RECORD OF COMMENTS: EFFECTS OF FOREIGN POLICY BASED CONTROLS (DUE NOVEMBER 30, 2001)

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FOIA

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November 15, 2001

U. S Department of Commerce
Regulatory Policy Division
Bureau of Export Administration
P.O. Box 273
Washington, D. C. 20044

Attn: Ms Sheila Quarterman

In re: 15 CFR Chapter VII
Effects of Foreign Policy-Based Export Controls
Action: Comments

Dear Ms. Quarterman:

We are thankful for the opportunity to provide comments concerning the extension or revision of the existing foreign policy controls for another year.

Not having first hand knowledge of the impact of existing controls on all the equipment that comes under Category 2 of the Commerce Control List, Supplement No. 1 to Part 774, our company then specifically requests the deletion of ECCN 2B350i from Category 2.

There are two main reasons for our request:

- All of our products are already widely available from other countries, so these controls do not really accomplish anything; they simply put US exporters like us at a significant disadvantage.
- Our company focus is on established customers whose products and customer base are dedicated to serve commercial/civilian markets and applications, furthermore, in the past 10 years that this policy has been in effect, without exception, all license applications were granted to us; as a matter of fact, in the past 20 months alone, we applied for and were granted the corresponding licenses for nearly 2 million dollars worth of pumps destined to CB3 countries.

We believe therefore that continuing to include ECCN 2B350i in Category 2, will not achieve the intended foreign policy purpose, but rather continue to adversely impact our competitive position in Export markets that are critical to our growth.

As Goulds Pumps is a foremost supplier of pumps to the Chemical Industry, the impact of continuing ECCN 2B350i will remain substantial; evidence of this is in the fact that for the past 10 years, we have had to absorb costs associated with license application and maintenance, and this has only worsened our already challenged financial position resulting from a shrinking world economy, and to make matters worse, these foreign policy - based export controls are keeping us from being able to participate in the very active short lead-time business that requires that we ship "pumps" in 4 to 6 weeks, which is obviously impossible given the very dilated process of obtaining a license which can and often takes in excess of 10 weeks.

We can not speak for our entire industry but being one of the largest pump companies in the world, we are confident that all US pump manufacturers will echo our concerns and support our request.

Thank you for your consideration of our request and comments. Please feel free to contact us if you or your office require further information.

Respectfully submitted,

Enrique A. Murillo
Empowered Official
IPG-Compliance Group

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November 20, 2001

Ms. Sheila Quarterman
Regulatory Policy Division
Bureau of Export Administration
U.S. Department of Commerce
P.O.Box 273
Washington DC 20044

Re: Effects of Foreign Policy-Based Export Controls, 66 Fed. Reg. 56260 (November 7, 2001)

Dear Ms. Quarterman:

Specific questionable foreign policy-based export controls administered by the Department of Commerce follow:

Total embargoes

Continuation of the long-standing embargo of Cuba serves no credible U.S. national interest. At the very least the governing law should be revised to remove restrictions on financing of otherwise recently liberalized controls on commercial export of agricultural commodities.

The embargo of Iraq should be replaced by the imposition of "smart" selective export controls because of lack of international support for broader controls. These would logically be no more extensive than present controls on export to North Korea. Given recent developments in United States-Russian relations, perhaps agreement can now be reached with Russia on "smart" sanctions. If not, continued lack of Russian agreement on non-export-related elements of U.S. proposals for "smart" sanctions should not stop the revision of unilateral U.S. export controls.

Unilateral U.S. embargoes of Iran, Libya, and Sudan could reasonably be reduced to controls based on terrorism concerns, especially given cooperation of those countries in current U.S. anti-terrorism efforts.

Eligibility for License Exceptions to Iran and Sudan should be specified in the EAR See Enclosure 1 for details.

Questions concerning Commerce vs. Treasury jurisdiction of Iran and Sudan embargoes should be resolved. See Enclosure 2 for details.

Also see below re Cuba, Iran, and Sudan terrorism controls.

Terrorism

There is little, if any, justification for continued designation of Cuba and North Korea as terrorist-support countries.

As stated in the EAR, many of the items controlled by Commerce only for anti-terrorism reasons to Iran, North Korea, Sudan, and Syria are authorized by neither EAA section 6(j) nor EAA section 6(a) and others stated to be controlled in part 742 do not appear on the Commerce Control List. Inconsistencies and unauthorized controls should be removed. See Enclosure 3 for details.

Regional stability

It is illogical to control items to our allies because of regional stability considerations. RS Column 1 should be changed to RS Column 2 for the portions of ECCNs 6A002, 6A003, 6E001, 6E002, 7D001, 7E001, 7E002, and 7E 10 1 now controlled for regional stability reasons.

Non-proliferation "catch-all" controls

Controls on all items subject to the EAR (even including paper clips!) if destined for nuclear, CBW, or missile end-uses or end-users of concern are obviously broader than justified. Such "catch-all" controls should be replaced by a selective list of relevant items. Existing ECCNs, as expanded last year to include xx999 items, controlled only to North Korea and to countries subject to total embargoes, now cover all items of relevance so far identified.

Sincerely yours,

William A. Root

William A. Root

Enclosure 1

License Exceptions to Iran and Sudan

740.1(a) of the EAR limits license exceptions to embargoed countries to those specified in part 746; but 746 is silent on the subject of license exceptions to Iran and Sudan.

742.8(b)(1) notes that the Iran-Iraq Arms Non-Proliferation Act of 1992 requires denial of licenses for items controlled to Iran for national security or foreign policy reasons absent contract sanctity or a Presidential waiver. However, 15 CFR 746.3(a)(1) and 31 CFR 575.507(a)(1) now authorize some OFAC license exceptions to Iraq and 31 CFR 560.205(b), .210(a-d), .420, .506-.512, .519, .523(b), .524, and .525 authorize many OFAC license exceptions to Iran. So this legislation apparently does not prohibit license exceptions to these Iran and Iraq.

The lack of BXA license exceptions to Iran and Sudan is completely or largely academic as long as OFAC controls to Iran and Sudan continue. However, in anticipation that OFAC controls will be reduced at some future time, it is recommended that part 746 of the EAR be revised to specify license exceptions from BXA jurisdiction to Iran and Sudan as is now done for Cuba, Iraq, and Libya.

License exceptions recommended to be specified in part 746 as eligible to Iran and Sudan:

- TMP news media (15 CFR 740.9(a)(2)(viii) and 746.2 and .4 authorities to Cuba and Libya; 31 CFR 560.210(c,d) and 538.21 l(e) related OFAC authorities for informational materials and travel transactions to Iran and Sudan);
- TMP from Canada through the United States (15 CFR 740.9(b)(1)(iv) authority "to any foreign destination"; 746.2 authority to Cuba);
- RPL parts (15 CFR 740.1 0(a)(3)(iv) implication from exclusion for aircraft replacement parts to Iran and other embargoed countries that otherwise eligible parts are authorized to these countries, as is done in 746.2 and .4 to Cuba and Libya);
- GOV international safeguards (15 CFR 740.1 1(a)(1)(iii) "Commodities consigned to IAEA or Euratom may be reexported to any country . .. ". 746.2, .3, and .4 authorities to Cuba, Iraq, and Libya);
- GOV items for personal or official use by personnel and agencies of the U.S. Government (15 CFR 740.1 1(b)(2)(i, ii) no destination restrictions; 746.2, .3, and .4 authorities to Cuba, Iraq, and Libya; 31 CFR 560.521 and .524 and 538.211(d), .516 and .518 related OFAC authorities to Iran and Sudan);
- GOV Chemical Weapons Convention (15 CFR 740.1 l(c) no destination restriction on reexports by OPCW, provided OPCW maintains "effective control"; 746.2, .3, and .4 authorities to Cuba, Iraq, and Libya);
- GFT gift parcels (15 CFR 740.12(a)(1) authority to donees "located in any destination"; 746.2 and .4 authorities to Cuba and Libya; 31 CFR 560.507 OFAC authority to Iran);
- GFT humanitarian donations (15 CFR 740.12(b) no destination restrictions except certain

medical items to Cuba; 746.2 and .4 authorities to Cuba (otherwise) and to Libya; 31 CFR 560.210(b) and 538.205 OFAC authorities to Iran and Sudan);
TSU operation technology and software (15 CFR 740.13(a)(2)(ii) authority "to any destination"; 746.2 and .4 authorities to Cuba and Libya);
TSU sales technology (15 CFR 740.13(b)(2)(ii) authority "to any destination"; 746.2 and .4 authorities to Cuba and Libya);
TSU software updates (15 CFR 740.13(c) authority "to any destination to which the software for which they are required has been legally exported or reexported"); 746.2 and .4 authorities to Cuba and Libya);
BAG (15 CFR 740.14(a) authority "to any destination"; 746.2, .3, and .4 authorities to Cuba, Iraq, and Libya; 31 CFR 560.210(d), .507, and .524 and 538.511 and .518 OFAC authorities to Iran and Sudan);
AVS (15 CFR 740.15 implication from numerous proscriptions for terrorist-supporting countries that otherwise eligible transactions are authorized to these countries, as is done at least in part in 746.2 and .4 to Cuba and Lihya);
APR spare parts accompanying foreign-made products that incorporate U.S.-origin components (15 CFR 740.16(h) no destination restriction; 746.2 and .4 authorities to Cuba and Libya; 3 1 CFR 560.5 11 and 538.507 related OFAC authorities to Iran and Sudan).

