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CHAPTER 4

Anti-Terrorism Controls

(Sections 742.8, 742.9, 742.10, 742.19, 744.13, 744.14, 746.2, 746.4, 746.7)

Export Control Program Description and Licensing Policy

These controls reflect U.S. opposition to acts of international terrorism supported by foreign governments, as well as terrorist acts carried out by designated terrorist entities.

Pursuant to Section 6(j) of the Export Administration Act, the Secretary of State has designated seven countries – Cuba, Iran, Iraq, Libya, North Korea, Sudan, and Syria – as nations whose governments have repeatedly provided support for acts of international terrorism. As noted below, the United States controls multilateral list items destined to military or other sensitive end-users in designated terrorist-supporting countries for anti-terrorism reasons under Section 6(j) of the Act. The United States controls additional items on the Commerce Control List (CCL) to Cuba, Iran, Sudan, North Korea, Libya, and Syria for anti-terrorism reasons under the general authority of Section 6(a) of the Act. Comprehensive trade embargoes apply to Cuba, Iran, Iraq, Libya, and Sudan.

Broadly speaking, the Bureau of Export Administration (BXA) has licensing responsibility for exports and reexports to Cuba, Syria, and North Korea and for reexports to Libya.

The Department of the Treasury's Office of Foreign Assets Control (OFAC) has licensing responsibilities for exports and reexports to Iran and Iraq and for exports to Libya. Both Departments maintain license requirements for exports and reexports to Sudan. This report does not describe the restrictions administered by OFAC against Iran, Iraq, Libya, and Sudan.

The embargo on exports to Cuba is administered by the United States under the Act and other statutes. The major policy change for Cuba in 2001 was the regulatory implementation of the Trade Sanctions Reform and Export Enhancement Act of 2000 (TSRA). Under the July 2001 rule, exports of food and other agricultural commodities may be approved to Cuba under a new prior notification procedure and License Exception Agricultural Commodities (AGR).

TSRA, which was contained in Title IX of the 2000 Agriculture Appropriations Act, requires the lifting of unilateral sanctions governing agricultural and medical commodities worldwide, but also requires that

a licensing regime be in place for exports of such commodities to designated terrorist-supporting countries. Please see Chapter 5 for more detail on regulations pursuant to this legislation.

In addition to the discussion of countries that support international terrorism, this chapter describes controls on exports and certain reexports to Specially Designated Terrorists (SDTs) and Foreign Terrorist Organizations (FTOs).

In response to the terrorist acts of September 11, 2001, the President issued Executive Order (E.O.) 13224 of September 23, 2001 – Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism – to deal with the continuing and immediate threat of further terrorist attacks on U.S. nationals or the United States. In this E.O., the President prohibited any U.S. person from assisting, sponsoring, or providing financial, material, or technological support for such acts of terrorism. The President named 27 terrorist organizations, leaders, and corporate and charitable fronts. These entities and individuals are listed in the Annex to E.O. 13224 and are identified by the abbreviation "SDGT." Other entities have subsequently been designated pursuant to E.O. 13224, and all existing FTOs were also included on the new list of SDGTs. The list of SDGTs is published by OFAC as part of the list of blocked persons, specially designated nationals, specially designated terrorists, foreign terrorist organizations, and specially designated narcotics traffickers designated pursuant to the various economic sanctions programs administered by OFAC.

The President directed all agencies of the United States to take appropriate measures within their authority to carry out the provisions of the E.O. In addition, on September 28, 2001, the United Nations adopted Resolution 1373, which states that member nations shall prohibit making financial assets or economic resources available for the benefit of persons who engage in or attempt to commit or facilitate terrorist acts.

BXA will soon publish a regulation consistent with the provisions of E.O. 13224 and U.N. Resolution 1373. The purpose of the new controls is to impose an export license requirement for the export or reexport of all items subject to the EAR destined to SDTs, FTOs, and SDGTs, wherever located.

BXA also will publish an amendment to the EAR that expands the scope of explosive detection systems controlled under Export Commodity Control Number (ECCN) 2A993 and creates new license requirements for the export and reexport of related software and technology. The new licensing requirements will be contained in ECCNs 2D993 and 2E993. The amendment will clarify the scope of explosive detection equipment controlled under the EAR and expand the number of destinations that require a license for the export and reexport of these items. Specifically, a license will be required to export or reexport these items to Iraq. A license was already required for the export of items controlled under ECCN 2A993 to Iran, North Korea, Sudan, Syria, Cuba, and Libya. This

amendment also creates a license requirement for the export and reexport of items controlled under ECCNs 2D993 and 2E993 to all designated terrorist-supporting countries. Items controlled under the three ECCNs also will be controlled for regional stability and U.N. reasons. BXA designed the amendment to enhance the security and safety of airline travel and physical structures, including government buildings. Chapter 3 provides details of the new control.

EAA Section 6(j) determinations:

The Secretary of State has determined that Libya (1979), Syria (1979), Cuba (1982), Iran (1984), North Korea (1988), Iraq (1990) and Sudan (1993) are countries whose governments have repeatedly provided support for acts of international terrorism.

Effective December 28, 1993, the Acting Secretary of State determined that the United States would control five categories of dual-use items subject to multilateral controls to certain sensitive government end-users under Section 6(j) of the Act, since these items meet the criteria set forth in Section 6(j)(1)(B). Specifically, the Acting Secretary determined that these items, when exported to military, police or intelligence organizations, or to other sensitive end-users in a designated terrorist-supporting country, could make a significant contribution to that country's military potential or could enhance its ability to support acts of international terrorism. These anti-terrorism controls apply to all designated terrorist-supporting countries.

The Acting Secretary also advised that the United States should continue to control other items not specifically controlled under Section 6(j) for general foreign policy purposes under Section 6(a) to terrorist-supporting countries and that the United States should continue to review the export of such items prior to approval to evaluate whether, under the circumstances of the application, the requirements of Section 6(j) apply. These measures are described in detail below.

Paragraph A below reflects the Section 6(j) controls and paragraphs (B), (C), (D) and (E) reflect the Section 6(a) controls on Iran, Sudan, Syria, and North Korea.

- A.** The Acting Secretary of State determined, effective December 28, 1993, that the export of certain categories of goods and technologies, when destined to military, police, intelligence entities, and other sensitive end-users, as determined by the Department of State, in any country designated under Section 6(j) of the Act as a country that has repeatedly provided support for acts of international terrorism, "could make a significant contribution to the military potential of such country, including its military logistics capability, or could enhance the ability of such country to support acts of international terrorism." As a result of this determination, the Secretaries of State and Commerce would notify Congress 30 days prior to the issuance of any

license for the export of any item from the five categories listed below to sensitive end-users in the terrorist-supporting countries.

Pursuant to Section 6(j) of the Act, BXA requires a license for the export of the following items to military or other sensitive end-users in designated terrorist-supporting countries:

- 1) All items subject to national security controls, except computers with a performance level of less than 500 million theoretical operations per second (Wassenaar Arrangement)¹.
- 2) All items subject to chemical and biological weapons proliferation controls (Australia Group).
- 3) All dual-use items subject to missile-proliferation controls (Missile Technology Control Regime).
- 4) All items subject to nuclear weapons-proliferation controls (Nuclear Referral List).
- 5) All military-related items (items controlled by CCL entries ending with the number 18).

