

1. BXA Background

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

2. Fiscal Year 1998 Highlights

Export Controls in the 21st Century

BXA's export control agenda for the 21st century is focused on maintaining our national security by reducing the proliferation of weapons of mass destruction while seeking to promote U.S. competitiveness in the global marketplace. BXA recognizes that U.S. industry cannot successfully compete internationally if an export control system does not reflect an up-to-date security environment. It also recognizes that economic globalization and the end of the Cold War have changed the nature of U.S. defense procurement and increased the role of the civilian high technology sector in defense and intelligence research, development and acquisition. More than ever before, our ability to stay ahead of our adversaries technologically rests on our ability to keep our high technology companies healthy. This increasingly means facilitating more exports, which in turn, support additional research and development and the creation of new products and technologies that enhance our national security.

The Administration continues to take important actions to remove unnecessary obstacles to exporting and strengthen multilateral regimes. The Administration has actively involved industry as part of its public-private partnership effort.

Export Licensing Streamlining

The Clinton Administration continues to make progress in eliminating unnecessary and ineffective export controls and streamlining the export control process. It has

simultaneously strengthened the implementation and enforcement of those export controls which are still required to combat proliferation and protect other U.S. national security and foreign policy interests while easing or eliminating unnecessary controls. These actions have greatly reduced obstacles for exporters.

On January 15, 1998, BXA published a rule which released 80 to 90 percent of the items used in commercial nuclear powerplants from control for export to most countries, while exports of critical nuclear power production components such as reactor vessels, fuel rod equipment, and primary pumps remain under the control of the Nuclear Regulatory Commission. This action minimized the adverse effect of these controls on non-nuclear commodities while sustaining controls on items with potential nuclear weapons utility.

On March 24, 1998, BXA published a rule implementing the Australia Group's decision to change the method of calculation of mixtures containing chemical precursors controlled under Export Control Classification Number 1C350 from "solvent free basis" to "absolute weight." Mixtures containing chemical precursors controlled under ECCN 1C350 may now be shipped without a license if they qualify for a de minimus exemption based on the weight percentage of controlled chemicals calculated on the absolute (total) weight of the mixture. This revision simplified the calculation and improved the coordination of the mixtures policy among Australia Group members.

The President on March 20, 1998, announced that the United States would take a number of steps to expand the flow of humanitarian assistance to the people of Cuba, and to help strengthen independent civil society and religious freedom in that country. On May 13, 1998, BXA resumed licensing direct humanitarian flights to Cuba and streamlining procedures for the sale of medicines and medical equipment to Cuba. BXA has been successful in reducing the license processing times by 32 percent.

Electronic Security Interests

BXA, in conjunction with Ambassador David Aaron, Under Secretary of Commerce for International Trade, is responsible for implementing President Clinton's commercial encryption policy to promote the growth of electronic commerce and secure communications worldwide while protecting the public safety and national security. In July 1998, Secretary Daley announced that the Clinton Administration had finalized guidelines to permit the export of encryption products under a license exception to banks and financial institutions in 45 eligible countries. This affects encryption exports for the world's 100 largest banks and almost 70 percent of the world's financial institutions. On September 22, 1998, BXA published regulations implementing these changes.

On September 16, 1998, Vice President Gore announced an important update for encryption policy. The Administration will strengthen its support for electronic commerce by permitting the export of strong encryption when used to protect sensitive financial,

health, medical, and business proprietary information in electronic form. The Administration also intends to establish a technical support center which will help enhance the ability of law enforcement to stay abreast of advancing communications technology. The policy update will also reflect the Administration's continued promotion of key recovery products. Furthermore, the regulations will identify other recoverable products and techniques that allow for the recovery of plain text.