Enclosure 2

OFAC vs. BXA Jurisdiction re Iran and Sudan

Iran

EAR 746.7(a)(l) directs an exporter to consult with OFAC for authorization:

(i) to export from the United States to Iran; or

(ii) if you are a U.S. person, to export or reexport from a third country to Iran; or

(iii) to reexport to Iran U.S.-origin items that were subject to any export license application requirement prior to May 6, 1995.

OFAC's Iranian Transactions Regulations are broader than as stated in the EAR. They also prohibit unless authorized by OFAC:

exports from the United States, reexports by a U.S. person, or reexports of U. S.-origin by other than a U.S. person if subject to a license requirement of another agency prior to May 6, 1995, to any country for the Government of Iran 31 CFR 560.204(a) and 205(a);

exports to Iran or to the Government of Iran of services as well as goods and technology 31 CFR 560.410;

exports to any country for the production of, or commingling with or incorporation into, goods, technology, or services to be reexported exclusively or predominantly to Iran 31 CFR 560.204(b);

brokering services related to prohibited exports or reexports 31 CFR 560.416;

release of technology or software in the United States or by a U.S. person wherever located if known to be intended for Iran or the Government of Iran (Iranians normally in Iran may be employed by a U.S. person only if authorized by a U.S. visa) 3 1 CFR 560.401 and 419;

financial transactions.

746.7(a)(2) states a BXA license requirement under the EAR to

(i) export to Iran specified items on the CCL; or

(ii) reexport to Iran a slightly shorter list of specified items on the CCL; or

(iii) export or reexport items subject to the general prohibitions, including proliferation end-use prohibitions.

746.7 introductory paragraph states that the OFAC-administered embargo against Iran includes transactions dealing with items subject to the EAR and that no person may export or reexport items subject to both the EAR and OFAC's Iranian Transactions Regulations without prior OFAC authorization. However, this paragraph also states that BXA continues to maintain licensing requirements on exports and reexports as described in (a)(2). There is no apparent reason for this, given the statement in 742.8(a)(5) that OFAC authorization constitutes authorization under the EAR and given the extent of OFAC-BXA concurrent jurisdiction.

It is recommended that
742.8(a)(5) be moved to follow the directly related sentence in 746.7 introductory paragraph, especially since it applies to all EAR Iranian controls whereas 742.8 concerns only anti-terrorism controls; and
the 746.7 statement that BXA continues to maintain licensing requirements either be deleted or be modified by something along the lines of "to the extent these are not subject to OFAC jurisdiction."

BXA license requirements for exports to Iran set forth in 746.7(a)(2)(i) are completely over-lapped by the broader OFAC authorization requirements for exports to Iran.

BXA license requirements for reexports to Iran set forth in 746.7(a)(2)(ii) are also completely overlapped by OFAC authorization requirements for reexports to Iran, unless there have been new EAR controls on reexports to Iran of U.S.-origin since May 6, 1995. No such new controls come to mind. The only recalled Iranian changes on the CCL since that date have been transfers from Wassenaar items to AT-only items when Wassenaar has reduced coverage. Such transfers simply continue the old Iran coverage under different ECCNs. Therefore, the May 6, 1995, date means in substance that the Iranian embargo on reexports by other than U.S. persons applies only to U.S.-origin ECCNs specified in the EAR as controlled to Iran. It is highly unlikely that either Government agencies or exporters maintain two separate sets of books, one as of prior to May 6, 1995, and the other as of the current date. It would therefore be desirable for OFAC to delete its controls on U.S.-origin reexports by other than U.S. persons, in effect deferring to BXA to control such reexports as specified in 746.7(a)(2)(ii) and (iii). In the meantime, it appears that any exercise of BXA jurisdiction under (a)(2)(ii) would duplicate OFAC controls.

BXA license requirements for exports or reexports pursuant to proliferation end-use prohiiitions as set forth in (a)(2)(iii) are probably also completely overlapped by OFAC authorization requirements for exports or reexports of all goods, technology, and services; for exports from third countries by U.S. persons; and for brokering services and financial transactions.

In summary, there appears to be no type of Iranian transaction under BXA jurisdiction which is not also under OFAC jurisdiction. It is recommended that the EAR be revised to recognize this; or, if there is some type of transaction intended to be under BXA rather than OFAC jurisdiction, this be identified in both OFAC and BXA regulations.

Sudan

OFAC administers a complete embargo on exports and reexports to Sudan. BXA anti-terrorism and part 744 end-use and end-user controls overlap these OFAC controls. Neither agency provides any guidance as to which agency has priority in this broad area of concurrent jurisdiction.

The OFAC authorization of reexports to Sudan by non-U.S. persons of U.S.-origin items not subject to export license application requirements under other U.S. regulations provides no **clarification,** because Commerce controls of such reexports are "under other U.S. regulations," *i.e.,* the EAR is a regulation other than the OFAC regulation. OFAC notes that such reexports of items classified EAR99 under the EAR may require Commerce authorization. This would be the case for EAR part 744 controls. But under Treasury regulations an OFAC authorization would also be required.

It is recommended that OFAC and BXA regulations be revised to specify only one agency as having jurisdiction for each type of control on exports and reexports to Sudan.

Enclosure 3

Items Subject to BXA Anti-Terrorism Controls to Iran, North Korea, Sudan, and Syria

There are major differences among the numerous EAR descriptions as to which items are subject to BXA anti-terrorism controls to Iran, North Korea, Sudan and Syria control. Some items described in 742 Supplement 2(c)(6-44) as controlled pursuant to EAA section 6(a) are not included in any ECCN on the CCL and are, therefore, classified EAR99. Many others which are described in ECCNs on the CCL as controlled only for AT reasons are omitted from lists controlled pursuant to either section 6(a) or section 6(j) of the EAA, so that it appears from the EAR that there is no statutory authority for their control.

It is recommended that the EAR be revised to remove statements constituting EAR99 controls to Iran, North Korea, Sudan, and Syria and that AT-only items having no EAR-stated statutory authority for control be deleted, especially since the basis for their being added to the CCL in the first place was unrelated to any anti-terrorismjustification.

There are many inconsistencies or ambiguities in EAR references to license requirements for export or reexport to Iran, North Korea, Sudan, and Syria.

The only place in the EAR which purports to be a complete statement of license requiremnts to these four countries is 746.7(a)(2), which applies only to Iran and is incorrect or misleading in several respects:

746.7(a)(2)(i) states "A license is required under the EAR: To export to Iran any item on the CCL containing (various notations) in the Country Chart Column of the License Requirements section of an ECCN." There is an element of circularity in the following statement on the Iran line of the Country Chart "See part 746 of the EAR to determine whether a license is required in order to export or reexport to this destination."

It is recommended that the Iran statement in the Country Chart be replaced with an "X" in each Column except Firearms Convention, as is done for North Korea.

The list in 746.7(a)(2)(i) of additional ECCNs requiring a license for export to Iran includes all but one short supply item

It is recommended that lC988 be added.

That list includes one CC item not controlled pursuant to the Country Chart (OA983) but omits three others.

It is recommended that 0A982, 0A985, and 0E982 be added.

That list omits four AT items controlled explicitly to Iran but not pursuant to the Country Chart. Three of these four are listed in 742.8(a)(1) as controlled to Iran.

It is recommended that lC995. 2A994, 2D994, and 2E994 be added to 746.7(a)(2)(i); lC995 be added to 742.8(a)(l); and all four ECCNs be added to the AT reexport license requirement in 742.8(a)(2).

The list of ECCNs excepted from reexport controls to Iran in 746.7(a)(2)(ii) omits short supply items, for which a license is required for reexport per 754.1(c) "only if such a

requirement is specifically set forth in this part or is set forth on the license authorizing the export from the United States."

It is recommended that the following be added to the 746.7(a)(2)(ii) list of ECCNs excepted from reexport controls to Iran: 0A980, 1C980, 1C981, lC982, lC983, lC984, and lC988 provided that no reexport license requirement is set forth on the license authorizing the export from the United States (there is no reexport license requirement set forth anywhere in part 754).

