3. The Office of Strategic Trade and Foreign Policy Controls

The Office of Strategic Trade & Foreign Policy Controls (STFPC) is composed of the National Security Controls Division, the Foreign Policy Division, and the Encryption Controls Division. STFPC implements multilateral export controls for national security reasons under the Wassenaar Arrangement to control the spread of conventional arms and related technologies. STFPC is also responsible for the bilateral agreement with Japan on export controls for high-performance computers. In addition, the office implements U.S. foreign policy controls to ensure that exports are consistent with our national goals relating to human rights, antiterrorism, and regional stability. In 1994, BXA created a new Encryption Controls Division to handle encryption policy and the large volume of licenses and industry outreach activities associated with commercial encryption. The office is responsible for all policy actions, export licenses, commodity classifications, and advisory opinions for commodities in the noted categories. STFPC also represents the Department in international negotiations on export controls and control list development.

National Security Controls

The United States maintains national security controls on the export and reexport of strategic items and technical data worldwide to prevent the diversion of such strategic items to certain destinations. To achieve this objective, the United States attempts to pursue a multilateral approach and imposes controls in cooperation with other nations participating in the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies.

Policy Towards Individual Countries

Section 5(b) of the Export Administration Act of 1979, as amended (the Act), requires the President to establish a list of controlled countries for national security purposes. Executive Order 12214 (May 2, 1980) delegated this authority to the Secretary of Commerce.

Initially, this list comprised those countries named in Section 620(f) of the Foreign Assistance Act of 1961 (FAA) (22 U.S.C. Sec. 2370 (f)) at the time of the enactment of the Export Administration Act in 1979. The Secretary of Commerce, however, may add or remove countries from the control list of countries under criteria provided in Section 5(b). Since 1980, the Secretary has removed countries from the list of controlled countries, including the former Federal Republic of Yugoslavia in 1985, Hungary in 1992, and the Czech Republic, Poland, and the Slovak Republic in 1994. Public Law 102-511 (October 24, 1992) amended Section 620(f) of the FAA to delete the former Soviet Bloc countries and

certain other nations from the list of Communist countries. Under Section 5(b) of the Act, the United States, however, continues to control exports to some of the countries deleted from the list in Section 620(f) of the FAA.

The countries currently controlled under Section 5(b) of the Act are: Albania, Bulgaria, Cuba, Estonia, Latvia, Lithuania, Mongolia, the Newly Independent States of the former Soviet Union, North Korea, the People's Republic of China, Romania, Vietnam, and Tibet. The Department, along with other concerned agencies, provides technical export control development assistance to many of these countries with a view to removing additional nations from the list of controlled countries.

Wassenaar Arrangement

The Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies is a multilateral regime currently consisting of 33-member countries. It contributes to regional and international security and stability by promoting transparency and greater responsibility in transfers of conventional arms and dual-use goods and technologies, thus preventing destabilizing accumulations of these commodities. The agreement obligates member countries to exchange information on certain dual-use transfer approvals and denials. The members share this information to enhance international security and regional stability.

The U.S. Government continues to participate in submissions of export data made by member countries in the regime since the November 1996 implementation of the Wassenaar dual-use export control list. The Wassenaar members make dual-use data submissions on a semiannual basis in April and October. In April 1998, BXA representatives attended the first official annual List Review of the regime. The first Wassenaar Arrangement meeting on Licensing and Enforcement Practices occurred in June 1998. In September, October, and November 1998, BXA representatives attended working group meetings of the Wassenaar Arrangement in Vienna, Austria. In October, Wassenaar's 33 members agreed to revise controls on telecommunications equipment and on commercial encryption products. Member countries also agreed to convene in February 1999 and begin an effort to assess the interdependency of telecommunications equipment, computers and electronic components and production equipment, and to determine if there remains any strategic relevance for controls on these items.