The Chemical Weapons Convention

On October 21, 1998, the Congress passed Chemical Weapons Convention (CWC) implementing legislation which the President subsequently signed into law. BXA is expected to oversee U.S. business community compliance. The CWC, which is administered by the Organization for the Prohibition of Chemical Weapons (OPCW) in the Hague, Netherlands, is the first major arms control treaty to have a significant impact on the private sector. Certain commercial chemical production, consumption and processing facilities will be required to submit data declarations and to permit international inspections. To fulfill its responsibilities under the treaty, BXA will publish new regulations, conduct industry outreach activities, develop an information management system to comply with the treaty's reporting requirements, and manage international inspections at U.S. commercial facilities.

Sanctions

In accordance with section 102(b) of the Arms Export Control Act (AECA), President Clinton reported to Congress on May 13 with regard to India and May 30 with regard to Pakistan his determinations that those non-nuclear weapon states had each detonated a nuclear explosive device. He directed relevant federal agencies to take the necessary actions to impose mandatory sanctions required under section 102(b) of the AECA. Following the President's directive, BXA implemented procedures to further restrict the export to India and Pakistan of dual-use items listed on the Commerce Control List in order to control their export for missile technology and nuclear nonproliferation reasons. BXA published regulations November 19, 1998 that codified the additional restrictions. Under the regulations, BXA also published a list of entities of proliferation concern in the two countries and established strict export license requirements on those entities.

High Performance Computers

In January 1997, BXA initiated a study to analyze the U.S. high-performance computing export control policy. This study updated the findings of a 1995 report on computer exports and will help the United States keep its high-performance computer (HPC) policy in step with technological developments. The analysis showed that increasingly powerful computers are widely available. The Administration continues its

review of this issue and is committed to keeping our controls up-to-date with the progress of technology.

On February 2, 1998, BXA published a rule amending the Export Administration Regulations to implement the National Defense Authorization Act (NDAA) which requires advance notification and post-shipment verification of exports and reexports of certain countries. As a result, exporters and reexporters are required to submit notices to BXA which BXA evaluates in conjunction with the Departments of Defense, Energy, State and the Arms Control and Disarmament Agency. In Fiscal Year 98, BXA received 794 notices with approximately 86 percent of those resulting in approval.

Deemed Exports

BXA continues to review the implementation of the “deemed export” rule that requires for U.S. companies to obtain prior approval from BXA before foreign nationals from certain countries are allowed to work on U.S. projects involving controlled technology. BXA is working with the interagency community and U.S. industry to revise license conditions for foreign nationals to accommodate rapid changes in technology that may have rendered certain conditions obsolete. Ensuring a streamlined review process is important given the substantial increase in “deemed export” license applications in FY 1998. BXA processed approximately 800 “deemed export” cases in FY 1998, up from 300 cases during FY 1997. BXA expects “deemed export” license applications to grow because of greater industry awareness of the requirements, as well as the anticipated increase in the number of H1b work visas for foreign nationals.

Harmonizing Multilateral Export Controls

BXA continues to work to harmonize multilateral lists and list interpretations to increase transparency and consistency and to maintain a level playing field for U.S. companies. BXA supported the expansion of transparency and information exchange in the Wassenaar Arrangement, which focuses on exports of arms and sensitive dual-use equipment and technologies. In January, BXA published comprehensive changes to the Export Administration Regulations to incorporate the Wassenaar Arrangement’s List of Dual-Use Goods and Technologies in the Commerce Control List. To simplify the conversion process for exporters, BXA also harmonized items on the Wassenaar list to conform to the European Union dual-use list and lists of other international control regimes to which the U.S. belongs.

BXA also led the U.S. effort to reformat and update Dual-use Export Control language in the NSG Annex for the Nuclear Suppliers Group (NSG) and the MTCR Annex for the Missile Technology Control Regime (MTCR) to comport with the product categories in the Commerce Control List and better reflect standard language and implementation by the

member countries. A substantial majority of members of the multilateral non-proliferation regimes now have "catch-all" controls, which the United States first advanced to help prevent weapons of mass destruction and missile proliferation. The MTCR and the NSG continue to sponsor outreach seminars and workshops on various export control issues for both members and selected nonmember countries to enhance the effectiveness of nonproliferation efforts and to improve the transparency of the international regimes. The nonproliferation regimes also provide a forum for continuing the dialogue with other member countries on ways to prevent further proliferation of weapons of mass destruction and missile delivery systems.