742.8(a)(4)(i) and (ii), 742.9(a)(3)(i) and (ii), 742.10(a)(4)(i) and (ii), 742.19(a)(3)(i) and (ii), and 742 Supplement 2(c)(1-5) and 2(c)(6-44) describe items controlled to Iran, Syria, Sudan, or North Korea under either EAA section 6(j) or EAA section 6(a), respectively, for anti-terrorism reasons. Many 2(c)(6-44) descriptions include coverage not found in any ECCN, *i.e.*, classified EAR99. There is also substantial coverage in AT-only ECCNs not described in Supplement 2(c)(6-44), despite the lack of any stated EAA authority therefor. Differences between 742 Supplement 2(c)(6-44) descriptions and AT ECCNs on the CCL are as follows:

2(c)	ECCN	Comment
6	9A991.a-d	6 covers all aircraft, helicopters, engines, and related spare parts and components; 9A991.a-b cover all non-USML aircraft (a term which includes helicopters), 9A99l.c covers aero gas turbine engines and specially designed parts therefor, 9A991 .d covers aircraft parts and components. Therefore, 6 engines other than gas turbine engines are EAR99 and 9A991 parts and components other than related spare parts and components are not authorized by EAA sections 6(a) or 6(j).
7	9A990.c	7 covers heavy duty on-highway tractors; 9A99O.c covers on-highway tractors with single or tandem rear axles rated for 9 mt per axle (20,000 lbs.) or greater and specially designed parts. Therefore, 7 tractors not meeting 9A99O.c specifications are EAR99 and 9A990.c parts are not authorized by EAA sections 6(a) or 6(j).
8	9A990.b	8 and 9A990.b both cover off-highway wheel tractors of carriage capacity 9t (10 tons) or more; 9A990.b also covers parts and accessories. Therefore, 9A990.b parts and accessories are not authorized by EAA sections 6(a) or 6(j).
9	9A990.a	9 covers large diesel engines (greater than 400 horsepower) and parts to power tank transporters; 9A990.a covers diesel engines for trucks, tractors, and automotive applications of continuous brake horsepower of 400 BHP (298 kW) or greater (performance based on SAE J1349 standard conditions of 10 Kpa and 25"). Therefore, engines meeting 9 but not not 9A990.a specifications are EAR99 and engines meeting 9A990.a but not 9 specifications are not authorized by EAA sections 6(a) or 6(j).
10	5A992.b	10 and 5A992.b both cover cryptographic, cryptoanalytic, and cryptologic equipment; 5A992.b also covers other information security equipment and components. Therefore, 5A992.b other equipment and components are not

		authorized by EAA sections 6(a) or 6(j).
11	6A998	11 covers radar equipment; 6A998 covers airborne radar equipment and specially designed components therefor. Therefore, 11 radar equipment other than airborne is EAR99 and 6A998 components are not authorized by EAA sections 6(a) or 6(j).
l-l	7A994	11 covers navigation and direction finding equipment; 7A994 covers navigation direction finding equipment, inertial navigation systems, including parts and components. Therefore, 11 direction finding equipment which is not navigation and navigation equipment which is neither direction finding nor inertial is EAR99 and 7A994 parts and components are not authorized by EAA sections 6(a) or 6(j).
12	3B992	12 covers electronic test equipment; 3B992 covers equipment for testing only specified electronic items but also covers specially designed components and accessories for such equipment. Therefore, 12 equipment for testing equipment not specified in 3B992 is EAR99 and 3B992 components and accessories are not authorized by EAA sections 6(a) or 6(j).
13	5A991.g	13 and 5A991.g both cover mobile communications equipment; 5A991.g also covers assemblies and components therefor. Therefore, 5A991.g assemblies and components are not authorized by EAA sections 6(a) or 6(j).
14	6A991	14 covers acoustic underwater detection equipment; 6A991 covers marine or terrestrial acoustic equipment capable of detecting or locating underwater objects or features or positioning surface vessels or underwater vehicles and specially designed components. Therefore, 14 equipment not having 6A99 1 capabilities is EAR99 and 6A99 1 equipment for other than underwater detection and components are not authorized by EAA sections 6(a) or 6(j).
15	2A994	15 covers portable electric power generators; 2A994 covers portable electric generators and specially designed parts. Therefore 2A994 generators which are not "power" generators and 2A994 parts are not authorized by EAA sections 6(a) or 6(j).
16	8A992.f	16 covers vessels and boats, including inflatable boats; 8A992.f covers boats including inflatable boats and specially designed components therefor and 8A992 heading covers specially designed parts therefor. Therefore 16 vessels are EAR99 and 8A992.f components and parts are not authorized by EAA sections 6(a) or 6(j).
17	8A992.g	17 and 8A992.g both cover marine and submarine engines; 8A992.g also covers specially designed parts therefor. Therefore, 8A992.g parts are not authorized by EAA sections 6(a) or 6(j).
18	8A992.a-d	18 covers underwater photographic equipment; 8A992.a covers specified types of underwater television systems, 8A992.b covers photographic still cameras specially designed or modified for underwater use, 8A992.c

		covers stroboscopic light systems specially designed for underwater use, 8A992.d covers other underwater camera equipment, and 8A992 heading covers specially designed parts therefor. Therefore, 18 photographic equipment not specified in 8A992.a-c nor regarded as 8A992.d camera equipment is EAR99 and 8A992.c stroboscopic light systems not regarded as photographic equipment and 8A992 parts are not authorized by EAA sections 6(a) or 6(j).
19	8A992.e	19 and 8A992.e both cover submersible systems; 8A992 heading covers specially designed parts therefor. Therefore, 8A992 parts are not authorized by EAA sections 6(a) or 6(j).
20	8A992.h	20 covers scuba gear and related equipment; 8A992.h covers underwater breathing equipment (scuba gear) and related equipment and 8A992 heading covers specially designed parts therefor. Therefore, underwater breathing equipment not regarded as scuba gear and 8A992 parts are not authorized by EAA sections 6(a) or 6(j).
21	9A991.e	Both 21 and 9A991.e cover pressurized aircraft breathing equipment; 9A991.e also covers specially designed parts therefor. Therefore, 9A991.e parts are not authorized by EAA sections 6(a) or 6(j).
22	2B991.c & .d	22 covers computer numerically controlled machine tools; 2B991.c & .d cover such tools meeting specified technical conditions. Therefore, 22 tools not meeting 2B991 conditions are EAR99.
23	9B990	23 and 9B990 both cover vibration test equipment; 9B990 also covers specially designed parts and components. Therefore, 9B990 parts and components are not authorized by EAA sections 6(a) or 6(j).
24	4A994	24 covers digital computers with a CTP of 6 (no unit specified) or above, assemblies, related equipment; 4A994.b covers digital computers with a CTP of 6 Mtops or greater and specially designed components therefor. 4A994.a covers computers, related equipment, and "electronic assemblies" rated for a specified temperature and specially designed components therefor. 4A994.c-g cover other "electronic assemblies" and related equipment exceeding specified technical thresholds and specially designed components therefor. Therefore, 24 computers with a CTP between 6 and 6 Mtops and 24 assemblies and related equipment not described in 4A994 are EAR 99 and 4A994.a computers and 4A994 components are not authorized by EAA sections 6(a) or 6(j).
24	4B994	24 covers equipment for development or production of magnetic and optical storage equipment; 4B994 covers only such equipment meeting specified technical conditions. Therefore, 24 equipment not described in 4B994 is EAR99.
24	4C994	24 covers materials for fabrication of head/disk assemblies; 4C994 covers materials specially formulated for and required for the fabrication of head/disk assemblies for controlled magnetic and magnetic-optical hard disk drives. Therefore, 24 materials not controlled by 4C994 are EAR99.

25(A) 5A991 .h	25(A) covers radio relay systems or equipment operating at a frequency equal to or greater than 19.7 GHz; 5A99 1 .h covers radio relay communications equipment designed for use at frequencies equal to or greater than 19.7 GHz and assemblies and components therefor. Therefore, 25(A) systems or equipment not regarded as communications equipment or operating at but not designed for use at greater than 19.7 Ghz are EAR99 and 5A991 .h designed for use at but not operating at such frequencies and 5A99 1 .h assemblies and components are not authorized by EAA sections 6(a) or 6(j).
25(A) 5A99 1 .b.7.c	25(A) covers radio relay systems or equipment operating at "spectral efficiency" greater than 3 bit/s/Hz; 5A991.b.7.c covers telecommunications transmission equipment and systems employing digital modulation techniques other than quadrature amplitude modulation (QAM) controlled by b.7.a or b.7.b having a "spectral efficiency" exceeding 3 bit/sec/Hz and specially designed components and accessories therefor but excluding equipment specially designed to be integrated and operated in any satellite system for civil use and excluding radio relay equipment for operation in an ITU allocated band not exceeding 960 MHz or "total digital transfer rate" not exceeding 8.5 Mbit/s and "spectral efficiency" not exceeding 4 bit/sec/Hz. Therefore, 25(A) QAM systems or equipment not controlled by 5A99l.b.7.a or b.7.b and 25(A) non-QAM systems or equipment excluded from 5A99l.b.7.c are EAR99 and 5A99l.b.7.a and b.7.b not meeting 25(A) specifications and 5A991.b.7 components and accessories are not authorized by EAA sections 6(a) or 6(j).
25(B) 5A991.b.5.a	25(B) covers fiber optic systems or equipment operating at a wavelength greater than 1000 nm; 5A991.b.5.a covers telecommunications transmission equipment and systems employing a "laser" and having a transmission wavelength exceeding 1,000 nm and specially designed components and accessories therefor. Therefore, 25(B) systems or equipment not regarded as telecommunications transmission or not employing a "laser" or operating at a wavelength greater than 1000 nm but not "having" (assuming 'having" interpreted as designed for) a transmission wavelength exceeding 1,000 nm system are EAR99 and 5A991.b.5.a systems or equipment not regarded as fiber optic and 5A99 1 .b.5.a components and accessories are not authorized by EAA sections 6(a) or 6(j).
25(C) 5A991.b.l	25(C) covers "telecommunications transmission systems" (the term defined in 5A99 1. b is "telecommunications transmission equipment") or equipment with a "digital transfer rate" at the highest multiplex level exceeding 45 Mb/s; 5A99 1 .b. 1 covers telecommunications transmission equipment or systems designed to operate at a "digital transfer rate" at the highest multiplex level exceeding 45 Mbit/s or a 'total digital transfer rate" exceeding 90 Mbit/s and specially designed components and accessories