B. Pursuant to Section 6(a) of the Act, the United States requires a license for the categories of items listed below for Iran, North Korea, Sudan, and Syria to promote U.S. foreign policy goals. Sudan (as of November 4, 1997) and Iran (as of May 7, 1995) are also subject to comprehensive trade and investment embargoes administered by the Department of the Treasury under the authority vested in the President under the International Emergency Economic Powers Act (IEEPA). The Department of State reviews license applications for items controlled under Section 6(a) of the Act before approval to determine whether the requirements of Section 6(j) apply. If the Secretary of State determines that the particular export "could make a significant contribution to the military potential of such country, including its military logistics capability, or could enhance the ability of such country to support acts of international terrorism," the Departments of Commerce and State will notify the appropriate Congressional committees 30 days before issuing a license. The categories of items controlled under Section 6(a) include, but are not limited to:

- Aircraft, including helicopters and engines.
- Heavy-duty on-highway tractors.
- Off-highway wheel tractors (>10 tons).
- Cryptographic, cryptoanalytic, and cryptologic equipment.
- Navigation, direction finding, and radar equipment.
- Electronic test equipment.
- Mobile communications equipment.
- Acoustic underwater detection equipment.

- Vessels and boats (including inflatable boats).
- Marine and submarine engines.
- Underwater photographic equipment.
- Submersible systems.
- Computer numerically controlled (CNC) machine tools.
- Vibration test equipment.
- Certain digital computers (CTP_{≥6}).
- Certain telecommunications transmission equipment.
- Certain microprocessors (clock speed >25 Mhz).
- Certain semiconductor manufacturing equipment.
- Software specially designed for computer-aided design/computer-aided manufacture (CAD/CAM) integrated circuit production.
- Packet switches.
- Software specially designed for air traffic control applications.
- Gravity meters (static accuracy <100 microgal or with quartz element).
- Certain magnetometers with sensitivity <1.0 nt rms per root hertz.
- Certain fluorocarbon compounds for cooling fluids for radar and supercomputers.
- High-strength organic and inorganic fibers.
- Certain machines for gear-cutting (up to 1.25 meters).
- Certain aircraft skin and spar milling machines.
- Certain manual dimensional inspection machines (linear positioning accuracy $\pm 3+L/300$).
- Robots employing feedback information in real time.
- Certain explosive device detectors.
- Production technology controlled under ECCN 1C355.
- Commercial charges and devices controlled under ECCN 1C992.
- Ammonium nitrate, including certain fertilizers containing ammonium nitrate, under ECCN 1C997.

C. Exports of the following additional items to Iran, Sudan, and North Korea are subject to a license requirement under the Export Administration Regulations (EAR) for foreign policy reasons:

- Large diesel engines (>400 hp).
- Scuba gear.
- Pressurized aircraft breathing equipment.

- D.** Export of the following additional item to Iran and North Korea is subject to a license requirement under the EAR for foreign policy reasons: portable electric power generators.
- E.** Exports of the following additional items to North Korea are subject to a license requirement under the EAR for foreign policy reasons:
- Ring magnets.
 - Hot cells.
 - Glove boxes suitable for use with radioactive materials.
 - Software for neutronic calculations/modeling.
 - Software for radiation transport calculations/modeling.
 - Software for hydrodynamic calculations/modeling.
 - Radiation detection, monitoring and measurement equipment.
 - Radiographic detection equipment such as x-ray converters, and storage phosphor image plates.
 - Electrolytic cells for flourine production.
 - Particle accelerators.
 - Industrial process control hardware/systems designed for power industries.
 - Freon and chilled water cooling systems capable of continuous cooling duties of 100,000 BTU/hr (29.3 kW) or greater.
 - Equipment for the production of structural composites, fibers, prepregs and preforms.
 - Hardened steel and tungsten carbide precision ball bearings (3mm or greater diameter).
 - 304 and 316 stainless steel plate.
 - Monel plate.
 - Tributyl phosphate.
 - Nitric acid in concentrations of 20 weight percent or greater.
 - Flourine.
 - Alpha-emitting radionuclides.
 - Software specially designed for industrial process control hardware/systems controlled by 1B999.
 - Software specially designed for equipment for the production of structural composites, fibers, prepregs and preforms controlled by 1B999, n.e.s. (not elsewhere specified).
 - Bellows sealed valves.
 - Isostatic presses, n.e.s.
 - Bellows manufacturing equipment, including hydraulic forming equipment and bellows forming dies.
 - Laser welding machines.
 - MIG welders.

- E-beam welders.
- Monel equipment, including valves, piping, tanks and vessels.
- 304 and 316 stainless steel valves, piping, tanks and vessels.
- Mining and drilling equipment, as follows:
 - Large boring equipment capable of drilling holes greater than two feet in diameter, and
 - Large earth-moving equipment used in the mining industry.
- Electroplating equipment designed for coating parts with nickel or aluminum.
- Pumps designed for industrial service and for use with an electrical motor of 5 HP or greater.
- Vacuum valves, piping, flanges, gaskets and related equipment specially designed for use in high-vacuum service.
- Spin forming and flow forming machines.
- Centrifugal multiplane balancing machines.
- Austenitic stainless steel plate, valves, piping, tanks and vessels.
- Frequency changers capable of operating in the frequency range from 300 up to 600 Hz.
- Mass spectrometers.
- All flash x-ray machines, and components of pulsed power systems designed thereof, including Marx generators, high power pulse shaping networks, high voltage capacitors, and triggers.
- Pulse amplifiers.
- Electronic equipment for time delay generation or time interval measurement, as follows:
 - Digital time delay generators with a resolution of 50 nanoseconds or less over time intervals of 1 microsecond or greater, or
 - Multi-channel (three or more) or modular time interval meter and chronometry equipment with resolution of 50 nanoseconds or less over time intervals of 1 microsecond or greater.
- Chromatography and spectrometry analytical instruments.
- Seismic detection equipment.
- Radiation hardened TV cameras.

License Requirements and Licensing Policy for Cuba

- A. BXA requires a license for export to Cuba of virtually all commodities, technology, and software, *except*:
- Technology generally available to the public and informational materials.

- Some types of personal baggage, crew baggage, certain aircraft on temporary sojourn, ship stores (except as prohibited by the Cuban Democracy Act to Cuba) and plane stores under certain circumstances.
- Certain foreign-origin items in transit through the United States.
- Shipments for U.S. Government personnel and agencies.
- Gift parcels not exceeding \$200 for Cuba limited to food, clothing (non-military), vitamins, seeds, medicines, medical supplies and devices, hospital supplies and equipment, equipment for the handicapped, personal hygiene items, veterinary medicines and supplies, fishing equipment and supplies, soap-making equipment, certain radio equipment, and batteries for such equipment. There are no frequency or dollar-value limits on food contained in gift parcels to Cuba.