National Security Export Control Changes

In January 1998, BXA published comprehensive changes to the Export Administration Regulations to incorporate the Wassenaar Arrangement's List of Dual-Use Goods and Technologies in the Commerce Control List (CCL). To simplify the classification process for exporters, BXA also harmonized items on the CCL to conform to the European Union dual-use list and lists of other international control regimes of which the United States is a

party. This January 1998 rule also imposed new requirements on exporters to report to BXA all exports of certain items made under the authority of certain license exceptions. BXA provides this information, excluding the exporter's name and the dollar value of the export, to other participating countries to enhance international security and stability through the sharing of information. This rule revision also removed the ability for some Wassenaar Arrangement Very Sensitive List dual-use items to be exported from the United States under license exception.

In February 1998, BXA implemented provisions of the National Defense Authorization Act (NDAA) which requires advance notification and post-shipment verifications of exports and reexports of certain high performance computers (HPCs) to certain countries. As a result, exporters and reexporters must submit notices of proposed export of computers to BXA which BXA evaluates in conjunction with the Departments of Defense, Energy, and State, and the Arms Control and Disarmament Agency. The United States also imposed new reporting requirements for exports and reexports of computers to enable BXA to track the use of these computers abroad.

In January 1997, BXA initiated a follow-on study to analyze the U.S. high-performance computing export control policy. This study updated the findings of a 1995 report on computer exports and will help the United States keep its HPC policy in step with technological developments. In April 1998, BXA completed its analysis, which showed that increasingly powerful computers are widely available, and will use the study findings to develop the U.S. export control policy for computers in FY 1999 and FY 2000.

Encryption

On December 30, 1996, BXA issued a regulation implementing the Clinton Administration's encryption policy that Vice President Gore announced on October 1, 1996. A Presidential Memorandum and Executive Order dated November 15, 1996, fully outlined the Administration's policy. The Administration's policy consists of several parts, including maintaining export controls, developing standards, and promoting international cooperation. The encryption policy aims to promote the growth of electronic commerce and secure communications worldwide while protecting the public safety, and U.S. foreign policy and national security. The United States continues to pursue these goals.

In July 1998, Secretary Daley announced that the Clinton Administration had finalized guidelines to permit the export of encryption products under a license exception to banks and financial institutions in 45 eligible countries. This affects encryption exports for the world's 100 largest banks and almost 70 percent of the world's financial institutions. On September 22, 1998, BXA published regulations implementing these changes.

On September 16, 1998, the Clinton Administration also announced an important

update to its encryption policy. The Administration will strengthen its support for electronic commerce by permitting the export of strong encryption when used to protect sensitive financial, health, medical, and business proprietary information in electronic form. Vice President Gore also assured the Nation's law enforcement community that the Administration remains committed to ensuring access to the plain text of criminally-related communications and stored data. The Administration intends to establish a technical support center which will help enhance the ability of law enforcement to stay abreast of advancing communications technology. BXA issued a regulation that implements the updated encryption policy on December 31, 1998.

BXA's new regulation establishes licensing policies and procedures for companies to follow to obtain approval to export encryption products. It also will create a new license exception for export of very strong encryption of any key length (with or without key recovery) to several industry sectors. Key elements of the license exception include export of very strong encryption by U.S. companies for use between their headquarters and their foreign subsidiaries worldwide, except in the seven terrorist countries (Iran, Iraq, Libya, Syria, Sudan, North Korea, and Cuba), to protect their sensitive company proprietary information. Insurance companies, as well as health and medical sectors in 45 countries will be able to purchase and use strong encryption products to secure health and insurance data among legitimate users such as hospitals, health care professionals, patients, insurers and their customers.

Banks and financial institutions in the same 45 countries will remain eligible to receive strong encryption for the protection of financial transactions. This will also occur under a license exception. Furthermore, encryption commodities and software, limited to client-server applications (e.g., Secure Socket Layer (SSL) based applications) or applications specially designed for on-line transactions for the purchase or sale of goods and services, may be exported to on-line merchants in destinations listed in these 45 countries. Such commodities and software will be used for the purchase or sale of goods, software and services including interactions between purchasers and sellers necessary for ordering, payment and delivery of goods.