		therefor excluding equipment specially designed to be integrated and operated in any satellite system for civil use. Therefore, 25(C) systems or equipment "with" (assuming "with" interpreted as operating at) the specified "digital transfer rate" but not designed to operate at that rate and 25(C) equipment specifically excluded from **5A991.b**. 1 are EAR99 and **5A991**.b. 1 with a "digital transfer rate" less than 45 Mbit/s but a "total digital transfer rate" exceeding 90 Mbit/s and **5A991**.b. 1 components and accessories are not authorized by EAA sections 6(a) or 6(j).
26(i)	3A991.a	26(i) covers microprocessors operating at a clock speed over 25 MHz; **3A99** 1 .a covers "microprocessor microcircuits", "microcomputer microcircuits", and microcontroller microcircuits having a clock frequency exceeding 25 MHz. Therefore, 26(i) microprocessors not meeting the definition of "microprocessor microcircuits" or "operating" at a clock speed over 25 MHz but not "having" (assuming "having" is interpreted as designed for) a clock **frequency** exceeding 25 MHz are EAR99 and 3A991.a "microcomputer microcircuits" and microcontroller microcircuits are not authorized by EM sections 6(a) or 6(j).
26(ii)	3A991.a	**26(ii)** covers microprocessors with a CTP of 550 mtops or above; **3A991** License Requirement Notes state "Microprocessors with a CTP below 550 MTOPS listed in paragraph (a) of this entry may be shipped NLR (No License Required) to North Korea, provided restrictions set forth in other sections of the EAR (e.g., end-use restrictions) do not apply." For the text of "paragraph (a) of this entry" see the above comment on 26(i). Therefore, **26(ii)** is apparently a subset of 26(i). The omission of an entry for Iran for **26(ii)** could be construed, perhaps unintentionally, to mean that the portion of 26(i) covered by **26(ii)** is not controlled to Iran. The "will generally be denied" **26(ii)** licensing policy for North Korea is inconsistent with the **3A991** License Requirement Notes.
27	3B991	27 covers semiconductor manufacturing equipment described in **3B001** and **3B991**. **3B001** is also covered by 742 Supplement 2(c)(l), so that the EAR provides that this ECCN is authorized by EAA section **6(j)** as well as by EAA section 6(a).
28	3D003	28 covers software specially designed for the computer-aided design and manufacture of integrated circuits; **3D003** covers computer-aided-design software designed for integrated circuits meeting any of three technical conditions. **3D003** is covered by 2(c)(l). Therefore, 28 software for manufacture rather than design and for design if not meeting any **3D003** technical condition is EAR99.
29	5A991.c.10	29 covers packet switch equipment described in **5A991.c**.
30	6D993	30 covers specially designed software for air traffic control applications that uses any digital signal processing techniques for automatic target tracking or that has a facility for electronic tracking; **6D993** covers ATC software application programs hosted on general purpose computers

		located at ATC centers and capable of automatically handing over primary radar target data (if not correlated with secondary surveillance radar data) from the host ATC center to another ATC center. Therefore, 30 software not meeting 6D993 specifications is EAR99 and 6D993 software not meeting 30 specifications is not authorized by EAA sections 6(a) or 6(j).
31	6A997	3 1 and 6A997 both cover gravity meters having static accuracy of less (better) than 100 microgal, or gravity meters of the quartz element (worden) type; but 6A997 is limited to gravity meters for ground use. Therefore, 31 gravity meters for other than ground use are EAR99.
32	6A996	32 and 6A996 cover the same type of magnetometers.
33	lC006.d	33 covers fluorocarbon compounds described in lC006.d for cooling fluids for radar. 1C006 is covered by 742 Supplement 2(c)(1). Therefore, lC006.d is authorized by both EAA section 6(a) and EAA section 6(j).
34	1C210	34 covers fibers described in 1C210. 1C210 is covered by 742 Supplement 2(c)(4). 34 incorrectly refers to (c)(1). Therefore, 1C006.d is authorized by both EAA section 6(a) and EAA section 6(j) but the contract sanctity dates given in 34 are incorrect.
35	2B993	35 covers machines described in 2B003 and 2B993 for cutting gears up to 1.25 meters in diameter (2B003 is covered by 742 Supplement 2(c)(l)). Therefore, 2B993 machines not for cutting gears up to 1.25 meters in diameter are not authorized by EAA sections 6(a) or 6(j).
36		36 covers aircraft skin and spar milling machines; there is no comparable ECCN. Therefore, 36 is EAR99.
37	2B996	37 covers manual dimensional inspection machines described in ECCN 2B996; 2B996 covers dimensional inspection or measuring systems or equipment. Therefore, 2B996 non-manual inspection machines and manual or non-manual measuring machines are not authorized by EAA sections 6(a) or 6(j).
38	2B997	38 and 2B997 both cover robots capable of employing feedback information in real time processing to generate or modify programs; 2B997 also covers robots to generate or modify numerical program data. Therefore, 2B997 robots to generate or modify numerical program data are not authorized by EAA sections 6(a) or 6(j).
39	2A993	39 covers explosive device detectors described in 2A993; 2A993 covers explosive detection systems. Therefore, 39 device detectors not part of detection systems are EAR99 and the portions of 2A993 detection systems which go beyond device detectors are not authorized by EAA sections 6(a) or 6(j).
40		Reserved
41	1E355	4 1 covers production technology controlled under 1 C35 5. However, 1C355 covers materials, not technology. 1E355 is probably intended.
42	1 C992	42 covers commercial charges and devices controlled under 1C992.
43	Reserved	

44	Numerous	44 covers specific processing equipment, materials, and software controlled under **0A999, 0B999, 0D999,** lA999, **1C999, 1D999, 2A999, 2B999, 3A999,** and **6A999**. Both 44 and these ECCNs are applicable only to North Korea.

Recapitulation

The only ECCNs applicable to Iran which match 742 Supplement **2(c)(6-44)** descriptions in every substantive respect are:

1C006.d (33)
1C210 (34)
lC992 (42)
1**C997(43)**
1E355 (41)
38991 (12)
5A991.c.10 (29)
6A996 (32)
9A991.a,b (6)

The following ECCNs cover less than the corresponding 742 Supplement 2(c) descriptions. ECCNs are generally more carefully drafted from a technical point of view than descriptions **in** other parts of the EAR Therefore, rather than broadening the following ECCNs to cover what is now 742 Supplement 2(c) EAR99 coverage, it is recommended that the descriptions in 742 Supplement 2(c) be narrowed to remove existing EAR99 coverage. 742 Supplement 2(c) citations follow the ECCN numbers in parentheses.

2A993 (39)
2B991.c,d (22)
2B997 (38)
2B (no ECCN) (36)
3A991.a (26)
3B992 (12)
3D003 (28)
4A994 (24)
4B994 (24)
4C994 (24)
5A991.b. 1 (25C)
5A991.b.5.a (25B)
5A991.b.7 (25A)
5A991.h (25A)
6A991 (14)
6A997 (3 1)

6A998 (11)
6D993 (30)
7A994 (11)
8A992.a-d (18)
8A992.f (16)
9A990.a (9)
9A990.c (7)
9A991.c (6)

The following ECCNs or parts thereof are not now described in 742 Supplement 2(c). Therefore, there is now no stated EAA authority for their control. Most AT-only ECCNs were established simply to continue coverage for AT purposes of items removed from COCOM or Wassenaar coverage, without any consideration of relevance to anti-terrorism. For this reason, rather than broadening 742 Supplement 2(c) descriptions to include these items, it is recommended that they be deleted. The 742 Supplement 2(c) citation which describes the portion of the ECCN not stated as authorized by either EAA section 6(a) or EAA section 6(j) follows the ECCN number in parentheses. If there is no such citation, the entire ECCN, or part thereof is recommended for deletion.

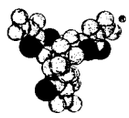
1C990
1C991
1C995
1 C996
1D993
1E994
2A993 (39)
2A994 (15)
2B991.a,b
2B992
2B993 (35)
2B996 (37)
2B997 (38)
2B998
2D991
2D992
2D994
2E991
2E994
3A991.a (26)
3A991.b-l
3A992
3B992 (12)
3C992

3D991
3E991
4A994 (24)
4D993
4D994
4E992
4E993
5A991.a
5A991.b. 1 (25C)
5A991.b.2-4
5A991.b.5.a (25B)
5A991.b.5.b-e
5A991.b.6
5A991.b.7 (25A)
5A991.b.8
5A991.c.1-9, 11-12
5A991.d-f
5A991.g (13)
5A991.h (25A)
5B991
5C991
5D991
5E991
5A992.a
5A992.b (10)
5B992
5D992
5E992
6A991 (14)
6A992
6A994
6A995
6A998 (11)
6B995
6C992
6C994
6D991
6D992
6D993 (30)
6E991
6E992
6E993
7A994 (11)

7B994
7D994
7E994
8A992.a-d (18)
8A992.e (19)
8A992.f (16)
8A992.g (17)
8A992.h (20)
8A992.i-k
8D992
8E992
9A990.a (9)
9A990.b (8)
9A99O.c (7)
9A991.c,d (6)
9A992
9B990 (23)
9B991
9D990
9D991
9E990
9E991
9E993

3.

