RECORD OF COMMENTS: BEST PRACTICES FOR EXPORTERS/RE-EXPORTERS AND TRADE FACILITATION/FREIGHT FORWARDING COMPANIES REGARDING THE TRANSIT, TRANSSHIPMENT, AND REEXORT OF DUAL-USE ITEMS.

Published in the Federal Register

68 FR 26567
(DUE JULY 16, 2003)

COMMENT	SOURCE	SIGNER(S) OF LETTER	DATE	NUMBER OF PAGES
1	**United Parcel Service**	Tom Boblitt	June 11, 2003	3
2	**FedEX Express**	Alan W. Black	June 13, 2003	3
3	**Bullard**	Stephanie Ratliff	June 4, 2003	3
4	**Hitachi, Ltd**	Yasushi Tagami	June 16, 2003	3
5	**Thayer Aerospace**	Roger Hubble	May 27, 2003	1
6	**The Export Law Group**	Russell W. Spittler	May 22, 2003	1
7	**Trade Compliance Associates, LLC**	W. Brad Lewis	June 15, 2003	1
8	**Wah Chang**	Patricia Skeahan	June 23, 2003	1
9	**Expeditors**	Anne B. Mesagna	June 30, 2003	1
10	**Texas Instruments**	William A. Aylesworth	July 16,2003	2
11	**Novell**	Angela Steen	July 16, 2003	2

12	**The Hong Kong Shippers' Council**	Sunny Ho	July 17, 2003	1
13	**The National Council on International Trade Development (NCITD)**	Mary O. Fromyer	July 15, 2003	3
14	**Customs and International Trade Bar Association**	James R. Cannon, Jr.	July 18, 2003	4
15	**P&O Ports North America, Inc.**	Robert Scavone	July 16, 2003	3
16	**Sun Microsystems, Inc.**	Hans Luemers	July 15, 2003	2
17	**Circinus, Ltd.**	Ann M. Thomas	July 16, 2003	2
18	**The Boeing Company**	Ramona B. Hazera	July 16, 2003	2
19	**Port Klang Malaysia**	Paul Seo Tet Chong	July 12, 2003	2
20	**Center for Information on Security Trade Control (CISTEC)**	Susumu Hirai	July 16, 2003	3
21	**Smiths Aerospace**	Glen Babcock	July 11, 2003	3

22	**IBM**	Christopher G. Caine	July 14, 2003	2

913–551–1414), by 4 p.m. on Friday, June 27, 2003.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated in Washington, DC, June 5, 2003.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. 03-14944 Filed 6–12–03; 8:45 am]

BILLING CODE 6335-01-P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Southeastern Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a conference call of subcommittees of the Advisory Committees to the Commission from the southern region (Florida, Georgia, Kentucky, North Carolina, South Carolina and Tennessee) will convene at 2 p.m. and adjourn at 3 p.m. on Thursday, June 12, 2003. The purpose of the conference call is to discuss ways in which the Advisory Committees can achieve meaningful outcomes when considering civil rights issues in their respective states.

This conference call is available to the public through the following call-in number: 1-800-659-1145, access code 17256829. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls not initiated using the supplied call-in number or over wireless lines and the Commission will not refund any incurred charges. Callers will incur no charge for calls using the call-in number over land-line connections. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1-800-977-8339 and providing the Service with the conference call number and access code.

To ensure that the Commission secures an appropriate number of lines for the public, persons are asked to register by contacting Bobby Doctor, Director of the Southern Regional Office, 404-562-7000 (TDD 400-562-7004), by 4 p.m. on Wednesday, June 11, 2003.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated in Washington, DC, June 2, 2003.

Ivy L. Davis,

Chief Regional Programs Coordination Unit.

[FR Doc. 03-14946 Filed 6-12-03; 8:45 am]

BILLING CODE 6335-01-P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Pennsylvania Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a press conference and briefing session of the Pennsylvania Advisory Committee will convene at 9:30 a.m. and adjourn at 3:30 p.m. (e.d.t.) on Thursday, June 26, 2003, at the City Council Chambers, City-County Building, 414 Grant Street, Pittsburgh, Pennsylvania 15219. The Advisory Committee will hold a press conference to promote the dissemination in the Pittsburgh region of its report, ***Barriers Facing Minority and Women Owned Businesses in Pennsylvania,*** released in Philadelphia in August 2002. The Committee will also hold a briefing session with community representatives, state and local officials, and minority- and women-owned business owners to discuss issues raised in the report that are unique to the Pittsburgh/Allegheny county area.

Persons desiring additional information, or planning a presentation to the Committee, should contact Marc Pentino of the Eastern Regional Office at 202-376-7533 (TDD 202-376-8116). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated in Washington, DC, June 5, 2003.

Ivy L. Davis,

Chief Regional Programs Coordination Unit.

[FR Doc. 03-14945 Filed 6-12-03; 8:45 am]

BILLING CODE 6335-01-P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

[Docket No. 030505114–3144–02]

Best Practices for Exporters/Re-Exporters and Trade Facilitation/Freight Forwarding Companies Regarding the Transit, Transshipment, and Reexport of Dual-Use Items; Correction

AGENCY: Bureau of Industry and Security, Department of Commerce.

ACTION: Notice of inquiry; correction.

SUMMARY: The Bureau of Industry and Security published a notice in the **Federal** Register of May 16, 2003 (63 FR 26567) requesting comments on the proposed "Best Practices for Exporters/Reexports and Trade Facilitation/Freight Forwarding Companies Regarding the Transit, Transshipment, and Reexport of Dual-Use Items." That notice contained an incorrect date within which comments were to be submitted. This document corrects the date for the submission of comments.

DATES: Comments on the proposed Best Practices must be received by July 16, 2003.

ADDRESSES: Comments on the proposed Best Practices may be submitted by e-mail to *rcupitt@bis.doc.gov,* by fax at (202) 482-2387, or on paper to Rick Cupitt, Office of the Under Secretary for Industry and Security, Bureau of Industry and Security, Room H3898, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Rick Cupitt, Office of the Under Secretary for Industry and Security at *rcupitt@bis.doc.gov* or (202) 482-1459.

SUPPLEMENTARY INFORMATION: The Bureau of Industry and Security published a document in the **Federal** Register of May 16, 2003 (63 FR 26567), requesting comments on the proposed "Best Practices for Exporters/Reexports and Trade Facilitation/Freight Forwarding Companies Regarding the Transit, Transshipment, and Reexport of Dual-Use Items." The notice inadvertently stated that comments were to submitted by June 16, 2003. That date was incorrect and the public is advised that the comment period will close on July 16, 2003.

Dated: June 9, 2003.

Kenneth I. Juster,

Under *Secretary for* ***Industry and Security.***

[FR Doc. 03-15024 Filed 6-12-03; 8:45 am]

BILLING CODE 3510-33-M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-l 22-845; A-l 22-847; C-l 22-846; C-l 22-8481

Notice of Postponement of Final Antidumping Determinations and Extension of Provisional Measures and Postponement of Final Countervailing Duty Determinations: Certain Durum Wheat and Hard Red Spring Wheat from Canada

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

Orleans, New Orleans, Louisiana
Contract *Activity:* Office Supplies & Paper Products Acquisition Center, New York, New York
Product/NSN: Tape Refill w/American Flag on the core 7520–00–NIB–1579
NPA: The Lighthouse for the Blind in New Orleans, New Orleans, Louisiana
Contract Activity: Office Supplies & Paper Products Acquisition Center, New York, New York

Services

Service Type/Location: Custodial Service GSA Leased Space for the Internal Revenue Service, Bronx, New York
NPA: Goodwill Industries of Greater New York and Northern New Jersey, Inc. Astoria, New York
Contract Activity: GSA, Property Management Center, New York, New York
Service Type/Location: Janitorial/Custodial U.S. Army Reserve Center, Calle Lee, Los Alamitos, California
NPA: Lincoln Training Center and Rehabilitation Workshop, South El Monte, California
Contract Activity: 63rd Regional Support Command, Los Alamitos, California
Service Type/Location: Janitorial/Custodial U.S. Army Reserve Center, Garden Grove, Garden Grove, California
NPA: Lincoln Training Center and Rehabilitation Workshop, South El Monte, California
Contract *Activity:* 63rd Regional Support Command, Los Alamitos, California
Service Type/Location: Janitorial/Custodial U.S. Army Reserve Center, Eau Claire, Wisconsin
NPA: L.E. Phillips Career Development Center, Inc., Eau Claire, Wisconsin
Contract Activity: Headquarters, 88th Regional Support Command, Fort Snelling, Minnesota
Service Type/Location: Janitorial/Custodial U.S. Army Reserve Center, Fairmont, West Virginia
U.S. Army Reserve Center, Grafton, West Virginia
U.S. Army Reserve Center, New Martinsville, West Virginia
NPA: PACE Training and Evaluation Center, Inc., Star City, West Virginia
Contract Activity: 99th Regional Support Command, Coraopolis, Pennsylvania
Service Type/Location: Janitorial/Custodial U.S. Army Reserve Center, Walker, Michigan
NPA: Hope Network Services Corporation, Grand Rapids, Michigan
Contract *Activity:* Headquarters, 88th Regional Support Command, Fort Snelling, Minnesota
Service Type/Location: Receiving, Shipping, Handling & Custodial Service Brunswick Naval Air Station, Topsham, Maine
NPA: Pathways, Inc., Auburn, Maine
Contract Activity: Defense Commissary Agency (DeCA), Ft. Lee, Virginia

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 03-12289 Filed 5-15-03; 8:45 am]

BILLING CODE 6353-01-P

DEPARTMENT OF COMMERCE

[I.D. 051303A]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Groundfish Tagging Program.

Form Number(s): None.

OMB Approval Number: 0648-0276.

Type of Request: Regular submission.

Burden Hours: 98.

Number of Respondents: 420.

Average Hours Per Response: 5 minutes for a regular tag and 20 minutes for an electronic tag.

Needs and Uses: The Groundfish Tagging Program provides scientists with information necessary for the effective conservation, management, and scientific understanding of the groundfish fishery off Alaska and the Pacific Northwest. Persons recovering tagged fish are requested to supply certain information about the recovery - date of catch, location, tag number, etc. Scientists use such information to analyze distribution of fish, their movements, and other important parameters, and use results in population assessment models and to develop allocation systems.

Affected Public: Business or other for-profit organizations, individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482-0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at dHynek@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: May 8, 2003.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–12316 Filed 5-15-03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

[Docket No. 030505114–3114–01]

Best Practices for Exporters/Re-Exporters and Trade Facilitation/ Freight Forwarding Companies Regarding the Transit, Transshipment, and Reexport of Dual-Use Items

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Notice of Inquiry.

SUMMARY: The Bureau of Industry and Security (BIS) is seeking public comments on the following proposed "Best Practices for Exporters/Re-exporters and Trade Facilitation/Freight Forwarding Companies Regarding the Transit, Transshipment, and Reexport of Dual-Use Items." BIS will consider all comments timely submitted before finalizing these Best Practices.

DATES: Comments must be received before June 16, 2003.

ADDRESSES: Comments may be submitted by e-mail to *rcupitt@bis.doc.gov,* by fax at (202) 482-2387, or on paper to Rick Cupitt, Office of the Under Secretary for Industry and Security, Bureau of Industry and Security, Room H3898, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Rick Cupitt, Office of the Under Secretary for Industry and Security at *rcupitt@bis.doc.gov* or (202) 482-1459.

SUPPLEMENTARY INFORMATION:

Background

This document sets forth "best practices" for exporters/re-exporters and trade facilitation/freight forwarding companies regarding the transit, transshipment, and re-export of dual-use items. The best practices identified herein represent the types of practices that many companies already observe, which is consistent with the broader view of the Department of Commerce (DOC) that implementing effective export compliance programs is an important component of responsible corporate citizenship and good business practices generally.

Overview

Dual-use export control laws are predicated on the security and reliability of supply chains. Both the licensing of export transactions in dual-use items and the allowance of license-excepted transactions in such items are premised on the assurance that such

items: (i] Will not be used for a prohibited end-use, (ii) will be in the possession of the person or organization contemplated as the end-user at the time of export, and (iii) will be utilized in the country contemplated as the country of end-use when the item is exported. The diversion of controlled goods or technologies-even inadvertently-from such contemplated end-use, end-user, or destination constitutes a serious threat to the efficacy of export control regimes. Such diversion undermines efforts to counter the proliferation of weapons of mass destruction, terrorism, and other threats to national and international security.

