions come from German and Norwegian government audits, but Mr. Hempel, who died in 1989, was never convicted of a crime.)

. In 1990, a Greek intermediary offered Iraq an atomic-bomb design (probably of Chinese origin) from Dr. Khan in Pakistan, with a guarantee that "any requirements or materials" could be bought from Western countries and routed through Dubai. Iraq has said it rejected the offer and suspected it of being part of a sting operation, although a more likely explanation is that the impending 1991 Persian Gulf war precluded the deal.

. In 1994 and 1995, two containers of gas centrifuge parts from Dr. Khan's labs were shipped through Dubai to Iran for about \$3 million worth of U.A.E. currency.

. In 1996, Guide Oil of Dubai ordered American-made impregnated alumina, which can be used for making nerve gas ingredients, and tried to pass it along to an Iranian purchasing agent, Drush Jamshidnezhad, in violation of American export control laws. A sample was delivered before the deal foundered when middlemen were caught by American officials in a sting operation.

. Also in 1996, the German government listed six firms in Dubai as front companies for Iranian efforts to import arms and nuclear technology.

. From 1998 to 2001, several consignments of rocket fuel ingredients shipped to Dubai by an Indian company, NEC Engineers, were sent to Iraq, in violation of Indian law and the United Nations embargo on Saddam Hussein's regime.

. In 2003, over Washington's protests, emirates customs officials allowed 66 American high-speed electrical switches, which are ideal for detonating nuclear weapons, to be sent to a Pakistani businessman with longstanding ties to the Pakistani military. American prosecutors have indicted an Israeli, Asher Karni,

for allegedly exporting the switches through Giza Technologies in New Jersey to South Africa and then to Dubai.

The pattern is terrifying, and those examples are most likely a small part of the overall picture. So, will the Bush administration, with its focus on fighting terrorism and the spread of weapons of mass destruction, start cracking down on the emirates? The first signs are not promising. President Bush has warned of interrogations in Pakistan and actions against the factory in Malaysia that supplied Dr. Khan, but has given no hint of any penalties against Dubai. Lockheed Martin is about to send 80 F-16 fighters to the emirates, and a missile-defense deal may be in the offing.

The lesson of the Khan affair is that instead of focusing solely on "rogue regimes," we have to shut down the companies and individuals that supply them with illicit arms and technology. The United States and its allies have to put pressure on the countries that allow the trade to flourish - even if it means withholding aid and refusing arms sales. Unless Dubai cleans up its act, it should be treated like the smugglers it harbors.

*Gary Milhollin is director of the Wisconsin Project on Nuclear Arms Control.
Kelly Motz is associate director.*

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United Arab Emirates Transshipment Milestones - 1971-2005

The Risk Report

Volume 11 Number 4 (July-August 2005)

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1971: The United Arab Emirates is formed by the following states: Abu Dhabi, Ajman, Dubai, Fujairah, Sharjah, and Umm al Quwain. Ras Al Khaimah joins the U.A.E. in 1972.

1972: The U.A.E. signs the Biological Weapons Convention.

1972: Port Zayed opens in Abu Dhabi.

1972: Port Rashid opens in Dubai.

1976: The U.A.E.'s first container terminal opens in Port Khalid, Sharjah.

1977: Saqr Port opens in Ras Al Khaimah.

1979: Jebel Ali Port, asserted to be the largest man-made harbor in the world, opens in Dubai.

1982: Fujairah Port opens.

1982: Alfred Hempel of West Germany sends 70 tons of heavy water from China to Dubai, from where 60 tons are forwarded to India and 10 tons to Argentina. At this time India is pursuing and Argentina is interested in atomic weapons.

1983: Hempel delivers to India, via the U.A.E, 15 tons of heavy water from Norway and 6.7 tons from the Soviet Union.

1983: Hank Slebos, of the Netherlands, reportedly tries to export a high-speed oscilloscope without a license to the U.A.E.'s Assaf Electrical Establishment. The ultimate destination is believed to be Pakistan, and in 1985 Slebos is reportedly jailed for one year for exporting strategically sensitive material.

