

2003

## Export Controls and Economic Sanctions

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### Recommended Citation

John B. Reynolds et al., *Export Controls and Economic Sanctions*, 37 INT'L L. 263 (2003)  
<https://scholar.smu.edu/til/vol37/iss2/5>

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# Export Controls and Economic Sanctions

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## I. Introduction

The national focus on combating terrorism dominated the development of economic sanctions and export controls in 2002. The Commerce Department's Bureau of Export Administration became the Bureau of Industry and Security, thereby emphasizing the bureau's role in national security. By some accounts, the Treasury Department's Office of Foreign Assets Control was nearly transferred to the Justice Department or the new Department of Homeland Security. Federal responses to terrorism and homeland security will continue to shape export controls and sanctions policies in 2003.

## II. Trade and Economic Sanctions

### A. SPECIALLY DESIGNATED GLOBAL TERRORISTS (SDGTs)

Throughout 2002, sanctions measures continued to be at the forefront of the U.S.-led war on terrorism. The Treasury Department's Office of Foreign Assets Control (OFAC) continued to freeze the U.S. assets of terrorists and terrorist organizations that it identified as Specially Designated Global Terrorists (SDGTs) pursuant to Executive Order 13,224, which President Bush issued on September 24, 2001 in the wake of the September 11 attacks.<sup>1</sup> In late 2002, the White House reported that 167 countries were following the United States' lead in blocking terrorist assets and that over \$113 million in terrorist assets in over 500 accounts had been frozen worldwide.<sup>2</sup> These amounts represent a significant increase over the approximate \$60 million in terrorist assets that had been frozen by the end of 2001.<sup>3</sup> Moreover, in the United States alone, more than \$35 million in terrorist

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1. Exec. Order No. 13,224, 66 Fed. Reg. 49,079 (Sept. 25, 2001).

2. Press Release, Office of the Press Secretary, Fact Sheet: News About the War Against Terror (Nov. 16, 2002), <http://www.whitehouse.gov/news/releases/2002/11/print/20021116-1.html> [hereinafter White House Fact Sheet].

3. See Karen DeYoung, *Citing Links to Terror, U.S. Blocks Some Assets*, WASH. POST, Jan. 7, 2002, at A1.

assets had been frozen,<sup>4</sup> including the assets of U.S.-based Islamic charities such as Holy Land Foundation,<sup>5</sup> Benevolence International Foundation, Inc., and the Global Relief Foundation.<sup>6</sup>

Despite the addition of 112 persons and entities to the SDGT list in 2002, the United States encountered resistance from allies unconvinced of the terrorism links of some names on the SDGT list. Consequently, in the second half of 2002, OFAC began to remove certain names from the SDGT list, including two Swedish citizens of Somali origin.<sup>7</sup> At the same time, the U.S. government began to publicize its cooperation with other countries, such as Italy and Saudi Arabia,<sup>8</sup> in making designations. It designated a number of non-Middle Eastern (and some non-Muslim) groups as SDGTs, including ETA (a Basque separatist group), the Communist Party of the Philippines, and the Eastern Turkistan Islamic Movement, which operates in northwest China.<sup>9</sup>

## B. TALIBAN AND AFGHANISTAN

The United States imposed economic sanctions against the Taliban and Taliban-controlled regions of Afghanistan in July 1999.<sup>10</sup> Following the toppling of Afghanistan's Taliban government in late 2001 and the installation of Afghan President Hamid Karzai's administration, the U.S. government took a series of actions designed to stabilize and rebuild the Afghan economy. On January 24, 2002, pursuant to section 4(d) of Executive Order 13,129, the State Department released a public notice in which it declared that the Taliban no longer controlled any territory in Afghanistan.<sup>11</sup> This action effectively modified

4. White House Fact Sheet, *supra* note 2.

5. See U.S. Department of Treasury, Office of Foreign Assets Control, *Recent OFAC Actions: 2001 Cumulative*, at <http://www.treas.gov/offices/enforcement/ofac/actions/2001cum.html> (last visited Mar. 30, 2003) [hereinafter *OFAC 2001 Cumulative*].

6. Global Relief Foundation and Benevolence International Foundation, Inc. were designated as SDGTs on October 18, 2002 and November 19, 2002, respectively. See U.S. Department of Treasury, Office of Foreign Assets Control, *Recent OFAC Actions: 2002 Cumulative*, at <http://www.treas.gov/offices/enforcement/ofac/actions/2002cum.html> (last visited Mar. 30, 2003) [hereinafter *OFAC 2002 Cumulative*]. In December 2001, the assets of both organizations were blocked "pending investigation" pursuant to section 106 of the USA PATRIOT Act of 2001, which permits asset blocking during the pendency of investigations into terrorist activity. See *OFAC 2001 Cumulative, supra* note 5; Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001, Pub. L. No. 107-56, 115 Stat. 272 (2001).

7. U.S. Department of Treasury, Office of Foreign Assets Control, *Recent OFAC Actions* (Aug. 27, 2002), at <http://www.treas.gov/offices/enforcement/ofac/actions/20020827.html> (last visited Mar. 30, 2003).

8. Press Release, U.S. Department of Treasury, Office of Public Affairs, Statement by U.S. Treasury Secretary for Enforcement Jimmy Gurusé in Support of Today's New Terrorist Financing Designations (Aug. 29, 2002), at <http://www.treas.gov/press/releases/po3379.htm> (last visited Mar. 30, 2003) (discussing joint action with Italy); Press Release, U.S. Department of Treasury, Office of Public Affairs, Treasury Department Statement on the Designation of Wa'el Hamza Julidan (Sept. 6, 2002), at <http://www.treas.gov/press/releases/po3397.htm> (last visited Mar. 30, 2003) (discussing joint action with Saudi Arabia).

9. OFAC designated individuals associated with ETA as SDGTs in a series of actions on February 26, May 3, and November 4, 2002. It designated the Communist Party of the Philippines and the Eastern Turkistan Islamic Movement as SDGTs on August 12 and September 3, 2002, respectively. See *OFAC 2002 Cumulative, supra* note 6.

10. Exec. Order 13,129, 64 Fed. Reg. 36,759 (July 7, 1999).

11. Public Notice 3899, Modification of Description of "Territory of Afghanistan Controlled by the Taliban" in Executive Order 13129, 67 Fed. Reg. 4301 (Jan. 29, 2002).

the import and export restrictions contained in OFAC's Taliban Sanctions Regulations by eliminating the need for U.S. persons to obtain an OFAC license to import from or export to Afghanistan. Importantly, however, the change did not lift the ban on doing business with the Taliban or other individuals and entities separately listed on OFAC's lists of SDGTs and specially designated nationals (SDNs). In addition, the change in OFAC's regulations did not obviate the need to obtain export licenses from the Commerce Department, where appropriate.