Global "transshipment hubs"—*i.e.*. countries or areas that function as major hubs for the trading and shipment of cargo-pose special risks of diversion. The concentrated presence of commercial infrastructure (e.g., trading companies, brokerages, and free trade zones) that facilitates large volumes of transit, transshipment, import and re-export traffic through such points make transshipment hubs particularly vulnerable to the diversion of sensitive items to illicit purposes.

To combat this risk, the United States Government has implemented a number of initiatives to work with industry and foreign governments. DOC, for example, has launched the Transshipment Country Export Control Initiative (TECI). TECI seeks to channel existing and new export control practices toward countering the diversion of controlled items through global transshipment hubs. TECI has two principal prongs. Under the first prong, DOC seeks to improve cooperation and communication with relevant agencies in key transshipment hubs charged with administering export and trade control laws.* Such efforts are already underway with respect to a number of key transshipment countries and will be launched with respect to others in the near future.

Under TECI's second prong, DOC seeks to work with the private sector businesses and individuals involved in the transshipment of goods to enhance their ability to prevent the diversion of controlled items. In the course of this dialogue, a number of organizations have noted the absence of a clearly stated set of export control "best practices" tailored to the particular activities and circumstances of entities that facilitate the export or re-export of dual-use items to, from, or through transshipment hubs (such "Trade Facilitators/Freight Forwarders" include freight forwarders, brokers, air and marine cargo carriers, express shipment carriers, port operators, and port authorities) as well as entities that export dual-use items to transhipment hubs or that re-export such items from such hubs ("Exporters/Re-exporters"). The absence of a single organization or forum representing these many diverse businesses involved in transshipment makes it unlikely that such a set of best practices would be developed without DOC coordination.

Set forth below, for public comment, is a draft set of best practices for use by Trade Facilitators/Freight Forwarders and Exporters/Re-Exporters in guiding the export control compliance activities of companies involved in the transshipment, transit, and re-export of dual-use items. They are based on input provided at DOC-sponsored export control compliance seminars and other events, and on the observations of best practices by DOC staff and export control practitioners involved in both the administration and enforcement of export controls.

The publication of these best practices creates no legal obligation to comply with such practices on the part of any person. Compliance with these best practices creates no defense to liability for the violation of export control laws. However, demonstrated compliance with these best practices by a company will be considered an important mitigating factor in administrative prosecutions arising out of violations of the Export Administration Regulations by that company.

[1] A number of U.S. Government agencies, including the DOC. also work with the governments of those hubs to strengthen their indigenous export control regimes, including conducting technical assistance activities as part of the Export Control and Related Border Security Assistance (EXBS) Program managed by the U.S. Department of State.

Best Practices for Exporters/Re-Exporters and Trade Facilitation/ Freight Forwarding Companies Regarding the Transit, Transshipment, and Reexport of Dual-Use Items

Purpose

To help industry, and in particular Trade Facilitators/Freight Forwarders and Exporters/Re-Exporters, contribute to a reduction in the illicit transshipment, transit, or re-export of dual-use items subject to U.S. and foreign export controls, and to facilitate legitimate global commerce by improving the capacity to distinguish between licit and illicit transactions.

Principles

1. Industry and government should work together to foster secure trade that reduces the risk of diversion of items subject to export controls.

2. Secure trade will reduce the diversion of dual-use items to prohibited end-uses, end-users, and destinations.

3. Secure trade will encourage the more expeditious movement of legitimate trade through borders and ports.

4. Industry can achieve secure trade objectives through appropriate export management practices.

Scope

The best practices identified herein:

1. Are designed Trade Facilitators/ Freight Forwarders and Exporters/Re-Exporters. The terms "Company" and "Companies", when used herein, refer to all of these types of entities;

2. Are designed to apply to transactions subject to the jurisdiction of the Department of Commerce; and

3. Complement the set of Best Practices for Exporters/Shippers found in the U.S. Department of Commerce Export Management System. Additional information on the Export Management System resides on the BIS Web site at *http://www.bis.doc.gov/ ExportManagementSystems/ Default.htm.*

Company Policy and Company Management

1. Each Company should develop a written policy against allowing its exports or services to contribute to terrorism or programs of proliferation concern.

2. Each Company should identify one person, who reports to the Company's Chief Executive Officer, General Counsel, or other senior management official (but not to a sales or marketing official), as the ultimate party responsible for oversight of the Company's export control compliance program.

3. Each Company should create an export control compliance program. Companies should integrate this compliance program into its overall regulatory compliance, security, and ethics programs.

4. Each Company should ensure that relevant Company personnel receive regular training in export control compliance responsibilities, and should consider offering to its employees incentives for compliance (and disincentives for noncompliance) with their export control responsibilities.

5. Exporters/Re-Exporters should seek to utilize only those Trade Facilitators/ Freight Forwarders that also observe these best practices.

Compliance Activities: General

6. An Exporter/Re-Exporter should classify each of its products according

the requirements of the Export Administration Regulations (EAR), 15 CFR Parts 730-774 (2003), and should communicate the appropriate Export Control Classification Number (ECCN) or other classification information for each export to the Trade Facilitator/Freight Forwarder and the end-user involved in that export (even if the shipment is made under an EAR License Exception). Each Company involved in the transaction should also maintain a record of such classification for every export.

7. A Company should screen all parties to the transaction against all relevant lists (such as the Denied Persons List, Unverified List, Entities List, and lists of U.S. Government-sanctioned parties), and should maintain a record of such screening.

8. A Company should screen all exports/re-exports against a list of embargoed destinations, and should maintain a record of such screening.

Compliance Activities: Transshipment Hub[2]-Specific

9. With respect to transactions to, from, or through transshipment hubs, Exporters/Re-Exporters should take appropriate steps to know who the end-user is and to determine whether the item will be re-exported or incorporated in an item to be re-exported. An Exporter/Re-Exporter of a dual-use item under license should inform the end-user, distributor, or other appropriate recipient of the item of the license terms and conditions for such export.

10. With respect to transactions to, from, or through transshipment hubs, Companies should have in place compliance and/or business procedures to be immediately responsive to theft or unauthorized delivery. This include procedures-including documented confirmation-to ensure that the item exported has reached the proper end-user.

11. With respect to transactions to, from, or through transshipment hubs, Companies should pay heightened attention to the Red Flag Indicators on the BIS Web site *(see http://www.bis.doc.gov/Enforcement/redflags.htm)* and in the "Know Your Customer Guidance" set forth in Supplement 3 to part 732 of the EAR.

Responding to Suspicious Transactions

12. When a Company encounters a suspicious transaction, it should halt the shipment and consult with its export control compliance specialist. If the transaction is determined to involve a potential or actual violation of the EAR, the Company should contact BIS or another U.S. law enforcement agency immediately and maintain all relevant records.

[2] DOC's TECI has focused its efforts on the following transshipment hubs: Cyprus, Hong Kong, Malaysia, Malta, Panama, Singapore, Taiwan, Thailand, and the United Arab Emirates.

Request for Comments

Parties submitting comments are asked to be as specific as possible. BIS encourages interested persons who wish to comment to do so at the earliest possible time. The period for submission of comments will close June 16, 2003. BIS will consider comments on any aspect or consequence of any part or all of this proposal. Comments received after the end of the comment period will be considered if possible, but their consideration cannot be assured. BIS will not accept comments accompanied by a request that a part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. BIS will return such comments and materials to the persons submitting them and will not consider them in developing any final "Best Practices" document that it may publish. All comments on this proposal will be a matter of public record and will be available for public inspection and copying. All comments must be submitted in writing (including facsimile or e-mail).

The public record concerning these comments will be maintained in the Bureau of Industry and Security, Office of Administration, U.S. Department of Commerce, Room 6883, 14th and Constitution Avenue, NW., Washington, DC 20230; (202) 482-0637. This component does not maintain a separate public inspection facility. Requesters should first view BIS's FOIA website (which can be reached through *http://www.bis.doc.gov/foia*). If the records sought cannot be located at this site, or if the requester does not have access to a computer, please call the phone number above for assistance.

Kenneth I. Juster,

Under Secretaryfor Industry and Security.

[FR Doc. 03–12265 Filed 5-15-03; 8:45 am]
BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

[Docket No. 030509121–3121–01]

Addition of Persons to Unverified List-Guidance as to "Red Flags" Under Supplement No. 3 to 15 CFR Part 732

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Notice.

SUMMARY: On June 14, 2002, the Bureau of Industry and Security ("BIS") published a notice in **the Federal Register** that set forth a list of persons in foreign countries who were parties to past export transactions where pre-license checks ("PLC") or post-shipment verifications ("PSV") could not be conducted for reasons outside the control of the U.S. Government ("Unverified List"). This notice also advised exporters that the involvement of a listed person as a party to a proposed transaction constitutes a "red flag" as described in the guidance set forth in Supplement No. 3 to 15 CFR part 732, requiring heightened scrutiny by the exporter before proceeding with such a transaction. The notice also stated that, when warranted, BIS would add persons to the Unverified List. This notice adds Lucktrade International PTE Ltd. and Peluang Teguh which are located in Singapore, and Lucktrade International which is located in Hong Kong to the Unverified List.

DATES: This notice is effective May 16, 2003.

FOR FURTHER INFORMATION CONTACT: Thomas W. Andrukonis, Office of Enforcement Analysis, Bureau of Industry and Security, Telephone: (202) 482-4255.

SUPPLEMENTARY INFORMATION: In administering export controls under the Export Administration Regulations (15 CFR parts 730 to 774) ("EAR"), BIS carries out a number of preventive enforcement activities with respect to individual export transactions. Such activities are intended to assess diversion risks, identify potential violations, verify end-uses, and determine the suitability of end-users to receive U.S. commodities or technology. In carrying out these activities, BIS officials, or officials of other federal agencies acting on BIS's behalf, selectively conduct PLCs to verify the bona fides of the transaction and the suitability of the end-user or ultimate consignee. In addition, such officials sometimes carry out PSVs to ensure that U.S. exports have actually been

UPS
Customs Affairs and
Export Compliance Group
1930 Bishop Lane, Suite 600
Louisville, KY 402 18
(502) 485-2610

RESPONSE BY
UPS TO
BEST PRACTICES FOR EXPORTERS / RE-EXPORTERS AND TRADE FACILITATION/FREIGHT FORWARDING COMPANIES REGARDING THE TRANSIT, TRANSSHIPMENT, AND REEXPORT OF DUAL-USE ITEMS.

DOCKET NUMBER **030505114-3114-01**

These comments are filed in response to a Bureau of Industry and Security (BIS) notification outlining proposed "Best Practices for Exporters/Re-Exporters and Trade Facilitation / Freight Forwarding Companies Regarding the Transit, Transshipment, and Reexport of Dual-Use Items." This notification is registered under docket number 030505114-3114-01.

Founded in 1907, UPS is the world's largest transportation company, offering the most extensive range of e-commerce and supply chain solutions for the movement of goods, information and funds. Headquartered in Atlanta, Ga., UPS serves more than 200 countries and territories. UPS employs approximately 370,000 people worldwide. Approximately 7% of the U.S. Gross Domestic Product (GDP) flows in UPS vehicles on a daily basis and UPS delivers approximately 55% of goods ordered on the intemet. UPS delivers about 12.8 million daily packages of which about one in 120 is an international package.

UPS supports all efforts to increase security in the supply chain and regularly employs the majority of the measures outlined in the notification by BIS. While UPS does support the overall intent of the proposed notification, we do find portions of the items outlined

below need additional clarification to fully assess the ramifications on our business. In addition, some of the areas outlined below would place undue burden on UPS operations. The areas we have identified for further clarification or to be taken into consideration are as follows:

Item 2
Oversight of Company export control compliance program
Item 2 states the company should select a single official to administer the export control compliance program and that person should not be a sales or marketing official. Given there is no legal obligation to follow or implement the best practices outlined by BIS, and the fact BIS states the official should report to senior management, there may be occasion where people have multiple responsibilities which may include such diverse operations such as sales and compliance. At the level BIS is stating this official should report, sales and marketing officials are typically only directing strategy, not actual implementation, and, as such, should not be disqualified in managing the official who is implementing the program. The focus should be on the implementation of best practices and the strict adherence to all other relevant regulatory requirements governing export transactions.