1985: Jebel Ali Free Zone is established in Dubai. Companies are exempt from all domestic capital and ownership requirements, import and export duties, and personal and corporate taxes.

1985: According to documents from Germany's customs investigation unit, employees of Leybold-Heraeus manufacture uranium enrichment components that are sent to Dubai via Switzerland and France. French investigators reportedly allege the final recipient is Pakistan.

1987: Fujairah International Airport opens.

1987: Fujairah Free Zone is established adjacent to Fujairah Port and near to Fujairah International Airport. Companies in the zone are exempt from all

domestic ownership requirements and import duties on goods for re-export.

1987: Iranian officials reportedly meet associates of Abdul Qadeer (A.Q.) Khan, a Pakistani citizen, in Dubai. Iran is reportedly offered a phased supply of centrifuge drawings, as many as 2,000 centrifuges and auxiliary items, including casting equipment for manufacturing the bomb core.

1988: Ajman Free Zone is established. Companies in the zone are exempt from all domestic capital and ownership requirements, income and corporate taxes, and import and export duties.

1988: Ahmed Bin Rashed Free Zone is established in Umm Al Quwain. Companies in the zone are exempt from corporate taxes as well as import and export duties.

March 1989: A firm owned by the Indian government reportedly ships 60 tons of thionyl chloride, which can be used to manufacture mustard gas and nerve agents, to Iran via Dubai.

May - June 1989: 100 metric tons of centrifuge-grade maraging steel are reportedly delivered from Belgium through Dubai to Iraq. The supplier thought the steel was destined for Pakistan.

June 1989: Rheineisen Chemical Products arranges for 257 tons of thionyl chloride, a mustard gas and nerve agent precursor, to be shipped from India to Dubai's Shatif Trading Company for transshipment to Iran. Rheineisen, a West German firm owned by an Iranian family, cancels the contract amid concerns about its legitimacy, and the chemical is returned from Dubai to India. Seyed Kharim Ali Sobhani, an Iranian diplomat who had brokered three shipments of thiodiglycol (a precursor of mustard gas) from the U.S to Iran between 1987 and 1988, is reportedly implicated in the deal.

1990: A Greek intermediary claiming to represent A.Q. Khan offers Iraq an atomic bomb design, promising that any required materials could be procured from Western countries and shipped via Dubai.

1991: The management of Port Rashid and Jebel Ali Port is combined under Dubai Ports Authority. Dubai Ports Authority is the sixteenth busiest container harbor in the world, with a capacity of over one million TEU (Twenty-foot Equivalent Units).

1993: The U.A.E. signs the Chemical Weapons Convention.

1993: A third berth is commissioned for Sharjah's Khorfakkan Container Terminal.

1994 - 1995: Bukary Syed Abu (B.S.A.) Tahir, a Sri Lankan based in Dubai, allegedly organizes the transshipment of two containers of centrifuge components from Dubai to Iran, on behalf of A.Q. Khan, for \$3 million.

1995: Sharjah Airport International Free Zone (SAIF-Zone) is established. Companies in the zone are exempt from all domestic ownership and capital requirements, import and export duties, and personal and corporate taxes.

September 1995: The U.A.E. signs the Nuclear Nonproliferation Treaty.

October 1995: Seven persons are indicted by the United States for conspiring to export, without the required license, \$500,000 of sensitive U.S. electronics to Iran between 1991 and 1994. Controlled goods, including encryption devices, were allegedly shipped via Hanofeel General Trading Est. of Dubai to Iran's Tak Neda Co. Ltd. Elham Abrishami, of Afshein, Inc. in the U.S., pleads guilty in 1997.

November 1995: Hamriyah Free Zone is established in Sharjah. Companies in the zone are exempt from all domestic ownership and capital requirements, import and export duties, and personal and corporate taxes.