Defense Trade Advocacy

As part of our role in defense advocacy and support for U.S. industry impacted by defense downsizing, BXA continued to work with the interagency community on defense advocacy issues. BXA coordinates its efforts with the Trade Promotion Coordinating Committee and the International Trade Administration's Advocacy Center. In Fiscal Year 1998, BXA defense advocacy efforts supported sales of approximately \$7 billion. Examples include BXA support for the \$6 billion F-16 fighter aircraft sale to the United Arab Emirates, the \$500 million sale of Paladin howitzers to Kuwait, and the \$100 million sale of radar equipment to Australia.

U.S. Defense Diversification

During Fiscal Year 1998, BXA continued to implement its U.S. defense diversification programs to provide assistance to the defense industry which has been negatively impacted by defense downsizing. BXA also implemented the first phase of a major new effort during Fiscal Year 1998. This new effort is a pilot Manufacturing Empowerment Zone program which is designed to assist manufacturing firms in the vicinity of the Long Beach, California, Naval Shipyard. This innovative program utilizes the surplus manufacturing equipment at the former shipyard for the benefit of the local business community. More than 10,000 small and medium-sized companies in the region have been contacted about this project. This program may be expanded to other communities around the country which are home to closing military bases.

Enhanced Proliferation Control Initiative

In December 1996, BXA implemented guidelines issued by the National Security Council to streamline the export licensing review process for entities of proliferation concern. The development of a list of entities through the "Is Informed" process arose from the Enhanced Proliferation Control Initiative (EPCI) begun in 1991 to stem the

spread of missile technology as well as nuclear, chemical and biological weapons. This improved process has injected accountability, transparency and timeliness into the “Is Informed” process. Since February 1997, BXA has published several Commerce Department rules which added names to the “Entity List.” Publishing the Entity List allows the U.S. Government to identify for U.S. businesses some of the organizations and companies that may be involved in proliferation activities. Under EPCI, BXA has the authority to inform exporters individually or through published notices that a license is required for exports and reexports of normally uncontrolled goods and technology to an organization or company on the Entity List, when there is an unacceptable risk of use in or diversion to activities related to nuclear, chemical or biological weapons or missile proliferation by those organizations or companies.

Industry Outreach

In Fiscal Year 1998, BXA continued to conduct extensive outreach and counseling services through the Office of Exporter Services Exporter Counseling Division, Export Seminar Staff and Western Regional Offices located in Irvine and San Jose, California. These offices advise businesses and conduct seminars on export control and defense conversion issues. In Fiscal Year 1998, BXA responded to more than 140,000 telephone calls, directly counseled more than 350 visitors in its offices, and organized 80 seminars attended by more than 6,500 participants. BXA held one of these programs in Mexico.

BXA’s Website

BXA’s site on the World Wide Web (www.bxa.doc.gov) provides guidance on topics of interest to exporters and to companies in defense related industries. The site helps those who are new to exporting as well as those with prior export control experience. Since the debut of the website in September 1996, visitors have grown too over 25,000 monthly with 20 percent located outside the United States. In Fiscal Year 1998, BXA expanded the BXA website to include new navigational tools, including the ability do a full-text search of the website. In addition, BXA added an electronic Freedom of Information Act (FOIA) reading room and the ability for exporters to submit confidential export enforcement tips, and launched the “Conversations with America” initiative that solicits suggestions from our visitors on how to improve BXA’s operations.

BXA reported in FY 1997 that it added the ability for exporters to request export license application forms via the Internet. As Fiscal Year 1998 came to a close, BXA had moved to the next step and was testing the ability to submit export license applications and commodity classification requests via the Internet. In addition, BXA, is also in the final phases of testing a version of the Denied Persons list that will allow exporters to download the data, configure it, and use it to screen the parties to their export transactions.