Item 6
Exporter/Re-Exporter classification
Under normal circumstances, the Export Control Classification Number (ECCN) is currently required on export shipments when a single schedule B commodity is greater than $2500.00 USD, requiring a Shipper's Export Declaration (SED) to be filed. Box 28 on the SED contains the ECCN which is only required under certain license or license exception instances. With this best practices notification, is BIS proposing all export shipments be submitted to the trade facilitation/Ii-eight forwarding company with the ECCN on the paperwork, even in instances where no SED is required? Item 6 states, "each company involved in the transaction should also maintain a record of such classification for every export". What would the trade facilitation&-eight forwarding company's responsibility be with the ECCN data on non-SED shipments? In some limited circumstances, UPS acts as a freight forwarder on behalf of customers. Record keeping requirements are significantly different than in instances where we act only as a carrier. When acting as a carrier, we have no legally mandated requirements on retention of invoices and selected other documents. If BIS is suggesting the ECCN number be added to all invoices, does that legally change the record keeping requirements of the carrier (UPS)?

Item 8
Embargoed destination screening
All UPS export shipments are screened against all relevant Denied Party Listings and an electronic record of the screening is maintained for 5 years. In addition, our software screens for embargoed countries-but only if the shipments are tendered and received into the UPS system. While UPS does not serve any of the embargoed locations, screening against embargoed locations is also visual, with any packages destined to an embargoed location being refused (by procedure) and returned to the exporter. While any shipments that would make it into our system would be caught by our software screen,

what records should be kept on transactions that are returned to the shipper and do not enter the UPS system?

Item 9
End-user determination
Upon receipt of an export transaction, UPS receives all relevant documentation to effect exportation of the goods. This includes invoice, SED and other supporting documents. Item 9 outlines the responsibilities for exporter&e-exporters in actual end-user determination. We currently screen against any parties listed in the transaction including exporter, bill to and ship to parties. In addition we monitor the country of ultimate destination (box 7) on the SED for embargoed countries. What responsibilities does the trade facilitation/freight forwarding company have other than screening against any parties in regards to the actual end-user determination? What exposure does a trade facilitation/freight forwarding company have if shipments are diverted to parties other than those listed on any of the documentation given at time of export? Are there differences between what is required of a freight forwarder, who may be acting on behalf of an exporter in creation of documents supporting the export transaction versus a carrier who is only facilitating movement of the goods and relaying information solely provided by the exporter?

If you have any questions regarding this response, please feel free to contact Tom Boblitt at (502) 485-2125 or via email at tboblitt@ups.com.

Sincerely,

Tom Boblitt

Global Regulatory Trade Services
Global Trade Services
3650 Hacks Cross Road
Building E, 3rd Floor
Memphis. TN 38125-8800

Telephone 901.434.4257
Fax 901.4345800

June 13, 2003

Office of Undersecretary for Industry and Security
Bureau of Industry and Security
Room H3898
U.S. Department of Commerce
14th Street and Pennsylvania Avenue, NW
Washington, DC 20230
Attn: Rick Cupitt

Re: Federal Express: Comments on May 16, 2003 "Best Practices" Federal Register Notice of Inquiry

Dear Mr. Cupitt:

FedEx Express would like to thank the Bureau of Industry and Security ("BIS") for the opportunity to comment on its "Best Practices for Exporters/Re-exporters and Trade Facilitation/Freight Forwarding Companies Regarding the Transit, Transshipment, and Reexport of Dual-Use Items," which were published in the Federal Register on May 16, 2003. These comments are submitted within the 30-day comment period listed in that Federal Register notice. **This notification is registered under docket number 030505114-3114-01.**

We applaud BIS's efforts to provide the trade community with guidance and best practices on dual-use items. We understand the concerns involved and support the need to increase security in the supply chain. However, we are concerned that several of the proposed best practices would place undue burdens on FedEx's operational processes and on its customers.

Item 2 (Company Policy and Company Management)

Item 2 of the proposed best practices states that "[e]ach Company should identify one person, who reports to the Company's Chief Executive Officer, General Counsel, or other senior management official (but not to a sales or marketing official), as the ultimate party responsible for oversight of the Company's export control compliance program.,, (emphasis added) FedEx understands and supports the need to identify specific employees who are responsible for export compliance matters. However, we note that in some companies, especially small ones, it is not uncommon for employees to have multiple areas of responsibility, such as sales and regulatory compliance. FedEx believes it is consistent with BIS's proposed best practices for employees who have multiple areas of responsibility, including but not limited to sales or marketing, to serve as export compliance managers or senior management officials with ultimate oversight of an export control compliance program. FedEx would appreciate BIS's confirmation on this point

Item 6 (Compliance Activities: General)

Item 6 states that exporters/m-exporters should classify their products under the U.S. Export Administration Regulations ("EAR"), 15 C.F.R. Part 730-774, and communicate the appropriate classification information for each export to the trade **facilitator/freight** forwarder and end-user involved in the transaction, even if the shipment is made under an EAR License Exception. Item 6 also states that all Companies involved (including trade facilitators/freight forwarders) should maintain records of such export classifications for all exports.

FedEx notes that for export shipments for which shipper's export information is filed electronically by the exporter via the Automated Export System **("AES"),** or for which a Shipper's Export Declaration **("SED")** exemption applies, the exporter is not legally required to provide such export classification information to the freight forwarder, nor is the freight forwarder entitled to demand this classification information, in the absence of suspicious factors concerning the shipment. Specifically, under section 30.65 of the Foreign Trade Statistics Regulations, an exporter who submits shipper's export information via AES need only list the exemption legend "No SED **Required—AES"** on commercial loading documents. The exporter is not required to provide export classification information to the freight forwarder. The same is true for exports for which no SED is required, such as shipments of EAR99 items under $2,500 per Schedule B number to non-restricted destinations.

FedEx believes a best practice under which exporters provide ECCN information to trade facilitators&eight forwarders, and trade facilitators/freight forwarders retain this information, would not measurably improve export compliance in the situations described above. Rather, such additional reporting and recordkeeping only would have the undesirable effect of increasing the administrative cost of export transactions. For a large-scale transportation company such as **FedEx,** which is involved in a high volume of international export transactions daily (many via AES), the impact of such additional reporting and **recordkeeping** would be significant, and in the case of AES would be duplicative of the export compliance procedures already required of AES participants. FedEx therefore suggests the following **alternative** language for Item 6:

> An **Exporter/Re-Exporter** should classify each of its products according to the requirements of the Export Administration Regulations (EAR), 15 CFR Parts 730774 **(2003),** and should communicate the Export Control Classification Number (ECCN) or other classification information for each export to the Trade Facilitator/Freight Forwarder and the end-user involved as necessary to ensure compliance with U.S. export laws. Each Company involved should maintain records concerning each export as required under appropriate U.S. regulations.

Item 8 (Compliance Activities: General)

Item 8 states that a "Company should screen all exports/m-exports against a list of embargoed destinations, and should maintain a record of such screening." FedEx would like BIS to confirm that where the screening does not indicate any embargoed destination, it is sufficient to maintain a record that the screening was performed, rather than retain the actual results of the screening. FedEx believes it would be unduly burdensome to require maintenance of the results of such screening in all cases, especially for Companies (such as FedEx) with a high volume of export shipments. In contrast, in cases where the screening identifies an embargoed destination it may be more appropriate for the results of the screening to be retained.

* * * *

We thank you again for the opportunity to comment on the proposed rulemaking. We look forward to your response regarding these comments. If you need additional clarification of the comments contained in this letter, please contact the undersigned.

Sincerely,

Alan W. Black
Manager
Global Regulatory Compliance
(901) 434-4266

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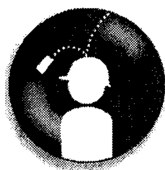
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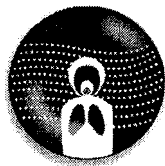
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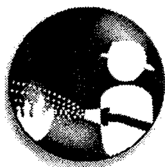
Fire and Rescue Safety

Thermal Imaging

June 4, 2003

Mr. Rick Cupitt
Office of the Under Secretary
For Industry and Security
Bureau of Industry and Security
Room H3898
US Department of Commerce
14th Street and Pennsylvania Ave NW
Washington, DC 20230

Dear Mr. Cupitt:

This letter is written in response to the recently requested public comments on the proposed "Best Practices for Exporter/Reexporters and Trade Facilitation/Freight Forwarding Companies Regarding the Transit, Transshipment, and Reexport of Dual-Use Items."

As Export Administrator, working for a company that manufactures and exports fire fighting thermal imagers, a product thought to be of dual use capabilities, my comments are specific to initiatives that should be addressed to enable a company to establish and maintain an effective Export Compliance Process. While the "Best Practices" offers valid suggestions for exporters, there should be additional offerings for company's that are establishing compliant export programs.

In order to assist private sector Export Administrators with establishing compliant processes specific to their company, an offering of very thorough and precise Export Compliance Classes, structured by product category, administrated by the Department of Commerce and perhaps relevant agencies that review license applications is necessary.

Current classes made available by the Department of Commerce are quite useful for exporters to obtain fundamental information on basic export transactions. Most compliance classes currently offered spend a great deal of time helping exporters determine if their transaction will require a license. However, for companies that are involved with the export of more sensitive, dual use products, the current class offerings are almost irrelevant, since the exporter already knows they must apply for an export license to ship their product. An emphasis needs to be made on other compliance issues.

It is necessary to provide industry with an understanding of the responsibility and due diligence required in order to be in compliance with the Export Administration Regulations. Specific topics should include:

- Overview and correct interpretation of the Export Administration Regulations
- Thorough review of all agencies that may be involved in reviewing license applications and why those agencies are involved
- Thorough overview of how to appropriately conduct screen checks
- Insight into how to avoid unauthorized transactions of products by foreign end users or intermediate consignees while in their possession
- Thorough review and explanation of each Transaction Based License Exception
- Overview of specific points of contact for the licensing officers (by product type) that review cases and move them through the licensing process
- Thorough review and explanation dedicated to understanding the involvement of the Operating Committee in the license application process
- Recommendations for establishing and maintaining an export compliance program
- Thorough review of recommended "Best Practices" or Export Management System Procedures and Transaction Documentation
- Thorough overview of the curriculum needed to train relevant employees of their duties and responsibilities by the Export Administrator
- Overview of audit procedures for a company's compliance program

In order to further secure trade and decrease diversion of dual-use items, an official certification program for the individuals that have been assigned to oversee a company's export compliance program should be offered. A certification program would assist in ensuring industry and government are working together as well as confirming Export Administrators are competently trained to make accurate decisions based on the Export Administration Regulations.

Certification should result from the successful completion of a series of classes provided by the Export Management and Compliance Division and the Outreach and Educational Services Division of the Department of Commerce. The topics addressed above should be reviewed comprehensively and class participants should be "graded" as to their understanding of the regulations and due diligence. Participants that complete the series with a passing score or grade should be considered certified.

For the companies that require their Export Administrators participate and pass the program, they should receive incentives such as:

- Expedited license processing time for all applications

- Ability to make repeat shipments, without additional license requirements, to end users that have had applications processed and granted within the last year
- Ability to provide all company employed sales agents, including those working for the foreign subsidiaries, with product to be used for demonstration purposes within their sales territory without application submittal
- Ability to ship to directly to end users in NATO countries that are government affiliated organizations such as professional fire and police departments without license submittal

These types of incentives for such a commitment to compliance will encourage more expeditious movement of legitimate trade.

To ensure industry is achieving and maintaining secure trade objectives, the Department of Commerce should also provide consistent audits of participating company's Export Compliance Programs. If companies remain in good standing they should continue to receive the incentives addressed above.

As stated in the Principles section of the Best Practices document issued by the Bureau of Industry and Security, "Industry and government should work together to foster secure trade that reduces the risk of diversion of items subject to export controls." I believe the key to this statement and the overall initiative is that we "Work together."

Thank you for the opportunity to share my thoughts.

Best regards,

Stephanie Ratliff
Export Administrator

RICHARD CUPITT - Comments on BIS's draft of Export Control "Best Practice" Guidelines

From: <yasushi.tagami@cero.head.hitachi.co.jp>
To: <rcupitt@bis.doc.gov>
Date: 6/16/2003 3:25 PM
Subject: Comments on BIS's draft of Export Control "Best Practice" Guidelines

Dear Dr. Richard T. Cupitt:

A long time no see. Thank you for meeting with our CISTEC delegation members in your office on Nov. 19 last year.