SARTOMER



November 23, 2001

Ms. Sheila Quarterman
Regulatory Policy Division
Bureau of Export Administration
U.S. Department Of Commerce
P.O. Box 273
Washington, DC 20044

Re: Effects of Foreign Policy-Based Export Controls, 66 *Fed. Reg. 56,260* (November 7, 2001)

Dear Ms. Quarterman:

We appreciate this opportunity to provide our comments to the Bureau of Export Administration ("BXA") on the effect of existing foreign policy-based export controls. Sartomer Company ("Sartomer"), based in Exton, Pennsylvania, produces hydroxyl terminated polybutadiene resins ("HTPB resins") at our facility in Channelview, Texas. We produce two grades of HTPB, as follows:

> Commercial: Poly bd® R-45HT/R-45HTLO HTPB resins are dual-use materials and are regulated under the Export Administration Regulations (the "EAR") (Export Control Classification Number 1 C 11 lb.2) due to their use both in civilian (e.g., insulated glass sealant, electronics potting, and various adhesives) and military/aerospace (e.g., missile propellant binder) applications; and
>
> Military: Poly bd® R-45M HTPB resins are used only in military/aerospace applications and are regulated under the International Traffic in Arms Regulations (United States Munitions List, Category V).

As detailed below, we respectfully submit that foreign policy-based export controls on commercial-grade HTPB resins, as currently implemented, have an adverse economic impact on our export activities, especially inasmuch as these controls create an unfair commercial advantage for foreign producers. We believe that easing these controls is consistent with the foreign policy, national security, and economic objectives of the United States, and we provide the following information in support of our views.

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Telephone: 610-363-4100 Toll Free: 800-345-8247 Fax: 610-363-4140 Internet: www.sartomer.com

ATOFINA

BACKGROUND

In 1969, ARCO Chemical (now Sartomer Company) was the sole producer of HTPB resins in the world. Now due in large part to foreign exploitation of delays created by the implementation of U.S. export controls, there are no fewer than six major foreign producers of HTPB resins, as follows:

Producer	**country**
Petroflex, Inc.	Brazil
Kaucuk	Czech Republic
European Space Administration (Fiat Avio)	Italy
Qilu Petrochem	China
Nippon Soda	Japan
AIC	Japan

Several of these plants were built in response to denied U.S. export license applications or to avoid the lengthy delays in obtaining licenses. Moreover, Petroflex, the Brazilian producer, has sold HTPB resins in the United States for more than a decade and has at least 20% U.S. market share. It frankly surprises us that we are supporting a foreign producer with public tax dollars and that our military is depending on a foreign source for a key missile propellant component. Meanwhile, the Brazilian military/aerospace industry (e.g., Avibras) only purchases material from the domestic source (i.e., Petroflex). Consequently, Sartomer is competitively disadvantaged both abroad and domestically.

BXA CRITERIA

1. *Information on the effect offoreign policy controls on sales of U.S. products to third countries, including views offoreign purchasers or prospective customers regarding U.S. foreign policy controls.*

Because of inordinate delays created by U.S. export licensing review procedures—delays that are effectively exploited by foreign competitors-Sartomer has no sales in countries such as Brazil, India, Pakistan, China, and essentially all of the former Eastern European countries, including Russia. In other global markets, Sartomer is disadvantaged because it cannot compete effectively with foreign producers that are not similarly burdened by such extensive controls. Even longstanding foreign customers continually express frustration and impatience with Sartomer because of the delays created by these controls; delays that would not exist if these customers took their business elsewhere.

2. *Information on controls maintained by U.S. trade partners (i.e., to what extent do they have similar controls on goods and technology on a worldwide basis or to specific destinations)?*

HTPB resins are controlled primarily for missile technology reasons based on voluntary standards established and followed by the Missile Technology Control Regime (the "MTCR"), an informal, political understanding among cooperating nations to limit the proliferation of missiles and missile technology. With one exception, the foreign competitors identified above are located in MTCR Partner countries.

3. *Information on licensing policies or practices by our foreign trade partners which are similar to U.S. foreign policy controls, including license review criteria, use of conditions, requirements for pre and post shipment verifications (preferably supported by examples of approvals, denials and foreign regulations).*

Each MTCR Partner country implements the voluntary standards through its own national legislation. Information about licensing policies and practices of these countries is not readily available, but anecdotal evidence, supported by our own experience in continually losing market share and business opportunities to foreign competitors because of licensing delays, informs us that U.S. implementation of these standards is far more comprehensive, complicated, and cumbersome than the practices of other MTCR Partners.

4. *Suggestions for revisions to foreign policy controls that would (if there are any differences) bring them more into line with multilateral practice.*

5. *Comments or suggestions as to actions that would make multilateral controls more effective.*

We address these two criteria together, as we believe they are interconnected. The MTCR sets voluntary baseline standards that require implementation at the national level. On the U.S. national level, we believe that implementation of these standards requires a greater focus on controlling activities that present a high risk of diversion, and more attention to streamlining the process of approving legitimate commercial transactions with reputable end users. To this end, we offer the following broad recommendations:

. Streamlined licensing renewal process. Instead of requiring submission of an entirely new application for previously licensed transactions, we recommend adopting procedures to provide for the renewal of existing licenses, especially involving MTCR Partner countries. We believe it is possible to re-certify the bona fides of previously approved end users and end uses without triggering a *de novo* review.

- Distribution licenses. We recommend providing for the continued and increased use of multiple end user/end use licenses, which dramatically reduce paperwork both for the government and the exporter.

- License exception for samples. Under existing procedures, Sartomer must obtain an export license for even sample quantities of HTPB resin, which significantly hinders our ability to develop new business opportunities. We recommend the adoption of a licensing exception that would permit the exportation of minimal quantities of HTPB resin (e.g., 500 Ibs.) to any non-proscribed party in an MTCR Partner country.

- Broadening the MTCR "no undercut" policy. As part of the global missile technology control protocol, each MTCR Partner agrees to respect license denials issued by another-the so-called "no undercut" policy. But the disparities between national regimes lead to inequities, especially in view of cumbersome U.S. regulatory requirements, which we believe undercut U.S. economic interests. We believe that these disparities effectively provide non-U.S. Partners with an unfair commercial advantage. We recommend that the U.S. Missile Annex Review Committee ("MARC") or other appropriate government representative seek to level the competitive playing field for U.S. companies.

- Regulatory flexibility. The EAR provide BXA with inadequate flexibility to exercise administrative discretion. In contrast, U.S. sanctions rules promulgated by the Treasury Department invariably empower the Office of Foreign Assets Controls ("OFAC") to grant exceptions, depart from the letter of regulatory procedures, and take other actions when in furtherance of U.S. interests. Sartomer recently was caught in a bureaucratic "Catch-22" when it sought permission to effect a licensing transfer between corporate affiliates that was well within the spirit of the objectives of U.S. export controls, but which departed slightly from the letter of the EAR. The situation, which remains unresolved, highlights the negative impact of regulations that do not adequately account for business realities, despite the well-intended efforts of BXA officials who are confined by these inflexible provisions. We recommend that the EAR be modified to provide BXA with the authority to make executive decisions with greater administrative discretion.

- BXA delegation. Although we appreciate that missile technology controls often implicate multiple interests requiring interagency review, we believe that many categories of transactions that have previously passed muster qualify for delegation to BXA of approval authority without the need for repetitive interagency referral. Once again, we turn to the example of OFAC, which is delegated by the State Department to take licensing action on sanctions matters that have been reviewed categorically for U.S. policy concerns.

- Decontrol. In 1992, after a lengthy study, the Department of Commerce determined that foreign availability of HTPB resins exists to controlled destinations. See 57 *Fed. Reg.* 4,948 (February 11, 1992). Although we understand that the removal of national security-based controls because of foreign availability did not lift those based on foreign policy, we believe that this determination supports decontrol of HTPB resins to the extent permitted within the MTCR context. We note that the MTCR Guidelines require a "case-by-case" review of MTCR Annex items, but do not impose specific requirements on how to implement such a review. We believe that adequate flexibility exists for the U.S. government to grant a licensing exception contingent upon prior notification by the exporter, or some other framework that would permit streamlined authorization for the exportation of HTPB resins for recognized commercial end uses by established end users.

6. *Information that illustrates the effect offoreign policy controls on the trade or acquisitions by intended targets of the controls.*

As a former Defense Department official noted during a congressional hearing on export controls:

> The export control system has tried to stay current . . . by developing ever more elaborate and complex regulations. This has occurred at the same time that the American public has demanded streamlined processes and more efficient government. As such, too much of our export control resources are devoted to licensing relatively benign transactions, diverting resources away from far more important and dangerous transactions. In demanding to put a stamp on every export transaction, then ultimately approving 99.4% of the requests, we are not really protecting our security. In fact, we're diverting resources from protecting the most important technology and products.'

We agree with this candid assessment, and believe that far too much effort and resources are focused on transactions, such as ours, that are intended for legitimate commercial uses by end users whose bona fides have been verified time and time again by the U.S. government.

Ironically, as foreign producers exploit the competitive disadvantages created by the inefficient or misplaced application of these controls, the risk increases that HTPB resins will be diverted for illegitimate purposes beyond the reach of U.S. jurisdiction. Conversely, easing the regulatory burdens faced by Sartomer and similarly situated

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[1] Statement of Dr. John J. Hamre before the Committee on Banking, Housing and Urban Affairs, United States Senate, February 14, 2001.

companies ultimately provides the government with greater oversight and control by establishing U.S. jurisdiction over more transactions that involve HTPB resins and other controlled commodities.

7. *Data or other information as to the effect offoreign policy controls on overall trade, either for individual firms or for individual industrial sectors.*

As explained above, Sartomer has lost worldwide market share, as well as innumerable specific business opportunities, because of delays and uncertainties created by the export licensing process.