The new regulation will also allow encryption hardware and software products with encryption strength up to 56-bit DES or its equivalent to be exported without a license, after a one-time technical review by U.S. agencies, to all users outside the seven terrorist countries. Currently, the United States permits streamlined exports of DES products for those companies that have filed key recovery business plans with Commerce. However, with the new regulations, the United States will no longer require the key recovery business plans.

The new regulations will also reflect the Administration's continued promotion of key recovery products. Those companies that have submitted plans to develop and market key recovery encryption products will no longer have to submit the six-month progress reviews.

Once the products are ready for market, companies can export them, at any bit length, without a license, worldwide (except to the terrorist nations), after a one-time review by U.S. agencies. Moreover, exporters will no longer need to name or submit additional information on a key recovery agent prior to export. These requirements will be removed from the regulations. Furthermore, the regulations will identify other recoverable products and techniques that allow for the recovery of plaintext by a system administrator. The regulations will permit export of these products for use within most foreign commercial firms and their wholly owned subsidiaries in order to protect internal business proprietary communications.

The Office of Strategic Trade also participates in the international work undertaken by Ambassador David Aaron, Under Secretary of Commerce For International Trade, whom the President designated as Special Envoy For Cryptography, and who chairs the multilateral working group on encryption export controls he established. These multilateral discussions paved the way for consensus in the Wassenaar Arrangement membership for extensive revision of encryption export controls. Since jurisdiction over commercial encryption items was transferred to Commerce through the end of 1998, BXA has received well over 3700 encryption license applications valued at approximately $1 billion. Sixty-four companies have submitted commitment plans which lay out how they will build and market key recovery products, and the United States has approved 20 key recovery products for export. These companies include some of the largest software and hardware manufacturers in the country. BXA has approved 61 of these plans; none has been rejected.

Sanctions and Foreign Policy

China

Based on agreements reached in Beijing in October 1997, during the eleventh annual meeting of the Joint Commission on Commerce and Trade (JCCT), U.S. and Chinese representatives met in Washington in April 1998 for the first of two export control technical exchanges. A smaller Chinese delegation returned in June 1998 to continue discussions, followed by a Chinese invitation to the Under Secretary of Commerce for Export Administration to visit Beijing to hold the second export control technical exchange. This took place in November 1998. These technical exchange seminars provide opportunities to discuss issues of concern, promote mutual understanding of the respective export control systems, and enhance future cooperation. By the end of the year, at the twelfth annual JCCT meeting, the United States and China agreed to procedures for end-use visits, an expansion of Chinese end-user certificates for nonproliferation-controlled items, and an agreement to continue the technical exchanges in 1999.

Cuba

The U.S. embargo on Cuba came at a time when Cuban actions seriously threatened the stability of the Western Hemisphere, and the Cuban Government had expropriated property from U.S. citizens without compensation. Because of Cuba's support for insurgent groups that have engaged in terrorism, the Secretary of State designated it as a state sponsor of terrorism under Section 6(j) of the Act in March 1982.

The United States requires a license for the export and re-export of virtually all U.S.-origin commodities, technology, and software to Cuba. All of the export licenses approved by BXA for Cuba in FY 1998 fell into one of five major categories: (1) medicines and medical supplies, instruments, and equipment, (2) other humanitarian aid, (3) gift parcels, (4) aircraft on temporary sojourn in Cuba, and (5) items for promoting independent activities to strengthen civil society in Cuba. In Fiscal Year 1998, BXA approved 128 license applications (122 exports and 6 re-exports) worth over $544 million, a significant increase over Fiscal Year 1997 when 87 export licenses, valued at $493.4 million, were approved. Much of this increase consisted of export licenses that were issued in connection with the Pope's visit to Cuba. BXA denied four export license applications (valued at $29.2 million) in Fiscal Year 1998 and returned sixteen license applications (worth $29.4 million) without action.