We would also like to express our gratitude to your continued consideration and efforts for coping with our concerns and difficulties regarding the US re-export system, which have led to the improvements described as follows in "SECOND REPORT TO THE LEADERS ON THE U.S.-JAPAN REGULATORY REFORM AND COMPETITION POLICY INITIATIVE" dated May 23, 2003 jointly written by both the US government and Japanese government, which is now published on the open official website of Ministry of Foreign Affairs in Japan.

"5. Re-Export Controls:
(1) The Government of the United States understands the concerns of the Government of Japan regarding the operation of the re-export system.
(2) In response to Japanese concerns, in April 2003, the Department of Commerce posted updated "Guidance on Reexports and other Offshore Transactions Involving U.S.-Origin Items" in English at: http://www.bis.doc.gov/Licensing/ReExportGuidance.htm. The Department of Commerce is in the final stages of adding a Japanese language version of this guidance to its website.
(3) Regarding the Government of Japan's proposal requesting the United States to station experts on export control regulation at the U.S. Embassy and Consulates in Japan, the Department of Commerce has personnel available in Tokyo to assist with inquiries regarding export control regulations. The Government of the United States will make every effort to fully respond to these inquiries.
(4) The Government of the United States will continue discussions with the Government of Japan regarding the Japanese request to require U.S. exporters to provide Japanese importers (re-exporters) with sufficient information on the products (e.g. ECCN number)." (The item number (1)-(4) are added.)(The Section I.A.5. in the part titled "Regulatory Reform and Other Measures by the Government of the United States" of the above-mentioned report)

In relation to these matters, we would like to make the following comments on the above-captioned guidelines

1. Section 6 of the "Best Practice" Guidelines Draft

The Section 6 of the above-captioned BIS?s draft guidelines stipulates as follows:

"6. An Exporter/Re-Exporter should classify each of its products according to the requirements of the Export Administration Regulations (EAR), 15 CFR Parts 730?774 (2003), and should communicate the appropriate Export Control Classification Number (ECCN) or other classification information for each export to the Trade Facilitator/Freight Forwarder and the end-user involved in that export (even if the shipment is made under an EAR License Exception). Each Company involved in the transaction should also maintain a record of such classification for every export."(The underline is added.)

We think this provision would improve the insufficiency of US exporters' providing the non-US importers (re-exporters) with the EAR classification information (e.g. ECCN) much better than before because the guidelines stipulate that 'The demonstrated compliance with these best practices by a company will be considered an important mitigating factor in administrative prosecutions arising out of violations of the EAR by that company" although the guidelines also stipulate that "the publication of these best practices creates no legal obligation to comply with such practices on the part of any person".

Therefore, we would like to ask you to surely keep this provision at this stage.

As the next stage, we would like to ask you to stipulate this provision in the EAR as legal requirements for exporters in the near future for the reasons we CISTEC delegation members emphasized during the meeting with you on Nov. 19 last year.

We would also like to ask you to add the phrase "the ultimate consignee" in the phrase "Trade Facilitator/Freight Forwarder and the end-user" of the Section 6 above for the clarification because there are cases where a ultimate consignee is not an end user.

We would also like to ask you to add the note which clarifies the definition of "Trade Facilitator".

2.Section 9 of the "Best Practice" Guidelines Draft

Section 9 of the above-captioned BIS's draft guidelines stipulates as follows:

"9. With respect to transactions to, from, or through transshipment hubs, Exporters/Re-Exporters should take appropriate steps to know who the end-user is and to determine whether the item will be re-exported or incorporated in an item to be re-exported. An Exporter/Re-Exporter of a dual-use item under license should inform the end-user, distributor, or other appropriate recipient of the item of the license terms and conditions for such export."(The underline is added.)

Although the guidelines stipulate that "the publication of these best practices creates no legal obligation to comply with such practices on the part of any person", the above-underlined stipulation is provided as a legal requirement in EAR 750.7(d) as follows:

"It is the licensee's responsibility to communicate the specific license conditions to the parties to whom those conditions apply."

Therefore, we would like to ask you to add the note which indicate the above-underlined stipulation is provided as a legal requirement in EAR 750.7(d).

Thank you again for your kind assistance and cooperation.

We greatly look forward to seeing you again.

Best regards,

Yasushi Tagami
Leader of US Export Control Group of International Relation Committee,
CISTEC(Center for Information on Security Trade Control);
Manager,
Corporate Export Regulation Department,
Corporate Export Regulation Division,
Hitachi, Ltd.

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□$B08@h□(B: rcupitt@bis.doc.gov
cc:
□$B7oL>□(B: Thank you very much

Dear Dr. Richard T. Cupitt,

Thank you very much for taking time out of your busy schedule to meet with our CISTEC delegation members on Nov. 19.

Your explanation was quite informative and helpful, which has enabled us to deepen our understanding concerning the US export control.

Thank you again for your kind assistance and cooperation. We hope to keep the good working relationship with you and also greatly look forward to seeing you again.

Best regards,

Yasushi Tagami
Leader of US Export Control Group of International Relation Committee,
CISTEC(C.enter for Information on Security Trade Control);
Manager,
Corporate Export Regulation Department,
Corporate Export Regulation Division,
Hitachi, Ltd.

RICHARD CUPITT - Comments on Best Practices

From: "Hubble Roger" <roger.hubble@thayeraerospace.com>
To: <rcupitt@bis.doc.gov>
Date: 5/27/2003 12:39 PM
Subject: Comments on Best Practices
cc: "Bulatao Brian" <brian.bulatao@thayeraerospace.com>

Dear Mr. Cupitt:

Thayer Aerospace is in general agreement with the twelve points proposed in the "Best Practices" document. However there are a number of additional things the government could do to support more efficient and effective international commerce:

1. Industry needs a single database that simplifies legal due diligence of potential business relationships. In the current business environment, before we can be certain we may do business with a person or company, we must check five separate lists - controlled by three government agencies. A single list would suffice - and all three agencies should input their requirements to that single list. Multiple lists add no value to the process - and make it more difficult.

2. Industry needs a single classification code. We use the Harmonized codes, the Schedule B codes and the ECCNs. Please choose any one - and let's all use that code. Cross referencing and record keeping would be simplified - resulting in fewer inadvertent violations and lower transaction costs.

3. Industry needs a single government agency that supports/handles imports and exports. The exporting process should be identical whether the item is controlled by the EAR or ITAR. We should use one license application form which collects all the pertinent information. The licenses (and interpretation of the license provisos) should be issued by one agency - tracked through one database, etc. The Depts. of Commerce and State should review all applications - with either department having the ability to block or restrict a transaction, but interaction with industry should be administered through a single agency point of contact - under a single set of controlling rules.

4. Eliminate the telephone answering machines. It is particularly difficult to work through the BIS telephone message system to ask a relatively quick/simple question of a knowledgeable, breathing person.

Again, we are happy with the government's initiatives related to the "Best Practices" document - but it falls far short of taking the mystery out of importing and exporting. Implementing the above four initiatives will maintain the current level of security - but with significantly less administrative cost, significantly less confusion, and result in expediting international commerce.

Sincerely,
Roger Hubble
Vice President
Thayer Aerospace

RAVEN AUSTIN - Best Practices Comment--Resent Per Bill Arvin's Request

From: "Russell W. Spittle? <rspittler@exportlawgroup.com>
To: "RICHARD CUPITT" <RCUPITT@bis.doc.gov>
Date: 7/14/2003 6:35 PM
Subject: Best Practices Comment--Resent Per Bill Arvin's Request
cc: "WILLIAM ARVIN" <WARVIN@bis.doc.gov>

Hello Mr. Cupitt,

I'm an export control attorney in California. I'm writing to offer a couple comments on the Best Practices that BIS is putting together, as requested in the Federal Register Notice. I offer two comments:

1. BIS should specifically address the need to handle Deemed Exports in the Best Practices. BIS materials consistently fail to address this regulatory requirement, which contributes to a failure to attend broad industry compliance on the issue. In light of increased vigilance in homeland security, the issue should be pointed out (recall the GAO report addressing Deemed Exports). May I suggest the following boldfaced language under "Company Policy and Company Management", point 3. Revise the first sentence to read "Each Company should create an export control compliance program **(including Deemed Exports to non-exempt foreign nationals).**
2. In stating "Best Practices", BIS should emphasize the need for a written power of attorney between exporters and forwarders, a critical aspect of accountability under the EAR and the FTSR regulations. Under "Compliance Activities: General", a new point 7 inserted between current points 6 and 7, to read: **A company should establish a written power of attorney with each Freight Forwarder as required under the EAR to ensure responsibilities and accountability are understood.**

I hope you find these comments useful and repeated by other commenters. Have a great week,

- Russ Spittler

Russell W. Spittler
Senior Attorney
The Export Law Group
www.exportlawgroup.com
Phone (714) 633-0709
Fax (714) 633-0702

RICHARD CUPITT - BIS "Best Practices" Comments

From: <WbITCALLC@aol.com>
To: <rcupitt@bis.doc.gov>
Date: 6/15/2003 6:38 PM
Subject: BIS "Best Practices" Comments

Dear Mr. Cupitt,

After spending the last 12 years of my career in the export control compliance area, I believe the following action needs to take place. The BIS (Commerce) and DDTC (State) needs to hold multiple USG--CEO/CFO level meetings/summits to emphasize the importance of export controls compliance.

The importance of the export controls should not be viewed as "a cost of doing business in the USA" but rather a subject, which ALL U.S. Industry CEOs/CFOs should allocate the proper/appropriate resources, attention and concern. It should be viewed by these CEOs/CFOs in the same light as regulatory compliance with EPA, OSHA, SEC, EEOC, Ethics, USG contracting, etc..

This "Topdown Mandate" needs to happen in all U.S. industries who export products and services, whether it is the industry of semiconductors, health, software, biotech, aerospace, defense, freight forwarders, etc. I made this exact same appeal to the last Administration who occupied the White House. I respectfully ask you to please advocate meetings/town halls discussions like this to Secretary Evans to assist/aid/comfort all those Export/Trade Control Administrators, Managers, Directors out there who are facing an uphill battle everyday.

Thank you for your consideration.

Best Regards,

W. Brad Lewis
President
Trade Compliance Associates, LLC
Tel: 213-706-0771

RICHARD CUPITT - Best Practices for Exporters, etc.

From: "Skeahan, Pat" <Pat.Skeahan@WahChang.com>
To: <rcupitt@bis.doc.gov>
Date: 6/23/2003 6:10 PM
Subject: Best Practices for Exporters, etc.

Rick: I have a comment on the Federal Register Article published Friday, May 16 2003, Vol. 68, No. 95, Docket No. 030505114-3144-02, regarding Best Practices for Exporters, etc.

The first paragraph of the Overview, item (ii) states that items will be in the possession of the person or organization contemplated as the end-user at the time of export.

It is our understanding that as Exporter and Principal Party in Interest the material we manufacture is our responsibility until it reaches the named destination. We ask our freight forwarder to deliver the material to the party named on the "Ship to" address on our invoice to insure that the material does not get diverted. According to the Overview in the Federal Register, the foreign end user should be in possession of the material at the time of export. I believe BIS teaches that it is bad practice to export dual use material ex-works, which is what this statement would indicate should happen. The exporter loses control of the material as soon as it is picked up at his loading dock.

Can you clarify this for me or let me know if I am misreading this portion of the overview.

Thank you,

Sincerely,

Patricia Skeahan
Export Administrator
Wah Chang

email: pat.skeahan@wahchang.com

Expeditors International of
Washington, Inc.

1015 Third Avenue
12” Floor
Seattle, WA 98104

Telephone (206) 674-3400
Facsimile (206) 682-9777

June 30, 2003

Mr. Rick Cupitt,
Office of the Under Secretary for Industry and Security
Bureau of Industry and Security
Room H3898
U.S. Department of Commerce
14th Street and Pennsylvania Avenue, NW.
Washington, DC 20230

Dear Mr. Cupitt,

Expeditors International of Washington, Inc. would like to thank the Bureau of Industry and Security for this opportunity to comment on the proposed “Best Practices” for Exporter&e-Exporters and Trade Facilitators/Freight Forwarders. Expeditors is a global provider of logistic services, which include freight forwarding, customs brokerage, and many other related services.

As a freight forwarder, we have had the opportunity to work with exporters from a variety of industries. Our experience with our customers is that they espouse the best practices being proposed by BIS and by the time their goods have begun their physical journey to their destination, the exporter has ensured that all export compliance requirements have been met.