Shortly after the State Department's action, OFAC issued a license authorizing the Federal Reserve to release \$193 million in gold and \$24 million in other assets of the Afghan Central Bank to the Karzai government.<sup>12</sup> OFAC's unblocking of the Afghan Central Bank's assets followed the U.N. Security Council Afghan Sanctions Committee's removal of the bank from its list of sanctioned parties on January 18, 2002.<sup>13</sup> Several days after unblocking the Afghan Central Bank's assets, OFAC, again following the lead of the U.N. Security Council Afghan Sanctions Committee, unblocked \$25.5 million in Afghan government-owned commercial banking interests, including the U.S. assets of Bank Millie and the Afghan Export Promotion Bank.<sup>14</sup> Finally, OFAC unblocked the assets of Ariana Afghan Airlines,<sup>15</sup> and the Federal Aviation Administration removed regulations prohibiting flight operations by U.S. air carriers and commercial operators within Afghan airspace.<sup>16</sup>

### C. COURT CASES INVOLVING OFAC PROGRAMS

#### 1. *Blocking Pending Investigation*

The International Emergency Economic Powers Act (IEEPA),<sup>17</sup> as amended by the USA PATRIOT Act,<sup>18</sup> permits the blocking of U.S. assets during the pendency of U.S. government investigations into whether particular individuals, entities, or organizations should be designated as SDGTs under Executive Order 13,224.<sup>19</sup> Two U.S.-based Islamic charities, Global Relief Foundation (GRF) and Benevolence International Foundation, Inc. (BIF), brought unsuccessful judicial challenges against OFAC orders blocking their assets pending investigations, as detailed below.

##### a. Global Relief Foundation

After its assets were blocked pending investigation in late 2001, GRF, a U.S.-based Islamic, global humanitarian relief organization, challenged the action, but the federal district

12. Press Release, U.S. Department of Treasury, Office of Public Affairs, Treasury Signs License Unblocking Frozen Afghan Assets (Jan. 24, 2002), at <http://www.treasury.gov/press/releases/po943.htm> (last visited Mar. 30, 2003).

13. *Id.*

14. Press Release, U.S. Department of Treasury, Office of Public Affairs, Treasury Signs License Unblocking Additional Frozen Afghan Assets (Feb. 8, 2002), at <http://www.treas.gov/press/releases/po1002.htm> (last visited Mar. 30, 2003).

15. U.S. Department of Treasury, Office of Foreign Assets Control, *Recent OFAC Actions* (Feb. 12, 2002), <http://www.treasury.gov/offices/enforcement/ofac/actions/20020212.html> (last visited Mar. 30, 2003).

16. Removal of Prohibition Against Certain Flights Within the Territory and Airspace of Afghanistan, Final Rule, 67 Fed. Reg. 5888 (Feb. 7, 2002) (to be codified at 14 C.F.R. § 91).

17. 50 U.S.C.A. §§ 1701–1706 (West 2002).

18. 50 U.S.C.A. § 1702 (West 2002).

19. See Exec. Order No. 13,224, *supra* note 1; see also Press Release, U.S. Department of Treasury, Office of Public Affairs, Treasury Designates Benevolence International Foundation and Related Entities as Financiers of Terrorism (Nov. 19, 2002), at <http://www.treas.gov/press/releases/po3632.htm> (last visited Mar. 30, 2003).

court hearing the case rejected GRF's arguments.<sup>20</sup> In denying GRF's request for a preliminary injunction to unfreeze its assets, the court noted that national security and the conduct of foreign affairs are rarely proper subjects for judicial intervention and are largely immune from judicial inquiry or interference.<sup>21</sup> In addition, the court stated that it is "particularly obliged to defer to the discretion of executive agencies interpreting their governing laws and regulations" in matters involving foreign policy and national security.<sup>22</sup> In reaching its conclusion, the court explained that the Executive Order must be considered "as a whole" and relied, in part, on section 5 of Executive Order 13,224, which gives the Secretary of the Treasury (and his designee) the authority "to take such other actions . . . [that are deemed] consistent with the national interests of the United States."<sup>23</sup> Because blocking during the pendency of an investigation is expressly authorized under IEEPA, as amended, the court ruled that such a blocking order was within the scope of section 5 of the Executive Order and was, therefore, appropriate.<sup>24</sup>

#### b. Benevolence International Foundation

Judicial reluctance to challenge the blocking pending investigation provisions was also evident in *Benevolence International Foundation, Inc. v. Ashcroft*.<sup>25</sup> BIF, an Islamic charity, filed a civil action that challenged the FBI's search of BIF's offices and the home of BIF's chief executive officer, as well as OFAC's blocking of BIF's assets pending investigation.<sup>26</sup> The government then filed criminal charges against BIF and its chief executive officer for submitting false affidavits in the civil proceeding.<sup>27</sup> The government moved to stay the civil proceeding until the conclusion of the criminal proceeding, and the court granted the government's motion.<sup>28</sup> Although the court noted that BIF could be potentially prejudiced by a delay of its civil case because its assets were likely to remain blocked, the freezing of BIF's assets before a determination that BIF was an SDGT did not appear to play any role in the court's consideration of the case.<sup>29</sup> BIF was subsequently officially designated as an SDGT.<sup>30</sup>

### 2. The Bro-Tech Case

In a rare criminal proceeding involving the Cuban Assets Control Regulations,<sup>31</sup> the government obtained guilty verdicts against Bro-Tech Corporation, a Pennsylvania company, and Bro-Tech executives for conspiring to violate the embargo against Cuba.<sup>32</sup> Bro-

20. *Global Relief Found., Inc. v. O'Neill*, 207 F. Supp. 2d 779 (N.D. Ill. 2002).

21. *Id.* at 788.

22. *Id.* at 793.

23. *Id.* at 796-97.

24. *Id.* The court also dismissed GRF's constitutional arguments on this issue, finding that OFAC's investigation of GRF did not constitute "punishment" within the meaning of the Bill of Attainder Clause. The court also held that the USA PATRIOT Act's "blocking pending investigation" provision did not constitute an *ex post facto* law.

25. *Benevolence Int'l Found., Inc. v. Ashcroft*, 200 F. Supp. 2d 935 (N.D. Ill. 2002).

26. *Id.* at 937.

27. *Id.*

28. *Id.* at 941.

29. *Id.*

30. U.S. Department of Treasury, Office of Foreign Assets Control, *Recent OFAC Actions* (Nov. 19, 2002), at <http://www.treas.gov/offices/enforcement/ofac/actions/20021119.html> (last visited Mar. 30, 2003).

31. Cuban Assets Control Regulations, 31 C.F.R. § 515 (2002).

32. *United States v. Brodie*, No. Crim. 00-CR-629, 2001 WL 1159756 (E.D. Pa. Aug. 11, 2001).

