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CHAPTER 1

Introduction

Export controls maintained for foreign policy purposes require annual extension according to the provisions of Section 6 of the Export Administration Act of 1979, as amended (the Act). Section 6(f) of the Act requires the Secretary of Commerce, through authority delegated by the President, to submit a report to Congress to extend the controls. Sections 6(b) and 6(f) of the Act require the report to include certain considerations¹ and determinations² on the criteria established in that section. This report complies with all the requirements set out in the Act for extending, amending, or imposing foreign policy controls.

The Department of Commerce is acting under the authority conferred by Executive Order No. 13222 of August 17, 2001. Therein, the President, by reason of the expiration of the Act, invoked his authority, including authority under the International Emergency Economic Powers Act, to continue in effect the system of controls that had been maintained under the Act. Under a policy of conforming actions under the Executive Order to those under the Act, the Department of Commerce, insofar as appropriate, is following the provisions of Section 6 of the Act with regard to extending foreign policy controls.

With this report, the Department of Commerce hereby extends all foreign policy controls in effect on December 31, 2001. The Bureau of Export Administration (BXA) of the Department of Commerce is taking this action at the recommendation of the Secretary of State. As further provided by the Act, foreign policy controls remain in effect for replacement parts and for parts contained in goods subject to such controls. The controls administered in accordance with procedures established pursuant to Section 309(c) of the Nuclear Nonproliferation Act of 1978 likewise remain in effect.

Each chapter of this report describes a particular category of foreign policy controls and delineates modifications that have taken place over the past year. Although this report covers the 2001 calendar year, most of the statistical data presented in the report are based on fiscal year 2001 export licensing statistics, unless otherwise noted. BXA generates this data from the computer automated system it uses to process and track export license activity. Due to the tabulating procedures used by the system in accounting for occasional license applications that list more than one country or destination, the system has certain limitations as a means of gathering data. In addition, BXA bases the data in this report on

values contained in export licenses it issued. Such values may not represent the values of actual shipments made against those licenses, because in some cases an exporter may ship only a portion of the value of an approved license.

Certain goods, technology, and software described in this report may also require a license for export to certain destinations for national security purposes in accordance with Section 5 of the Act.

Highlights for 2001

Implementation of the Trade Sanctions Reform and Export Enhancement Act of 2000

On July 12, 2001, BXA and the Department of the Treasury's Office of Foreign Assets Control (OFAC) published rules implementing certain provisions of the Trade Sanctions Reform and Export Enhancement Act of 2000 (TSRA) (Title IX of Public Law 106-387). BXA implemented the requirements of TSRA for exports and reexports of agricultural commodities to Cuba. BXA created License Exception "Agricultural Commodities" (AGR) to permit exports and reexports to Cuba of agricultural commodities that are classified EAR99 and are not specifically identified on the Commerce Control List (CCL). Exports and reexports of medicines and medical devices to Cuba are not eligible for AGR because TSRA did not override the specific provisions for medicines and medical devices set forth in the Cuban Democracy Act of 1992 (Public Law 102-484). However, exporters may export medicines and medical devices under existing BXA license application procedures. OFAC's July 12 rule specifies licensing procedures for exports of agricultural and medical items to Iran, Libya, and Sudan.

Ammonium Nitrate Control Expansion

In 2001, BXA imposed new foreign policy controls on ammonium nitrate, including dry fertilizers and fertilizer blends containing more than 15 percent by weight of ammonium nitrate. These items are now classified as Export Commodity Control Number (ECCN) 1C997 and require a license for anti-terrorism reasons due to their potential use in explosives production.

Removal of Sanctions on Serbia, India, and Pakistan

On April 1, 2001, the United States removed comprehensive trade sanctions imposed in 1999 against Serbia because of the ethnic conflict in Kosovo. On October 1, 2001, BXA also removed sanctions and certain controls imposed in 1998 against India and Pakistan because of their detonation of nuclear devices.

Regional Stability

This report notifies Congress that BXA intends to publish an amendment to the Export Administration Regulations (EAR) that expands the scope of explosive detection equipment controlled under ECCN 2A993 and creates new license requirements for the export and reexport of related software and technology. The new licensing requirements will be contained in ECCNs 2D993 and 2E993. In the past, the U.S. Government required a license for the export and reexport of this equipment only to designated terrorist-supporting countries. With this amendment, BXA also will impose broader licensing requirements on all destinations, including Canada, for regional stability reasons. BXA designed the amendment to enhance the security and safety of airline travel and physical structures including government buildings.