More recently, the President on March 20, 1998, announced that the United States would take several steps to expand the flow of humanitarian assistance to the people of Cuba, and to help strengthen independent civil society and religious freedom in that country. In a June 12 Federal Register Notice, BXA implemented two out of three of these measures by resuming licensing of direct humanitarian flights to Cuba and streamlining procedures for the sale of medicines and medical equipment to Cuba. The third measure -- allowing family remittances of specified amounts to close relatives in Cuba-- is the Treasury Department's jurisdiction.

The resumption of direct humanitarian cargo flights enables assistance to reach the Cuban people more expeditiously at a reduced cost. The United States requires a license for all aircraft bound on such flights that do not qualify under Export Administration Regulation (EAR) License Exception AVS. BXA reviews license applications involving flights to Cuba for humanitarian reasons under a presumption of approval, and reviews applications involving aircraft flying for any other reasons on a case-by-case basis. The United States also streamlined its procedures for exporting medicines and medical equipment to Cuba, either for sale or donation, and reduced license processing time. BXA is taking steps to facilitate compliance with the on-site verification and monitoring requirement for medical sales and certain donations to Cuba. On-site monitors in Cuba can include, but are not limited to, representatives of the license applicant, religious or charitable groups, western diplomats, and international nongovernmental organizations.

Since the implementation on May 13, 1998, of a policy of expedited review of applications for medical sales, the United States has approved six such applications during

the fiscal year, at a total value of $1.9 million. This is in contrast to the 15 licenses for medical sales in the five-year period from October 1992 to May 13, 1998. Although the United States has allowed commercial medical sales to Cuba under the Cuban Democracy Act, the interests of U.S. industry in this opportunity were heightened by the onset of the new policy. BXA has also been successful in reducing the license processing times by 32 percent.

Federal Republic of Yugoslavia (including Serbia & Montenegro)

In 1998, the Department imposed new foreign policy controls on the Federal Republic of Yugoslavia (also known as the FRY or Serbia/Montenegro), in concert with the Department of State, in order to implement United Nations Security Council Resolution 1160 of March 31, 1998, prohibiting the sale or supply of certain arms-related items and the transport by U.S.-registered aircraft and vessels of such items to the FRY. The Commerce-controlled items subject to this action include shotguns, ammunition, military vehicles, equipment for the production of military explosives, bulletproof vests, night vision equipment, crime and crowd control equipment (including water cannons), and items that may be used to arm and train individuals for terrorist activities.

The new foreign policy controls that the United States imposed on exports to the Federal Republic of Yugoslavia (FRY) of "oppressive police equipment" have had very little impact on U.S. industry, at least in terms of the total volume of U.S. exports to the FRY. Most of the items subject to the new denial policy already required a license for export to the FRY. The United States has approved only one export license to the FRY since Fiscal Year 1994. The lone approval occurred in Fiscal Year 1998 and involved a transfer of technical data to a Yugoslav national employed in the United States (transactions of this sort are labeled as "deemed exports"). The United States did not reject any export license applications for the FRY during Fiscal Year 1998, nor did it return any without action.

Hong Kong

Under the Hong Kong Policy Act of 1992, the U.S. Government will continue its export licensing policies for Hong Kong that existed prior to return of Hong Kong to the control of the People's Republic of China in July of 1997 -- as long as Hong Kong maintains an effective and autonomous export control program. The Bureau of Export Administration aggressively monitors the status of Hong Kong's post-reversion export control program to ensure that it continues to be effective and autonomous from that of the People's Republic of China. By openly and vigilantly observing Hong Kong's program, BXA supports Hong Kong's efforts to maintain the separation of its export control system from that of the rest of China.

In order for Hong Kong to maintain an effective export control system, the United States has agreed to share any publicly-releasable list or procedure changes adopted by the

nonproliferation regimes (Australia Group, Nuclear Suppliers Group, Missile Technology Control Regime) and the Wassenaar Arrangement. In return, Hong Kong has agreed to implement all appropriate regime changes made known to it.