However we are aware that there are also exporters who have a perception that an inherent role of a freight forwarder is not only to arrange the physical movement of the cargo but to also “take care of’ (without any perceived responsibility on the part of the exporter) all export compliance matters such as ECCN classifications; license determinations and any other requirement that may affect their export. It is the pairing of this type of uninformed exporter and a self-blinding forwarder that can create scenarios where unauthorized exports may become destined for unauthorized end-users, end-uses or destinations.

Publishing these “Best Practices” should prove to be beneficial in developing a sense of ownership of responsibility amongst the exporters and freight forwarders who might not otherwise acknowledge their role in national and international security. From a commercial perspective, publishing these Best Practices will also help to level the playing field for the compliant exporters and forwarders who invest time and money in developing and maintaining the compliance programs that help to foster secure trade.

Compliant exporters can use the Best Practices publication as a point of reference to explain to end-users, for example, why they cannot release a controlled item without an end-user statement. Forwarders can use the Best Practices publication to justify its refusal to forward an export shipment until the exporter provides its ECCN classification and license determination to the forwarder.

In conclusion, we feel that the proposed Best Practices for Exporters/Re-Exporters and Trade Facilitators/Freight Forwarders accurately depict the practices and procedures that will have a positive impact in helping to prevent exports to illegitimate end users and end uses.

Sincerely,

Anne B. Mesagna
Director, Export Compliance and Systems
Expeditors International of Washington, Inc.

Kenneth I. Juster
Under Secretary for Industry and Security
Department of Commerce
14th Street and Constitution Avenue, N.W., Room 3898
Washington, DC 20230

July 16, 2003

Dear Under Secretary Juster:

I am writing in response to your letter of June 6, 2003, addressed to Tom Engibous, Chairman, President and Chief Executive Officer of Texas Instruments (TI). TI appreciates the opportunity to comment on the best practices developed as part of the Department of Commerce's Transshipment Export Control Initiative (TECI). We want to commend the Department for its continued consultation with US companies on the development of these Guidelines. TI strongly supports the underlying goal of safeguarding our nation's national security. In this regard, TI has internal policies and resources devoted to a strong export compliance program.

Based on our review of the best practice guidelines for TECI, it appears that the Department is proposing a broad compliance foundation to ensure that individual companies do not inadvertently divert dual-use items to proliferation-related activities and other prohibited end-uses/users. We note that the TECI best practice guidelines are similar to the ones currently provided for an Export Management System (EMS) or an Internal Control Program (ICP) for Special Licenses. TI uses both these programs as a basis for our internal compliance processes in our worldwide operations.

Logically, the overview of the guidelines emphasizes the importance of the security and reliability of supply chains. It is worth noting that the Customs-Trade Partnership Against Terrorism (C-TPAT) program administered by US Customs helps to fill various additional security gaps and also focuses on the security of supply chains. We are familiar with this as TI is a certified C-TPAT member and our efforts in this area are continuing. These BIS and Customs programs in combination provide a comprehensive and cohesive compliance structure to enhance the security of international trade. TI is committed to these as are other companies in our industry.

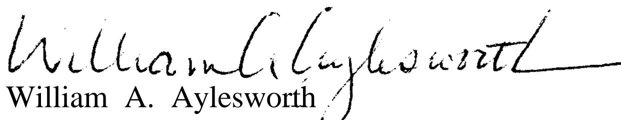
In light of TI's experience and dedication to an export compliance program, we note positively that the guidelines are voluntary and that demonstration of compliance with the guidelines will be considered a mitigating factor if there is a violation. Both these aspects of the guidelines may serve as an incentive for wider uniform adoption of such practices.

We would also like to take this opportunity to comment on the importance of the first prong of TECI under which DoC seeks to improve cooperation and communication with relevant agencies in transshipment hubs. As you have already recognized, the success of the TECI will rest not only on implementation by US companies but also on achieving multilateral consensus on this approach. To this end, we are encouraged by the fact that you are pursuing government to government dialogue as part of your ongoing plans to strengthen export control regimes. Placing the entire burden of preventing diversion on US companies poses significant costs and operational difficulties. More importantly, it directly impacts the competitiveness of U.S. companies as foreign buyers may decide to avoid and evade any unilateral U.S. export control program by increasingly sourcing products from non-U.S. companies. If the governments of the transshipment hub countries were to install effective and comprehensive export controls applicable to all products and technologies controlled under multilateral export control regimes, the TECI will achieve its objectives.

The prospects for success in garnering the multilateral support to implement this initiative will be greatly enhanced by further streamlining current U.S. export control regulations. The present complexity of these regulations is an ongoing challenge to US companies. To others outside the present U.S. export control framework, incorporation of these types of export controls under the auspices of TECI may serve as a disincentive for their cooperation. TI and others in our industry are prepared to work closely with the relevant authorities to identify problem areas and suggest improvements as necessary in the regulatory framework.

TI remains committed to our country's security and we give serious consideration to all initiatives and ideas that offer the potential of enhancing that security in our compliance programs. Please continue to seek TI's involvement in your deliberations in such matters.

Sincerely,



William A. Aylesworth
Senior Vice President and
Chief Financial Officer

July 16, 2003

Mr. Rick Cupitt
Office of the Under Secretary for Industry and Security
Bureau of Industry and Security (BIS)
Room H3898
U.S. Department of Commerce
1 4th Street and Pennsylvania Avenue N. W.
Washington, D.C. 20230

Dear Mr. Culpitt:

On behalf of Novell Inc, I would like to thank you for the opportunity to comment on the draft set of "Best Practices for Exporters/Re-exporters and Trade Facilitation/Freight Forwarding Companies Regarding the Transit, Transshipment, and Re-export of Dual-Use Items" published in the May 16, 2003 *Federal Register.*

As a one billion dollar company with fifty-two percent revenue derived from international shipments, Novell fully supports the efforts of BIS to address transshipment exposures. Novell recognizes that global transshipment hubs pose a special threat of diversion of sensitive items that are subject to U.S. export controls. Additionally, Novell supports the initiatives that the U.S. government has taken to work with private sector businesses and foreign governments on these concerns.

The majority of the "Best Practices" outlined in the proposed guidelines are part of the existing BIS Export Management System and are being observed by industry, including screening against relevant U.S. government lists, developing and implementing export compliance programs, and providing export compliance training to appropriate company personnel.

Novell would like to provide comments to a section of element #9:

9. With respect to transactions to, from, or through transshipment hubs, Exporters/Re-exporters should take appropriate steps to know who the end-user is and to determine whether the item will be re-exported or incorporated in an item to be re-exported.

Many software manufacturers or vendors distribute product both through direct end-user agreements and through multi-channel product distribution methods. In the case of the end-user agreements, vendors certainly know who their customer/end-users are and can determine whether re-export is intended. However, distributors obtain product from

2211 North First Street – San Jose, CA 95131 -Tel: 408-967-8564 – www.novell.com

a vendor then redistribute it through their cadre of resellers who then deal directly with customers or they redistribute to other resellers or retailers who then provide the product to end-users. Distributors, resellers, and retailers are usually unwilling or, in some cases, unable to provide the vendor with a list of its customers. In some cases, they don't want the vendor to try to sell directly to their customers cutting the reseller out of the sale. In other cases, they simply don't have the record-keeping capacity.

Many manufacturers include export language in their agreements with channel partners that require the partners to comply with all U.S. government laws and regulations, which would include screening their end-users against the relevant U.S. government lists. Also, many manufacturers provide training and perform audits to ensure their distribution partners are screening their customers against the relevant government lists.

Novell does not believe it is practical, beneficial or, in many cases, possible for U.S.-based manufacturers to obtain the identities of end-users who have received product through the distribution channel. Nor, should the manufacturers be expected to determine whether the item will be re-exported or incorporated in an item to be re-exported, short of red-flag indicators. If a red flag is identified by the distributor or reseller, the company should take the necessary steps to prevent an illegal diversion.

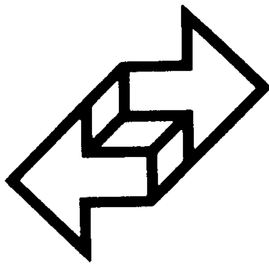
Novell appreciates the opportunity to comment on the "Best Practices" draft. Any questions on our comments may be directed to the undersigned at 408-967-8564.

Sincerely,

Angela Steen
Director/International Trade Services

cc: Cliff Simpson
VP and Treasurer

Ryan Richards
VP and Deputy General Counsel



THE HONG KONG SHIPPERS' COUNCIL

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Mr. Kenneth I. Juster
Under-Secretary for Industry & Security
U.S. Department of Commerce
Washington, D.C. 20230

July 17, 2003

Dear Mr. Juster,

Best Practices for Exporters/Re-Exporters and Trade Facilitation/Freight Forwarding Companies Reaardina the Transit, Transshipment, and Re-export of Dual-Use Items

Thank you for your letter dated June 6, 2003 inviting the Council's comments on the above set of best practices. While we fully appreciate the need for an effective export compliance programme, we hope the United States Government would take the following comments into consideration when drafting the best practices guidelines and any legislature relevant to it:

1. The role of most re-exporters and trade facilitators located at transshipment hubs is pretty passive. Their main function is to follow the instructions of their clients or the overseas buying office. There would be tremendous commercial risks in the event of non-compliance with the instructions of their clients.
2. The requirements from each trade facilitator must be clearly specified. Port authorities and terminal operators in their routine business, would not be involved in their clients' commercial matters. In the case of freight forwarders, the relevant consignee is normally their destination office or agents--not the cargo end-user.
3. Details like the period that records should be kept, extensiveness of training requirements, etc, must be clearly stated.

With an improved scheme of control in mind, efforts must be made to ensure the seamless flow of normal trade.

Careful consideration should be given to the different roles and functions of exporters, re-exporters and facilitators. Duplication of works should be reduced to the minimum.

Yours sincerely,

Sunny Ho
Executive Director

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July 15, 2003

Mr. Rick Cupitt
Office of the Under Secretary for industry and Security
Bureau of Industry and Security (BIS)
Room H3898
U.S. Department of Commerce
14th Street and Pennsylvania Avenue, NW
Washington, DC 20230

Dear Mr. Cupitt:

The National Council on International Trade Development (NCITD)' is pleased to respond to the request published in the *Federal Register* on May 16, 2003 for comments on the proposed "Best Practices for Exporters/Reexporters and Trade Facilitation/Freight Forwarding Companies Regarding the Transit, Transshipment, and Reexport of Dual-Use Items".

NCITD fully supports the efforts of BIS to address transshipment vulnerabilities and recognizes that global transshipment hubs pose special risks of diversion of sensitive items to illicit purposes. We support the initiatives that the United States Government has taken to work with industry and foreign governments on these concerns. Our member companies are committed to enhancing their ability to prevent the diversion of controlled items.

A vast majority of the "Best Practices" outlined in the proposed guidelines are already being observed by our member companies including screening, using export control compliance programs, and assigning responsibility for export compliance. However, there are several points and practices that we question. Specifically:

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[1] NCITD is a nonprofit membership organization, supported by a diverse membership of large, mid-size and small firms. Membership includes exporters and importers, freight forwarders and brokers, ocean and air carriers, banks, attorneys, trade groups, and consulting firms.

4. <u>Each company should...consider offering to its employees incentives for compliance (and disincentives for noncompliance) with their export control responsibilities.</u>

In our member companies, employees charged with export control responsibilities do not receive incentives for compliance. Compliance is expected of them because it is part of their job responsibilities and because it is the law of the United States, not because they receive incentives. In many companies, there is a disincentive for failing to comply, job termination. NCITD does not believe that special rewards should be offered to employees who perform their job responsibilities and comply with U.S. law.

9. . <u>..Take appropriate steps to know who the end-user is and to determine whether the item will be reexported or incorporated in an item to be reexported.</u>

Most companies do this today when there is a business need to know or any suspicions are raised about the transaction. Most companies, as required under the Export *Administration Regulations,* include Destination Control Statements in their shipping documentation. However, there may be circumstances where products, by their very off-the-shelf nature, are generic. Exporters do not need to know what the customer will use the product for in order to sell to them. In such situations, the manufacturer does not need details in order to make the product and thus would not inquire <u>absent any red flags</u>. This is consistent with Export Management Systems (EMS) guidelines that require the exporter or reexporter to address information that becomes known during the <u>normal course of business.</u> If the exporter has a red-flag or concern about the end-user, then the exporter will inquire further.