1996: Ajman Free Zone is granted autonomous status by the ruler of Ajman.

1996: Dubai Airport Free Zone is established near the Dubai Cargo Village. Companies in the zone are exempt from all domestic capital and ownership requirements, import and export duties, and personal and corporate taxes.

1996: The German government warns its exporters that Iranian companies active in procurement for weapons programs are present in Dubai. Among the entities that arrange and finance technology transfers via front companies in Dubai are Iran's State Purchasing Organization, and Bonyad Mostazafan and Janbazan Foundation.

June 1996: Dubai's Guide Oil Equipment Company is identified in a U.S. court as a corporation that ships impregnated alumina, which can be used in the manufacture of nerve gas, through Dubai or the United Kingdom to Iran. In 1998 Abdol Hamid Rashidian and Henry Joseph Trojack are convicted for conspiring to ship impregnated alumina to Iran.

July 1996 - March 1998: IGI, Inc. sold \$400,000 of poultry vaccine from the U.S. to Iran via Dubai, violating the U.S. embargo on Iran.

1997 - 1998: Pars Company Inc. of the U.S. exports two STX gas monitors to the U.A.E. and transships them to Iran. Pars Company did not obtain the required license for the monitors, which can be used in chemical and biological weapons production, and is fined \$10,000. The U.S. Department of Commerce subsequently imposes a nine year denial of export privileges in 2002. The U.S. firm Industrial Scientific Corporation is also implicated, and pays a \$30,000 fine.

1998: According to the U.S. Department of Commerce, Jabal Damavand General Trading Company of Dubai transfers U.S.-origin ferrography laboratory equipment to Iran without authorization. In 2002 the U.S. bans Jabal Damavand for ten years from engaging in any activity subject to the Export Administration Regulations.

March 1998: According to the U.S. government's Iraq Survey Group (I.S.G.), the Iraqi Intelligence Service uses bribes to circumvent customs inspections in Dubai, which is a transshipment point for military equipment being sought from Romania.

May 1998: A new Sun Ultra Enterprise 1 Work Station is located in Iraq's National Computer Center, which was involved in Iraq's nuclear weapons program. Iraq claims to have imported workstations from the U.A.E. and Jordan.

May 1998 - June 1999: According to the U.S. Department of Commerce, Dubai's Ibn Khaldoon Drug Store Est. participates in the unauthorized export of medical equipment from the U.S. to Iran, in contravention of the U.S. embargo. Ibn Khaldoon is ordered in 2004 to pay a \$40,000 fine.

May 1998 - May 2002: Biocheck Inc. of the U.S. allegedly exports medical diagnostic kits without authorization to Iran via Italy and the U.A.E. Biocheck is later fined \$32,000 by the U.S. Department of the Treasury, and pays the U.S. Department of Commerce \$22,500.

September 1998 - February 2001: NEC Engineers of India allegedly sends 10 shipments of materials used in the manufacture of rocket propellant and missiles to Dubai and Jordan without the required export license. Indian court documents state that the consignments, shipped for \$791,343, "appear to have been diverted to Iraq for assisting their weapon building programme," violating the U.N. embargo. NEC Engineers is accused of mis-declaring goods and attempting to export consignments in the name of associated companies. The Dubai companies Target General Land Transport and Indjo Trading are reportedly involved.

November 1998 - February 2000: Mohammad Farahbakhsh, co-owner and managing director of Dubai's Diamond Technology LLC, allegedly tries to export U.S. computer items to Iran via Diamond Technology. The alleged purchaser is Shahid Hemmat Industrial Group, which is a branch of the Iranian Ministry of Defence and subject to U.S. sanctions for its involvement in cruise and ballistic missile development.

1998 - 2000: Mazyar Gavidel and his company Homa International Trading Corp. violate the U.S. trade embargo against Iran by illegally transferring approximately \$2 million of laundered money through Dubai. Gavidel and Homa International are convicted by the U.S. in August 2002.