B. The United States generally denies export license applications for exports to Cuba. However, BXA will consider applications for the following on a case-by-case basis:

- Exports to meet basic human needs.
- Exports to Cuba from foreign countries of non-strategic, foreign-made products containing 20 percent or less U.S.-origin parts, components or materials, provided the exporter is not a U.S.-owned or controlled subsidiary in a third country.
- Exports to Cuba of telecommunications equipment, to the extent permitted as part of a telecommunications project approved by the Federal Communications Commission, necessary to deliver a signal to an international telecommunications gateway in Cuba.
- Exports to Cuba of business and office equipment if destined to human rights organizations or to individuals and non-governmental organizations that promote independent activity.
- Certain commodities and software for U.S. news bureaus in Cuba.

C. The Department of Commerce reviews applications for exports of donated and commercially supplied medicine or medical items to Cuba on a case-by-case basis. The United States does not restrict exports of these items, except in the following cases:

- To the extent Section 5(m) of the Export Administration Act of 1979 or Section 203(b)(2) of the IEEPA would permit such restrictions.
- In a case in which there is a reasonable likelihood the item to be exported will be used for purposes of torture or other human rights abuses.

- In a case in which there is a reasonable likelihood the item to be exported will be reexported.
- In a case in which the item to be exported could be used in the production of any biotechnological product.
- In a case where the U.S. Government determines it would be unable to verify, by on-site inspection and other appropriate means, that the item to be exported will be used for the purpose for which it was intended and only for the use and benefit of the Cuban people. This exception does not apply to donations of medicine for humanitarian purposes to a non-governmental organization in Cuba.

License Requirements and Licensing Policy for North Korea

Items on the CCL continue to require a license to North Korea. The United States has a general policy of denial for strategic, nuclear, missile, chemical, biological, and other sensitive items on the CCL to all end-users in North Korea. In addition, there is a policy of denial for items on the CCL to military end-users or end-uses, and items with potential nuclear applicability to nuclear end-users or end-uses in North Korea. Certain items on the CCL may be licensed to civilian end-users or end-uses on a case-by-case basis, subject to U.S. interagency review. Items controlled for anti-terrorism reasons to North Korea include: aircraft and aircraft parts, encryption products, most telecommunications equipment, and computers. License applications for computers up to 2,000 MTOPS as well as microprocessors up to 550 MTOPS to non-military or non-nuclear end-users are reviewed on a case-by-case basis.

Commodities, technology, or software not on the CCL may be exported to North Korea without a license, provided that the end-user is not involved in weapons proliferation activities, in which case provisions of the Enhanced Proliferation Control Initiative “catch-all” control would apply.

License Requirements and Licensing Policy for Libya

- A.** BXA requires a license for the reexport of U.S.-origin goods, technology, or software subject to the EAR to Libya from third countries, *except* for the following:
- Medicine and medical supplies.
 - Food and agricultural commodities.
 - Items permitted under certain license exceptions.
 - Foreign non-strategic products of U.S.-origin technology or software.
 - Foreign strategic products of U.S.-origin technology or software exported from the United States before March 12, 1982.

B. BXA will generally deny applications for reexport of the following:

- Off-highway wheel tractors with carriage capacity of 10 tons or more, except for exports of such tractors in reasonable quantities for civil use.
- Aircraft (including helicopters), and specified parts and accessories.
- Other commodities and related technology and software controlled for national security purposes, including controlled foreign-produced products of U.S. technology and software exported from the United States after March 12, 1982, and oil and gas equipment and related technology and software not readily available from non-U.S. sources.
- Commodities, software, and technology destined for the Ras Lanuf Petrochemical Processing Complex, *except* for (a) exports or reexports pursuant to a contractual arrangement in effect prior to December 20, 1983; and (b) the reexport of goods or technology already outside the United States on December 20, 1983, for which license applications will be reviewed on a case by case basis.
- Items subject to U.N.S.C. Resolution 748 of March 30, 1992 (effective April 5, 1992) and U.N.S.C. Resolution 883 of November 11, 1993 (effective December 1, 1993)².

C. BXA will consider exceptions to this denial policy on a case-by-case basis for the following:

- Reexports of commodities or technology and software involving a contract in effect prior to March 12, 1982, where failure to obtain an authorization would not excuse performance of the contract.
- The reexport of goods or technology subject to national security controls already outside the United States on March 12, 1982, or the export of foreign products incorporating such items as components.
- The use of U.S.-origin components incorporated in certain foreign origin equipment and constituting 20 percent or less by value of that equipment.

D. All other reexports, with the exception of humanitarian items and medical equipment as defined in the TSRA, will generally be denied.

License Requirements and Licensing Policy for Sudan

The United States has a general policy of denial for all end-users in Sudan for all items controlled for chemical, biological, missile and nuclear proliferation reasons, military-related items controlled for national security reasons (CCL entries ending in the number 18), and certain items controlled for national security or foreign policy reasons for export and reexport, such as aircraft, cryptologic items, and explosive device detectors. Other items controlled to Sudan for national security or foreign policy reasons are subject to a policy of denial for military end-users or end-uses and are reviewed on a case-by-case basis for non-military end-users or end-uses. Pursuant to Executive Order 13067 of November 3, 1997, the Department of the Treasury maintains comprehensive trade restrictions on exports and reexports to Sudan. In cases in which a proposed export or reexport involves an item on the CCL requiring a license from both the Treasury and Commerce Departments, Commerce will only review a license application if the Department of the Treasury has approved. Treasury is solely responsible for licensing the export of non-CCL level agricultural and medical items to Sudan under the provisions of the TSRA.

License Requirements and Licensing Policy for Syria

The United States has a general policy of denial for exports and reexports of items controlled for chemical, biological, and missile proliferation reasons; military-related items controlled for national security reasons (CCL entries ending in the number 18); and certain other national security or foreign policy controlled items, such as aircraft, cryptologic items, and explosive device detectors, to all end-users in Syria. BXA reviews other national security and foreign policy controlled items under a policy of denial to military end-users and end-uses and on a case-by-case basis to non-military end-users and end-uses.

BXA will consider applications for export and reexport to Syria on a case-by-case basis if they meet the following conditions:

- The transaction involves the reexport to Syria of items where Syria was not the intended ultimate destination at the time of original export from the United States, provided that the export from the United States occurred prior to the applicable contract sanctity date.
- The U.S. content value of foreign-produced commodities is 20 percent or less.
- The commodities are medical equipment.
- The commodities are aircraft equipment necessary to maintain the safety of civil aviation and the safe operation of commercial passenger aircraft.

Applicants wishing to have contract sanctity considered in reviewing their applications must submit adequate documentation demonstrating the existence of a contract that predates the imposition or expansion of controls on the item(s) intended for export.

License Requirements and Licensing Policy for Iran

The United States has a general policy of denial for all items controlled for national security or foreign policy reasons that require a license to Iran. Pursuant to Executive Order 12959 of May 6, 1995, the Department of the Treasury maintains comprehensive trade restrictions on exports and reexports to Iran. The Department of the Treasury is responsible for licensing agricultural and medical items classified as EAR99 (items not on the CCL) to Iran.