8. *Suggestions as to how to measure the effect of foreign policy controls on trade.*

We believe that the current state of the economy provides as good a yardstick as any against which to measure the effect of foreign policy-based controls. Certainly, these controls, as currently implemented, are not helping U.S. businesses to compete more effectively in the world marketplace. If anything, they are achieving the opposite effect by miring U.S. businesses in unnecessary delays and red tape, while foreign companies take up the slack. Now, more than ever, U.S. businesses need the support of our government to remain competitive, and opportunities for public participation such as this are positive steps.

9. *Information on the use of foreign policy controls on targeted countries, entities, or individuals.*

A greater emphasis on more targeted restrictions is critical to ensure that foreign policy controls are more effectively implemented. Instead of devoting inordinate resources to reviewing the particulars of proposed transactions involving reputable end users and established business relationships, we believe that a greater focus needs to be placed on screening for denied persons and entities, and specially designated nationals.

CONCLUSION

The importance of preventing the proliferation of weapons of mass destruction cannot be overstated, and Sartomer takes very seriously its responsibility to exercise due diligence in its global trade activities. Indeed, Sartomer devotes considerable time, expense, and resources to rigorous export compliance, thereby ensuring that its products are used for legitimate commercial purposes by reputable customers. But Sartomer has been hamstrung by a regulatory regime that, with all due respect, emphasizes form over substance, and hobbles our ability to compete effectively in the global marketplace.

We believe that a strong economy is the backbone of a safe and secure country, and we respectfully submit that a greater emphasis should be placed on easing the regulatory burdens faced by companies such as Sartomer. We believe that these burdens can be alleviated without sacrificing our foreign policy and national security objectives.

In fact, we believe that promoting U.S. exports actually strengthens U.S. export controls over strategic commodities by establishing U.S. jurisdiction over activities that might otherwise fall beyond the reach of the U.S. government.

Thank you, again, for providing us with this opportunity to present our views. We believe that BXA's efforts to solicit public participation in its review of foreign policy controls are commendable, and we hope that our comments might lead to regulatory and procedural improvements to better meet the important objectives of these important controls.

Sincerely,

Dave Barbieri/ps

Dave Barbieri
Business Manager -- Specialty Polymers

cc: John Murphy, John Pisa-Relli, Jack Potts

4

PESA
PETROLEUM EQUIPMENT SUPPLIERS ASSOCIATION

SHERRY A. STEPHENS
PRESIDENT

November 27, 2001

Ms. Sheila Quarter-man
Regulatory Policy Division
Bureau of Export Administration
Department of Commerce
PO Box 273
Washington, D.C. 20044

Dear Ms. Quarterman:

As president of the Petroleum Equipment Suppliers Association, a trade organization representing approximately 160 companies in the U.S. oilfield service and supply sector, I am writing to encourage the Secretary to forego the extension of several foreign policy export controls expiring in January 2002. Specifically this letter concerns the foreign policy reexport controls relating to Libya which are part of the group of expiring controls.

Our member companies believe that the Libyan reexport controls should be allowed to lapse. Other countries have reduced or eliminated trade restrictions against Libya, leaving the U.S. the only country to restrict trade for foreign policy reasons. The desired results of these restrictions have not been attained, and the American workers and consumers continue to pay the price. Surely in this time of economic downturn, it makes sense for our country to rethink its position.

There are a number of effective ways to restrict the reexport of items that are significant for reasons of national security, anti-terrorism or for non-proliferation reasons that do not include the need for perpetuating the foreign policy reexport controls relating to Libya. In fact, the most noticeable effect of the restrictions has been a loss of United States suppliers' reputation for dependability. When foreign companies do not buy U.S. products, it is a problem but when foreign buyers lose faith in American suppliers, it means the loss of sales for years to come. This is too heavy a loss to bear by American workers and companies for no national gain. We urge you to allow this restriction to lapse.

Sincerely,

Sherry Stephens

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Arthur T. Downey
Vice President Government Affairs

November 28.2001

Ms Sheila Quarter-man
Regulatory Policy Division
Bureau of Export Administration
US Department of Commerce
P.O. Box 273
Washington, DC 20044

Dear Ms Quarterman:

In accordance with the federal Register notice published on November 7th, these comments relate to the foreign policy-based controls on reexports to Libya from third countries. Baker Hughes provides equipment and services to the oilfield industry worldwide. Our annual revenues are about $6 billion, and we have about 28,000 employees.

The BXA Libyan controls on reexports of US-origin goods are an anachronism. They have been virtually untouched for almost two decades; they badly need to be updated. There is no foreign policy rationale for these controls, especially since they reflect a much tighter level of control than for Iran or Sudan. Thus, most US-origin products (i.e., classified EAR 99) outside the US can be reexported to Iran or to Sudan, but virtually none can be reexported to Libya without BXA authorization. There is no credible reason to so restrict the reexport of EAR 99 items from third countries.

The Secretary is required to make certain determinations in order for him to extend the Libyan reexport controls in January. We believe that the facts cannot support those determinations.

- If the foreign policy rationale (as stated in the 2001 Foreign Policy Report to Congress) is to 'demonstrate distance" from certain Libyan actions, this purpose can easily be accomplished without maintaining these reexport controls. The existence of a massive embargo against virtually all economic, political, and cultural relations is quite sufficient to "demonstrate" that distance.

- These reexport controls are inconsistent with international law, since they are not linked to national security concerns. Virtually all countries would welcome an automatic expiration of these foreign policy reexport controls.

- The competitive position of US companies is hurt by the existence of these reexport controls, since they cause foreign customers to "design out? US products, and foreign competitors use these controls to persuade potential customers not to buy American goods. The impact of this problem reaches beyond potential Libyan transactions: European companies, for example, who want to abide by US reexport controls do not distinguish between those involving Libya or Iran, and they default to the tightest controls, i.e., the Libyan controls. Thus, American products get "designed out" of potential Iranian or Sudan transactions too, and so there is *a* significant commercial spillover effect of these Libyan reexport controls. In addition, the continued existence of these reexport controls imposes a great compliance cost on American companies that our foreign competitors do not have to bear.

- These reexport controls cannot be enforced effectively, especially since the parties are non-US persons most of whom have no interest in submitting to what they believe is an impermissible assertion of US sovereignty over their activities. There are no facts to the contrary. It is, therefore, insupportable to maintain totally ineffective and unenforceable reexport controls.

We believe it is important for the Secretary to permit these Libyan reexport controls to lapse automatically in January. In their place, he could impose targeted reexport controls-"smart sanctions"-that focus on legitimate US concerns relating to national security, non-proliferation or anti-terrorism. In effect, the new, revised, Libyan reexport controls would be on a par with the reexport regime in place with respect to Iran and Sudan.

Such a "modernization" of the Libyan reexport controls would be welcomed by all US business, foreign buyers of US goods, and by foreign governments. Such narrower reexport controls might well even be enforceable.

. This measure of allowing these reexport controls to lapse would not deliver any false signal to Libya. The comprehensive US embargo against Libya would remain untouched. This modernization of the Libyan reexport controls-to align them with those imposed on other countries of concern-need not be taken by Libya or anyone else as a reward for Libya's apparently helpful posture on terrorism since September 1 1".

If you have questions or would like specific information, please let me know.

Sincerely,

Arthur T. Downey

Fax Transmksion

BAKER HUGHES

TO: Sheila Quarterman
Regulatory Policy Division
BXA

November 28, 2001

FAX: 482-3322

FROM: Art Downey

MESSAGE: Comments attached.

TOTAL NUMBER OF PAGES: 4 (INCLUDING THIS SHEET)

Baker Hughes Incorporated
816 Connecticut Avenue, NW Second Floor, Washington, DC 20006-2075
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NATIONAL FOREIGN TRADE COUNCIL, INC.

1625 K STREET. N.W., WASHINGTON, DC 20006

Tel: (202) 887-0278 FAX: (202) 452-8160

November 29,200 1

Ms. Sheila Quarterman
Regulatory Policy Division
Bureau of Export Administration
Department of Commerce
Washington, DC 20230

Dear Ms. Quarterman:

I am writing on behalf of the National Foreign Trade Council, an association of 500 U.S. companies engaged in international trade and investment, to comment on the foreign policy export controls that will automatically expire on January 20, 2002 unless specifically extended by the Secretary of Commerce in accordance with the Export Administration Act.

Our comments relate to foreign policy controls on Iran and re-export controls on Libya. In the case of Iran the developing regional political dynamic, the apparent cooperation between the U.S. and Iran relating to the campaign against terrorism, and positive evolution in the actions and policies of the government of Iran warrant a serious review of these controls.

We are also would welcome a discussion of the foreign policy re-export controls on Libya, which we believe should be permitted to expire. That is because they are not enforceable; they depart from accepted international practice, putting us at odds with our trading partners and ceding an advantage to our competitors who operate without such controls. The simple burden of isolating US-source product to ensure compliance with U.S. controls, together with the prospective liability if U.S. controls are violated. gives foreign purchasers a huge incentive to "design out" U.S. products.

There are a number of ways to restrict the export and m-export of items that are significant for reasons of national security, anti-terrorism or for non-proliferation that do not include perpetuating foreign policy export and re-export controls on Iran and Libya. The clearest effect of these restrictions has been the loss of U.S. suppliers' reputation as reliable suppliers, resulting in the loss of sales for years to come. This is too great a price for American workers to pay for no benefit. We urge you to allow these restrictions to lapse.