January 1999: Abu Bakar Siddiqui, a British exporter of Pakistani origin and an alleged procurement agent for A.Q. Khan, allegedly attempts to ship special aluminum sheets to Dubai.

May 1999: British customs authorities reportedly seize up to 20 tons of components, including high-grade aluminum, believed to be ultimately destined for Pakistan. The cargo arrived from the U.S. and was allegedly about to be shipped to Dubai. The exporter is allegedly Siddiqui, who is convicted in the United Kingdom in 2001 for illegally exporting strategic materials to Pakistan, including high-strength aluminum bars.

2000: Ras Al Khaimah Free Trade Zone is established near Saqr Port. Companies in the zone are exempt from all domestic ownership and capital requirements, as well as income and corporate taxes.

2001: U.A.E. companies act as intermediaries in the partial delivery of fiber-

optic and military communications contracts from South Korea to Iraq, according to the I.S.G.

2001: Dubai's Ports, Customs & Free Zone Corporation is established to take over customs operations from the Dubai Ports Authority and Jebel Ali Free Zone Authority.

June 2001: Bef Corp. allegedly exports photo finishing equipment to SK of Dubai, which transships the equipment to Iran, in violation of U.S. sanctions.

September 2001: The U.A.E.'s Advance Technical Systems purchases \$16,000 of military radar components from the U.S. and transships them to Pakistan after declaring that they were for the Bangladeshi Air Force. Following guilty pleas delivered in June 2003 for the illegal export of parts for howitzers, radars and armored personnel carriers, two U.S. citizens and one Pakistani are imprisoned.

October 2001: A U.A.E.-based firm acts as an intermediary to facilitate the trade in ballistic missile-related goods from China to Iraq, according to the I.S.G.

May 2002: The German government warns its exporters that since 1998 Iraq has been increasingly engaging in procurement activities through Dubai. Germany believes that North Korea has also increased its operations in Dubai.

August 2002: The U.S. firm Mercator, Inc. agrees a \$30,000 settlement with the U.S. Department of Commerce, which had alleged that Mercator had exported chemicals to Dubai with the knowledge that they would be re-exported to Iran without prior authorization.

December 2002: The U.S. Navy accuses Dubai's Naif Marine Services of smuggling to Iraq polymers that could be used to manufacture explosives.

2003: Ajman Port, which is adjacent to Ajman Free Zone, now serves over 1,000 ships a year.

January 2003: Spare parts for Mirage F-1 aircraft and Gazelle attack helicopters are transferred to Iraq. U.S. intelligence reportedly believes that parts were purchased from France by Dubai's Al Tamoor Trading Co., and then smuggled to Iraq through a third country, reportedly Turkey.

May 2003 - February 2004: U.A.E.-based Diamond Technology LLC and its managing director Mohammad Farahbakhsh allegedly export a U.S. satellite communications system to Iran without the required license.

June 2003: 311 companies attend the third U.A.E. Trade Exhibition in Iran. Trade with Iran exchanged through Dubai's ports was 12 billion dirhams in 2001, an increase from 4.3 billion in 1997.

October 2003: 66 triggered spark gaps, which can be used to detonate nuclear weapons, are shipped without the required license from the United States to Top-Cape Technology in South Africa. They are subsequently transshipped via Dubai to AJMC Lithographic Aid Society in Pakistan. In 2004 Asher Karni, an

Israeli living in South Africa, pleads guilty to conspiring to export controlled commodities to Pakistan without validated export licenses. In 2005 the U.S. indicts Humayun Khan of the Pakistani company Pakland PME for violating export restrictions and being the ultimate purchaser.

October 2003: Five containers of centrifuge components, sent by B.S.A. Tahir and shipped through Dubai, are seized en route to Libya. The items are part of four shipments made by Malaysia's Scomi Precision Engineering (SCOPE) between 2002 and 2003 to Dubai's Aryash Trading Company. One of the four consignments lists the addressee as Gulf Technical Industries, but is diverted to Desert Electrical Equipment Factory, also based in Dubai.