License Requirements and Licensing Policy for SDTs, FTOs, and SDGTs

The United States has a general policy of denial for applications to export or reexport any item subject to the EAR to SDTs and FTOs. A license will be required for the export of items to SDGTs pursuant to the rule that will soon be published. A list of designated persons is available in the Appendices to 31 CFR Chapter V.

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

A. The Purpose of the Control

Anti-terrorism controls seek to prevent acts of terrorism and to distance the United States from nations that have repeatedly supported acts of international terrorism and from individuals and organizations that commit terrorist acts. The controls demonstrate the resolve of the United States not to trade with nations or entities that fail to adhere to acceptable norms of international behavior. The policy provides the United States with the means to control any U.S. goods or services that might contribute to the military potential of designated countries and to limit the availability of such goods for use in support of international terrorism. U.S. foreign policy objectives also are furthered by ensuring that items removed from multilateral regime lists continue to be controlled for anti-terrorism reasons and such controls are applied consistently to all terrorist-supporting countries.

Cuba

The United States imposed an embargo several decades ago when Cuban actions posed a serious threat to the stability of the Western Hemisphere and the Cuban government expropriated

property from U.S. citizens without compensation. In March 1982, as a result of Cuba's support for insurgent groups that engaged in terrorism, the Secretary of State designated it as a state sponsor of terrorism under Section 6(j) of the Act.

North Korea

Although there has been a bilateral dialogue on terrorism with North Korea, anti-terrorism controls remain because of unresolved issues concerning North Korea's continuing support of international terrorism, including, but not limited to, harboring members of the Japanese Red Army Faction. The alleged abduction of Japanese individuals by North Korean intelligence services during the 1980s and 1990s remains of concern as well. Although there is no recent evidence of North Korean complicity in the disappearance of Japanese nationals, government activity in other areas supports the continuation of the anti-terrorism controls. The purpose of the controls includes restricting the import of equipment useful in enhancing the military or terrorist-supporting capabilities of the regime and addressing other U.S. foreign policy concerns, including human rights, non-proliferation, and regional stability.

Libya

The purpose of export and reexport controls toward Libya is to demonstrate U.S. opposition to, and to distance the United States from, Libya's intervention in the affairs of neighboring states and support for acts of international terrorism and international subversive activities. Although Libya has made progress in distancing itself from terrorist organizations and activities and in its multilateral relations, the U.S. Government believes that further progress is needed before the United States can consider resuming normal economic ties. Meanwhile, the U.S. Government's policy of support for exports and reexports of food, medicines, and medical equipment ensures that the Libyan population has access to items necessary for basic human needs.

Sudan

Evidence indicates that Sudan allows the use of its territory as a sanctuary for terrorist organizations including Osama bin Ladin's al-Qaeda network, the Egyptian Islamic Group, the Egyptian Islamic Jihad, Hamas, and Palestinian Islamic Jihad. The embargo and export controls demonstrate U.S. opposition to Sudan's support for international terrorism and restrict access to items that could make a significant contribution to Sudan's military capability and ability to support international terrorism. In the past year, the U.S. Government has held useful dialogue with the government of Sudan, which has taken steps that the United States considers to be positive. In September, the President named former Senator John Danforth as Special Envoy to Sudan to continue work on issues of continuing concern to the United States, including the civil war, human rights, religious freedom, and slavery. Sudan must take additional, substantive steps in these areas before the United States will consider establishing normal relations or modifying its export controls. As the U.S.-Sudanese dialogue continues, the U.S. Government's authorization of exports of food, medicine, and medical equipment ensures that the

Sudanese population does not suffer unduly in terms of basic human needs as a result of U.S. export controls. Sudan's ongoing cooperative efforts with the United States indicate the effectiveness of the controls.

Syria

Although there has been no evidence of direct involvement by the Syrian Government in the planning or implementation of terrorist acts since 1986, Syria continues to provide sanctuary and support to groups engaging in terrorism. The trade controls reflect U.S. opposition to Syria's support of terrorist groups, prevent significant U.S. contribution to Syria's military capabilities and ability to support international terrorism, and promote other U.S. foreign policy interests, including human rights and regional stability.

Iran

These controls respond to the continued Iranian sponsorship of terrorism. The purpose of the controls is to restrict exports of equipment that would be useful in enhancing Iran's military or terrorist-supporting capabilities and to address other U.S. foreign policy concerns, including human rights, non-proliferation, and regional stability.

The controls allow the United States to prevent shipments of U.S.-origin equipment to Iran for uses that could pose a direct threat to U.S. interests. Iran continues to support groups that practice terrorism, including terrorism to disrupt the Middle East peace negotiations. By restricting items with military use, the controls demonstrate the resolve of the United States not to provide any direct or indirect military support for Iran and to support other U.S. foreign policy objectives. The United States' support for exports and reexports of food items, medical supplies, and medical equipment adds an additional facet to the bilateral dialogue and ensures that the Iranian population receives what it needs for humanitarian purposes.

SDTs, FTOs, and SDGTs

The purpose of the unilateral controls on the export or reexport of items subject to the EAR to SDTs, FTOs, and SDGTs is to take action consistent with E.O. 13224. These controls also further the general policy of the United States to prevent supporters of terrorism and terrorist elements from acquiring technology that might enhance terrorist capabilities. The controls enable BXA to use its enforcement mechanisms and resources to support U.S. counterterrorism efforts by investigating unlicensed exports, reexports, and diversion of items subject to the EAR to parties designated as terrorists by the U.S. Government.

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

1. Probability of Achieving the Intended Foreign Policy Purpose. Although widespread availability of comparable goods from foreign sources limits the effectiveness of these controls, the controls do restrict access by these countries and persons to U.S.-origin commodities, technology, and software, and demonstrate the U.S. determination to oppose and distance itself from international terrorism. In extending these controls, the Secretary has determined that the controls are likely to achieve the intended foreign policy purpose. During the period that the United States has imposed sanctions against the designated terrorist countries, their level of active support for terrorist activities has generally declined. Several countries have sought removal from the terrorism list.

Cuba

The United States maintains an embargo and anti-terrorist sanctions against Cuba to express U.S. opposition to the continued repressive policies of the Castro government. The United States has modified the embargo on numerous occasions to aid the Cuban people in bringing about a transition to democracy and a free market economy and to expand humanitarian assistance to the Cuban people.

North Korea

The controls deny the North Korean government most commodities, technology, and software controlled on the CCL to support acts of international terrorism or to expand its proliferation activities. The United States has, due to certain North Korean commitments regarding nuclear and missile activities, modified its embargo to allow exports of certain low-level commodities to civil end-users and end-uses. On June 19, 2000, BXA published regulations that authorize U.S. exporters to export consumer products to North Korea without a license, including agricultural, medical, and low-level industrial goods and services. Exports to North Korea have traditionally been humanitarian in nature, comprising food, medicine, and medical equipment. Prior to the June 2000 liberalization, these humanitarian exports required a license.