Sincerely,

J. Daniel O'Flaherty
Vice President

National Association of Manufacturers

Franklin Vargo

Vice President, International Economic Affairs

International Economic Affairs Department

November 29, 2001

Ms. Sheila Quarterman
Regulatory Policy Division
Bureau of Export Administration
Department of Commerce
PO Box 273
Washington, DC 20044

Re: Request for Comments on Foreign Policy-Based Export Controls Published in the Federal Register on Nov. 7, 2001

Dear Ms. Quarterman:

Thank you for giving the National Association of Manufacturers (NAM) the opportunity to comment on the continuation of foreign policy-based export controls in the Commerce Department's Export Administration Regulations.

The NAM is generally opposed to foreign policy-based export controls because these controls are primarily unilateral in nature. As such, they are rarely effective in preventing the targeted countries from acquiring the controlled products. Non-U.S. suppliers, not bound by multilaterally agreed controls, merely take the place of US. suppliers.

In the end, unilateral export controls usually have no effect on the targeted country. But they have multiple adverse effects on U.S. companies, denying them immediate sales opportunities and encouraging foreign companies to systematically "design out" U.S. suppliers in order to reduce the risk of being caught up in foreign-policy based re-export controls.

Our comments focus on foreign policy-based re-export controls on Libya because the perverse impact of the controls is most apparent here. Under current Commerce Department regulations, U.S. products may not be re-exported from a third country to Libya either as discrete products or components of products. It does not matter whether or not the supplier is a non-U.S. company or national. As a result, U.S.-made products are systematically "designed out" of products destined for Libya. These re-export controls, however, have not prevented Libya from obtaining the products that it desires.

The United States does not apply this standard on re-exports to other countries of special concern, such as Iran and Sudan, except for narrow de minimis exceptions. While we oppose, as a general rule, unilateral trade sanctions, if they must continue, we would like to see more consistency in their application. This can be achieved by allowing the foreign policy-based re-export controls on Libya lapse when they expire in January 2002.

Halliburton Company
OFFICE OF GOVERNMENT AFFAIRS

Charles E. Dominy
Vice President

November 27,200 1

Ms. Sheila Quarterman.
Regulatory Policy Division
Bureau of Export Administration
Department of Commerce
14'h and Constitution Ave.
Washington, DC 20230

Dear Ms. Quarterman:

With the passage of the Export Administration Act authorization legislation again this year, the Administration is now faced with an interesting challenge. As you are aware, several foreign policy export controls will automatically expire in January 2002 unless the Secretary explicitly extends them. This letter concerns the foreign policy reexport controls relating to Libya that are part of the group of expiring controls.

Our company and others like it believe that the Libyan re-export controls should be allowed to lapse. Recent relaxation of the United States export controls relating to food and medicine for shipment to Libya indicates that the new direction of the United States is toward realism in trade matters. Other countries have reduced or eliminated trade restrictions against Libya leaving the United States the only country to restrict trade for foreign policy reasons. The results that were to occur because of the nearly 20 year old restrictions do not appear to be any closer than when they were instituted leaving American workers and consumers to pay a healthy price with nothing in return for their sacrifice,

There are a number of effective ways to restrict the re-export of items that are significant for reasons of national security, anti-terrorism or for non-proliferation, that do not include the need for perpetuating the foreign policy re-export controls relating to Libya. In fact, the most noticeable effect of the restrictions has been a loss of United States supplier's reputation for dependability. When foreign companies do not buy U.S. products, it is problem, but when foreign buyers lose faith in American suppliers it means the loss of sales for years to come. Products made in the U.S. have often been our best ambassadors in gaining the admiration and trust of foreign citizens; to cut off all exports has some counterproductive effects in that these loyalties are transferred to other countries. This is too heavy a loss for American workers and companies to bear for no national gain. We urge you to allow this restriction to lapse.

Sincerely,

Charles E. Dominy

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FACSIMILE TRANSMISSION SHEET

TO: Shelia Quarterman
Regulatory Policy Division
Bureau of Export Administration

FACSIMILIE NUMBER: (202) 482-3355

FROM: Rebecca Dornbusch RD.

DATE: November 30, 2001

PAGES PLUS COVER: 4

COMMENTS : Please see the attached submission from the International Biometric Industry Association (IBIA).

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Via Hand Delivery
November 30, 2001

M s . Sheila Quarterman
Regulatory Policy Division
Bureau of Export Administration
Department of Commerce
P.O. Box 273
Washington, DC. 20044

In re 15 CFR Chapter VII [Docket No. 011024258-1258-01]

Dear Ms. Quarterman:

I am writing on behalf of the International Biometric Industry Association (IBIA) in response to your request for comments on foreign policy-based export controls.

Founded in 1998, IBIA is a trade association that advocates the collective interests of the biometric industry worldwide. IBIA is governed by and for biometric developers, manufacturers, and integrators, and impartially serves all biometric technologies in all applications. Proven biometrics are safe, convenient, reliable technologies that accurately identify or verify individuals based upon each person's unique physical or behavioral characteristics by accurately recognizing and authenticating faces, hands, fingers, signatures, irises or irides, voices, and fingerprints.

On February 15, 2000, IBIA sent a letter and a policy statement to the Bureau of Export Administration that set forth the following key facts:

- Export licenses for biometrics derive from no law but from an informal request Congress made in the 1980s to control technology that other countries might abuse.
- No countries are known to have used biometrics for oppressive purposes.

- U.S. export controls on biometrics serve only to limit the market for US.-made biometric equipment, systems, and software, and thereby place U.S. companies at a disadvantage to the many foreign firms that make highly competitive products.
- Since the 1980s, Congress has proposed and enacted laws that commend or mandate the use of biometrics to safeguard personal privacy, protect sensitive medical information, and shield consumers and institutions from fraud.

Nothing has changed since February 15, 2000 to alter these facts. Copies of the letter and policy statement of that date are enclosed.

In addition, moreover, the atrocities of September 11 provide another vital reason to remove export controls on biometrics except for Tier IV states. Our government and many foreign governments who comprise the global alliance against terror have rightly concluded (a) that accurate, systematic means of identifying and verifying individuals are vital components of an effective anti-terrorist security program, and (b) that proven biometric technologies are the only practical means to meet the need. In the present emergency, it makes no sense to limit the export of biometrics made in the U.S. to any allied nation.

Sincerely,

Verrick O. French
Managing Director

Enclosures

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Via I-land Delivery
February 15, 2000

Ms. Tanya Hodge Mottley
Director, Strategic Trade Division
U.S. Department of Commerce
Bureau of Export Administration
14th Street & Pennsylvania Avenue, N.W.
Washington, D.C. 20230

Dear Ms. Mottley:

At OUT meeting on October 19, 1999, the International Biometric Industry Association (IBIA) promised to provide input to you and your staff ***on*** the 15-year-old regulations that currently govern export controls on biometric devices and software. We are pleased to submit the enclosed document that describes the basis for controls on biometric products, and advocates major changes that will align the rules to more accurately reflect current market conditions and the intent of Congress.

The rules that require products to obtain an export license were adopted in the mid-1980s, after Congress made an informal request to control technology that might be subject to abuse by other countries. Specifically, Congress was concerned that the Federal Bureau of Investigation's Automated Fingerprint Identification Standard (AFIS) could be used by foreign governments to suppress human rights. The circumstances that led to this regulation, however, no longer exist. The rule now serves only to limit the market for U.S.-made biometric equipment, systems, and software, and thereby places U.S. companies at a disadvantage to the many foreign firms that make highly competitive products. The following facts illustrate the significant changes that have occurred since the regulations were adopted:

- AFIS has become the *de facto* global standard for law enforcement fingerprint identification, and manufacturers worldwide build systems to compete for AFIS applications.
- AFIS solutions command a very small share of a market that is now dominated by commercial, off-the-shelf biometric products for mainstream uses such as access control, network security, and benefits administration.
- No countries are known to have used biometric technology for oppressive purposes.
- Since biometrics prevent unauthorized access to sensitive data and systems, impeding the sale of the technology undermines the Commerce Department's banking-related communication rules that are designed to ensure the security of financial networks and e-commerce transactions in an Internet economy.
- Standing alone, biometric products do not use encryption above the 56-bit level-the level at which export controls on encryption products are activated under revised regulations announced last month by the Commerce Department.
- Congress now views biometric technology favorably, having enacted laws and proposed legislation that identify biometrics as a means to safeguard personal privacy, protect sensitive medical information, and protect consumers and institutions from fraud.

In summary, there no longer exists any compelling reason to regulate the export of biometric technology. As Under Secretary William Reinsch recently noted, "exports = strong high-tech companies = strong defense." This farsighted approach to ensuring U.S. competitiveness in similar industries such as high performance computers and semiconductors should be vigorously applied to biometric solution providers as well.

The IBIA therefore respectfully urges the Bureau of Export Administration to revoke its rules controlling the export of biometric technology to countries other than Tier IV states.

Sincerely,

Richard E. Norton
Executive Director

Enclosure

Removing Export Controls on Biometric Technology

A Report by the
International Biometric Industry Association
February 2000

Summary

For more than 15 years the U.S. Department of Commerce has controlled the export of biometric technology. Controls were originally imposed on the basis of an informal recommendation by Congress to keep biometric identification products from being misused by certain countries. As a result of this request, fingerprint and voice identification applications are classified as "crime control" technology – a barrier that requires U.S. manufacturers and distributors to obtain an export license for shipment to countries other than those belonging to NATO.