October 2003: According to B.S.A. Tahir, the BBC China, the ship carrying the seized centrifuge components, was also transporting an aluminum casting and dynamo for Libya's centrifuge workshop. The consignment was allegedly sent via Dubai by TUT Shipping on behalf of Gunas Jireh of Turkey.

October 2003: Two weeks after the seizure of the centrifuge components, B.S.A. Tahir arranges the transshipment to Libya, via Dubai, of an electrical cabinet and power supplier-voltage regulator on behalf of Selim Alguadis, an associate of A.Q. Khan.

December 2003: Hamid Fathaloomy, principal of Dubai's Akeed Trading Company, allegedly attempts to export U.S. pressure sensors to Iran.

2004: Over 400 companies are operating in the Ras Al Khaimah Free Trade Zone, 38% of which are Indian.

2004: Dubai Ports Authority's capacity passes six million TEU.

April 2004: The U.A.E. freezes the accounts of SMB Computers as part of its investigation into B.S.A. Tahir, who is the Group Managing Director.

April 2004: Elmstone Service and Trading FZE is sanctioned for two years by the United States for transferring to Iran equipment and/or technology of proliferation significance since 1999.

June 2004: 1383 companies are operating in SAIF-Zone.

August 2004: The U.S. indicts Khalid Mahmood, of Dubai, for breaking the U.S. embargo to Iran. Mahmood allegedly attempted to arrange the sale of forklift radiators from the U.S. to Iran, by concealing the final destination in the sale.

September 2004: The I.S.G. lists 20 U.A.E. firms that are suspected of having acted as intermediaries or front companies for Saddam Hussein's Iraq, and says that the U.A.E. was a transit location for prohibited goods, with companies using deceptive trade practices. The I.S.G. also concludes that the U.A.E. and Iran were the most frequent destinations for Iraqi smuggled oil and owned the majority of smuggling vessels involved.

December 2004: The U.A.E. agrees to join the U.S.' Container Security Initiative (C.S.I.), becoming the first country in the Middle East to do so. U.S.

customs officials will be stationed in Dubai to help target and screen suspect cargo bound for the United States.

2005: More than 300 Iranian companies are known to have operated in Dubai's Jebel Ali Free Zone.

2005: Over 300 companies operate in the Fujairah Free Zone.

2005: Dubai is the sixth largest port in the world for container traffic.

February 2005: The Jebel Ali Free Zone Authority launches an expansion project to develop its manufacturing in industry specific sectors, including medical products, food processing and the chemicals sector.

March 2005: Dubai's participation in the C.S.I. becomes operational.

May 2005: Dubai signs a Memorandum of Understanding with the U.S. to join the Megaports Initiative. Dubai will be the first government in the Middle East to participate in the scheme, which is intended to detect and seize shipments of radioactive material.

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From: "Kelly Anderson" <kelly@pacskey.com>
To: <publiccomments@bis.doc.gov>
Date: Mon, Mar 12, 2007 3:51 PM
Subject: RIN 0694-AD93

Dear Sir or Madam,

In reference to advanced notice of proposed rulemaking RIN 0694-AD93, I applaud whoever it was that started the ball rolling to amend the EAR in this exact way. It goes without saying, but I support this rulemaking 100%. The U.S. export control laws are too simple for dual-use goods, there needs to be more control to ensure these items do not end up in the wrong hands. I wish to add Malaysia to this county group C. I believe they qualify based on the criteria--especially their unwillingness to cooperate with the U.S. in interdiction efforts. Singapore is also questionable, but perhaps they cooperate--I don't know? Regardless, I'd like to see Malaysia posted on this group C. I am very interested in what happens to this proposed rule. If I may ask, please place me on an "update list" of some sort so I can follow it's progress.