Libya

The United States maintains export and reexport prohibitions for commodities controlled for national security reasons, for certain types of oil terminal and refining equipment, for items used to service or maintain Libyan aircraft and airfields, and for all other items subject to the EAR, with few exceptions. The intent of these restrictions is to prevent U.S. contributions to Libya's involvement in activities detrimental to the U.S. national security and foreign policy objectives. The controls send a clear signal that despite the resumption of trade between Libya and European Union, the United States is unwilling to resume normal trade relations until Libya's behavior improves.

Sudan

The controls on Sudan affirm the commitment of the United States to oppose international terrorism by limiting Sudan's ability to obtain and use U.S.-origin items in support of terrorist or military activities. These controls send a clear message to Sudan of strong U.S. opposition to its support for terrorist groups.

Syria

These controls are an important means of demonstrating U.S. resolve to limit Syria's ability to obtain U.S.-origin items that could be used to support terrorist activities or contribute significantly to Syria's military potential. Although other nations produce many of the items subject to U.S. anti-terrorism controls, this fact does not eliminate the need to send a strong signal to the Syrian government of U.S. disapproval of its support for terrorist groups.

Iran

The controls on Iran restrict its access to specified U.S.-origin items that could be used to threaten U.S. interests. The United States has sought, and will continue to seek, the cooperation of other countries in cutting off the flow of military and military-related equipment to Iran.

SDTs, FTOs, and SDGTs

These controls seek to prevent acts of terrorism and to affirm U.S. opposition to international terrorism by limiting the ability of designated terrorist organizations and individuals to obtain and use U.S.-origin items in terrorist operations.

2. *Compatibility with Foreign Policy Objectives.* In extending current controls, the Secretary has determined that they are compatible with U.S. foreign policy objectives toward countries and persons who support terrorism. They also are compatible with overall U.S. policy toward Iran, Sudan, Cuba, North Korea, Libya, and Syria and terrorist groups and organizations. The controls to specially designated terrorist groups and individuals (SDTs, FTOs, and SDGTs), wherever located, affirms U.S. commitment to restrict the flow of items and other forms of material support to countries, individuals, or groups for military or terrorist purposes.

3. *Reaction of Other Countries.* Most countries are generally supportive of U.S. efforts to fight terrorism and stop the proliferation of weapons of mass destruction in countries of concern. However, almost none have imposed embargoes as comprehensive as those that the United States has imposed. Some countries have challenged certain U.S. controls as extraterritorial. Opposition to U.S. foreign policy-based controls by many of its major trading partners, including some close allies, has become a point of contention. This reaction has led some foreign firms to design-out U.S. components or to cite the lack of their own national sanctions as a marketing tool to secure business contracts that may have

gone to U.S. companies. In some instances, foreign governments have instructed foreign firms to ignore U.S. reexport controls.

Cuba

Although most countries recognize the right of the United States to determine its own foreign policy and security concerns, many countries, particularly Canada, Mexico and the members of the European Union, opposed the Cuban Liberty and Democratic Solidarity (Libertad) Act of 1996 (Helms-Burton).

North Korea

The United States maintained a comprehensive trade embargo against North Korea for 50 years. In general, the U.S. allies have largely acted in concert with the United States to deny North Korea modern equipment and technology. The recent easing of U.S. sanctions toward North Korea and the removal of some U.S. controls has been echoed by other western countries. U.S. allies will likely follow the United States' lead and not go beyond the scope of U.S. liberalizations until North Korea places further limits on its proliferation and military activities.

Libya

Many countries believe that in turning over the two Libyan nationals for trial, Libya fulfilled its obligations to the United Nations in regard to the Pan Am 103 bombing. The United Nations suspended its sanctions against Libya in April 1999. Most countries did not support the United States' renewal this year of the Iran-Libya Sanctions Act and would like to see the United States remove the sanctions maintained under IEEPA on items including aircraft parts and components and oil well equipment. The United States has sought and will continue to seek other countries' support in cutting off the flow of sensitive items to Libya.

Sudan

The United States imposed the controls (and subsequent embargo) in response to credible evidence that Sudan assists international terrorist groups, destabilizes neighboring governments and violates human rights. The United States continues to consult with key allies and urges them to take all possible measures to convince Sudan to halt its support of terrorism. On September 28, 2001, the United Nations Security Council passed Resolution 1054, which lifted the sanctions imposed as a result of Sudan's involvement in the assassination attempt on President Mubarak of Egypt. The United States maintains its unilateral sanctions.

Syria

The United States maintains controls in response to Syria's lack of concrete steps to end support for the international terrorist groups that maintain a presence in Syria and Syrian-controlled areas of Lebanon. Although other countries concur that Syria's regional activities are destabilizing, few countries maintain controls similar to those implemented by the United States.

Iran

Regarding the controls on specific product categories, other countries share the U.S. concern over Iran's support of terrorism, human rights abuses, and attempts to acquire weapons of mass destruction. For instance, the Wassenaar Arrangement has recognized Iran as a country whose behavior is a cause of concern. In general, however, U.S. controls on commercial goods to Iran are more stringent than those of other countries. Iran's trade partners include Germany, Japan, the United Kingdom, and many other nations.

SDTs, FTOs, and SDGTs

Many countries support U.S. efforts to fight terrorism through blocking terrorist organizations and individuals from acquiring commodities that could assist said groups in committing future acts of violence. While some countries are considering restrictive legislation, very few maintain export controls similar to those implemented by the United States. The terrorist attacks of September 11, 2001, could provide the impetus to expand export controls on such organizations and individuals by U.S. allies and, thus, further restrict terrorists from obtaining commodities, whether of U.S. or foreign origin.

4. Economic Impact on United States Industry.

Cuba

The United States requires a license for the export and reexport of all U.S.-origin commodities, technology, and software subject to the EAR to Cuba. In recent years, the number of license applications that BXA approved to Cuba has increased significantly, particularly over the mid-1990s levels when BXA approved about 100 licenses per year. In FY 2001, BXA approved 240 applications valued at \$452 million. However, this is a considerable decrease from FY 2000, when BXA approved 310 applications valued at \$737 million. Much of the increase in approved export license applications to Cuba can be attributed to changes made during the late 1990s in U.S. export policies, including the resumption of direct flights, exports of medicines and medical supplies and equipment, and exports of food and certain agricultural commodities for sale to independent non-government entities. In 2001, BXA denied two license applications (valued at \$12,885) and returned without action (RWA'd) 30 license applications (valued at \$63.7 million).

Table 1: Export License Applications Approved for Cuba (FY 1995-2001)

Fiscal Year	Number of Applications	Total Value in U.S. Dollars
1995	111	\$604,004,985
1996	83	\$592,738,313
1997	87	\$493,414,819
1998	128	\$544,659,988
1999	181	\$758,407,893
2000	310	\$737,108,231
2001	240	\$452,989,260
TOTAL (1995-2001)	1140	\$4,183,323,489

The majority of export licenses approved for Cuba in FY 2001 (192 of the 240 cases) were for EAR99 items, including medicines and medical supplies, instruments, equipment, and gift parcels. In addition, aircraft and ocean vessels on temporary sojourn accounted for 49 cases.