Export Management Systems

BXA published Export Management System (EMS) Guidelines as part of an optional program that companies may implement, as good business practice, to ensure compliance with the Export Administration Regulations. The guidelines assist companies to establish internal procedures for screening exports. Establishing an EMS can greatly reduce the risk of inadvertently exporting to a prohibited end-use or end-user. BXA offers onsite EMS reviews of companies' written and operational programs and conducts EMS workshops and seminars to educate the export community on the various tools available to its members to assist them in complying with the EAR. This year, BXA published its revised EMS Summary brochure which is widely used as a training tool by exporters.

Defense Industrial Base Assessments

During Fiscal Year 1998, BXA was involved in five major industrial base projects. Two projects were completed during the fiscal year: an assessment of the U.S. emergency aircraft ejection seat industry, a study sponsored by the U.S. Air Force that was released in early Fiscal Year 1998, and an analysis of the optoelectronics industry, a study requested by that industry's trade association that will be released in early Fiscal Year 1999. Research continued on a Navy-sponsored assessment of high performance explosives, a study initiated in Fiscal Year 1997 that is scheduled for completion in Fiscal Year 1999. BXA initiated two new research projects, one on the U.S. maritime industry, requested by the U.S. Navy, and one on assistive technologies (technologies which enable persons with disabilities to function more fully). The purpose of this study, requested by the Department of Education and the Federal Laboratory Consortium, is to identify the industry's technology needs and match these with defense-related technologies resident in the Federal laboratories.

3. Export Administration Programs

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

The Office of Strategic Trade and Foreign Policy Controls (STFPC) is responsible for implementing multilateral export controls under the Wassenaar Arrangement, which deals with conventional arms and related dual-use goods and technology. The office is responsible for policy and licensing of encryption and high performance computer exports. STFPC also has the lead for policy issues involving countries like China and India, for unilateral and UN sanctions, and for export controls maintained for antiterrorism, regional stability, and crime control reasons.

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

The Office of Chemical and Biological Controls and Treaty Compliance has overall responsibility for administering export controls and policy development relating to the Australia Group (e.g., chemical weapons precursors and biological agents). This office will have a major role in overseeing compliance by U.S. industry with the requirements of the Chemical Weapons Convention, the Biological Weapons Convention, and other relevant treaties. The office also carries out the provisions governing deemed exports and executes BXA responsibilities in furtherance of its controls on exports for short supply reasons.

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

The Office of Exporter Services (OEXS) is responsible for counseling exporters, conducting export control seminars, and developing, drafting and publishing changes to the Export Administration Regulations. It develops brochures and other written guidance to educate and train exporters, and to ensure compliance with the Export Administration Regulations. It is also responsible for compliance actions relating to the special comprehensive license, for administering the processing of license applications, commodity classifications, and advisory opinions, and for implementing the End-User Verification

process through which U.S. exporters are informed of foreign entities of proliferation concern.

4. Export Enforcement Programs

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

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

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

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

5. Nonproliferation and Export Control Cooperation Programs

The Nonproliferation and Export Control Cooperation (NEC) office coordinates BXA's activities in support of U.S. export control cooperation programs with Russia and the other republics of the former Soviet Union in the Central Asian, Eastern Europe, and Caucasian regions, and the Baltic and Central European states. The NEC team conducts technical exchanges to assist those nations to develop their own effective export control systems with the goal of preventing terrorist and rogue nations from obtaining weapons of mass

destruction and other sensitive materials. The technical exchanges are focused on the following five functional areas of export control cooperation: legal and regulatory foundations, licensing procedures, enforcement mechanisms, industry-government relations, and system administration and automation support.

6. Technical Advisory Committee Activities

The Department of Commerce has chartered Technical Advisory Committees (TACs) pursuant to statute 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 use of production technology, and on export control regulations and procedures.