Very respectfully,

Kelly Anderson
Export Manager
Pacific Sky Supply, Inc.
www.pacskey.com



ADVANCING GLOBAL COMMUNICATIONS

www.tiaonline.org

2500 Wilson Boulevard, Suite 300
Arlington, VA 22201-3834 USA

Tel: +1.703.907.7700
Fax: +1.703.907.7727

March 12, 2007

Via Electronic Mail to publiccomments@bis.doc.gov

Assistant Secretary Christopher A. Padilla
Regulatory Policy Division,
Bureau of Industry and Security
Room H2707
U.S. Department of Commerce
Washington DC, 20230

RE: RIN 0694-AD93, TIA comments on proposed rulemaking

Dear Mr. Padilla:

In response to the Federal Register notice issued on February 26, 2007, the Telecommunications Industry Association (TIA) and its 600 member companies would like to thank you for the opportunity to comment on the proposed rulemaking for designating Country Group C for countries that are "Destinations of Diversion Concern." TIA is strongly opposed to this rulemaking because it could significantly affect compliance costs and delay the license approval process, ultimately eroding the international competitiveness of U.S. telecommunications equipment exports.

As presented in the Federal Register notice, the U.S. Commerce Department's Bureau of Industry and Security's (BIS) seeks to use its rulemaking to address the national security threat posed by illicit transshipment, reexport, and diversion in international trade of EAR-subject items, including telecommunications equipment covered under a range of export control classifications. Such classifications represent approximately 80 percent of the telecommunications business, ranging from cell phones to network infrastructure equipment. While TIA generally supports the BIS goal of furthering the national security interests of the United States, TIA is concerned about the significant impact in terms of costs that the proposed rulemaking would have on its members, many of which have comprehensive compliance programs already in place. Costs for such programs exceed \$637 thousand annually for large firms, according to some estimates. Any government changes that affect these internal systems must be carefully analyzed and implemented. Accordingly, companies must understand the full scope of the new regulations, including the product and country coverage, before the full impact of the changes can be understood.

Further, as mentioned in BIS's Federal Register notice, the "result of (these) changes could mean that more license applications might be required; more stringent license review policies might be implemented, which could result in fewer approvals or more conditions on licenses; authorizations may be delayed because of increased end-user checks; or authorizations may decrease because of diversion risks for such countries." TIA's view is that any delay in time or excessive conditions in the license application process will reduce time-to-market in the subject countries, adversely affecting the international competitiveness of U.S. telecommunications exports. As a result, affected U.S. products

will be replaced in the designated countries by potentially less secure competing foreign products, thereby undermining BIS' security goals and reducing revenues for TIA members in the process.

Additionally, TIA notes that some of its member companies maintain manufacturing and distribution "hubs" in potential Country Group C countries. Consequently, the proposed rulemaking may have broader regional implications as licensing delays in the United States disrupt supply chain operations, which rely on the efficient, timely delivery of finished products and intermediate inputs from the United States. Any such disruptions would have severe consequences for maintaining on-time deliveries to established customers throughout the region, potentially creating service deficiencies and further undermining U.S. companies' competitiveness in the region.

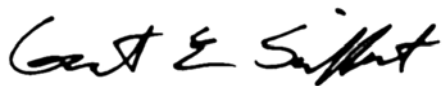
TIA encourages the Department of Commerce to continue working with other governments to strengthen international export control practices and to work with counterpart agencies to further develop export control regimes, promote information and data exchanges, and to strengthen cooperation and facilitate enforcement. Further, TIA encourages continued outreach to freight transportation carriers in order to facilitate information sharing and develop best practices to address transshipment issues. Such efforts will help promote secure supply chains and may ultimately facilitate exports of EAR-subject items.

TIA is proud that its members are the most competitive and efficient telecommunications equipment manufacturers in the world, and that the United States continues to lead the world in telecommunications revenue. Indeed, last year U.S. telecommunication revenues surpassed \$900 billion, representing over 30 percent of global revenues. By the year 2010, U.S. revenues are expected to exceed \$1.2 trillion. Increasingly, a significant share of such revenues is derived from foreign markets. In 2005, U.S. telecommunication equipment trade totaled \$59.6 billion, the highest level ever achieved, and exports topped \$15.7 billion, the highest level since 2001.