Anti-Terrorism Controls

In response to the terrorist acts of September 11, 2001, the President issued Executive Order 13224 of September 23, 2001 – Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism – to deal with the continuing and immediate threat of further terrorist attacks on U.S. nationals or the United States. On September 28, 2001, the United Nations Security Council adopted Resolution 1373, which states that member nations shall prohibit making financial assets or economic resources available for the benefit of persons who engage in or attempt to commit or facilitate terrorist acts.

BXA soon will publish a rule consistent with the provisions of Executive Order 13224 and U.N. Resolution 1373. The purpose of these new controls is to impose a license requirement for the export and reexport of all items subject to the EAR destined to newly designated terrorists and terrorist groups located anywhere in the world. In addition, current export controls will be expanded to impose a license requirement for the reexport of all items subject to the EAR by foreign persons to persons previously designated as terrorists. Comprehensive controls on exports from the United States and by U.S. persons will continue in effect. Previously, a license was required only for the reexport by foreign persons of items listed on the CCL.

Liberia

BXA will soon publish a rule that amends the EAR to prohibit the sale, supply, or export from the United States or the sale, export, or reexport by U.S. persons of arms-related items, including technical assistance and training, to Liberia. This regulatory action is consistent with U.N. Resolution 1343 of March 7, 2001, and is being taken in coordination with the Department of State, which controls defense articles and services to Liberia under the International Traffic in Arms Regulation (ITAR).

Chemical Precursors and Related Equipment

The Australia Group (AG), which is an informal forum of industrialized nations that have agreed to cooperate in curbing the proliferation of chemical and biological weapons, welcomed Bulgaria as its 33rd member at the AG Plenary in October 2001. The AG, via each member-state's national laws and regulations, maintains export controls on a list of chemicals, biological agents, and related equipment and technology that could be used in chemical or biological weapons. Actions at the 2001 Plenary included adopting controls on critical components that can upgrade chemical manufacturing equipment to functional equivalents of controlled items, and liberalizing controls on medical and diagnostic kits containing small quantities of controlled chemicals.

High Performance Computers

In FY 2001, BXA made two major adjustments to High Performance Computer (HPC) controls. The first set of changes to HPC controls was announced in FY 2000 (August 2000), but was not fully effective until FY 2001 due to a legislatively mandated waiting period. These changes:

- Raised the Tier II license exception eligibility to 45,000 from 33,000 MTOPS.
- Raised the Tier III license exception eligibility to 28,000 from 20,000 MTOPS for civilian end-users and from 12,500 MTOPS for military end-users.
- Raised the NDAA notification level to 28,000 MTOPS (effective February 28, 2001).
- Removed the distinction between military and civilian end-users in Tier III.
- Moved Argentina from Tier II to Tier I.
- Moved Estonia from Tier III to Tier II (effective December 29, 2000).

The second set of changes to HPC policy in FY 2001 was announced on January 10, 2001, and was implemented in regulations published on January 19, 2001. The President also submitted a report to Congress announcing the changes on January 19, 2001. The revisions to HPC control policy:

- Combined Computer Tiers I and II into a single Tier I (all HPCs, regardless of performance capabilities, are eligible for License Exception CTP).
- Raised the Tier III license exception eligibility to 85,000 from 28,000 MTOPS.
- Raised the NDAA notification level to 85,000 MTOPS (effective March 20, 2001).
- Moved Lithuania from Tier III to Tier I (effective May 19, 2001).

Format of Analysis Used in Chapters 2 -12 of This Report

Chapters 2-12 of this report describe the various export control programs maintained by the Department of Commerce for foreign policy reasons, including controls maintained for crime control, regional stability, chemical and biological non-proliferation, and anti-terrorism reasons. Each of these programs is extended for another year. The analysis required for such an extension is presented in each chapter in the format described below.

Export Control Program Description and Licensing Policy

This section defines the export controls maintained for a particular foreign policy purpose that are imposed or extended for the year 2002. Each of the following chapters describes the licensing requirements and policy applicable to a particular control.