Since these controls were put in place. the market for biometric applications has been fundamentally changed. The regulations now severely constrict the export of mainstream commercial products, and place the U.S. at a competitive disadvantage with the rest of the world. To correct this situation the biometric industry strongly recommends that biometric products be removed from the Commerce Control List, and that the Bureau of Export Administration (BXA) apply restrictions only to products that are being exported to countries supporting terrorism.

There are several persuasive reasons for the Department of Commerce to take this step:

- The biometric industry is global. Biometric products are now developed, manufactured, and distributed worldwide, with companies in at least eight other countries now offering highly effective solutions that compete strongly with U.S. products in all applications.
- The major market is for commercial off-the-shelf products. To a broad extent. products are specifically tailored to safeguard information and protect personal privacy, and not to perform traditional criminal identification functions-
- Standing alone, biometric products do not use encryption above the 56-bit level – the level at which controls are activated under BXA rules. Biometric solutions, their related toolkits and firmware components generally would fit in the "No License Required" category as defined in regulations published on January 14, 2000.
- Restricting biometric exports limits the effectiveness of financial controls. Recently the U.S. lifted encryption export controls for many foreign banks to help them combat computer hacking and other forms of fraud. Biometrics is the only way to ensure that internal and external access to these systems is carefully controlled and documented.

Background

Controls were an outgrowth of the Automated Fingerprint Identification Systems (AFIS) project, a mid-1970s collaborative effort between the Federal Bureau of Investigation (FBI) and what was then called the National Bureau of Standards (NBS). The FBI was looking for a way to automate the process of comparing "ten print" cards to other ten print cards for criminal and applicant identification, and to automate the search of a ten print card database to identify latent fingerprints found at crime scenes. Based on the U.S. government's interest in AFIS technology, foreign competitors quickly began to develop systems that could meet the FBI standard and thereby become the de *facto* standard for law enforcement officials worldwide.

Parallel to the development of AFIS, U.S. companies began work on biometric identification systems that could be used for the "real time" or "near real time" identification or authentication of persons who are enrolled in some form of database. This technology did not utilize rolled fingerprint impressions; instead, it required only one to four flat fingerprint impressions for a successful search. Systems were designed to function in two basic modes: 1:1 authentication' against a specific enrolled print (s), or 1:*n* identification by interrogating a database of enrolled prints. These systems demonstrated that biometrics could be used in commercial environments to make transactions more secure and protect important data from being compromised by unauthorized parties.

Just as the standardization of AFIS stimulated competition among biometric Companies throughout the world, the advent of commercial drivers for biometrics spurred the invention of other technologies that could compete with fingerprint-based systems. Products that were developed to handle authentication and/or verification chores included iris recognition. signature dynamics, hand geometry, facial recognition, and voice recognition.

Product Applications

The following chart shows how biometrics have been integrated into a wide range of finished products. Note that of the sixteen categories shown, only one involves the use of AFIS to identify offenders:

Civil & Government	Commercial
Voter Registration	Computer and Network Access
Driver's License Systems	Physical / Facilities Access Control
Criminal Justice Information Systems (AFIS)	Banking Transactions
Passports and Travel Documents	Healthcare (patients, records, drugs)
National Identification Systems	Time and Attendance
Corrections Monitoring	Communications Security (cell-phones, radios)
Benefits Disbursement	Automotive Security
Schools and Universities	Parental Control

Recently the U.S government has officially taken note of the importance of biometric technology to the growth of Internet-based commerce and the success of efforts to counteract fraud against financial institutions. In particular, Under Secretary William A. Reinsch has repeatedly acknowledged that biometrics can play an important role in guaranteeing the integrity of information in the age of electronic commerce.

Globalization

Companies in the countries listed below produce biometric products. All compete directly with U.S. companies for commercial business throughout the world:

Country	Technology
Canada	Fingerprint; voice recognition
France	Fingerprint; facial recognition
Germany	Fingerprint
Korea	Fingerprint; facial recognition; iris recognition
Japan	Fingerprint; iris recognition
Netherlands	Signature dynamics
Sweden	Fingerprint
Switzerland	Finger geometry

Recommendations

The US. government originally implemented export restrictions on a unique technology that was to be used for crime control. Due to standardization, foreign competition, and the development of a commercial market for biometrics, the basis for the policy has vanished. In fact, the perception that biometric technologies should be covered by export restrictions has been largely replaced by the view that biometrics offer protection against having networks compromised, computers penetrated, and identities stolen. Congress, which never chose to follow its recommendations advocating AFIS controls with laws to mandate them, has repeatedly voted to support the use of biometrics to improve security, to reduce waste, fraud and abuse, and to streamline electronic commerce.

Globally, the United States now holds the largest market share of biometric products yet it is the only country that restricts their export. These restrictions delay order fulfillment by U.S companies, deter overseas companies from entering into joint ventures with U.S. companies, and channel customers for biometric products to overseas companies at the expense of U.S. companies. As noted by Under Secretary Reinsch, the U.S. government knows that "exports = *healthy high-tech companies = strong defense."* We ask the Bureau to apply this equation forcefully by removing controls on the export of biometric technology to non-embargoed countries.

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M. Kay Larcom
Director, Federal Affairs

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November 29, 2001

Ms. Sheila Quarterman
Regulatory Policy Division
Bureau of Export Administration
U.S. Department of Commerce
P.O. Box 273
Washington, DC 20044

Dear Ms. Quarterman:

In accordance with the ***Federal Register*** notice of November 7, 2001, Conoco Inc. respectfully submits the following comments relating to the foreign policy based export controls on Libya. We believe that these controls should not be extended and should be allowed to lapse next January. This action would benefit U.S. exporters without representing a change in the current U.S. sanctions policy against Libya.

There are a number of reasons for letting this regulation lapse:

- The foreign policy re-export controls on Libya are tighter than for other countries sanctioned by the U.S.; this represents an unevenness in the application of foreign policy controls that does not reflect the current state of either Libya or the world at large.
- The current comprehensive U.S. economic, political and cultural embargo against Libya that remains in place seems sufficient to "demonstrate distance" as required; these re-export controls are redundant and unnecessary.
- The foreign policy export controls against Libya are inconsistent with last year's relaxation of export controls relating to food and medicine to that country.
- The continuation of these re-export controls on Libya adds weight to the rationale used by foreign competitors that the U.S. is an unreliable supplier. In fact, these controls work to the disadvantage of American exporters as all foreign competitor countries reject as a matter of principle the U.S. imposition of re-export controls that are not related to national security.
- It is impossible to effectively enforce these regulations rendering them useless as a foreign policy tool.

In place of these broad and ineffective controls, a targeted re-export control regime might be considered that would address concerns in a more appropriate, perhaps even enforceable, manner. National security interests can be preserved without the needless direct and indirect harm to U.S. business that these current controls cause.

Thank you for the opportunity to provide these brief comments.

Sincerely,

M. Kay Larcom

ICOTT INDUSTRY COALITION ON TECHNOLOGY TRANSFER
1400 L Street, N.W., Washington, D.C. 20005 Suite 800 (202) 371-5994

November 29, 2001

Ms. Shiela Quarterman
Regulatory Policy Division
Bureau of Export Administration
U.S. Department of Commerce
P.O. Box 273
Washington DC 20044

Re: Effects of Foreign Policy-Based Export Controls, 66 Fed. Reg. 56260 (Nov. 7, 2001)

Dear Ms. Quarterman:

The Industry Coalition on Technology Transfer (ICOTT) is pleased to respond to the Department's request for comments on the renewal of foreign policy-based export controls. This is the first full review of these controls conducted by the Bush Administration. As such, it presents a special opportunity to take a fresh look at the rationales for, and effectiveness of, such restrictions.

In large measure these controls are unilateral in character. Therein lies their ineffectiveness. While there can be instances where unilateral controls are justified, they are rarer than the broad array of such United States controls would indicate. From the standpoint of effectiveness, unilateral controls are like damming half a river. The builder may take pride in the majesty of the dam but there is every bit as much water downstream as before. For this reason, unilateral controls should be invoked-or continued-only where the resulting injury to American workers and businesses can be justified when balanced against the symbolic character of the restrictions. "National security" includes economic as well as military security, and both of these elements must be taken into account in the administration of our export control system.

Another argument frequently advanced in support of unilateral controls is that their imposition is necessary while the United States seeks multilateral support. The historical record of this tactic has been mixed at best. At a minimum, controls imposed unilaterally under this rationale should be of limited duration unless sufficient multilateral support is achieved.

We urge that any controls that do not meet the foregoing criteria be removed.

Founded in 1983, ICOTT is a group of major trade associations (names listed below) whose thousands of individual member firms export controlled goods and technology from the United States. ICOTT's principal purposes are to advise U.S. Government officials of industry concerns about export controls, and to inform ICOTT's member trade associations (and in turn their member firms) about the U.S. Government's export control activities.

Sincerely,

Eric L. Hirschhorn
Executive Secretary

ICOTT Members

American Association of Exporters and Importers (AAEI)
Electronic Industries Alliance (EIA)
Semiconductor Equipment and Materials International (SEMI)
Semiconductor Industry Association (SIA)

cc: Hon. Kenneth Juster
Hon. John Bolton
Hon. James Jochum
Hon. Lincoln Bloomfield
Hon. Condolezza Rice

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