With these data in mind, I urge you to carefully analyze the impact that the proposed rulemaking on compliance costs and on the competitiveness of U.S. telecommunications equipment providers.

Thank you again for the opportunity to comment on the proposed rulemaking. If you have any questions about this filing, or if we can assist you further, please do not hesitate to contact Michael Nunes at 703.907.7725 or mnunes@tiaonline.org.

Sincerely,

A handwritten signature in black ink that reads "Grant E. Seiffert". The signature is written in a cursive, slightly slanted style.

Grant Seiffert
President



facsimile transmittal

To: Regulatory Policy Division Fax: 202-482-3355
 From: Ken Montgomery Date: March 12, 2007
 CC: _____ Pages: 3
 Re: RIN 0694-AD93

- Urgent For Review Please Comment Please Reply Please Recycle

Message:

AeA Comment Letter
 for RIN 0694-AD93

← Ken Montgomery
 202-682-4433



March 12, 2007

Sent via email and fax

U.S. Department of Commerce
Bureau of Industry and Security
Regulatory Policy Division
Office of Exporter Services
14th St. and Constitution Ave. NW, Room 2705
Washington, DC 20230

RIN 0694-AD93

**RE: Advanced Notice of Proposed Rulemaking Concerning Country Group C:
Destinations of Diversion Concern (72 Fed. Reg., No. 37, Feb. 26, 2006, p. 8315)**

Dear Sir or Madam:

AeA (formerly the American Electronics Association) welcomes the opportunity to comment on this advanced notice of proposed rulemaking. AeA member companies feel this proposal could have substantial impact on export compliance cost and risk.

AeA strongly opposes any effort to aggregate multiple countries in a separate control or sanctions group on the grounds of "diversion" risk, by which we understand to be risk of unauthorized reexport from countries in question. A number of countries currently function as regional transshipment hubs, each with unique circumstances. The risk (if any) of unauthorized reexport through each must be considered on its own merits. The creation of a broad category of countries based on subjective criteria of diversion risk is very likely to result in inappropriate, ineffective and economically damaging requirements for some countries in the group.

AeA members apply stringent internal controls to ensure that U.S. reexport regulations are observed in transshipment situations. Moreover, businesses have been organized over the years under the assumption of predictable export requirements for shipment through major transshipment destinations. As a result, certain countries process a very large volume of business which could be substantially affected by new controls or screening requirements intended to enforce reexport controls to third destinations.

In addition, this proposal would implement new requirements unilaterally, and as such its effectiveness in curbing diversion risk is questionable. Under it, U.S. companies would have to re-route existing supply chain business models to potentially more costly routing and add delays via screening tests, while non-U.S. companies would continue using existing routes and procedures.

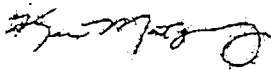
This notice does not identify the scope of products affected, the countries under consideration for new controls, or the proposed new controls themselves. Each of these factors is crucial in evaluating the effectiveness of measures to counter risk of unauthorized reexport. As a result, AEA cannot comment with any authority on the impact of the proposed approach.

However, we assert that existing law and regulation that permits sanctions on specific entities who reexport without appropriate authorization are the most effective means of discouraging diversions, and should be used to their best advantage. New requirements imposed on whole countries or groups of countries have less chance of success, and are difficult to adapt to the unique and changing circumstances of each reexport environment. They also carry the real risk of competitive disadvantage for U.S. exporters.

We respectfully request that BIS re-issue the advanced notice with more definitive information as to destination and scope so that we may further analyze and comment on potential impacts.

We again thank BIS for this opportunity to comment on the proposal rule.

Sincerely,



Ken Montgomery
Director, International Trade Regulation