Many companies sell products through reputable distributors. In these cases, the companies would not know who the end-user is. The distributor would not want to share that information with the manufacturer for fear that the manufacturer would cut them out and deal directly with their customer. Most companies who sell through distributors have in place agreements with their distributors that require compliance with all U.S. export control laws and regulations. In addition, companies using distributors typically advise their distributors of the dual-use nature of their products and provide relevant red flag information.

NCITD does not believe it is prudent for BIS to state that an exporter should inquire with all customers. The exporter should not be expected to determine whether the item will be reexported or incorporated in an item to be reexported, short of red-flag indicators. If a red flag is identified, the company will, of course, take the necessary steps to clarify the concern. If it is not clarified, the company will not make the sale.

This point should be revised to state that the exporter should take appropriate steps to know who the end-user is <u>when a red flag or suspicion is raised</u>. These steps should not be required for each and every transaction. BIS should attempt to define "appropriate steps."

10. <u>With respect to transactions to, from, or through transshipment hubs, companies should have in place compliance and/or business procedures to be immediately responsible to theft or unauthorized delivery.</u>

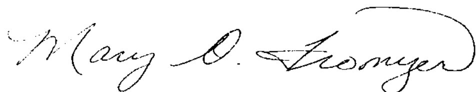
We are unclear as to what is expected of the exporter here. In most cases, if a shipment is made to a bona fide customer and the product does not reach them, the customer tells the company immediately for reimbursement for the missing items or for shipment of replacement products. When such situations occur, if the quantity missing is substantial enough, the exporter will file an insurance claim and investigate the matter. If the missing quantity is minimal, normal business practices do not require that the company conduct a full investigation.

What is BIS's expectation of 'the exporter here regarding theft and/or unauthorized delivery? What type of documentation verifying that the exported item has reached the proper end-user is expected? For most export shipments, final delivery is made to ports/airports, where the foreign customers arrange transportation to their location. At that point, the steamship line loses control over the goods, as does the exporter. If the end-user was planning on illegally diverting U.S. goods, we believe they would not be responsive if we were to request or require documentation that the item exported has reached the intended destination.

The applicability of export control rules will vary based on the industries, countries, and corporate structure and overall context in which a company is operating. Each company needs to incorporate compliance practices based on the types of issues to which they have they most exposure. It would be unfair to apply each standard equally to all companies. Therefore, in regards to this initiative as a whole, NCITD suggests that the BIS emphasize that it does not intend for any of its recommended best practices to set a "standard of care" by which a company would be judged in a civil or criminal enforcement action brought by an enforcement agency.

Thank you for the opportunity to submit these comments. We hope they prove helpful and would be pleased to discuss them in more detail with you.

Sincerely,



Mary 0. Fromyer
Executive Director

Customs and International Trade Bar Association

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Peter Jay Baskin
Chair, Trial and Appellate Practice Committee

James R. Cannon, Jr.
Chair, International Trade Committee

Sidney N. Weiss
Past President

July 18, 2003

Honorable Kenneth I. Juster
Undersecretary for Industry and Security
Bureau of Industry and Security
U.S. Department of Commerce
Room H3898
146th Street & Pennsylvania Avenue, NW
Washington, DC 20230

Attention: Rick Cupitt

Dear Mr. Secretary:

Re: *Best Practices for Exporters/Re-exporters and Trade Facilitation/Freight Forwarding Companies Regarding the Transit, Transshipment, and Reexport of Dual-Use Items*

The following comments are submitted on behalf of the Customs International Trade Bar Association (CITBA) in response to the invitation of the Bureau of Industry and Security (BIS) in the captioned matter. 68 Fed. Reg. 26,567 (May 16, 2003). The Customs and International Trade Bar Association was founded in 1926. Its members consist primarily of attorneys that concentrate in the field of customs law, international trade law and related matters. CITBA members represent United States importers, exporters and domestic parties concerned with matters that involve the United States export laws, customs laws, and other international trade laws, and related laws and regulations of federal agencies concerned with international commerce.

The Bureau of Industry and Security should be applauded both for undertaking the effort to establish "best practices" and for the public discussion of these issues with respect to the transshipment of dual-use items through so-called "transshipment hubs." CITBA particularly endorses the approach to mitigation of penalties in the event that a private entity following the "best practices" nevertheless becomes involved in a matter in which dual-use items are diverted from the intended end user.

In the spirit of constructive criticism, though, CITBA observes that the proposed "Best Practices" are not accompanied by examples or illustrations and are otherwise vague. For example, the notice indicates that companies involved in relevant transactions should identify a management official with corporate responsibility and should create a compliance program. Yet, other than by saying that they complement the

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set of Best Practices for Exporters/Shippers found in the U.S. Department of Commerce Export Management System, the notice does not identify the specific elements of such a compliance program or provide samples. Nor is it clear whether companies should submit their program to BIS for endorsement or approval, in the manner that importers cooperate with Customs in the context of the Customs-Trade Partnership Against Terrorism.

In addition, the proposed practices raise two troublesome issues from a legal perspective. First, in paragraph 5, 68 Fed. Reg. at 26,568, exporters are encouraged to “utilize only those Trade Facilitators/Freight Forwarders that also observe these best practices.” However, without a list from BIS or a standard checklist or questionnaire, whether a broker or freight forwarder follows “best practices” will be subject to a great deal of interpretation and potentially misleading information. Such companies will have an incentive to declare that they follow “best practices.” However, the practices are not so well-defined that an exporter or re-exporter will be able to assess such claims. Nor is it clear that a company should be liable in any manner for misrepresentations by service vendors regarding their own level of “best practices.”

In its paragraph 7, the notice states that companies should screen all parties to a transaction against all relevant lists. The government would be doing the exporting community a great service if it put together a consolidated list, rather than putting the onus on exporters to have to check a multitude of lists issued by a variety of governmental departments.

Paragraph 9 of the Best Practices proposes that Exporters/Re-exporters should not only “know” the end-user, but also “take appropriate steps to . . . determine whether the item will be . . . incorporated in an item to be re-exported.” It is reasonable to establish a “best practice” concerning re-exportation of the dual-use item itself. However, once the dual-use item is incorporated in a permitted downstream manufactured article, it is unclear why there should always be a responsibility to monitor whether the finished article is re-exported. Nor does the notice propose any “appropriate steps.” Examples could be used to indicate that the nature of the finished merchandise (as well as the dual-use item) affect the responsibility of the exporter or re-exporter.

Paragraphs 9 and 10 of the notice are particularly troubling because they expect the exporter to find out who the end user is and what will happen to the product being exported. While this may be possible in some situations, in others, it clearly will not be. For obvious commercial reasons, unrelated distributors will not tell their suppliers who the end users will be. The focus of the best practices covered in paragraphs 9 and 10 should therefore be on the U.S. exporter’s customer, rather than on the end user, unless the exporter, as part of its normal business practice, learns who the end user will be.

The physical nature of the item is significant. In some cases, the dual-use item may be easily removed or disassembled from the finished article in which it is incorporated. Software installed on a computer may be readily copied or downloaded. In such cases, the responsibility

for diligence regarding the identity of the shippers, transshippers, customers, end-users, and end use may be greater. However, in other cases, the dual-use item may not be able to be separated from the further-manufactured article. Controlled chemicals may be used in a manufacturing process that results in a new chemical or plastic, where the process is not easily reversed.

Moreover, the "Best Practices" provide no examples of "appropriate steps" or guidelines concerning the breadth or intrusiveness of the inquiry contemplated. In some cases, details concerning the end-use of a dual-use article may be trade secrets of the user. End-users will not always be willing to share with their suppliers the details of a specific application. Once it is established that the sale is made to a permissible use and user, the exporter should be deemed to satisfy the standard. Otherwise, the sheer intrusiveness of the monitoring duty may impair the exporter's ability to sell.

Paragraph 12 of the "Best Practices" also suggests a standard that is vague and potentially confusing. Although "red flags" previously identified by the Department contain guidelines, this notice gives no example or guideline to assist in defining a "suspicious transaction." The Best Practice does not suggest any contact or dialog between the exporter and the carrier, forwarder or end-user. Rather, the only apparently approved action is to halt the shipment and "consult" the internal company compliance specialist.

Undoubtedly, in the course of commercial transactions, there will be range of "suspicious" transactions of varying degrees. A one-size-fits all response will not be appropriate. Nor should the Best Practice always require contacting BIS or a U.S. law enforcement agency. The export control compliance specialist may determine that different responses are called for depending upon the particular facts. As a partner with BIS, the trade should not be required to halt shipments upon any suspicious activity, but should be allowed to exercise reasonable care in handling the situation and creating an appropriate response.

While the Commerce Department's effort to identify best practices is commendable, it would be even more helpful for exporters if the effort was undertaken together with the Department of State so that both ITAR and dual use products could be covered by one set of best practices.

Finally, while the notice indicates that following the best practices will be a mitigating factor in administrative prosecutions, it will not provide a defense to liability. CITBA believes that compliance with best practices should create a defense to liability, just the way the exercise of reasonable care in the import context provides a defense to Customs civil penalties.

Respectfully submitted,

James R. Cannon, Jr.
Chairman, International Trade Committee

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July 16, 2003

Via facsimile 1-202-482-2387

Rick Cupitt
Office of the Under Secretary for Industry and Security
Bureau of Industry and Security
Room H3898
U. S. Department of Commerce
14th Street and Pennsylvania Avenue, NW
Washington, D.C. 20230

Dear Sir:

This letter contains comments on the Notice of Inquiry, Docket No. 030505114-3114-01, concerning "Best Practices for Exporters/Re-exporters and Trade Facilitation/Freight Forwarding Companies Regarding the Transit, Transshipment, and Re-export of Dual-Use Items."

Our comments on those materials are as follows.

1. It is not clear from the materials whether or not this inquiry is limited to containerized cargo, or if it is also intended to apply to non-containerized cargo. The specific reference to transshipment hub terminals, in particular, suggests that the focus of the inquiry is on containerized cargo. This should be made explicit, because the activity with respect to the handling of containers is sufficiently distinct from the activity of handling other types of cargo to merit separate treatment, and different procedures, to effectively manage security risks.

2. Similarly, it is not clear whether the inquiry at this stage is intended to include air transportation. This would be a common mode of transport for high tech items that may well be the focus of security concerns, but would involve an entirely different set of hub terminals (e.g. London, Frankfurt, Luxembourg, Dubai etc.) and industry practices. An attempt to develop a single set of guidelines to apply to both modes of transport may prove to be extremely ambitious.

3. The document presently lumps:

a. "Trade Facilitators/Freight Forwarders," (to include: freight forwarders, brokers, air and marine cargo carriers, express shipment carriers, port operators, and port authorities); and
b. "Exporters&-exporters," (entities that export dual-use items to transshipment hubs or that re-export such items from such hubs)'

into a group of entities labeled "Company" or "Companies". The document then proposes a list of requirements for all such "Companies".

4. While it is understandable that there would be a preference to establish one set of requirements for many types af entities, it is submitted that this may be somewhat oversimplifying the task, and least with respect to terminal operators, and probably Port Authorities. In particular, the ability of the terminal operators to comply with the requirements to pre-screen shippers, cargo and destinations, is much more limited than it would be for carriers, freight forwarders, and exporters. The ability to take steps to identify end users is virtually non-existent for the terminal operator, as is the ability to ensure that the item has reached the proper end-user. In the case of containers, the client of the terminal operator is the ocean carrier. In order for the terminal operator to handle the carrier's containers, a certain lilted amount of information is typically communicated via an EDI interchange to the terminal operator. Typically this would be the size and weight of the container, the vessel and voyage on which it is to be loaded, and the destination port. It would not normally include the name or contact information of the shipper, or the contents of the container (although hazardous materials and refrigerated cargo would be identified as such). It would typically not include the destination address, or even country, but only port (which may or may not be in the same country as destination.