The export control monitoring capabilities of BXA employees in Hong Kong -- statistical analysis, safeguards visits, and other conventional means -- were greatly enhanced by an Agreed Minute on Strategic Commodities Trade Controls signed by Secretary Daley and his Hong Kong counterpart, Secretary for Trade and Industry Denise Yue, in October 1997. The Agreed Minute calls for semiannual meetings, the first of which occurred in Hong Kong in January 1998, and the second in Washington, D.C., in July 1998. These regular meetings enable BXA to recommend an appropriate policy response to any changes in Hong Kong's system or practices.

India/Pakistan

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

BXA staff also participated in a State Department-led delegation that visited India in November 1998. The goal of the bilateral discussions was to urge India to adopt the guidelines and export control lists of the various international nonproliferation regimes. The meetings were largely informational in nature due to the lengthy descriptions by delegation members of each country's export control systems. India expressed its commitment to nonproliferation; however, it stated that it was not anxious to join the international regimes which it described as both discriminatory and arbitrary. The U.S. and Indian delegations agreed to meet again early in 1999 to continue the discussions.

Newly Independent States

Several foreign nations received export licensing and control list development assistance during 1998. STFPC provided staff experts to brief visiting delegations on export control practices, procedures, and application handling for dual-use products.

Armenia

Armenian export control officials participated in a technical workshop on export licensing in Washington, D.C., from October 19-23, 1998. The workshop was designed to assist senior managers who have the responsibilities for export license decision making and application processing. The program included briefings on the interagency review process, dispute resolution, export clearance, current issues facing export licensing systems, and the important link between effective export control licensing and enforcement.

Baltics

Senior licensing officials from Latvia, Lithuania, and Estonia visited the Department for briefings on the U.S. export control system on March 30, 1998.

Hungary

A group of Hungarian export licensing officials visited Washington on November 2-6, 1998, for a technical exchange workshop on export licensing system standards, procedures, and practices..

Kazakhstan

A senior government delegation participated in a program in Washington on the further development of Kazahkstan's export control system from September 21-25, 1998. The delegation also met with officials in the Departments of State, Energy, and Defense, and the U.S. Customs Service.

Slovak Republic

Export licensing officials from the Slovak Republic attended an export control licensing workshop from May 18-22, 1998 in Washington, D.C. This technical exchange on export licensing was designed for senior-level export control experts who are engaged in licensing administration. The program considered the interagency review process, dispute resolution, export clearance, and current issues facing the export licensing system.

North Korea

Although the United States has an embargo against North Korea, BXA approved, with the support of the Departments of State and Defense, exports in support of humanitarian aid to famine and flood victims. The total number of export license applications that the United States has approved for North Korea increased significantly after the signing of the U.S.-North Korean Agreed Framework in October 1994, however these licenses were predominately for food and other humanitarian items. In Fiscal Year 1998, BXA approved 43 licenses (totaling $129.1 million) for exports to North Korea, only slightly less than the

number for Fiscal Year 1997. BXA rejected two applications (totaling $4.9 million) in Fiscal Year 1998 and returned 15 applications (valued at $1.6 billion) without action.

Sudan

On November 3, 1997, President Clinton signed Executive Order 13067, which imposed an embargo on Sudan, effective November 4, 1997. This Executive Order expands existing prohibitions instituted since the Secretary of State designated Sudan as a state sponsor of international terrorism. These sanctions block Sudanese assets in the United States, and prohibit, *inter alia,* the export to Sudan of virtually all goods, technology, or services from the United States, and the facilitation by any U.S. person of the export or re-export of goods, technology or services to Sudan from any destination. The Department of the Treasury's Office of Foreign Assets Control (OFAC) implements the Executive Order.

U.S. exports to Sudan did not change significantly with the designation of Sudan as a terrorist state in 1993 because U.S. exports to Sudan were generally low-technology items not subject to U.S. export controls. The imposition of the November 3, 1997, embargo, however, extended controls to low technology items, which have traditionally made up the bulk of U.S. exports to Sudan. In Fiscal Year 1998, BXA denied one export license application for aircraft parts and components (valued at $500,000), and returned ten applications (valued at $23,364,082) without action.