The U.S. embargo on Cuba is unilateral. According to the Central Intelligence Agency's (CIA) World Factbook 2001, Cuba imported \$3.4 billion in commodities in 2000. Leading imports were petroleum, foodstuffs, machinery, and chemicals. Leading suppliers were Spain, Venezuela, and Canada. In general, southern Florida (particularly the port area of Tampa) and exporters that would benefit from the cost advantages of the United States' proximity to Cuba are most affected by the trade embargo.

North Korea

U.S. export sanctions on North Korea have had a minimal impact on U.S. industry. North Korea's total imports average about \$1-2 billion per year, with the primary imports including petroleum, grain, coking coal, machinery and equipment, and consumer goods. As reported by the Korea Trade Promotion Corporation, North Korea's five major trading partners are China, Japan, Russia, South Korea, and Germany, which account for more than 60 percent of North Korea's total trade. The CIA estimates that imports totaled \$960 million in 1999.

Based on U.S. Census Bureau statistics, total U.S. exports to North Korea, although far below the levels of other developed countries, increased significantly after the signing of the U.S.-North Korea

Agreed Framework in October of 1994. Exports rose from only \$179,730 in 1994 to between \$3 and \$4 million each year from 1995 through 1998. In 1999, U.S. exports to North Korea nearly tripled to \$11.3 million. However, in 2000, U.S. exports were down to \$2.7 million. The majority of U.S. exports in 2000 were cereals, especially corn.

The total number of export license applications that BXA approved has experienced a corresponding surge, increasing from six licenses (valued at \$66,443) in FY 1994 to an annual average of 40 licenses, valued at over \$1.5 billion through FY 1999 (see Table 2). However, in FY 2000, BXA approved only ten licenses for North Korea, valued at \$31.1 million. In FY 2001, BXA approved seven license applications valued at \$1,187,232 for North Korea; no applications were rejected and one (valued at \$11,067) was RWA'd.

On September 17, 1999, President Clinton announced his decision to ease some of the sanctions maintained against North Korea. The sanctions easing was implemented in June 2000, and resulted in most U.S. consumer goods being authorized for export to North Korea. This accounts for the decline in license applications for North Korea in FY 2000 and 2001; the majority of the items formerly requiring a license are now able to be shipped license-free.

Table 2: Export License Applications Approved for North Korea (FY 1994-2001)

Fiscal Year	Number of Applications	Total Value in U.S. Dollars
1994	6	\$66,443
1995	27	\$366,498,433
1996	39	\$209,134,369
1997	47	\$393,281,396
1998	43	\$129,113,580
1999	32	\$407,887,147
2000	10	\$31,130,643
2001	7	\$1,187,232
TOTAL	211	\$1,538,299,243

Libya

According to Census Bureau statistics, U.S. exports to Libya in calendar year 2000 totaled \$17.9 million, mostly consisting of wheat. This accounts for a negligible percentage of Libya's total imports of \$7.6 billion in 2000, according to the CIA's World Factbook. Libya's major suppliers include Italy (24 percent), Germany (12 percent), Tunisia (9 percent), the U.K. (7 percent), France (6 percent), and South Korea (5 percent). Libya's major imports were machinery, transport equipment, food, and manufactured goods.

U.S. exports to Libya have declined steadily since 1979 when export controls were first tightened. Since then, the United States has authorized exports to fulfill pre-1982 contractual obligations and humanitarian aid. Annual U.S. exports and reexports to Libya fell from \$860 million in 1979 to less than \$1 million annually from 1987 through 1994. Total U.S. exports to Libya have been virtually zero for every year from 1992 through 1999. In FY 2000, exports totaled \$1.6 million, due to the shipment of corn. In FY 2001, BXA issued one license valued at \$305,000 and denied two valued at \$1,312,122.

Sudan

U.S. unilateral export sanctions on Sudan have had only a minor affect on U.S. industry. Sudan's poor economic performance over the past decade prevents the country from importing a significant amount of goods from any supplier, including the United States. Before the U.S. embargo went into effect on November 4, 1997, the small amount that Sudan imported from the United States generally did not require an export license and, thus, was not affected by the export controls. According to Census Bureau statistics, U.S. exports to Sudan in calendar year 2000 totaled \$16.9 million, mostly wheat and legumes. The CIA estimates that Sudan's total imports from all sources were \$1.2 billion in 2000; leading suppliers were China, Libya, Saudi Arabia, the United Kingdom, and France. Leading imports were foodstuffs, manufactured goods, machinery and transport equipment, and medicines.

The U.S. aerospace industry appears to have been the most affected by the anti-terrorism controls on Sudan. Aircraft exports from the United States to Sudan totaled more than \$6.4 million in 1992, but no such exports have been reported since 1994. Exports of aircraft engines and aircraft engine parts show a similar decline, falling from \$845,142 in 1992 to barely \$10,000 in 1997.

By 1998, U.S. aerospace exports to Sudan had fallen to virtually zero.

The number of U.S. export licenses issued for Sudan was negligible before the sanctions were implemented, since low-level technology items (which did not require export licenses) constituted the bulk of U.S. exports. After sanctions were imposed, OFAC acquired export control authority for Sudan. Since then, BXA has only processed license applications with Sudanese end-users when the

application is for a “deemed export.” There were no license applications approved or rejected for Sudan in FY 2001 and five were RWA’d (valued at \$9.3 million), with instructions for the exporter to contact OFAC.

Table 3: Approved Licenses for Sudan (FY 1992 to FY 2001)

Fiscal Year	Total Applications Approved	Total Value (in U.S. dollars)
1992	1	\$25
1993	2	\$5,404,000
1994	0	\$0
1995	0	\$0
1996	7	\$571,992
1997	10	\$7,095,973
1998	0	\$0
1999	1	\$1
2001	1	\$1
2001	0	\$0
TOTAL	22	\$13,071,992

Syria

U.S. controls have had minimal impact on industry because the U.S. Government does not require a license for most items for Syria’s leading import sectors, including agricultural items and EAR99 products for the petroleum industry. Despite recent setbacks to the Syrian economy, the economic reforms and infrastructure improvements undertaken by the government in the early 1990s, while limited, have enhanced the country’s potential as a market for U.S. exports.

From 1992-2000, the volume of U.S. exports to Syria has been relatively stable, falling within the range of \$161 million and \$226 million per year. In calendar year 2000, U.S. exports totaled \$219.0 million. Cereals, mostly corn, accounted for about a quarter of U.S. exports, as did various types of machinery. Other leading exports included tobacco and pharmaceuticals.

The average annual value of export licenses issued by BXA for Syria has increased in the last ten years. In FY 1991, BXA approved eight licenses with a total value of \$1,041,504. However, the value licensed trade has risen to an average of more than \$83 million per year between FY 1994 through FY 2000. In FY 2001 there was a decline in both the number of licenses approved for Syria as well as their value.

The majority of licensed items for export during the period covered by Table 4 consist of aircraft parts and components, digital computers, and certain electronic devices and telecommunications equipment controlled for foreign policy reasons only. BXA denied nine applications valued at \$67,996 in FY 2001, bringing the total number of applications denied for Syria since FY 1991 to 75 applications with a total value of \$32.8 million.