5. Therefore, to hold the terminal operator to the same standard as the carrier, forwarder, or exporter with respect to the contents of this information would be patently unfair because:
   a. The terminal does not, in its normal course of business, come into possession of this information. (Indeed some of this data, such as the contact information for the cargo owner, is often zealously protected by the carriers, who regard this information as proprietary.) This effectively bars the terminal operator from access to the types of information listed in the Red Flag Indicators.
   b. Terminals are not organized or staffed to analyze this data, since they do not ordinarily receive it or process it for any other reason.
   c. Terminal?; do not have a relationship with the cargo owner, and are not involved in any way with the movement of the cargo at any point before or after it passes through the terminal- In this respect, the role of the terminal

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'Query: What about exporters of dual-use items that do not pass through transshipment hubs?

is analogous to the role of the trucker who is used by the carrier to move the loaded container from the premises of the carrier's client to the port.

d. Conversely, while most of the data in question never reaches the terminal, it will have been available to the carrier, forwarder, or exporter for perhaps several weeks, while empty containers were being positioned at the premises of the shipper, then transported over land via truck or rail to the terminal for loading, which could occur within a few days, or literally within a few hours after receipt by the terminal through its gate.

e. Similarly, when viewed along the supply chain continuum, cargo consolidators or warehouse operators who process cargo before it is containerized will have a closer relationship to the cargo owners that do rhe terminal operators.

6. The U.S. Coast Guard is in the process of promulgating regulations that comprehensively control matters of security at seaports. In addition, terminals are presently subject to the mandate of U. S. Customs with respect to "do not load" instructions that may be issued with respect to any particular containers. It is entirely possible that the goals of the Bureau of Industry and Security for the Department of Commerce, as they relate to terminal operators, could be met by insuring compliance with those requirements. At the very least, it should be fair for the private sector to expect that these Government initiatives will be coordinated and consistent, particularly in view of the extensive scope of the matters that are being regulated, and the potentially crippling levels of cost that will be involved in complying with such an extensive series of requirements, layered one on top of the other.

7. In conclusion, the obligations listed in this notice, as a practical matter, cannot be applied to terminal operators with the same weight as they might be applied to the carriers, forwarders, and exporters who have a much more direct relationship with the cargo owners. It may well be possible to require the terminal operators to remain responsible to act when a matter of security is brought to their attention, but it would be unduly burdensome, and indeed virtually impossible, for the terminal operators proactively to comply with these requirements as written.

We appreciate the opportunity to provide this input into your deliberations.

Respectfully submitted,

Robert Scavone
Executive Vice President
Strategic Planning and Development

Sun Microsystems, Inc.
Mailstop USCA12-202
4120 Network Circle
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July 15, 2003

Mr. Richard Cupitt,
Office of the Under Secretary for Industry and Security,
Bureau of Industry and Security
Room H3898
U.S. Department of Commerce
14th Street and Pennsylvania Avenue, NW
Washington, DC 20230,

RE: Best Practices for Exporters/Re-exporters and Trade Facilitation/Freight Forwarding Companies Regarding the Transit, Transshipment, and Re-export of Dual-Use Items, Notice of Inquiry

Dear Mr, Cupitt:

On behalf of Sun Microsystems, I would like to compliment you on a laudable effort to construct a set of export compliance best practices. As a general mutter, Sun agrees with the need for published best practices, and supports their use as mitigating factors in compliance actions.

For companies like Sun, publication of Best Practices contributes to putting us on a level *playing* field with other foreign and domestic companies. Sun, like many other US high technology companies, has managed an internal control program encompassing elements of these guidelines for many years. As a result, we actively support efforts to encourage other companies to assume equal responsibility.

Our specific comments are as follows:

1, On the first item under "Company Policy and Company Management," Sun agrees that it should be the policy of every company that its products and services not contribute to terrorism in any context. However, anti-terrorism export controls, unlike EPCI controls, are quite specific. The current formulation could suggest that there is a general EPCI-like responsibility for exporters relative to terrorism controls, which is not the case.

We suggest that the reference to terrorism be deleted, and replaced with "any proscribed end-use, including programs of proliferation concern."

2. We view the single most problematic statement in the Rest Practices in Item 9 of the same section, specifying that exporters and ***w-exporters should*** take "appropriate steps to know who the end-user is and to determine whether an item will be re-exported or incorporated into an item to be exported."

Knowing the customer is a fundamental principle of an effective internal control program. However, in contemporary business practice, the "customer" is often a reseller and not a final end-user. In many segments of the electronics industry, products

are subject to multiple layers of distribution. Moreover, distribution agreements often contain stipulations prohibiting identification of end-users, to prevent manufacturers from undercutting the distributor through direct sales.

We do not view this as inconsistent with an effective export compliance program. Each party in the distribution chain must be aware of US and other export restrictions and be prepared to take appropriate steps to comply. We also agree that compliance best practice should include an evaluation of resellers and communication of the need to comply with export restrictions, either through terms and conditions or other means.

We are concerned that the responsibility for knowledge of the end-user be directed toward the entity that is in a position to acquire it in the normal course of business and act on it. While the relevant statement in the Best Practices seems to refer to licensed items, items that are shipped under license exception and undet "no license required" conditions with EPCI restrictions, can also have serious compliance consequences. In these areas, multi-layer distribution is most common.

While the term "appropriate" does qualify the statement in question, we suggest it could be made clearer by stating it as follows: "With respect to transactions to, from, or though transshipment hubs, Exporters/Re-exporters who deliver to final end-users should take appropriate steps to know who the end-user is, etc.

Thanks for your efforts in developing this set of Best Practices, and for the opportunity to comment.

Sincerely,

Hans Luemers
Director International Trade Services

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July 16, 2003

Mr. Rick Cupitt
Office of the Under Secretary for Industry and Security
Bureau of Industry and Security
Room H3898
U.S. Department of Commerce
14th Street and Pennsylvania Avenue, N.W.
Washington, DC 20230

Subject: Comments on the Proposed "Best Practices for Exporters/Re-exporters and Trade Facilitation/Freight Forwarding Companies Regarding the Transit, Transshipment, and Reexport of Dual-Use Items"

Dear Mr. Cupitt,

Circinus, Ltd. provides consulting services relating to trade compliance under various regulations, such as the Export Administration Regulations and the U.S. Customs Regulations, among others. Such services include the development and implementation of corporate policies and procedures, conducting in-house training, performing procedural assessments and audits, troubleshooting on various matters such as classification and marking, and so forth. We support the efforts of BIS to identify best practices to be implemented by companies as part of an effective export compliance program.

Circinus is pleased to respond to the request for comments on the proposed "Best Practices for Exporters/Re-exporters and Trade Facilitation/Freight Forwarding Companies Regarding the Transit, Transshipment, and Reexport of Dual-Use Items" as published in the May 16, 2003 Federal Register. Our comments are as follows:

a) #10 states "This include(s) procedures – including documented confirmation – to ensure that the item exported has reached the proper end-user."

For several reasons, this would be extremely difficult for the great majority of exporters to implement. Such reasons include:

- It would not be uncommon for an end-user, even a legitimate one, to ignore requests from the exporter to confirm receipt of the goods.
- If the forwarder was contracted by the end-user rather than the U.S. exporter, the forwarder may also ignore requests from the exporter to confirm delivery of the goods to the intended end-user.
- Even if the forwarder was contracted by the U.S. exporter, they may be unresponsive to requests for confirmation of delivery, just as they are frequently unresponsive to requests for completed SEDs or AES records.
- Many U.S. exporters do not have sufficient personnel to request such documented confirmation, much less monitor responses (or lack thereof) and make follow-up requests as necessary.

b) In addition to the best practices outlined in the Federal Register, we would recommend including an audit component. Such audits should cover a representative sample of the Company's export and reexport transactions and be conducted on a regular basis by internal or external auditors who were not involved in the transactions. The results of the audits should be communicated to the senior management official responsible for oversight of the Company's export compliance program and be used to improve the Company's program.

Thank you for the opportunity to provide these comments. If you have any questions or would like further information, please do not hesitate to contact me at the above telephone number or email address.

Sincerely,

Ann M. Thomas
Circinus, Ltd.
President

The Boeing Company
1200 Wilson Blvd.
Arlington, VA 22209-1989

July 16, 2003

The Honorable Ken I. Juster
Under Secretary for Industry and Security
Room H3898
Bureau of Industry and Security
U.S. Department of Commerce
14th Street and Constitution Avenue, N.W.
Washington, DC 20230

Dear Mr. Juster:

Thank you for your letter to Mr. Condit dated June 6, 2003, regarding proposed best practices for exporters, re-exporters and trade facilitation/freight forwarding companies regarding the transit, transshipment and re-export of dual use items. We support a partnership for national security between the U. S. Government and industry in the dual use international trade arena and believe that the promulgation of best practices would provide a framework of understanding and facilitate consistency of efforts by U.S. industry and its international partners.

We appreciate the opportunity to comment on these proposals and offer the following points for your consideration.

- We have in place most, if not all of these proposed best practices as they apply to our facilities, our employees and our transactions with our customers. We also take reasonable steps to identify red flags with respect to all aspects of our transactions with the customer. Furthermore, we are currently engaged in an effort with U.S. Customs, the Customs-Trade Partnership Against Terrorism (C-TPAT) to actively support measures being taken by that agency to safeguard the various elements of the supply chain.

- What exactly is expected of the exporter is not completely clear with respect to some of the proposed best practices, and it would be helpful for industry to have an opportunity to meet with BIS to have a better understanding of some of the proposed elements and of how BIS would like to see them implemented.

- We have some questions about general liability, in particular with respect to proposed best practice #12. Specifically, whether consideration has been

given to the implications that erroneous, albeit well-meaning reports of violations could have for the company submitting the report.

- While committed to support government efforts in this area, we foresee costs associated with these proposed practices and recommend that BIS explore the possibility of offering incentives in addition to mitigation in violation situations.

In conclusion, we support the idea that company best practices could be enhanced to reflect a new national security environment and that a partnership between BIS and industry, such as C-TPAT, is important to the protection of U.S. national security interests in the dual use arena. However, we believe that the scope and intent of the best practices proposed by BIS should be further examined and clarified to ensure that they can be consistently applied and that the standards they would impose are reasonable and can be met.

I look forward to the opportunity to engage further with your office on this issue.

Sincerely,

Ramona B. Hazera
Vice President, Export Management and Compliance

Cc: Mr. Rick Cupitt

DIIKTIRAF MS ISO 9002

Ruj. Anda:

Ruj. Kami:

(13)dlm.KP.04-2.35

12 July, 2003

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

Dear Sir,

We refer to your letter of June, 2003 and we thank you for giving us 'the opportunity to comment on your draft best practices designed to strengthen the security of international trade on items subject to U.S. export controls.

2. We believe it would serve as good guidelines which would enable you to achieve the intended objectives.

3. As noted in your draft, the support and acceptance of best practices from trade facilitates I Freight Forwarders and exporters and re-exporters is very important,

4. In this connection we believe the draft should be extended to the relevant ministries responsible for enacting laws, regulations, rules and policy direction relating to the trade, viz Ministry of Finance, Ministry of Transport and Ministry of International Trade and Industry. The same should also be considered to be extended to our non-governmental organizations such as Malayslan Chambers of Commerce and Industries, Federation of Malaysian Manufacturers and Malaysian Freight forwarders Association whose members are directly involved in the operational aspects of the trade.

5. We trust the foresaid entities would be able to glve comments based on their perspectives. In this regard, we would be happy to render our assistance in extending the draft to them for comments, if you have not already done so.

LEMBAGA PELABUHAN KELANG Beg Berkunci 202, Jalan Pelabuhan, 42005 Pelabuhan Kelang, Selangor Darul Ehsan, Malaysia. Tel: 03-3688211 (20 Talian) Telefax: 603-3670211/ 368911

Regards,

Yours faithfully,
PORT **KLANG** AUTHORITY,

(PAUL SEO TET CHONG)
for General Manager

Center for Information on Security Trade Control
Bansuiken Bulding, 6-6, Toranomon, 1-chome, Minato-ku, Tokyo 105-0001, Japan
Phone:03-3593-1148 http://www.cistec.or.jp

July 16th 2003

Honorable Richard T.Cupitt, Ph.D.
Special Advisor
Office of the Under Secretary
U.S Department of Commerce
Bureau of Industry and Security (BIS)
14th & Constitution Ave., N.W.Rm 3896
Washington, DC 20230-0002

Re: Comments to the draft of Export Control "Best Practice" Guidelines on May 16,2003

Dear Dr. Cupitt,

It has been long time since we met before in Tokyo.
I think that all is well with you and it is nice to communicate with you this time.
I would like to appreciate your efforts in listening to our difficulties and concerns on US reexport controls and you may remember our long-time saying "No obligation, without information."