During Fiscal Year 1998, the Committees addressed technical and administrative issues regarding nonproliferation controls and foreign policy controls. BXA continued to rely on the Committees as a valuable source of information and advice on regulatory and policy matters. BXA expanded its outreach activities to the public and to potential Committee members by increasing its use of the BXA Website for reporting on Committee activities and for recruiting Committee candidates.

Fiscal Year 1998 TAC Activities

The Information Systems Technical Advisory Committee (ISTAC) addressed issues relating to Control List Categories 3 (semiconductor section), 4, and 5. The ISTAC forwarded to BXA comments and proposals on the following topics: the issue of export controls based on maximum attainable performance versus shipped performance; continued use of the Composite Theoretical Performance metric; proposed changes to License Exception Key Management Infrastructure; and Wassenaar Arrangement proposals, including a review of earlier proposals, revised recommendations, and comprehensive comments explaining the rationale for those recommendations.

The Materials Technical Advisory Committee (MTAC) reviewed proposals regarding Control List Category 1. The MTAC provided comments and advice regarding the negotiations, regulations, and implementation of the Chemical Weapons Convention and the Biological Weapons Convention. Much of the Committee's work centered on the acceptability and feasibility of proposals for definitions, data declarations, and inspections. The MTAC completed its work on the parameters for controls on pipes and valves (ECCN 2A292), with suggestions on both technical and language changes to those controls.

The Materials Processing Equipment Technical Advisory Committee (MPETAC) made recommendations regarding proposed revisions to Control List Category 2. The Chairperson continues to advise the U.S. Government at negotiations of the Wassenaar Arrangement. The Chairperson also represents the MPETAC at Technical Working Group meetings of the Institute for Defense Analyses and at interagency meetings of the Defense Threat Reduction Agency.

The Regulations and Procedures Technical Advisory Committee (RPTAC) made recommendations on a range of issues, including the following: the implementation of regulations regarding commercial encryption products, a Bureau of Census proposal to revise the definition of “Exporter of Record,” the “deemed exports” rule, the “material contribution” licensing policy as it applies to the Enhanced Proliferation Control Initiative, implementation of the Executive Order on license processing, and post shipment verification reporting procedures on exports of high-performance computers.

The Sensors and Instrumentation Technical Advisory Committee (SITAC) advised the Department regarding commodities and data within Control List Category 3 (instrumentation section) and Category 6. The Committee reviewed implementation of current Wassenaar Arrangement regulations and reviewed pending proposals for changes to the Wassenaar Arrangement lists. The SITAC also provided comments on a definition for the term “specially designed,” the impact of economic sanctions, and the implication of U.S. regulations pertaining to the export and re-export of high-performance computers.

The Transportation and Related Equipment Technical Advisory Committee (TransTAC) advised the Department on commodities and technical data within Control List Categories 7, 8, and 9. After a briefing on power plant technology for Uninhabited Air Vehicles, the TransTAC developed a related position paper for forwarding to BXA. The Committee also discussed issues regarding the Missile Technology Control Regime. The TransTAC responded to questions on licensing issues and changes in policy for export controls affecting the aerospace industry.

President's Export Council Subcommittee on Export Administration

The President's Export Council Subcommittee on Export Administration (PECSEA) advised on foreign-policy based economic sanctions, the export licensing process, commodity jurisdiction, the Wassenaar Arrangement, controls on computer exports, the Enhanced Proliferation Control Initiative, economic sanctions imposed by state and local governments, the “deemed export” rule, and the Census Bureau’s proposed rule on the “Exporter of Record.”

President’s Export Council Subcommittee on Encryption

The President’s Export Council Subcommittee on Encryption (PECSENC) used the information gathered in its working groups to deliberate and advise on a range of issues, including current encryption developments and policy, overseas markets, the feasibility of key recovery, the Data Encryption Standard, and the status of “recoverable” encryption products.