Table 4: Approved Licenses for Syria (FY 1991-2001)

Fiscal Year	Total Applications Approved	Total Value (in U.S. dollars)
1991	8	\$1,041,504
1992	31	\$46,366,527
1993	106	\$42,896,103
1994	167	\$76,379,096
1995	139	\$68,298,135
1996	80	\$81,006,877
1997	100	\$107,003,346
1998	81	\$80,707,010
1999	100	\$86,534,591
2000	121	\$141,539,669
2001	106	\$70,269,323
TOTAL	1039	\$802,042,181

The U.S. policy of case-by-case review for aircraft parts and components and aircraft engine parts and components for air safety has led to an increase in aerospace exports to Syria. From 1991-98, exports of aircraft engine parts to Syria totaled \$3.1 million (slightly more than 17.4 percent of total U.S. aerospace exports to Syria during this period) while exports of avionics equipment totaled only \$355,596 (just 1.9 percent of total U.S. aerospace exports to Syria). In 1998, miscellaneous aircraft parts and equipment accounted for 71.4 percent (\$1.39 million) of total U.S. aerospace exports, while exports of avionics equipment totaled \$52,139 (2.7 percent of total U.S. aerospace exports to Syria). Exports of aircraft engine parts to Syria, which had fallen to virtually zero in 1997, increased to \$503,991 in 1998 (25.9 percent of total 1998 U.S. aerospace exports to Syria). In calendar year 2000, total U.S. aerospace exports to Syria equalled \$600,000, all of which was in the form of aircraft parts.

The U.S. policy of not approving the sale of new aircraft to Syria has resulted in a gradual shift from the export of aircraft parts and components for U.S.-origin planes to the export of parts for non-U.S.-origin planes. Although Syrian Arab Airlines (SAA) operates several Boeing aircraft, which, because they are all 20-25 years old, require large amounts of spare and maintenance parts to operate safely, their recent purchase of six Airbus aircraft indicate that the Boeing aircraft may be retired. Many of the components currently required by SAA for use on the Boeing aircraft are provided by U.S. exporters. Although the impact of retiring the Boeing aircraft has not yet been determined, U.S. exporters are also providing parts and components for the Airbus aircraft, albeit at lower levels.

U.S. information technology firms also are increasingly affected by export controls on Syria. The technology level at which export licenses are required has not changed in recent years, despite rapid technological advancements. This has the effect of controlling even very low-level items. For example, the control level for computer exports to Syria stands at 6 millions of theoretical operations per second (MTOPS).

Iran

U.S. policy is to deny dual-use licenses for Iran, consistent with the Iran-Iraq Arms Non-proliferation Act of 1992, contained in the National Defense Authorization Act of FY 1993 (NDAA), and the U.S. trade and investment embargo of 1995. Prior to the NDAA and the imposition of the embargo, U.S. exports to Iran had risen sharply in the early 1990s in response to Iran's removal of certain import restrictions. From 1991 through 1994, U.S. exports to Iran totaled close to \$2.2 billion, making the United States the sixth-largest exporter to Iran during this period. Such exports, however, amounted to only five percent of Iran's total imports and less than one percent of overall U.S. exports.

Following the denial policy mandated by FY 1993 NDAA and the 1995 U.S. trade and investment embargo, U.S. exports to Iran have fallen dramatically. In 1999, the U.S. exported \$48.1 million to Iran, virtually all in the form of cereals such as corn. In 2000, exports fell further to \$16.6 million – again, almost all cereal.

Since 1997, BXA has only approved applications for "deemed exports" (transfers of controlled U.S. technology to Iranian nationals legally residing in and working in the United States), rather than actual exports. In FY 2001, BXA approved 19 deemed export licenses for Iranian nationals. In contrast, during the four fiscal years prior to FY 1995 (FY 1991-94), the United States approved an average of \$177 million in applications to Iran each year. Table 5 shows the impact of the NDAA on U.S. trade with Iran:

Table 5: Approved Applications to Iran (FY 1991-2001)

Fiscal Year	Number of Applications	Total Value in U.S. Dollars
1991	89	\$ 60,149,182
1992	131	\$567,559,528
1993	44	\$ 63,834,952
1994	10	\$ 16,774,377
1995	0	\$0
1996	0	\$0
1997	5	\$19
1998	6	\$10,012
1999	10	\$20,408
2000	23	\$35
2001	19	\$32
TOTAL	117	\$80,639,835

The U.S. trade and investment embargo radically transformed the composition of U.S. trade with Iran. Since 1996, the first full year of the embargo, top U.S. exports to Iran are completely different than previous years. In calendar year 2000, nearly 90 percent of U.S. exports to Iran were in the form of cereals, with pharmaceutical products, such as blood antisera, and printed materials making up the remainder.

Table 6 indicate that the agricultural and oil industry were among those most directly affected by the embargo. The U.S. aerospace industry has been also significantly affected. From 1991 through 1994, U.S. exports of aircraft engine parts to Iran totaled nearly \$9.4 million, averaging \$2.3 million per year and peaking at more than \$7.5 million in 1994. By 1996, the first year that the trade embargo was fully in effect, aerospace exports declined to virtually zero.

Prior to the embargo, the United States competed with Iran's major trading partners in industrial machinery, motor vehicles and auto parts, power generating machinery, measuring and controlling devices, computers, plastics and resins, and industrial organic chemicals. In 2000, Iran imported a total of \$50 billion in goods. Iran's leading sources of these products in 2000 were Germany, South Korea, Italy, the United Arab Emirates, France, and Japan.

Table 6: Top U.S. Exports to Iran, 1991-1995 (FAS Value, in U.S. Dollars)

S.I.C. Number	Description of Goods	Total Value
3511	Turbines & turbine generator sets	\$322.5 million
3531	Construction machinery & parts	\$307.8 million
3533	Oil & gas field equipment	\$250.1 million
2044	Milled rice & by-products	\$166.3 million
0115	Corn	\$137.4 million
2873	Nitrogenous fertilizers	\$124.2 million
3714	Motor vehicle parts & accessories	\$50.8 million
2821	Plastics materials & resins	\$45.4 million
3743	Railroad equipment & parts	\$42.7 million
3569	General industrial machinery & equipment	\$41.8 million

The most damaging effect of the embargo on industry has been the reaction of foreign firms to U.S. reexport requirements. U.S. exporters report that their products are often designed-out of foreign manufactured goods to insure that foreign exports do not fall within the scope of U.S. controls. This "designing-out" damages U.S. exports, both for sales to embargoed countries and non-embargoed countries.

SDTs, FTOs, and SDGTs

BXA did not review any license applications for SDTs or FTOs in FY 2001; thus, the economic impact of these controls is minimal. OFAC maintains restrictions on activities of U.S. persons involving designated terrorist entities, which BXA's controls augment.