Analysis of Control as Required by Section 6(f) of the Act

Section 6(f)(2) of the Act requires that the Secretary of Commerce describe the purpose of the controls and consider or determine whether to impose or extend foreign policy controls based on specified criteria, including consultation efforts, economic impact, alternative means, and foreign availability. For each control program, the Commerce Department's conclusions are based on the following required criteria:

A. The Purpose of the Control

This section provides the foreign policy purpose and rationale for each particular control.

B. Considerations and/or Determinations of the Secretary of Commerce

1. *Probability of Achieving the Intended Foreign Policy Purpose.* This section considers or determines whether such controls are likely to achieve the intended foreign policy purpose in light of other factors, including the availability from other countries of the goods or technology subject to control, and whether the foreign policy purpose can be achieved through negotiations or other alternative means.

2. *Compatibility with Foreign Policy Objectives.* This section considers or determines whether the controls are compatible with the foreign policy objectives of the United States and with overall U.S. policy toward the country or the proscribed end-use subject to the controls.

3. *Reaction of Other Countries.* This section considers or determines whether the reaction of other countries to the extension of such export controls by the United States is likely to render the controls ineffective in achieving the intended foreign policy purpose or to be counterproductive to other U.S. foreign policy interests.

4. *Economic Impact on United States Industry.* This section considers or determines whether the effect of the controls on the export performance of the United States, its competitive position in the international economy, the international reputation of the United States as a reliable supplier of goods and technology, or the economic well-being of individual U.S. companies exceeds the benefit to U.S. foreign policy objectives.³

5. *Enforcement of Control.* This section considers or determines the ability of the United States to enforce the controls. Some enforcement problems are common to all foreign policy controls.⁴ Others enforcement problems are associated with only one or a few controls. Each control has been assessed to determine if it has presented, or is expected to present, an uncharacteristic enforcement problem.

C. Consultation with Industry

This section discusses the results of consultations with industry leading up to the extension or imposition of controls. It also includes comments provided to BXA by Technical Advisory Committees (TACs) and the President's Export Council Subcommittee on Export Administration (PECSEA). Such comments are to be attributed to the TACs or PECSEA unless otherwise indicated.

D. Consultation with Other Countries

This section reflects consultations on the controls with countries that cooperate with the United States on multilateral controls and with other countries as appropriate.

E. Alternative Means

This section specifies the nature and results of any alternative means attempted to accomplish the foreign policy purpose, or the reasons for extending the controls without attempting any such alternative means.

F. Foreign Availability

This section considers the availability from other countries of goods or technology comparable to those subject to the proposed export control. It also describes the nature and results of the efforts made pursuant to Section 6(h) of the Act to secure the cooperation of foreign governments in controlling the foreign availability of such comparable goods or technology. In accordance with the Act, foreign availability considerations do not apply to export controls in effect prior to June 12, 1985, to controls maintained for human rights and anti-terrorism reasons, or to controls in support of the international obligations of the United States.

General Comments from Industry

In a November 7, 2001, *Federal Register* notice, the Department of Commerce solicited comments from industry on the effectiveness of the U.S. export control policy. Comments were also solicited via the BXA Web page. A detailed review of the comments received can be found in Appendix I.

ENDNOTES

1. *Section 6(b)(2) requires the Department to consider the criteria set forth in Section 6(b)(1) when extending controls in effect prior to July 12, 1985. In addition, the report must include the elements set forth in Sections 6(f)(2)(A) (purpose of the controls); 6(f)(2)(C) (consultation with industry and other countries); 6(f)(2)(D) (alternative means attempted); and 6(f)(2)(E) (foreign availability).*
2. *Section 6(b)(1) requires the Department to make determinations regarding the criteria set forth therein when imposing, extending, or expanding controls. The report must also contain the additional information required in Section 6(f)(2)(A), (C)-(E) (as set forth in endnote 1, supra.)*
3. *Limitations exist when assessing the economic impact of certain controls because of the unavailability of data or because of the prevalence of other factors, e.g., currency values, foreign economic activity, or foreign political regimes, which may restrict imports of U.S. products more stringently than the United States restricts exports.*
4. *When the United States implements controls without the imposition of corresponding restrictions by other countries, it is difficult to guard against reexports from third countries to the target country, to secure third country cooperation in enforcement efforts, and to detect violations abroad and initiate proper enforcement action. The*

relative ease or difficulty of identifying the movement of controlled goods or technical data is also a factor. Controls on items that are small, inexpensive, easy to transport or conceal, or that have many producers and end-users, are harder to enforce.