Tech's foreign sales offices and related foreign corporate entities sold ion exchange resins for water purification to Cuba.

One of the executives found guilty was a Canadian national, whose conviction was based, in part, on actions that were not crimes under Canadian law.<sup>33</sup> Another executive, Bro-Tech President and CEO Stefan Brodie, a U.S. national, was also convicted, but his conviction was later overturned. After the jury verdict the court ruled, on grounds unrelated to Mr. Brodie's nationality, that there was insufficient evidence from which a jury could conclude that Mr. Brodie had *knowingly and willfully* entered into the charged conspiracy.<sup>34</sup>

### 3. Other Court Cases Involving OFAC Programs

In an unpublished *per curiam* opinion, the U.S. Court of Appeals for the Fifth Circuit refused to upset a district court ruling that upheld OFAC's decision not to unblock property of a U.S. entity under the Libyan Sanctions Regulations.<sup>35</sup> The case involved a European entity's purchase and eventual transfer to its U.S. branch of fuel oil in Europe from a refiner/marketer in Germany, which OFAC had previously designated as an SDN of the Government of Libya. Noting that it had a narrow standard of review, the court affirmed OFAC's blocking "essentially for the reasons stated by the district court"<sup>36</sup> and did not address the panoply of sanctions-related issues that had been raised in the briefs and in oral arguments.

## D. TRADE SANCTIONS REFORM AND EXPORT ENHANCEMENT ACT DEVELOPMENTS

There was a marked increase in exports of U.S. agricultural products to Cuba and agricultural and medical products to Iran, Libya, and Sudan pursuant to the Trade Sanctions Reform and Export Enhancement Act of 2000 (TSRA) in 2002.<sup>37</sup> Numerous U.S. companies, selling commodities ranging from bulk agricultural products and processed food to medical devices, availed themselves of the opportunity presented by TSRA to make sales to previously closed markets. There were TSRA-related developments at OFAC and the Commerce Department's Bureau of Industry and Security (BIS), the two agencies responsible for licensing TSRA exports.

### 1. OFAC

Following enactment of TSRA, OFAC amended the Sudanese Sanctions Regulations,<sup>38</sup> the Libyan Sanctions Regulations,<sup>39</sup> and the Iranian Transactions Regulations<sup>40</sup> to establish

33. Mary Claire Dale, *Government Pursues Criminal Charges in Cuba Embargo Case* (Mar. 16, 2002), at <http://www.tnonline.com/archives/news/2002/03.16/cuba.html> (last visited Mar. 30, 2003).

34. *Id.*

35. *Vitol S.A. v. U.S. Dep't of the Treasury*, 54 Fed. Appx. 592, No. 01-21178, 2002 U.S. App. LEXIS 26696 (5th Cir. 2002) (pursuant to Rule 47.5 of the 5th Circuit, the court determined that its opinion should not be published and is not precedent except under the limited circumstances set forth in Rule 47.9.4 of the 5th Circuit); Libyan Sanctions Regulations, 31 C.F.R. § 550 (2002). One of the authors of this article, Michael Sherman, represented Vitol S.A. in this matter.

36. *Vitol*, 2002 U.S. App. LEXIS 26696.

37. The Trade Sanctions Reform and Export Enhancement Act, Pub. L. 106-387, 114 Stat. 1549 (2000); *see* Export Administration Regulations, 15 C.F.R. §§ 740, 742, 746, 772, 774 (2002); 31 C.F.R. §§ 515, 538, 550, 560 (2002).

38. Sudanese Sanctions Regulations, 31 C.F.R. § 538 (2002).

39. Libyan Sanctions Regulations, 31 C.F.R. § 550 (2002).

40. Iranian Transactions Regulations, 31 C.F.R. § 560 (2002).

new one-year licenses and prescribe licensing procedures for exports and re-exports to Sudan, Libya, and Iran of agricultural commodities, medicines, and medical devices. OFAC has submitted periodic reports to Congress on its licensing activities under TSRA. OFAC has reported that it has made significant progress towards effectively implementing TSRA licensing application guidelines and procedures. Despite a steadily increasing volume of TSRA applications and the agency's increased workload on terrorism-related matters.<sup>41</sup> In particular, in its report to Congress, OFAC reported that the number of TSRA applications increased from ninety-eight in the third quarter of 2001 (TSRA's first quarter of operation) to 171 in the second quarter of 2002.<sup>42</sup> From its issuance of regulations in July 2001 through the end of September 2002, OFAC reports that it issued 253 licenses and fifty-four license amendments.<sup>43</sup> Although OFAC was issuing approximately sixty TSRA licenses each quarter in 2002, the increased volume of applications resulted in longer processing times. As of the second quarter of 2002, the last quarter for which OFAC released data, the agency's processing of TSRA license applications took well over thirty days on average.<sup>44</sup> At the same time, exporters have been pleased with certain measures OFAC has taken to expedite the TSRA licensing process, such as issuing licenses and amendments via e-mail in Adobe Acrobat PDF format and referring applications to the State Department via e-mail for interagency review.

## 2. BIS

In July 2001, in order to implement TSRA, BIS created License Exception AGR (Agricultural Commodities), which permits export and re-export of U.S.-origin agricultural commodities to Cuba following submission of prior notification on BIS Form 748P or its electronic equivalent, provided that the criteria set forth in License Exception AGR are met.<sup>45</sup> Significantly, unlike sales to Iran, Libya, or Sudan, TSRA sales to Cuba may only be financed by payment of cash in advance or by a banking institution outside the United States or Cuba. Congressional efforts to remove these financing restrictions failed, as discussed in more detail in Section II.E. *infra*.

In October 2002, BIS reported to Congress that it had received 205 notifications of proposed TSRA transactions pursuant to BIS License Exception AGR between July 26, 2001 (the date BIS's TSRA implementing regulations went into effect) and September 31, 2002.<sup>46</sup> BIS further reported that it had approved 194 of those transactions in an average

41. U.S. Department of Treasury, Office of Foreign Assets Control, *Report of Licensing Activities Pursuant to the Trade Sanctions Reform and Export Enhancement Act of 2000* (July–Sept. 2001), at <http://www.treas.gov/offices/enforcement/ofac/licensing/agmed/4quarter2001.pdf> (last visited Mar. 30, 2003).

42. *Id.*; U.S. Department of Treasury, Office of Foreign Assets Control, *Report of Licensing Activities Pursuant to the Trade Sanctions Reform and Export Enhancement Act of 2000* (Jan.–Mar. 2002), at <http://www.treas.gov/offices/enforcement/ofac/licensing/agmed/2quarter2002.pdf> (last visited Mar. 30, 2003).

43. U.S. Department of Treasury, Office of Foreign Assets Control, *Biennial Report of Licensing Activities Pursuant to the Trade Sanctions Reform and Export Enhancement Act of 2000* (Sept. 2000–Sept. 2002), at <http://www.treas.gov/offices/enforcement/ofac/licensing/agmed/1stbiennial.pdf> (last visited Mar. 30, 2003) [hereinafter *First Biennial Report*].

44. *Report of Licensing Activities Pursuant to the Trade Sanctions Reform and Export Enhancement Act of 2000* (Jan.–Mar. 2002), *supra* note 42. OFAC's biennial report to Congress on TSRA, covering the period September 2000 through September 2002 noted that TSRA "license applications . . . referred for interagency review are requiring on average a review period of more than 70 business days." *First Biennial Report, supra* note 43.

45. Export Administration Regulations, License Exceptions, 15 C.F.R. § 740.18 (2002).

46. U.S. Department of Commerce, Bureau of Industry and Security, *Report on Actions Taken Pursuant to Section 906(A)(1) of the Trade Sanctions Reform and Export Enhancement Act of 2000* (Oct. 28, 2002), at <http://www.bxa.doc.gov/factsheets/TSRAHillReports123.pdf> (last visited Mar. 30, 2003).

of twelve business days and that it had returned the eleven other notifications without action in an average of three business days.<sup>47</sup> BIS explained that the eleven notifications that it returned without action were either not eligible for export under License Exception AGR or were duplicative of prior filings by the exporter.<sup>48</sup>

### 3. *The U.S. Food and Agribusiness Exhibition*

Nearly 300 U.S. food companies displayed their products at the U.S. Food and Agribusiness Exhibition, which was held in Havana, Cuba from September 26 through September 30, 2002.<sup>49</sup> PWN Exhibicon International LLC of Westport, Connecticut obtained a license from OFAC and permission from the Cuban authorities to organize the event.<sup>50</sup> Following the event, Cuba announced that it had purchased nearly \$90 million in U.S. agricultural products at the event, including rice, corn, soy, raisins, turkey, and tropical drink mixes.<sup>51</sup> The exhibition was the culmination of a year in which Cuba purchased food products from numerous U.S. companies, including Cargill, Archer Daniels Midland, and Radlo Foods LLC, and during which numerous U.S. politicians, including Senator Barbara Boxer (D-CA), Senator Maria Cantwell (D-WA), Governor Jesse Ventura (I-MN), and Governor John Hoeven (R-ND) visited the island to promote food sales.<sup>52</sup>

## E. SANCTIONS-RELATED CONGRESSIONAL ACTION

### 1. *The Sudan Peace Act*

President Bush signed into law the Sudan Peace Act on October 21, 2002.<sup>53</sup> The Act “seeks to facilitate a comprehensive solution to the war in Sudan,” calls for the allocation of \$100 million for each fiscal year through 2005 “for assistance to areas outside of government control in Sudan,” and “condemns violations of human rights on all sides of the conflict.”<sup>54</sup> The Act also requires the President to “certify within six months of enactment and each six months thereafter, that the Sudan government and the Sudan People’s Liberation Movement” are in negotiations to end the Sudanese conflict.<sup>55</sup> If the President certifies that the government is not engaged in negotiations, the Act allows the President to (1) “[s]eek a UN Security Council resolution for an arms embargo on the Sudanese government” and (2) take “steps to deny Sudan government access to oil revenues” that may be used to fund military ventures.<sup>56</sup> The enacted version of the legislation did not, however, contain the controversial capital markets provision that the House version of the

47. *Id.*

48. *Id.*

49. Vanessa Bauza, *Cuba, U.S. Firms Cook Up Deals; American Companies Walk Away With \$89 Million Worth of Business*, SUN-SENTINEL, Oct. 1, 2002, at A1.

50. U.S.-Cuba Trade and Economic Council, Inc., *Special Bulletins: U.S. Healthcare Exhibition In Cuba Scheduled For 25 January 2000 to 29 January 2000* (June 21, 1999), at <http://www.cubatrade.org/bullet.html> (last visited Mar. 30, 2003).

51. Bauza, *supra* note 49.

52. Neil King, Jr., *Fidel’s Big Appetite for U.S. Food is More Than a Hill of Beans*, WALL ST. J., Aug. 14, 2002, at A1.

53. See Sudan Peace Act, Pub. L. No. 107-245, 116 Stat. 1504 (2002).

54. U.S. Department of State, Office of the Spokesman, *Fact Sheet: Sudan Peace Act* (Oct. 21, 2002), at <http://www.state.gov/r/pa/prs/ps/2002/14531.htm> (last visited Mar. 30, 2003).

55. *Id.*

56. *Id.*



legislation included. That provision would have prohibited any foreign entity engaged in the development of oil or gas in Sudan from raising capital in the United States and forced all companies listed on U.S. stock exchanges to disclose business dealings in Sudan.<sup>57</sup>

## 2. Cuba-Related Activity

### a. Failed attempts to relax Cuban sanctions

In 2002 Congress considered, but ultimately did not pass, a number of bills designed to ease the embargo against Cuba. For example, the Senate version of the Farm Security Act contained a provision that would have lifted restrictions on private financing of trade in agricultural goods and medical supplies to Cuba, but the House refused to include such a provision.<sup>58</sup>

On July 23, 2002 the House approved an amendment to the Treasury-Postal appropriations bill that would have prevented the Treasury Department from spending money to enforce U.S. trade restrictions against Cuba.<sup>59</sup> The House version of the bill also contained a provision that would have prevented the Treasury Department from using appropriated funds to enforce U.S. restrictions on travel to Cuba.<sup>60</sup> Although the House approved the Treasury-Postal bill on July 24, 2002, the Senate did not act on the bill prior to adjournment of the 107th Congress.<sup>61</sup>

Other measures introduced in the 107th Congress included the Freedom to Travel to Cuba Act of 2002, which would have removed travel restrictions,<sup>62</sup> and legislation to provide for the expiration of the Helms-Burton Act on March 31, 2003.<sup>63</sup> The legislation regarding the expiration of the Helms-Burton Act was introduced on October 10, 2002, and was referred to the Ways and Means, Judiciary, and Financial Services committees.<sup>64</sup> The bill was subsequently referred to the Subcommittee on Immigration, Border Security, and Claims, as well as the Subcommittee on International Monetary Policy.<sup>65</sup> The close of the 107th Congress saw no further action on this legislation.

### b. Suspension of Title III of Helms-Burton Act

Throughout 2002, President Bush continued to postpone the effective date of Title III of the Helms-Burton Act.<sup>66</sup> The provision, if permitted to take effect, would allow various classes of individuals and corporate claimants to sue foreign companies that “traffic” in expropriated property in Cuba. President Bush indicated that “continued suspension was

57. *Gramm Maintains Hold on Sudan Act Over Capital Market Sanctions*, available at <http://www.insidetrade.com>. Domestic U.S. entities are already prohibited from doing so under the Sudanese Sanctions Regulations. Sudanese Sanctions Regulations, 31 C.F.R. § 538 (2002).

58. Farm Security and Rural Investment Act of 2002, Pub. L. No. 107-171, 116 Stat. 134 (2002); see also Press Release, Federal Document Clearing House, Inc., Dooley Moves to Lift Restrictions on Trade with Cuba (Apr. 18, 2002), 2002 WL 7272491.

59. H.R. 5120, 107th Cong. (2002).

60. *Id.*

61. S. 2740, 107th Cong. (2002).

62. H.R. 5022, 107th Cong. (2002).

63. H.R. 5616, 107th Cong. (2002).

64. *Id.*

65. *Id.*

66. Press Release, Office of the Press Secretary, Title III of the Cuban Liberty and Democratic Solidarity Act (Jan. 17, 2002), at <http://www.whitehouse.gov/news/releases/2002/01/20020117-4.html> (last visited Mar. 30, 2003).

'necessary to the national interests of the United States' and would 'expedite a transition to democracy in Cuba,'<sup>67</sup> which the State Department continues to list as a terrorism-supporting country.<sup>68</sup>

### 3. *Enhanced Border Security and Visa Entry Act*

On May 14, 2002, President Bush signed into law the Border Security and Visa Entry Reform Act of 2002.<sup>69</sup> Among other things, the new law imposes strict security-related controls on the issuance of visas to non-immigrants from countries that are state sponsors of international terrorism.<sup>70</sup> As of the end of 2002, there were seven countries designated as sponsors of terrorism: North Korea, Cuba, Syria, Sudan, Iran, Iraq, and Libya.<sup>71</sup>

## F. FOREIGN NARCOTICS KINGPIN DESIGNATION ACT DEVELOPMENTS

The Foreign Narcotics Kingpin Designation Act, which was signed into law in December 1999, identifies and imposes sanctions on a worldwide basis against drug traffickers (termed "Significant Foreign Narcotics Traffickers" (SFNT)), their criminal organizations, and the foreign persons who provide support or assistance to those traffickers and their organizations.<sup>72</sup> OFAC made its first "Tier II" designations on January 31, 2002, imposing sanctions on twelve non-U.S. entities and fifteen foreign individuals determined to have materially assisted or supported an SFNT.<sup>73</sup> President Bush then designated an additional seven individuals as SFNTs on May 31, 2002.<sup>74</sup>

## G. OFAC'S PERIODIC DISCLOSURE OF CIVIL PENALTY AND SETTLEMENT CASES

As a result of a lawsuit brought under the Freedom of Information Act, OFAC made publicly available for the first time documents pertaining to informal settlements and the imposition of civil penalties under the agency's sanctions programs.<sup>75</sup> Subsequently, OFAC began a notice-and-comment rulemaking proceeding in which it proposed a framework for its disclosures to the public regarding penalty cases.<sup>76</sup> Those who commented generally supported the openness and transparency of the proposed rule, but commenters made

67. Kelly Wallace, *Bush Extends Ban on Cuba Lawsuits* (July 17, 2002), at <http://www.cnn.com/2002/ALLPOLITICS/07/17/bush.cuba> (last visited Mar. 30, 2003).

68. *Id.*

69. Press Release, Office of the Press Secretary, President Signs Border Security and Visa Entry Reform Act (May 14, 2002), at <http://www.whitehouse.gov/news/releases/2002/05/20020514-4.html> (last visited Mar. 30, 2003).

70. *Id.*

71. U.S. Department of State, Bureau of Consular Affairs, *Notice: Special Visa Processing Procedures Pursuant to Section 306 of the Enhanced Border Security and Visa Reform Act of 2002*, at <http://www.travel.state.gov/section306.html> (last visited Mar. 30, 2003).

72. See 21 U.S.C. §§ 1901-1908 (2002).

73. See U.S. Department of Treasury, Office of Foreign Assets Control, *Bulletin* (Feb. 6, 2003), available at <http://www.treas.gov/ofac>; Blocking Assets and Prohibiting Transactions, 21 U.S.C. § 1904 (2002).

74. See U.S. Department of Treasury, Office of Foreign Assets Control, *What You Need to Know About U.S. Sanctions Against Drug Traffickers*, at <http://www.ustreas.gov/offices/enforcement/ofac/sanctions/t11drugs.pdf> (last visited Mar. 30, 2003).

75. Public Citizen, *Mokhiber v. Treasury, FOIA Suit for Disclosure of OFAC Settlements*, at <http://www.citizen.org/litigation/briefs/foiagovtsec/ofac/> (last visited Mar. 30, 2003).

76. Prop. Treas. Rule, 67 Fed. Reg. 41,658 (June 19, 2002).

several recommendations for a final rule.<sup>77</sup> One comment requested that OFAC disclose the type of entity involved in the settlement but not its name. Another recommended that OFAC should draw a clear distinction between a civil penalty and a settlement that was agreed to without the finding of a violation.<sup>78</sup> In addition, some commenters suggested that OFAC should describe the violation or alleged violation in sufficient detail to be of value to the regulated community and that only civil penalties imposed or settlements entered into after the publication of the final rule should be subject to disclosure under the rule.<sup>79</sup> OFAC had not yet adopted a final rule by the end of 2002.

#### H. ZIMBABWE

In February 2002, the United States, following the lead of the European Union, imposed limited sanctions against Zimbabwe.<sup>80</sup> The U.S. sanctions prevent Zimbabwean President Robert Mugabe, his family, and senior members of his government from entering the United States.<sup>81</sup> On April 17, 2002, the United States suspended all munitions exports to Zimbabwe.<sup>82</sup> However, aside from prohibiting the export of items and services controlled as munitions under the International Traffic in Arms Regulations (ITAR),<sup>83</sup> U.S. sanctions against Zimbabwe do not affect the ability of U.S. corporations and their foreign subsidiaries to do business with Zimbabwe.

### III. Export Controls

#### A. CONTINUATION OF EXPORT ADMINISTRATION REGULATIONS UNDER INTERNATIONAL ECONOMIC EMERGENCY POWERS ACT

In 2002, Congressional efforts to enact a successor statute to the expired Export Administration Act of 1979, as amended,<sup>84</sup> were unsuccessful. Under the authority of the International Economic Emergency Powers Act,<sup>85</sup> President Bush continued to maintain the Export Administration Act and the Commerce Department's Export Administration Regulations (EAR) (codified at 15 C.F.R. parts 730–774).<sup>86</sup>

#### B. COMMERCE DEPARTMENT BUREAU OF EXPORT ADMINISTRATION CHANGES ITS NAME TO BUREAU OF INDUSTRY AND SECURITY

In April 2002, the Bureau of Export Administration changed its name to the Bureau of Industry and Security (BIS) to reflect better the broad nature of its responsibilities, includ-

77. See U.S. Department of Treasury, Office of Foreign Assets Control, *Comments on Proposed Rules Concerning the Disclosure of Certain Civil Penalties Information*, at <http://www.treasury.gov/offices/enforcement/ofac/interim/civpen.html> (last visited Mar. 30, 2003).

78. *Id.*

79. *Id.*

80. Press Release, Office of the Press Secretary, Zimbabwe Proclamation (Mar. 4, 2002), at <http://www.whitehouse.gov/news/releases/2002/02/20020222-4.html> (last visited Mar. 30, 2003).

81. *Id.*

82. Public Notice 3979, Suspension of Munitions Export Licenses to Zimbabwe, 67 Fed. Reg. 18,978 (Apr. 17, 2002).

83. 22 C.F.R. § 120 (2003).

84. See 50 App. U.S.C. §§ 2401–2420 (expired).

85. See 50 U.S.C. §§ 1701–1707 (2002).

86. Public Notice, Continuation of Emergency Regarding Export Control Regulations, 67 Fed. Reg. 53,721 (Aug. 14, 2002).

ing “[a]dministering export controls on dual-use items[,] . . . critical infrastructure [security,] . . . and assist[ing] U.S. industry in complying with the Chemical Weapons Convention.”<sup>87</sup>

### C. LIBERALIZATION OF BIS CONTROLS ON HIGH PERFORMANCE COMPUTERS

Effective March 6, 2002, BIS liberalized License Exception CTP (Computers) controls on computers.<sup>88</sup> The following are the most important revisions made by the regulation:

- *License Exception CTP Limit for Tier 3*: Effective March 3, 2002, the License Exception CTP limit for Computer Tier 3 Countries was raised from 85,000 Millions of Theoretical Operations per Second (MTOPS) to 190,000 MTOPS. Tier 3 includes the People’s Republic of China, the former Soviet republics, India, Pakistan, the Middle East, Vietnam, and Central Europe. Ten-day advance notification has not been required since March 20, 2001, and this continues to be the case.
- *Post-Shipment Verification Reporting*: Effective March 3, 2002, the regulation raised the CTP level triggering a post-shipment verification report for exports and re-exports to Tier 3. The level was raised from 85,000 MTOPS to 190,000 MTOPS.
- *Transfer of Latvia to Tier 1*: Effective May 2, 2002, Latvia was moved from Tier 3 to Tier 1. There is no upper CTP limit for Tier 1 destinations.
- *Expansion of Eligible Destinations for Shipments of Computer Software and Technology under License Exception TSR*: ECCNs 4D001 and 4E001 were amended to add Australia, New Zealand, Norway, Switzerland, and Turkey to the list of destinations eligible for shipments of software and technology for computers with an unlimited CTP under License Exception TSR.<sup>89</sup>

Due to a lack of interagency agreement, the rule did not raise the License Exception TSR level for software (4D001) and technology (4E001) for the development or production of computers. Because this level remains at 33,000 MTOPS (for twenty-two destinations such as France, Japan, United Kingdom, and the like), computer companies must obtain licenses for deemed exports and even exports to foreign subsidiaries of some software and technology relating to decontrolled computers (see section E below for a summary of BIS implementation of Wassenaar changes, including those for computers).

### D. LIBERALIZATION OF BIS CONTROLS ON GENERAL PURPOSE MICROPROCESSORS

On March 21, 2002, BIS made License Exception CIV (Civil End-Uses/End-Users) available for general purpose microprocessors in ECCN 3A001.a.3.a with a CTP equal to or greater than 6,500 MTOPS, but not in excess of 12,000 MTOPS.<sup>90</sup> License Exception CIV authorizes exports to civil end-users for civil end-uses in Country Group D:1 countries,

87. Press Release, U.S. Department of Commerce, Commerce Department Renames Agency “Bureau of Industry and Security” (Apr. 18, 2002), at <http://www.bis.doc.gov/press/2002/commercerenamesagency-bis.html> (last visited Mar. 30, 2003).

88. Revisions to License Exception CTP: Implementation of Presidential Announcement of January 2, 2002, 67 Fed. Reg. 10,608 (Mar. 8, 2002) (to be codified at 15 C.F.R. §§ 734, 740, 742, 774).

89. *Id.*

90. License Exception CIV Eligibility for Certain “Microprocessors” Controlled by ECCN 3A001, 67 Fed. Reg. 13,091 (Mar. 21, 2002) (to be codified at 15 C.F.R. § 774).

such as the People's Republic of China and the former Soviet republics, but not D:1 country North Korea.<sup>91</sup>

#### E. IMPLEMENTATION OF WASSENAAR ARRANGEMENT REVISIONS

In 2002, BIS revised the EAR on three occasions to implement December 2000 amendments to the Wassenaar Arrangement List of Dual-Use Goods and Technologies: (1) January 3, 2002 amendment of Commerce Control List (CCL) Categories 1–7 and 9,<sup>92</sup> (2) March 5, 2002 amendment of Category 4 (Computers) to implement the principal computer control changes made in December 2000 to the Wassenaar List,<sup>93</sup> and (3) Category 5, Part II (Information Security) to eliminate the 64-bit key length limit for encryption in the mass market Cryptography Note.<sup>94</sup> The following describes the first two sets of amendments; the encryption-related changes are discussed in section F below.

##### 1. CCL Categories 1–7 and 9

Effective January 3, 2002, BIS amended CCL Categories 1–7 and 9, with most of the changes removing or liberalizing CCL National Security (NS) controls. For example, ECCN 5D001.c.2 was amended to remove NS controls from software providing the capability of recovering source code of telecommunications software. Of course, decontrolled items remain subject to CCL Antiterrorism controls, which are, for the most part, unilateral U.S. controls.

##### 2. Principal Changes to Category 4

Effective March 5, 2002, BIS amended CCL Category 4 (Computers) to implement the principal computer control changes made in December 2000 to the Wassenaar List of Dual-Use Goods and Technologies.<sup>95</sup> For example, it raised the control level for computers in ECCN 4A003.b from 6,500 MTOPS to 28,000 MTOPS. Items subject to decontrol under this rule remain subject to Antiterrorism controls (ECCN 4A994). The rule also amended the EAR in other respects consistent with the Wassenaar changes and made several revisions to “clean-up” the January 19, 2001 regulation<sup>96</sup> that implemented the Clinton administration's last comprehensive liberalization of BIS controls on computers.

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91. *Id.*

92. Implementation of the Wassenaar Arrangement List of Dual-Use Items: Revisions to Categories 1, 2, 3, 4, 5, 6, 7 and 9 of the Commerce Control List and Revisions to Reporting Requirements, 67 Fed. Reg. 458 (Jan. 3, 2002) (to be codified at 15 C.F.R. §§ 743, 752, 772, 774).

93. Implementation of the Wassenaar Arrangement List of Dual-Use Items Revisions: Computers; and Revisions to License Exception CTP, 67 Fed. Reg. 10,611 (Mar. 8, 2002) (to be codified at 15 C.F.R. §§ 734, 738, 740, 742, 743, 748, 774) [hereinafter Dual-Use Items Revisions].

94. Revisions and Clarifications to Encryption Controls in the Export Administration Regulations—Implementation of Changes in Category 5, Part 2 (“Information Security”), of the Wassenaar Arrangement List of Dual-Use Goods and Other Technologies, 67 Fed. Reg. 38,855 (June 6, 2002) (to be codified at 15 C.F.R. §§ 732, 734, 738, 740, 742, 748, 770, 772, 774) [hereinafter Revisions and Clarifications to Encryption Controls]. These three rules in 2002 followed one rule that was published on April 9, 2001 to implement December 2000 Wassenaar changes relaxing controls on microprocessors, graphic accelerators, and external interconnects. Implementation of the Wassenaar Arrangement List of Dual-Use Items: Revisions to Microprocessors, Graphic Accelerators, and External Interconnects, 66 Fed. Reg. 18,402 (Apr. 9, 2001) (to be codified at 15 C.F.R. § 774).

95. See Dual-Use Items Revisions, *supra* note 93.

96. See Implementation of Presidential Announcement of January 10, 2001: Revisions to License Exception CTP, 66 Fed. Reg. 5443 (Jan. 19, 2001) (to be codified at 15 C.F.R. §§ 740, 742, 748).

## F. CONTINUING ENCRYPTION DECONTROLS

Following significant liberalizations of encryption controls over the last several years, the Commerce Department promulgated new rules in June 2002 that clarify the circumstances under which varying levels of notification or review are required.<sup>97</sup> The rule modifications expand the availability of the “mass market” exception to many strong encryption products that otherwise would only have qualified as “retail.”<sup>98</sup> Compared to a “retail” classification, “mass market” status provides two principal benefits: (1) no reporting is required for shipments of “mass market” encryption under NLR (No License Required), whereas “retail” encryption shipments must be reported unless excluded; and (2) “mass market” encryption is eligible for the EAR’s de minimis rule, whereas “retail” encryption is eligible for this rule only if BIS expressly grants permission.<sup>99</sup>

In addition, the encryption rule eliminated the distinction between commercial and non-commercial publicly available encryption source code.<sup>100</sup> It also clarified that finance-specific encryption items specially designed and limited for banking use or money transactions can be self-classified under 5A992, 5D992, or 5E992 without notification to or review by BIS.<sup>101</sup> Finally, the amended rule permits, under license exception ENC (Encryption), the export and re-export of encryption products for testing, inspection, or production following one-time review by BIS.<sup>102</sup>

## G. BUSH ADMINISTRATION ANNOUNCES DEFENSE TRADE REVIEW

On November 21, 2002, the Bush administration announced that it had initiated a comprehensive assessment of the effectiveness of U.S. defense trade policies.<sup>103</sup> Among other things, the scope of the review will encompass the following:

- Licensing Policies and Practices: “Identify[ing] possible specific modifications, and assess[ing] the potential risk[] . . . posed by such modifications, . . . [to improve] U.S. defense trade licensing policies and practices.”
- Defense Technology Security Initiative (DTSI): Determining the effectiveness of DTSI, which the former Clinton administration began in May 2000, and developing recommendations to improve or eliminate the DTSI.
- Technology Policy: “Identify[ing] technology transfer policy changes that will facilitate the ability of the U.S. military to benefit from commercial developments and international cooperation” and facilitate “fundamental research in U.S. academic institutions, U.S. Government laboratories, private industry and other organizations.”

97. Revisions and Clarifications to Encryption Controls, 67 Fed. Reg. at 38,855; U.S. Department of Commerce, Bureau of Industry and Security, Office of Strategic Trade & Foreign Policy Controls, Information Technology Controls Division, *U.S. Encryption Export Control Policy: Fact Sheet* (June 6, 2002), at [http://www.bis.doc.gov/encryption/encfactsheet6\\_17\\_02.html](http://www.bis.doc.gov/encryption/encfactsheet6_17_02.html) (last visited Mar. 30, 2003).

98. Revisions and Clarifications to Encryption Controls, 67 Fed. Reg. at 38,855.

99. *Id.*

100. *Id.*

101. *Id.*

102. *U.S. Encryption Export Control Policy: Fact Sheet*, *supra* note 97.

103. Press Release, Office of the Press Secretary, Fact Sheet: Bush Administration Review of Defense Trade Export Policy and National Security (Nov. 21, 2002), at <http://www.whitehouse.gov/news/releases/2002/11/20021121-5.html> (last visited Mar. 30, 2003).

- **Militarily Critical Technologies:** Ensuring that such technologies are controlled and that there are protections against diversion.<sup>104</sup>

The review, which is supposed to be completed in six months, may also cover some BIS licensing policies, especially those relating to militarily sensitive items.<sup>105</sup> As with DTSI, the main objectives of the review are to increase the interoperability of NATO member military forces and to close the gap between U.S. forces and other NATO member forces.<sup>106</sup>

#### H. PROMINENT EXPORT ENFORCEMENT CASES

The most prominent export enforcement cases in 2002 probably were those involving Space System/Loral and Hughes Electronics/Boeing Satellite Systems. Following are brief descriptions of these two Arms Export Control Act cases.

##### 1. *Space System/Loral*

On January 10, 2002, the U.S. Customs Service announced a settlement in which Space System/Loral, Inc. (SS/L), a subsidiary of Loral Space & Communications, Ltd. (Loral), agreed to pay a record Arms Export Control Act civil fine of \$20 million for alleged violations committed in connection with its assistance in preventing the People's Republic of China's Long March satellite launchers from exploding.<sup>107</sup> About \$6 million of this fine must be used by Loral and SS/L to defray some of the costs associated with implementing compliance measures required under the settlement.<sup>108</sup> In the settlement, Loral and SS/L neither admitted nor denied the alleged violations.<sup>109</sup> The State Department lifted the debarment that had applied to SS/L's exports to the People's Republic of China (PRC), and the Justice Department dropped its criminal investigation of Loral's exports.<sup>110</sup>

##### 2. *Hughes Electronics/Boeing Satellite Systems*

On December 26, 2002, the State Department formally charged Hughes Electronics and Boeing Satellite Systems with export violations in 1995 and 1996 related to allegedly illegal assistance to PRC's Long March satellite launchers.<sup>111</sup> Boeing Satellite Systems assumed this potential liability when it acquired Hughes Space and Communications on January 13, 2000. This action initiated administrative proceedings before an administrative law judge (such proceedings are rare for the State Department) and apparently followed years of on-again, off-again settlement negotiations between the companies and the State Department.<sup>112</sup> The charging letter alleged 123 export violations, and maximum penalties under these charges could total \$66.5 million.<sup>113</sup> The letter stated that the U.S. government re-

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104. *Id.*

105. *Id.*

106. *Id.*

107. Press Release, U.S. Customs Service, U.S. Customs Probe Into Satellite Manufacturer Results in Record \$20 Million Fine (Jan. 10, 2002), at [http://www.customs.gov/xp/cgov/newsroom/press\\_releases/12002/01102002.xml](http://www.customs.gov/xp/cgov/newsroom/press_releases/12002/01102002.xml) (last visited Mar. 30, 2003).

108. *Id.*

109. *Id.*

110. *Id.*

111. John Mintz, *State Department charges Boeing, Hughes with China dealings*, SEATTLE TIMES, Jan. 1, 2003, available at <http://www.seattletimes.com>.

112. *Id.*

113. U.S. Department of State, Bureau of Political-Military Affairs, Office of Defense Trade Controls, State Dept. Charge Letter to Hughes and Boeing Concerning Transfer of Defense Technology to China (Dec. 26, 2002), at <http://www.softwar.net/hughes2.html> (last visited Mar. 30, 2003).

mained free to pursue criminal actions against the companies. At the end of 2002, Hughes Electronics and Boeing Satellite Systems were contesting the charges on the grounds that State Department licenses were not needed because the companies had Commerce Department licenses, and because all transferred information was in the public domain.<sup>114</sup>

#### I. BIS'S UNVERIFIED LIST

On June 14, 2002, BIS issued a list of parties in foreign countries (Unverified List) that were involved in past transactions in which BIS was unable to conduct pre-license checks or post-shipment verifications.<sup>115</sup> All parties on the new list are in the People's Republic of China (PRC), except for one in Malaysia and another in the United Arab Emirates (UAE). The notice advises exporters and re-exporters that the participation of a party on the Unverified List in a transaction is a "red flag" for purposes of the "Know Your Customer" guidance" in Supplement 3 to EAR part 732.<sup>116</sup> In other words, in such situations, "exporters have an affirmative duty to . . . [investigate] the proposed transaction to satisfy themselves that . . . [it] does not involve a proliferation activity prohibited by [EAR] part 744" and does not otherwise violate the EAR. On November 21, 2002, BIS removed one of the listed entities in the PRC from the Unverified List after the U.S. government was able to conduct a post-shipment verification of the entity.<sup>117</sup>

#### J. REGULATORY IMPLEMENTATION OF BIS-ODTC SETTLEMENT OF LONGSTANDING JURISDICTIONAL DISPUTE REGARDING "SPACE QUALIFIED" ITEMS

On September 23, 2002, the Commerce and State Departments published rules in the Federal Register amending the EAR and the ITAR, respectively, to implement the settlement on "space qualified" items that was announced publicly on the BIS Web site ([www.bis.doc.gov](http://www.bis.doc.gov)) on August 31, 2001.<sup>118</sup> The rules concerned certain items in CCL Categories 3 (Electronics), 5—Part I (Telecommunications), 6 (Sensors and Lasers), and U.S. Munitions List Category XV (Spacecraft Systems and Associated Equipment).<sup>119</sup> The State Department gained control over most such items, and those transferred to, or remaining with, the Commerce Department are strictly controlled.

#### K. SANCTIONS FOR PROLIFERATION OF WEAPONS OF MASS DESTRUCTION, MISSILES, OR LETHAL MILITARY EQUIPMENT

The State Department imposed sanctions on certain PRC, Armenian, and Moldovan entities and nationals for the proliferation of items relating to chemical or biological weap-

114. Mintz, *supra* note 111.

115. List of Unverified Persons in Foreign Countries, Guidance to Exporters as to "Red Flags," 67 Fed. Reg. 40,910 (June 14, 2002).

116. *Id.*

117. Removal of Person From the Unverified List—Guidance as to "Red Flags" Under Supplement No. 3 to 15 C.F.R. Part 732, 67 Fed. Reg. 70,209 (Nov. 21, 2002).

118. Licensing Jurisdiction for "Space Qualified" Items and Telecommunications Items for Use on Board Satellites, 67 Fed. Reg. 59,722 (Sept. 23, 2002) (to be codified at 15 C.F.R. §§ 740, 742, 774); Amendments of the United States Munitions List, 67 Fed. Reg. 59,733 (Sept. 23, 2002) (to be codified at 22 C.F.R. § 121).

119. Licensing Jurisdiction for "Space Qualified" Items and Telecommunications Items for Use on Board Satellites, 67 Fed. Reg. at 59,772.



ons or missiles.<sup>120</sup> Sanctions were also imposed on certain Russian entities for providing lethal military equipment to countries that the State Department designated as terrorist-supporting.<sup>121</sup> The measures imposed on these parties included commercial “dual-use,” munitions, procurement, and/or federal assistance sanctions.

#### L. ODTIC CREATES NEW LIMITED EXEMPTIONS FOR U.S. UNIVERSITIES

Effective March 29, 2002, the State Department amended the ITAR to create limited exemptions for U.S. universities.<sup>122</sup> The State Department created the new exemptions in response to concerns raised by U.S. universities about the difficulty in complying with the strict ITAR rules after the March 1999 transfer of commercial communications satellites from the CCL to the USML. Under the new exemptions, accredited U.S. institutions of higher learning (e.g., U.S. universities) can in some instances export and import articles fabricated only for fundamental research that would otherwise be controlled by U.S. Munitions List Category XV(a) or (e), that control spacecraft (such as satellites) and related components and items.<sup>123</sup> The new exemptions supplement pre-existing limited exemptions for U.S. universities in the ITAR.

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120. Bureau of Nonproliferation; Imposition of Nonproliferation Measures Against Three Chinese Entities, Including Ban on U.S. Government Procurement, 67 Fed. Reg. 3528 (Jan. 24, 2002); Bureau of Nonproliferation; Imposition of Nonproliferation Measures Against Armenian, Chinese, and Moldovan Entities, Including Ban on U.S. Government Procurement, 67 Fed. Reg. 34,983 (May 16, 2002); Bureau of Nonproliferation; Imposition of Nonproliferation Measures Against Entities in the People's Republic of China and in India, 67 Fed. Reg. 48,696 (July 25, 2002).

121. Imposition of Lethal Military Equipment Sanctions Against the Government of Russia and Waiver of These Sanctions and Imposition of Discretionary Measures Against Three Russian Entities, 67 Fed. Reg. 57,865 (Sept. 12, 2002).

122. International Traffic in Arms Regulations; Exemptions for U.S. Institutions of Higher Learning, 67 Fed. Reg. 15,099 (Mar. 29, 2002).

123. *Id.*