5. Enforcement of Control. Because of the well-publicized involvement of these countries in acts of international terrorism, there is public knowledge and support for U.S. controls, which facilitates enforcement. The large number of items exported in normal trade to other countries, including some aircraft items and consumer goods that have many producers and end-users around the world, creates innumerable procurement opportunities for brokers, agents, and front companies working for these countries. In addition, differences in export laws and standards of evidence for violations also complicate law enforcement cooperation between countries.

The controls on designated terrorist entities facilitate export enforcement by enabling BXA to investigate exports and reexports of unlicensed items subject to the EAR to such terrorist entities, wherever located.

BXA views these controls as a key enforcement target, using regular outreach efforts to keep businesses informed of concerns and gathering leads on activities of concern, safeguard visits to verify end-use and end-users of U.S. commodities, and other programs to maintain a strong enforcement effort. BXA is moving to implement a strong program to deal with procurement by or for designated terrorist-supporting countries and entities. This program includes enhanced agent training, development of a targeted outreach program to familiarize U.S. business with concerns, and close cooperation with lead agencies working terrorism issues.

C. Consultation with Industry

On November 7, 2001, the Department of Commerce, via the *Federal Register* and on BXA's Web page, solicited comments from industry on the effectiveness of foreign policy based export controls. A detailed review of the comments is available in Appendix I.

Over half of the comments received addressed the need to lift U.S. unilateral reexport controls on Libya. The letters were submitted by the National Association of Manufacturers, the Petroleum Equipment Suppliers Corporation, Baker Hughes, Halliburton, and the National Foreign Trade Council. The comments contained a common view that continued reexport controls ensure that U.S. companies will be left out of the Libyan market without any resulting foreign policy benefit. Baker Hughes stated the following: "The competitive position of U.S. companies is hurt by the existence of these reexport controls, since they cause foreign customers to 'design out' U.S. products, and foreign competitors use these controls to persuade potential customers not to buy American goods."

Baker Hughes recommended aligning controls on Libya with those imposed on other countries of concern. This view was echoed by NAM, which stated the following: "The United States does not apply this standard on reexports 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 reexport controls on Libya lapse when they expire in January 2002." Several other letters also advocated that the Secretary of Commerce not extend reexport controls for 2002. The organizations recommended that the United States focus on controlling items that could compromise national security, non-proliferation, or anti-terrorism concerns while liberalizing non-sensitive EAR99 reexports.

In July of 2001, BXA held a briefing for over 75 industry representatives on the details of the regulations implementing the Trade Sanctions Reform and Export Enhancement Act of 2000. In December 2001, BXA also briefed the Technical Advisory Committee about the intended expansion of controls on chemical mixtures.

BXA continues to receive inquiries and to consult with industry in regard to licensing policy and practices for designated terrorist-supporting countries and for designated terrorist entities. BXA also works in coordination with the Departments of State, Defense, and OFAC to keep industry informed of changes in licensing requirements and policies toward embargoed and designated terrorist-supporting countries.

D. Consultation with Other Countries

The United States continues to consult with a number of countries, both on a bilateral and a multilateral basis, on activities of designated terrorist-supporting countries. The U.S. Government also holds ongoing consultations on designated terrorist entities. In general, most countries are supportive of U.S. anti-terrorism efforts but do not implement strict export control programs similar to the United States.

Cuba

The Administration has worked hard with other nations, especially nations in Europe and Latin America, to resolve disputes that arise because of implementation of the U.S. embargo. Although differences remain between the United States and other countries concerning the best method to encourage democracy and human rights, the European Union's commitment to its position (renewed in December 2001) that relations cannot improve unless Havana makes significant improvements in human rights remains very helpful. Similarly, cooperation with a number of countries throughout the world resulted in a positive outcome at the U.N. Commission on Human Rights earlier in 2001.

North Korea

The United States consults on an ongoing basis with its regional allies regarding anti-terrorism controls on North Korea. In particular, the United States works closely with Japan on continuing anti-terrorism controls on North Korea.

Libya

Extensive consultation with other nations on Libyan controls continues to take place under the auspices of the United Nations. The United States also has conducted numerous bilateral discussions on this topic.

Sudan

The United States continues to consult with other countries regarding the internal conflict in Sudan, the resulting refugee problem, and the military attacks on aid workers committed by both sides of Sudan's internal dispute. Many of these consultations have occurred within the forum of the United Nations.

Syria

The United States consults on an ongoing basis with Syria and the other countries involved in, or party to, the Middle East peace negotiations.

Iran

The United States has an ongoing dialogue with its allies and partners on Iran's activities. The United States continues to work with other states to curb Iran's proliferation activities.

SDTs, FTOs, and SDGTs

The United States cooperates with allies and partners and shares information on the activities of designated terrorist entities. It is expected that strong ally support for the U.S. fight against terrorism will further facilitate dialogue on foreign export control expansion.

E. Alternative Means

The United States has taken a wide range of diplomatic, political, and security-related steps, in addition to economic measures such as export controls, to persuade certain countries to stop their support for terrorist activities. The methods that the United States uses against a country, terrorist organization, or individual varies and is dictated by the circumstances prevailing at any given time. For example, in the case of Syria, the United States believes that maintenance of anti-terrorism controls is an appropriate method to reinforce to Syria its obligations to act against terrorist elements. The controls on designated terrorist entities indicate the United States' desire to prevent such entities from acquiring commodities, whether of U.S. or foreign origin.

F. Foreign Availability

The foreign availability provision does not apply to items determined by the Secretary of State to require control under Section 6(j) of the Act.³ Cognizant of the value of such controls in emphasizing the U.S. position toward countries supporting international terrorism, Congress specifically excluded them from foreign availability assessments otherwise required by the Act. However, BXA has considered foreign availability of items controlled to designated terrorist-supporting countries under Section 6(a).

For Syria and Iran, there are numerous foreign sources for commodities similar to those subject to control. Although Sudan's imports are low-technology items for which numerous foreign sources exist, the poor health of Sudan's economy, and thus its inability to import these goods, makes foreign availability less of an issue. The development of Sudan's oil resources would change this perception radically, as would an end to the civil war, since these events are likely to have a positive impact on the

health of Sudan's economy. For North Korea, the continued maintenance of sanctions by many other countries severely limits the impact of foreign availability.

ENDNOTES

1. *The Department of Commerce requires a license under Section 6(a) of the Act for all computers going to Iran, North Korea, Sudan, or Syria with a CTP of 6 MTOPS or above. Note also that controls apply to exports of all levels of computers to Cuba and Libya. For Iraq, the Department of Commerce maintains restrictions on items subject to the EAR that are also controlled by the Treasury Department, which administers a comprehensive embargo on Iraq.*
2. *See 15 CFR 746.4(c)(2)(iv, v, vi and vii).*
3. *Provisions pertaining to foreign availability do not apply to export controls in effect before July 12, 1985, under sections 6(i) (International Obligations), 6(j) (Countries Supporting International Terrorism), and 6(n) (Crime Control Instruments). See the Export Administration Amendments Act of 1985, Public Law 99-64, section 108(g)(2), Stat.120, 134-35. Moreover, sections 6(i), 6(j), and 6(n) require that controls be implemented under certain conditions without consideration of foreign availability.*