As you are aware of "SECOND REPORT TO THE LEADERS ON THE U.S.-JAPAN REGULATORY REFORM AND COMPETITION POLICY INITIATIVE, May 23, 2003," where 1.A.5. in "Regulatory Reform and Other Measures by the Government of the United States" reads as follows:

5. Re-Export Controls:
The Government of the United States understands the concerns of the Government of Japan regarding the operation of the re-export system.
In response to Japanese concerns, in April 2003, the Department of Commerce posted updated "Guidance on Reexports and other Offshore Transactions Involving U.S.-Origin Items" in English at: http://www.bis.doc.gov/Licensing/ReExportGuidance.htm. The Department of Commerce is in the final stages of adding a Japanese language version of this guidance to its website.
Regarding the Government of Japan's proposal requesting the United States to station experts on export control regulation at the U.S. Embassy and Consulates in Japan, the Department of Commerce has personnel available in Tokyo to assist with inquiries regarding export control regulations.
The Government of the United States will make every effort to fully respond to these inquiries. The Government of the United States will continue discussions with the Government of Japan regarding the Japanese request to require U.S. exporters to provide Japanese importers (re-exporters) with sufficient information on the products (e.g. ECCN number).

I appreciate that the Japanese language version of "Guidance on Reexports and other Offshore Transactions Involving U.S.-Origin Items" is now on BIS website.
This kind of guidance is useful when the reader is already knowledgeable about the scheme of the US export control system because reexport control is only the addition to the whole system of the US export controls.

I acknowledge BIS issuance of draft of Export Control "Best Practice" Guidelines on May 16, 2003.
Section 6 of this Draft Guidelines read as follows:
"6. An Exporter/Re-Exporter should classify each of its products according to the requirements of the Export Administration Regulations (EAR), 15 CFR Parts 730-774 (2003), and should communicate the appropriate Export Control Classification Number (ECCN) or other classification information for each export to the Trade Facilitator/Freight Forwarder and the end-user involved in that export (even if the shipment is made under an EAR License Exception). Each Company involved in the transaction should also maintain a record of such classification for every export."
The Guidelines say "The demonstrated compliance with these best practices by a company will be considered an important mitigating factor in administrative prosecutions arising out of violations of the EAR by that company" though it says "the publication of these best practices creates no legal obligation to comply with such practices on the part of any person".

The above provision would certainly improve the insufficiency of the past situations where a few US exporters provide the non-US importers (r-e-exporters) with the correct EAR classification information (e.g. ECCN).

Section 9 of this Draft Guidelines read as follows:
"9. With respect to transactions to, from, or through transshipment hubs, Exporters/Re-Exporters should take appropriate steps to know who the end-user is and to determine whether the item will be re-exported or incorporated in an item to be re-exported. An Exporter/Re-Exporter of a dual-use item under license should inform the end-user, distributor, or other appropriate recipient of the item of the license terms and conditions for such export."

Actually, this provision is a legal requirement in EAR 750.7(d) as follows:
"It is the licensee's responsibility to communicate the specific license conditions to the parties to whom those conditions apply."
Therefore, the above provision in Section 6 could also be a legal requirement in EAR 750.7(d).

In communicating with BIS we have been informed that our requests that the above should be a legal requirement would create a problem for exporters when information is not correct, if this made exporters liable to mistakes.
Therefore, I would like to propose the following solution:
When importers receive information from US exporters these information will be conveyed to BIS. BIS will communicate with US exporters if any question arises with classification.

Unless importers receive response from BIS within three weeks, the provided information are supposed to be correct.

I am looking forward to seeing you again.

Best regards,

S. Hirai

Susumu Hirai
Chairman, Policy Study Subcommittee
Export Control Policy Committee
Center for Information on Security Trade Control (CISTEC)

smiths

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July 11, 2003

Mr. Rick Cupitt
Office of the Under Secretary for Industry & Security
Bureau of Industry & Security (BIS), Room H3898
U.S. Department of Commerce
14th Street and Pennsylvania Avenue, NW
Washington, DC 20230

Dear Mr. Cupitt:

Smiths Aerospace ("Smiths"), a Delaware corporation and a significant U.S. exporter with several foreign affiliates, submits these comments in response to the request published in the May 16 *Federal Register* (68 Fed. Reg. 26567-26569) on the proposed *Best Practices for Exporters/Reexporters and Trade Facilitation/ Freight Forwarding Companies Regarding the Transit, Transshipment and Reexport of Dual-Use Items.*

These Best Practices aim to reduce the risk of illegal diversion of controlled items through major global transshipment hubs. Smiths recognizes the importance of this objective as part of the ongoing campaign against global terrorism. Several of the proposed best practices reflect sensible measures already in common use in industry, such as written policies and procedures, employee training, and transaction screening. On the other hand, Smiths is concerned that some of the proposed best practices assign to exporters an impracticable policing role that they cannot be expected to fulfill. In particular, we wish to address two of these proposals.

Proposed Best Practice #5. Exporters/Re-Exporters should seek to utilize only those Trade Facilitators/Freight Forwarders that also observe these best practices.

Exporters should not be expected to police the behavior of their freight forwarders, as they simply are not in a position to know about their forwarders' internal practices and procedures. In the course of its business, an exporter typically makes use of a very large number of freight forwarders. Frequently, under the contract terms of an export sale, the freight forwarder is selected by the buyer. It is not practicable for an exporter to query all of its forwarders about their internal practices, and freight forwarders are reluctant to provide such information in any case – particularly if their customer is the buyer and not the exporter. If the Commerce Department wants to restrict the use of certain freight forwarders, it should formulate a list of disapproved forwarders for licensable transactions – rather than expecting each U.S. exporter to spend enormous amounts of time and resources in conducting their own *ad hoc* investigation, doubtless in duplication of each other's efforts.

Proposed Best Practice # IO first part). With respect to transactions to, from, or through transshipment hubs, Companies should have in place compliance and/or business procedures to be immediately responsive to theft or unauthorized delivery.

Once a shipment of hardware has reached a foreign country and then been stolen, an exporter has little ability to rectify that situation. Recovery of stolen merchandise can be accomplished only by local law enforcement officials in the country where the theft takes place. Law enforcement officials typically will respond to a claim of theft only when it is raised by the owner of the stolen merchandise (and, practically, only if that owner is physically present in the country where the theft takes place). However, under most international commercial terms of sale, the exporter's ownership and/or responsibility for a shipment ends at a point (such as a port or airport) before the buyer actually physically takes possession of that shipment. Consequently, typically only the buyer will have any influence with the local law enforcement officials responsible for investigating a theft situation. Similarly, in situations where goods have been delivered in error to an unauthorized end-user, the freight forwarder typically will move to correct the situation only when the issue is raised by its customer – again, often the buyer, not the exporter.

Best Practice #10 (part two). This includes procedures – including documented certification – to ensure that the item exported has reached the proper end-user.

It is illogical to ask an exporter to take on the added burden of verifying that goods have been delivered to the buyer. In most cases, when a foreign customer fails to receive a shipment of goods, the first person that the buyer notifies *is* the exporter – as the buyer has a strong interest in obtaining reimbursement from the seller. Moreover, imposing this burden on the exporter is not consonant with – and actually threatens to overwrite -- international commercial terms of sale *(Incoterms),* which typically shift the responsibility for, and control of, internationally shipped goods away from the exporter long before a transshipment or diversion could occur. While an exporter theoretically can ask a freight forwarder to submit documentation showing that a shipment has been delivered to the final destination, often the forwarder's contract is with the buyer and not the exporter. In this circumstance, there is no reason for the forwarder to comply with that request. Further, transport to the final destination in a foreign country may occur by means of a local foreign transportation route (e.g. a railroad running from a foreign port to the buyer's facility), making it even more difficult to obtain delivery verification. Given the extreme difficulty for exporters in verifying foreign delivery, it makes no sense for BIS to impose an industry-wide paperwork burden for so little gain.

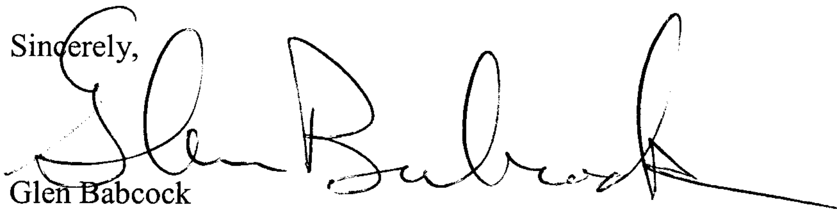
BIS has requested that exporters offer affirmative strategies for reducing the risk of transshipment and diversion. It is our view that the best method of reducing risk is by educating individuals involved in the export process. BIS could support this by

smiths

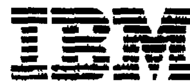
producing and, more importantly, publicizing a list of practical and specific transshipment risks. For example, BIS should publicize the current list of transshipment hubs and known transshippers. Practically, it is extremely difficult for a company to educate its employees about transshipment risks when those risks have not been defined with precision.

Thank you for the opportunity to comment on these proposed best practices. Should you have any questions or wish to discuss our comments further, please contact Mr. Karl Laskas at (240) 686-2352, or the undersigned at (240) 686-2355.

Sincerely,



Glen Babcock
Director, Security and Export
Smiths Aerospace



Office of the Vice President,
Governmental Programs

1301 K Street Northwest, Suite 1200
Washington, DC 20005 3307

July 14, 2003

Mr. Kenneth Juster
Under Secretary for Industry and Security
United States Department of Commerce
14th and Pennsylvania Avenue NW
Washington D.C. 20230

Dear Mr. Juster:

Reference: Your letter dated June 6, 2003 to Mr. Samuel Pahnisano
U.S. Export Regulations – Best Practices for Exporters/Re-Exporters

We appreciate the opportunity to comment on the Notice of Inquiry for Best Practices for Exporters and Re-Exporters published in the Federal Register on May 16, 2003. As you indicated in your letter, some companies, including IBM, have already submitted comments through Advisory Committees, but we are pleased to be submitting individual comments as well.

We welcome the BIS initiative in this area and find the key items in general agreement with IBM practices. We believe that continuing awareness and education and high level support within a company are key for compliance in this area. There are, however, a few points that I would like to make, including reference to current relevant business trends:

1) In the business mode1 that IBM and most other computer companies follow, the end user is often not known (in some cases IBM is directly competing with its business partners). Therefore, 'customer' should replace references throughout the document to the 'end user.' IBM will, of course, act on any information that we become aware of, consistent with "Know Your Customer Guidance" in Supplement 3 to Part 732 of the Export Administration Regulations.
2) We propose that BIS introduces an initiative similar to the former Distribution License [or current C-TPAT (Customs-Trade Partnership Against Terrorism) for importers]. Companies that sign up and are accepted for a BIS enhanced (but voluntary) export regulations compliance program would be eligible for specified privileges.

3) With regard to communicating the ECCNs for each export to Trade Facilitator/Freight Forwarders and the end user, we strongly suggest that this best practice be changed to state that a company should have a process whereby it makes ECCNs available upon request. Such a process would supplement the EAR requirements with respect to routed export transactions. With large exporters like IBM, a requirement to provide the ECCN in all cases would create an enormous administrative burden that would not match the limited benefits derived from it. In addition, as changes to the classification occur, the exporter would have the obligation to communicate these to the customers. Further, should this best practice be retained, with regard to the freight forwarders, it should be flexible to accommodate different business models, such as not requiring communication of the ECCN to the freight forwarder if the forwarder is providing transportation only and the exporter is responsible for all other aspects of compliance.
4) In item 12, the second sentence should be replaced with 'All relevant sections of Part 764 of tie EAR must be followed." This will better address all necessary compliance issues with regard to violation,

Thank you again for providing this opportunity. If you have any questions regarding the content of this letter, please contact Vera Murray, director of the IBM Export Regulation Office, at 202/5 15-5527 or me at 202/5 15-5800.

Sincerely,

Christopher G. Caine

CGC:al

Office of the Vice President,
Governmental Programs

1301 K Street, Northwest, Suite 1200, Washington, District of Columbia 20005-3307

Fax from Christopher G. Caine
Fax number 81622-S 113 or 202/515-5 113

Date: 7/14/2003

Pages to follow: (2)

To: Mr. Kenneth Juster

Phone #: 202/482-1455

Fax #: 202/482-2387

From: Chris Caine

Phone #: 202/515-5800

Special Instructions: