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Special Report

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By Kathleen Walsh, Senior Associate and Director of the Stimson Center Fellowship in China, Henry L. Stimson Center

Recent Developments in the NIS

Russia Approves New Customs Code

On May 29, 2003, President Putin signed the Customs Code of the Russian Federation, passed by the State Duma (lower house of parliament) on April 25 and approved by the Federation Council (upper house of parliament) on May 14 of this year.[1] The new Code is a result of more than four years of work by the parliament, the State Customs Committee, and the Russian business community.[2,3] The final version of the new Code contains a total of 6,500 amendments, with 400 out of 460 articles of the old Code modified.[3,4] The new Code simplifies customs rules and procedures with the ultimate goal of reducing red tape and arbitrary actions of customs officers.[4,5] For example, the Code requires customs officers to clear goods no later than three days after a declaration has been filed.[4] The Code also stipulates that changes in procedures for declaring goods for custom purposes should enter into force no earlier than 90 days after their publication, giving importers and exporters more time to adjust to new requirements.[6] These changes make foreign trade operations more stable and predictable. Moreover, the new Code complies with the 1999 Kyoto Convention on Simplification and Harmonization of Customs Procedures. Currently, Russia is working on joining this convention; Russian officials also hope that the approval of the new Customs Code will facilitate Russia's admission to the World Trade Organization.[3,4,5] The Code enters into force on January 1, 2004.[1]

Sources: [1] "V. Putin podpisal Tamozhenny kodeks RF" (V. Putin signed the Customs Code of the Russian Federation), Tamozhenny kompyuterniy servis (TKS) website, <<http://www.tks.ru>>. [2] Anastasiya Onegina, "Customs Without Surprises," *Vedomosti*, April 8, 2003; in "New Customs Code to clip State Customs Committee powers," FBIS Document CEP2003040800255. [3] "Federation Council Approves New Wording of Customs Code," *Interfax Business Law Review*, May 13-20, 2003. [4] "Russia: Federation Council Unanimously Votes for New Customs Code," *ITAR-TASS*, May 14, 2003; in FBIS Document CEP20030514000057. [5] "Duma Deputy: Russia adopting Customs Code can ease talks on WTO entry," *ITAR-TASS*, April 3, 2003; in FBIS Document CEP20030403000266. [6] "Russia's upper house passes new customs code," *Radio Rossii*, May 14, 2003; in FBIS Document CEP20030514000441.

New Customs Code Adopted in Kazakhstan

A new Customs Code entered into force on May 1, 2003 in Kazakhstan. The Code was enacted by Law 401-II, which was signed by Kazakhstani President Nursultan Nazarbayev on April 5, 2003.[1] According to Berdibek Saparbayev, head of the Kazakhstani Customs Control Agency, "until now customs authorities have been guided by the Law on Customs and several other legal acts, of which there are nearly 100." [2] Saparbayev said that the new Code is different in that "it is a regulatory document that reduces the number of by-laws. In general, this will simplify customs procedures." [2]

The Code assigns customs authorities the responsibility for conducting radiation checks on the border.[3] This clause of the Code, however, as well as the clause explaining how the radiation checks will be performed, will not come into effect until January 1, 2004.[4,5] The Customs Code also includes a provision on priority customs clearance of radioactive materials.[6] The new Code draws on Russian and international experience, as well as on provisions of the Kyoto Convention on the Simplification and Harmonization of Customs Procedures.[2]

Editor's note: the International Convention on Simplification and Harmonization of Customs Procedures (Kyoto Convention) was adopted on May 18, 1973 in Kyoto (Japan) and came into effect on September 25, 1974. Later, it was revised by the World Customs Organization (WCO) to bring it in line with current practices of international trade. The protocol of the amendment was adopted on June 26, 1999 in Brussels (Belgium). Today, the revised Kyoto Convention is an important international instrument for improving customs procedures.[7,8]

Sources: [1] Customs Code of the Republic of Kazakhstan, *Kazakhstanskaya pravda*, No. 102-104 (24042-24044), April 11, 2003, pp. 4-18. [2] "Novyy tamozhenny kodeks napravlenn na uproscheniye tamozhennykh protsedur" (New Customs Code aims to simplify customs procedures), *Kazinform*, May 5, 2003, <www.kazaag.kz>. [3] Customs Code of the Republic of Kazakhstan, Article 19, Item 12, *Kazakhstanskaya pravda*, No. 102-104 (24042-24044), April 11, 2003, pp. 4-18. [4] Customs Code of the Republic of Kazakhstan, Article 433, Item 2, *Kazakhstanskaya pravda*, No. 102-104 (24042-24044), April 11, 2003, pp. 4-18. [5] Customs Code of the Republic of Kazakhstan, Article 529, *Kazakhstanskaya pravda*, No. 102-104 (24042-24044), April 11, 2003, pp. 4-18. [6] Customs Code of the Republic of Kazakhstan, Article 370, *Kazakhstanskaya pravda*, No. 102-104 (24042-24044), April 11, 2003, pp. 4-18. [7] Aleksandr Grebeshov, "VTO i mezhdunarodnaya trgovlya" (Aleksandr Grebeshov, "WTO and international trade") *Zakony. Finansy. Nalogi*, No. 20 (86), May 16, 2003, <<http://www.zfn.nizhny.ru/archive/000520/s8.shtml>> [8] Protocol of the Amendment to

A Review of the Ukrainian Law on Export Control

The Law of Ukraine on *State Control Over International Transfers of Military and Dual-Use Goods*, which was approved by the Verhovna Rada on February 20, 2003 and signed by president Leonid Kuchma on March 13, 2003, is, so far, the only export control-related document adopted by Ukraine's legislative branch. For the past decade, all legal norms regulating export, import, and transit of military and dual-use goods and technologies were adopted by the executive power – the President and the Cabinet of Ministers of Ukraine. The new law, to a certain extent, is a summary of the provisions contained in numerous preceding governmental decrees. Specifically, all the major provisions of the law were translated from the 1998 presidential decree 117/98 *On Procedures for Export Controls in Ukraine*, signed February 13, 1998. At the same time, three new major features were introduced into the law.

First, the document contains a section (Section IV. Preventing Export Control Violations and Punishments, Articles 23 – 28), which specifies potential violations and respective civilian punishments. Civilian punishments include fines (from 150% of price of goods that were the subject of relevant international transfer to 1,000 non-taxable minimum incomes of citizens), cancellation or revocation of a license or international import certificate, cancellation of registration of an entity involved in foreign economic activities as an entity eligible for international transfers of goods. The law also mentions criminal punishments which are specified in the Criminal Code. These provisions of the law add strong legal “teeth” to the country's export control enforcement mechanism, which was previously lacking.

Second, Article 14 reads that “Establishment of internal compliance programs (ICP) is obligatory for entities involved in international transfers of goods desiring to obtain authorization from the Cabinet of Ministers of Ukraine to export and import goods, designated for military purposes and goods containing information pertaining to state secrets, or if they desire to obtain a general or open license.” The duly authorized state export control body, i.e. the State Service on Export Control (SSEC), provides recommendations and assists in developing ICPs and “grants necessary information and methodical assistance” to companies. The law also provides for establishing a mechanism to certify the ICPs.

Third, Article 23 gives the SSEC the authority to conduct investigations, within its jurisdiction, with respect to documentation fraud, end-use and end-users, and any other operations involving military or dual-use goods subject to export control. These new powers could be given to the SSEC by the Verhovna Rada and were lacking before.

International Supplier Regimes

Nuclear Suppliers Group Plenary in Pusan, South Korea

On May 23, 2003, the Nuclear Suppliers Group (NSG) concluded its six-day annual plenary meeting, held in Pusan, South Korea. The NSG is an informal arrangement of 41 countries exporting nuclear materials and technologies, aimed at preventing proliferation of nuclear weapons by coordinating efforts in nuclear export controls. The focus of this year's meeting was on tightening controls over exports that might contribute to the North Korean nuclear program. Noting that “North Korea has repeatedly flouted its international non-proliferation obligations,” the NSG press statement declared that “the group again called on all states to exercise vigilance to ensure that none of their exports of goods and technologies contribute to North Korea's nuclear weapons effort.” The group also agreed “to conduct outreach with certain non-NSG members to prevent North Korea from trying to find loopholes in the international non-proliferation system.” The Iranian nuclear program was another major issue discussed at the plenary. The NSG member states expressed concerns over Iran's nuclear activities and urged the Iranian government to resolve outstanding issues in this sphere.[1]

“Catch-all” provisions were discussed at some length because of recent episodes involving attempted exports to North Korea and Iran of sensitive items not included on international export control lists.

According to a well-respected nuclear industry newsletter, one episode involved an attempt by North Korea to import from Germany 200 metric tons of 6061-T6 aluminum tubing, apparently intended for North Korea's uranium enrichment program, which is based on the gas centrifuge process.[2] The quality of the material was below the level requiring a specific export license under Nuclear Supplier Group rules, but was nonetheless considered usable for certain gas centrifuge components. German authorities used the country's catch-all provision to halt the export. Another case involved spectrometers, the export of which to Iran was blocked by Australian authorities under that country's catch-all provision because of concerns regarding the proposed end-user. A third case involved Japanese frequency converters, potentially usable in gas centrifuges. Japan tried to halt the transshipment of the units from Thailand and Hong Kong to North Korea. Hong Kong blocked the shipment using its catch-all controls, but Thailand had no such provisions and lacked the authority to detain the cargo.

Sources: "Nuclear Suppliers Group meeting calls for more vigilance over North Korea," Yonhap news agency, 23 May 2003; in Lexis-Nexis Academic Universe, <<http://www.lexis-nexis.com>>. [2] Mark Hibbs, "Procurement by DPRK, Iran Focuses Attention on 'Catch-All' Controls," *Nucleonics Week*, May 29, 2003, p. 12.

International Export Control and WMD Security Assistance Programs

United States to Give Aid to Replace Nuclear Lighthouse Stations in Russia

Under the USSR, a system of lighthouses was created that used radioactive materials as power sources for units located in remote areas. More specifically, these lighthouses have been powered by radioisotope thermal generators, or RTGs, that use heat energy from the decay of the isotope Strontium-90 to generate power. Each RTG has a radioactivity level of around 40,000 curies, making them some of the most powerful radioactive sources in the world.[1] By using RTG generators, the lighthouses could operate for years without maintenance, allowing for their use in isolated locations in the Russian Far East, such as Chukotka and Kamchatka, as well as around the Kola Peninsula and Novaya Zemlya.[2]. Unfortunately, this also led to neglect. The Nuclear Safety Authority of Russia (or Gosatomnadzor) accounts for 353 lighthouses, but this number does not include lighthouses under military control; other sources estimate that there are 600 units [1,3], while a May 2003 U.S. General Accounting Office report estimates that there are 998 RTGs in Russia. Of these, an estimated 829 are used in lighthouses, radio beacons, and meteorological stations, and the remaining 169 are in storage. After an inspection of lighthouses on the Arctic Ocean coast of Siberia in the summer of 2002 by specialists from Gosatomnadzor, most of the lighthouses visited were described as being in "very bad" condition. The inspections revealed that radioactivity levels near the lighthouses were higher than permitted, which indicates that the shielding for the RTGs may be damaged and that they are possibly leaking radioactivity.[2]

These RTGs are considered severe ecological and security threats. Due to their extremely remote locations and lack of security they are also very vulnerable to theft and could be used in a radiological dispersal device (RDD), also known as a "dirty bomb." Several thefts have been reported, as scavengers have attempted to strip the casings from the radioactive materials to sell as scrap metal. In one such case this year, a group of thieves stripped a lighthouse RTG of its aluminum, steel, and lead parts, and dumped the radioactive strontium cylinder into the Gulf of Finland. The 400-degree centigrade cylinder melted the ice and sank to the bottom of the Gulf. The cylinder was recovered on March 28 and sent to the Sosnovyy Bor nuclear waste storage depot.[4,5] Three years earlier, the same lighthouse was looted, and the generator was found stripped of its metal parts at a bus stop in Kingisepp, about 50 kilometers away.[5] Similar thefts have also occurred in Kandalaksha, near Murmansk in the North of Russia, in 2001, and in Kamchatka, where thieves stole a generator in order to provide heat and electricity for their apartment. However, the radiation shielding of the RTG was damaged in transport, and the thieves abandoned the generator.[4,6]

In its Fiscal Year 2004 budget proposal, the U.S. Department of Energy has requested \$19.7 million in order to help NIS states secure radiological sources that could be used in an RDD.[7] One goal of these funds, which will be combined with funding from the U.S. Department of State, will be to secure these lighthouses through cooperation with an existing Norwegian assistance program, which has already succeeded in removing RTGs from 25 lighthouses in the Murmansk region and converting the warning beacons to solar-powered units.[8] These solar units are similar to those used in Norwegian lighthouses

and function well even during the dark winter months. Department of Energy funding will be used to provide safe transport and storage for the old radioactive power sources extracted from the lighthouses, while money from the Department of State will be used to convert the lighthouses to solar power.[2,9]

Sources: [1] John Hooper, "Campaign launched to stop dirty bombs," *The Guardian*, March 12, 2003, Lexis-Nexis Academic Universe, <<http://web.lexis-nexis.com>>. [2] Thomas Nilsen, "Nuclear Lighthouses to be replaced," Bellona Foundation, February 2, 2003, <<http://www.bellona.no>>. [3] "Radiatsionno opasnyye obyektly organizatsiy narodnogo khozyaystva: Obshchaya kharakteristika obyektov ispolzovaniya atomnoy energii" (Dangerous radioactive objects used by economic entities: General characteristics of objects that use atomic energy), Gosatomnadzor Website, <<http://www.gan.ru/otchet/rd/reg36.htm>>. [4] "Thief Discards Radioactive Parts of Russian Lighthouse in Gulf of Finland," *Helsingin Sanomat* International Edition, April 4, 2003, <<http://www.helsinki-hs.net/>>. [5] Oleg Bodrov, "Radioaktivnaya bomba dlya Baltiki" (Radioactive bomb for the Baltic), *Pravda*, April 17, 2003, <<http://www.pravda.ru>>. [6] Leonid Skudar, "Opasny ne izotopy" (Isotopes are not dangerous), *Vesti*, December 22, 2000; in Integrum Techno, <<http://www.integrum.ru>>. [7] Statement of Linton F. Brooks, Acting Under Secretary of Energy for National Security, Before the Subcommittee on Energy and Water Development Committee on Senate Appropriations, April 10, 2003; in Federal Document Clearing House Congressional Testimony; in Lexis-Nexis Academic Universe, <<http://www.lexis-nexis.com>>. [8] Galina Lysenko, "Milliony kyuri i milliony kron" (Millions of curies and millions of crowns), *Rossiyskaya gazeta*, September 10, 2002, in Integrum Techno, <<http://www.integrum.ru>>. [9] CNS correspondence with State Department official, May 28, 2003.

New Border Guard Facility at Georgian-Azerbaijani Border Opens with U.S. Assistance

On March 21, 2003, U.S. Ambassador to Georgia Richard Miles and Georgian President Eduard Shevardnadze participated in a ceremony marking the opening of the new border checkpoint at Red Bridge on the Georgian-Azerbaijani border.[1,2]

According to a March 20, 2003 press release from the U.S. Embassy in Georgia, the newly built border guard station is a fully fenced-in compound designed to accommodate 65 people and comprised of administrative and command buildings, single and joint housing, a kitchen-dining facility, laundry, warehouses, an ammunition storage area, a vehicle maintenance area, dog kennels, and a recreation area for physical training of checkpoint personnel.[1] In addition, the new border guard station comes with two helipads for the deployment of Georgian Border Guard aircraft.[1]

At the ceremony, Chairman of the Georgian State Border Guard Department Lieutenant General Valeriy Chkheidze noted that the new border guard station fully meets international standards and has no analogies in the entire expanse of the Commonwealth of Independent States (CIS).[3] Chkheidze also emphasized that the Red Bridge border checkpoint is equipped with monitoring systems that allow control of the entire perimeter of the Azerbaijani-Georgian border.[3] The new border guard station also constitutes a significant improvement in the working and living conditions of the Georgian Border Guards deployed at the border with Azerbaijan. Since 1997 the Georgian Border Guards had been living in tents in the Khrami River plain, which is regularly flooded and where the temperatures fluctuate from -15° C in winter to 45° C in summer.[1]

The construction of the Red Bridge border checkpoint, a \$3.5 million project, [3,4] is part of the Georgian Border Security and Law Enforcement (GBSLE) assistance program funded by the U.S. government. The Georgian State Border Guard Department initially approached the GBSLE program for assistance in 1999. In 2001, the U.S. Army Corps of Engineers began project site planning and construction oversight. The Red Bridge border checkpoint was built by the Zafer Construction Company (Turkey), which won an international tender and began construction in March 2002.[1]

On March 25, 2003, Chkheidze told the Georgian news agency Prime-News that during a visit to the United States planned for summer 2003, he intends to discuss with his American counterparts the modernization of the border posts along the Chechen sector of the Georgian-Russian border.[3] In particular, a new border guard command post is planned for the mountain village of Shatili. It is envisioned that the border guard duties on the Chechen sector of the Georgian-Russian border will be assumed by soldiers who have received special military training in the U.S. Department of Defense "Train and Equip" program.[3] Head of Command Headquarters of the Georgian State Border Guard Department Colonel Korneli Salia also indicated to Prime-News that total U.S. assistance to Georgian border guards in 2003 will amount to \$14 million.[4]

Past examples of GBSLE assistance to the Georgian border guards include the \$3.2 million renovation of an aircraft maintenance facility at the Alekseyevka airbase, which is essential for the upkeep of the Mi-8

and Mi-2 helicopters employed by the Georgian border guards.[5] The Alekseyevka airbase is located adjacent to Tbilisi's commercial airport and supports the aircraft assets of the Georgian Border Guard forces, including a rapid reaction group positioned in Tbilisi. The renovation of the aircraft maintenance facility was completed in August 2002 by the Morrison Construction Company, Ltd. (UK), which began the project on April 6, 2001.[5]

The GBSLE program also provides assistance to the Georgian Customs Department. On March 20, 2003, Acting Coordinator of U.S. Assistance to Europe and Eurasia Tom C. Adams (U.S. Department of State) met with Chairman of the Georgian Customs Department Aleksander Aslanikashvili. The U.S. and Georgian officials met to discuss progress in implementing the GBSLE assistance program and to resolve questions of continued financing.[6] According to the press service of the Georgian Customs Department, the U.S. government started to provide technical assistance to Georgian customs under the auspices of the GBSLE program in 2002. This includes the installation of the "Asycuda" computerized customs management system and the planned construction of new border checkpoints.[6] In particular, the U.S. government will provide assistance in building border checkpoints at Sadakhlo (on the Georgian-Azerbaijani border), Kazbegi (on the Georgian-Russian border), and Vale (on the Georgian-Turkish border). In addition, U.S. assistance will include the modernization of the border checkpoint at the Tbilisi airport.[6]

Editor's note: The Georgia Border Security and Law Enforcement (GBSLE) assistance program was launched in 1998 to support Georgia's sovereignty and territorial integrity by enabling the Georgian government to control the movement of people and goods across its land borders, coastline, and ports of entry, to reduce weapons smuggling and other illicit trafficking, and to increase the Georgian government's ability to collect customs revenues.[5] The GBSLE program is funded by the U.S. government, administered by the U.S. State Department and coordinated by the U.S. Customs Service through GBSLE program country director James Kelly. Under the auspices of the GBSLE program, the U.S. government has provided Georgian border guards, Georgian customs officials and the Georgian Ministry of Defense with communications equipment, vehicles and helicopters, spares parts for transport and patrol, surveillance and detection equipment, computers for automation of application, licensing and regulatory systems, and forensics laboratory assistance.[5] Since its launch in 1998, the GBSLE program has provided \$70 million in assistance to the Georgian border protection, law enforcement, defense and customs agencies.[6]

Sources: [1] "American and Georgian Authorities Inaugurate New Border Guard Facility at Red Bridge," U.S. Embassy in Georgia, Official Press Release, March 20, 2003, <http://web.sanet.ge/usembassy/releases/mar20_03.htm>. [2] "US-Funded Border Guard Checkpoint Opened at Border with Azerbaijan," Civil Georgia, March 21, 2003, <<http://www.civil.ge>>. [3] "SShA profinansirovali sooruzheniye sovremennoy pogranzastavy v Gruzii, vydelyv 3,5 milliona dollarov" (The U.S. financed construction of modern border checkpoint in Georgia, providing \$3.5 million), Prime-News News Agency (Georgia), March 21, 2003; in Integrum Techno, <<http://integrum.com>>. [4] "Na chechenskom uchastke granitsy s Rossiyei, pri finansovoy podderzhke SShA, sozdayetsya novaya komendatura" (A new border post is being created on the Chechen section of Georgia's border with Russia with U.S. financial support), Prime-News News Agency (Georgia), March 25, 2003; in Integrum Techno, <<http://integrum.com>>. [5] Grant Sattler, "Europe District rebuilds Russian hanger," *Engineer Update*, August 2002, Vol.26, No. 8; [*Engineer Update* is an unofficial publication published monthly for the U.S. Army Corps of Engineers], <<http://www.hq.usace.army.mil/cepa/pubs/aug02/story7.htm>>. [6] "Predsedatel tamozhennogo departamenta i predstavitel Gosdepartamenta SShA obsudili khod sovместnoy programmy" (Customs department chairman and U.S. State Department representative of the discussed progress of joint program), Prime-News News Agency (Georgia), March 20, 2003; in Integrum Techno, <<http://integrum.com>>.

Illicit Trafficking

Theft, Ransom of Radioactive Sources Disclosed at International Export Control Forum

During his presentation at the Seventh Regional Forum on Export Control and Nonproliferation for Central Asian Countries and the Caucasus, held in Almaty, Kazakhstan, June 2-4, 2003, a representative of an international organization disclosed that a theft of five large radioactive sources had taken place recently in a Latin American country.

According to the official, the thieves stole the sources from the company producing them. They then demanded a ransom for the sources from that company. When the ransom was paid, the thieves advised the

producing company that the sources could be found in a nearby river. When company personnel looked for the sources, they found only three of them in the specified location. The location of the other two sources remains unknown, leaving doubts as to whether they were dumped into the river with the three recovered sources – or deliberately retained by the thieves.

The official stated that the episode was particularly disturbing because it demonstrated unambiguously that criminals have now targeted radioactive sources as objects known to have considerable monetary value because of the risks they can pose to the public if improperly protected. He cited a similar episode in Nigeria at the end of last year, in which radioactive sources used in the oil industry there were also the target of a deliberate theft, as further evidence of criminal interest in these commodities.

Security Service of Ukraine (SBU) Thwarts Illegal Technology Transfer

In January 2003 the Boryspil (Ukraine) city court sentenced the deputy director of the Zhitomir Scientific Research Institute of Radiosystems to three years in prison for the attempted transfer of military technology abroad.[1,2,3] The charges against the institute's deputy director were filed by the investigation department of the Security Service of Ukraine (SBU) for violation of three articles of the Ukrainian Criminal Code: Article 20 (Contraband), Article 333 (Illegal Transfer Abroad of Materials, Equipment, and Technologies that can be Used to Manufacture Weapons as Well as Military and Special Equipment) and Article 364 (Abuse of Power and Position).[3]

An article written by an SBU press service representative, Lada Safonova, which appeared in *Kievskiy Vedomosti* of January 11, 2003, reveals some interesting details regarding this case.[3] According to Safonova's account, the deputy director of the Zhitomir Institute and three leading engineers were stopped at the Boryspil international airport customs point while traveling to an unspecified destination. While examining the luggage of the deputy director, Ukrainian customs officials discovered blueprints of electric circuits, which were confiscated for further examination. However, the group was not barred from departing to the unspecified country. Upon arrival in the undisclosed country, described as a "long-time foreign business partner" of the institute, the Ukrainian specialists were accommodated at a hotel and their passports were taken away. The hosts explained to the Ukrainian specialists that they were to be tested in order to determine whether their technical expertise matched the requirements of the assignment for which they were invited. Throughout the unspecified period of time, the Ukrainian engineers were not allowed to leave the hotel. The so-called "testing" turned out to be extensive maintenance on equipment performed by the four Ukrainian specialists. Once the work was complete, the Ukrainians were escorted to the airport and sent back to Ukraine.[3] In the meantime, the State Export Control Service of Ukraine analyzed the confiscated technical documentation and concluded that it contained information that could be used for military purposes and, therefore, could not be exported without proper licensing. Consequently after returning to Ukraine, the deputy director of Zhitomir Institute was apprehended by the SBU.[3]

Even though Safonova never mentions the name of the country, she noted that, in 1995, Ukraine officially sold to this country "several unique radioelectronic devices," which were designed at the Zhitomir Institute. With the passage of time this equipment necessitated maintenance and other technical work, which, as Safonova explains, could have been the reason the Ukrainian engineers were invited.[3]

Safonova also notes that the institute's activities came under SBU scrutiny, prior to the deputy director's departure, when other members of the institute visited the unspecified foreign country and upon their return began to prepare travel documents for the deputy director and top engineers. Furthermore, in 2002 the prosecutor general's office of Ukraine had already sent an official warning to the administration of the institute regarding their previous unauthorized contacts with foreign defense agencies.[3]

Sources: [1] "V proshlom godu SBU viyavila i presekla 36 proyavleniy protivopravnoi deyatel'nosti v sfere voenno-tekhnicheskogo sotrudnichestva" (Last year SBU detected and prevented 36 manifestations of illegal activities in the sphere of military-technical cooperation), Ukrainian News Agency UNIAN, March 25, 2003; in Integrum Techno, <<http://integrum.com>>. [2] "Shchodo deyakikh rezultativ diyatel'nosti Sluzhbi bezpeki Ukraini u 2002 rotsi" (Regarding certain results of activities of Security Service of Ukraine in 2002), March 25, 2003; the official website of the Security Service of Ukraine, <<http://www.sbu.gov.ua/rus/reports/ann25-03-2003.shtml>>. [3] Lada Safonova, " 'Sekretniye materialy' na vyvoz" ("Secret materials" for transfer abroad), *Kievskiy Vedomosti*, No. 3 (2808), January 11, 2003; <http://www.kv.com.ua/index.php?rub=50&number_old=2808>.

Summaries from the NIS Press

Security Service of Ukraine (SBU) Activities in 2002

On March 25, 2003, the press center of the Security Service of Ukraine (SBU) published a press release detailing SBU activities in 2002.[1,2] According to the press release, Ukrainian counterintelligence operatives identified and thwarted 36 instances of illegal activity in the sphere of military-technical cooperation, including attempts to illegally transfer weapons and military equipment to countries – unspecified in the press release – subject to international trade restrictions and sanctions.[2] The release also states that 22 of these incidents constituted attempts by foreign firms and their representatives to acquire arms and military equipment in violation of international obligations undertaken by Ukraine.[2]

Sources: [1] “V proshlom godu SBU vyyavila i presekla 36 proyavleniy protivopravnoy deyatelnosti v sfere voyenno-tekhnicheskogo sotrudnichestva” (Last year SBU detected and prevented 36 instances of illegal activities in the sphere of military-technical cooperation), Ukrainian News Agency UNIAN, March 25, 2003; in Integrum Techno, <<http://integrum.com>>. [2] “Shchodo deyakikh rezul'tativ diyatelnosti Sluzhbi bezpeki Ukraini u 2002 rotsi” (Regarding certain results of Security Service of Ukraine activities in 2002), March 25, 2003; Security Service of Ukraine website, <<http://www.sbu.gov.ua/rus/reports/ann25-03-2003.shtml>>.

Russian Ministry of Economic Development and Trade Issues General License for Export of Plutonium-238 by Tenex

On March 25, 2003, Russian Prime Minister Mikhail Kasyanov signed Order No. 377, authorizing the Ministry of Economic Development and Trade to issue a general license for Techsnabexport (Tenex), the leading Russian exporter of uranium and radioisotopes, to export products containing plutonium-238.[1,2,3] Kasyanov’s Order expands the list of commodities, previously established by Order No. 315 of March 11, 2002, that Tenex is authorized to export under a general license.[1,5] Under general license No. 003300200189, issued by the Ministry of Economic Development and Trade on April 10, 2003, Tenex is now authorized to export plutonium-238 in different forms, such as alloys or chemical compounds, provided they contain more than 80 percent of plutonium-238 as well as products derived from plutonium-238 and are used as sources of ionizing radiation.[2,4,6] Prior to this, such exports required the issuance of a single, one-time license.

Plutonium-238 is an isotope that is widely used as a heat and energy source in the space industry, in studies of dry substances in the mining industry, as well as for testing radiometric equipment.[2] It cannot be used for nuclear weapons, but could be used as a radioactive contaminant if dispersed in a “dirty bomb.”

According to Russian law, general licenses permit the export of specified items to a particular destination for a fixed period, without the need for additional governmental approvals.[7] However, Article 19 of the 1999 Russian law *On Export Control* specifies that controlled goods can be exported under a general license if such exports are directed towards countries that adhere to the “principles and norms of international law in the field of nonproliferation of weapons of mass destructions and the means of their delivery.”[8] Furthermore, Article 19 states that a general license can be issued to a Russian juridical entity only if it has already implemented an internal compliance program that has passed the mandatory state accreditation procedure.[8]

Order 377 also specifies that exports of products containing plutonium-238 are limited to the countries that are members of both the Nuclear Suppliers Group (NSG) and the Wassenaar arrangement, which include the following countries: Argentina, Australia, Austria, Belgium, Bulgaria, Canada, Czech Republic, Denmark, Finland, France, Great Britain, Germany, Greece, Hungary, Ireland, Italy, Japan, Luxembourg, Netherlands, New Zealand, Norway, Poland, Portugal, Republic of Korea, Romania, Slovakia, Spain, Turkey, Switzerland, Sweden, and the United States.[1,6]

In addition to this, in compliance with Article 43 of the statute *On the Implementation of Control of Foreign Economic Activities Related to Dual-use Equipment and Materials and Related Technologies that Can be Used for Nuclear Purposes*, approved by governmental decree No. 462 on June 14, 2001, Tenex is required to submit quarterly reports to the Ministry of Economic Development and Trade, listing shipments made and including copies of export contracts.[9]

While the aforementioned features make the Russian export control system appear to be an efficient instrument of nonproliferation, the decision to simplify the licensing procedure for exports of plutonium-238 has the effect of permitting exports of plutonium-238 to the listed countries without advance notification to the Russian government and without a governmental examination of the legitimacy of the end-user, which would be a prerequisite if individual export licenses were required.

Most Western industrialized states also permit exports of small quantities of plutonium-238 under general license to many countries. As in Russia, this arrangement does not require the exporter to notify export licensing authorities of the planned export before it is made and does not provide export licensing authorities the opportunity to verify the appropriateness of the end user. However, as noted earlier, although plutonium-238 cannot be used as the core of a nuclear weapon, it could be used in a radiological dispersion device with the potential to cause wide-scale contamination. For this reason, the International Atomic Energy Agency and a number of countries are considering new, more stringent export controls on this and other radioactive commodities. At the summit of the Group of Eight industrialized countries in Evian, France, on June 1-3, 2003, participants agreed to consider developing recommendations for limiting exports of such sources to states that have effective controls and to adopt notification procedures for states receiving such exports.[10] The G-8 members are Canada, France, Germany, Great Britain, Italy, Japan, Russia, the United States, and the European Union.

Source: [1] "V perechen tovarov, na vyvoz kotorykh OVAO 'Tekhsnabeksport' vydayutsya generalniye litsenzii, vkluyuchen plutonii" (The list of products, which the Foreign Economic Joint Stock Company 'Techsnabeksport' requires a general license to export, now includes plutonium), Russian On-line Information Newsline Skrin "Issuer," March 27, 2003; in Integrum Techno, <<http://integrum.com>>. [2] "Poluchena generalnaya litsenziya na eksport plutoniya-238 v razlichnykh vidakh i izdelii na ego osnove" (General license on export of plutonium-238 in its various forms and also products containing it is received), Techsnabeksport official press release, April 10, 2003; <<http://www.tenex.ru/digest/licplut.html>>. [3] *Sobraniye zakonodatelstva Rossiiskoy Federatsii* (Collection of Russian Federation legislation), No. 13, 2003, p. 3150. [4] "Economics ministry allowed to license plutonium export," ITAR-TASS, March 27, 2003; in Lexis-Nexis Academic Universe Database, <<http://www.lexis-nexis.com>>. [5] "Novaya generalnaya litsenziya firmy 'Izotopservis'" (A new general license is issued for firm 'Izotopservis'), Techsnabeksport press release, April 16, 2002; <<http://www.tenex.ru/genlic.html>>. [6] "Pravitelstvo RF razreshilo AO 'Tekhsnabeksport' postavki splavov plutoniya v ryad zarubezhnykh stran" (The Russian government allowed JSC 'Techsnabeksport' to export plutonium alloys to certain foreign countries), Russian Business News Agency ABNEWS.RU, March 27, 2003; in Integrum Techno, <<http://integrum.com>>. [7] "Russian Government Continues Accreditation of Companies with Internal Compliance Programs," *NIS Export Control Observer*, January 2003, p. 3., <<http://cns.mii.edu/nis-excon>>. [8] The Federal Law "On Export Control," 183-FZ, July 18, 1999; Agency of Foreign Economic Relations and Telecommunications website "INTRADE," <<http://www.rusimpex.ru/Content/Law/Expkon/expkon00.htm>>. [9] Pravitelstvo Rossiiskoy Federatsii, Postanovleniye No. 462 ot 14 iyunia 2001 g. *Ob osushchestvlenii kontrolya za vneshneekonomicheskoy deyatel'nostyu v otnoshenii oborudovaniya i materialov, a takzhe sootvetstvuyushchikh tekhnologii, primenyayemykh v yadernikh tsebyakh* (The Statute On the implementation of control of foreign economic activities related to dual use equipment and materials and related technologies that can be used for nuclear purposes was approved in accordance with Decree No. 462 of the Government of the Russian Federation on June 14, 2001), Prognostication of Financial Risks website, the official Internet project of the Institute of Economic Security (Russia), <http://www.bre.ru/new_laws.php?id=0,0,0,4725>. [10] 2003 G-8 Summit, Evian, France, June 1-3, 2003; Summit Documents, "Nonproliferation of weapons of mass destruction. Securing radioactive sources. A G-8 statement," G-8 website, <http://www.g8.fr/evian/english/navigation/2003_g8_summit/summit_documents/non_proliferation_of_weapons_of_mass_destruction_securing_radioactive_sources_-_a_g8_statement.html>.

International Developments

U.S. Initiates Steps to Loosen Highly Enriched Uranium Export Controls

The United States Congress has initiated steps to loosen U.S. export restrictions on highly-enriched uranium (HEU). In March 2003, Representative Richard Burr, Republican of North Carolina, introduced a provision in the Energy and Commerce Committee of the House of Representatives to remove constraints on HEU exports, and Senator Christopher "Kit" Bond, Republican of Missouri, offered similar legislation in the Senate's Committee on Environment and Public Works. The House Committee accepted the Burr amendment as part of a larger piece of legislation, and it will soon be considered by the entire House of Representatives, while the Senate Committee on Energy and Natural Resources is nearing consideration of Senator Bond's parallel measure.[1]

HEU is one of two materials (the other being plutonium) that have been used as the core of a nuclear weapon, with an enrichment level of 90 percent or more in the isotope uranium-235. Note, however, that all uranium enriched to 20 percent or more in this isotope, can be used for a nuclear weapon. According to International Atomic Energy Agency standards, 25 kg of weapons-grade HEU is sufficient for the

manufacture of a nuclear weapon. Weapons-grade HEU can also be used for civilian purposes. For instance, in research reactors HEU fuels permit sustained, high-level power, which is preferred for some applications, in particular for the large-scale production of radioisotopes used in medicine. HEU is also used as a target in the medical isotope production process, producing desirable isotopes as it is irradiated in isotope production reactors.

The restrictions on HEU exports that the proposed provisions would end were made part of U.S. law in 1992, in a provision known as the Schumer Amendment to the U.S. Energy Policy Act. That law has barred exports of HEU in order to reduce the risk that such material might contribute to proliferation by states or fall into the hands of terrorist organizations. An exception to the 1992 law allows export of HEU to only those reactor facilities that have committed to convert to using low-enriched uranium (LEU), a fuel that is unsuitable for nuclear weapons.

The 1992 Schumer Amendment built upon an earlier U.S. initiative launched in 1978, the Reduced Enrichment for Research and Test Reactors (RERTR) program, which promoted the conversion of research and test reactors from HEU to LEU fuel. Over the years, U.S. commerce in HEU has substantially declined from a peak of more than 2,500 kg of HEU exported in 1967 to about 50 kg annually during the past several years.[2] Recent HEU commerce mainly involves weapon-grade material, i.e., HEU enriched to 90 percent or more in the isotope uranium-235.

The largest importer of U.S. HEU for civilian purposes is MDS Nordion of Canada. Nordion, the world's leading producer of medical radioisotopes, has continued to receive U.S. supplies of HEU because it pledged to phase out HEU use by 2000. However, it has not met this goal and the costs to do so would be considerable. Although Nordion has made repeated pledges to cooperate with the United States in this conversion, it continues to delay. Those opposed to rescinding the Schumer Amendment fear that this action, by ensuring an open-ended supply of HEU, would relieve the pressure to complete Nordion's conversion.

MDS Nordion is also the largest supplier of medical isotopes to the United States. Supporters of the Burr and Bond Amendments (repealing the Schumer restrictions on HEU exports) argue that the new legislation is needed to ensure the continued supply of such isotopes to the U.S. healthcare system. Supporters of the existing restrictions counter that the Schumer Amendment, if left unchanged, would not bar export of U.S. HEU unless Nordion refused to cooperate with implementation of the program to convert its facilities to LEU. They also point out that Nordion has stockpiled a four-year supply of HEU targets for its new isotope production facility. Even if the Nordion production were interrupted, they stress, the United States could purchase medical isotopes from other producers, such as the Netherlands, Belgium, and South Africa.

Although Nordion has expressed strong support for nonproliferation and for the eventual conversion of its facilities to LEU, it remains concerned about the costs of conversion and its economic position vis-à-vis its competitors.

The U.S. Congress will likely resolve this issue later in 2003, as the Burr and Bond Amendments work their way through the legislative process.

Sources: [1] Daneil Horner and Jenny Weil, "Effort to Ease Restrictions on HEU Exports Progresses on Hill," *Nuclear Fuel*, April 14, 2003, pp. 15-16. [2] Alan J. Kuperman, "Civilian Highly Enriched Uranium and the Fissile Material Convention," paper originally prepared for the symposium "The Scope of a Fissile Material Convention," United Nations Institute for Disarmament Research and the Oxford Research Group, Geneva, Switzerland, August 29, 1996, Updated January 16, 2002.

The U.S. Container Security Initiative

U.S. concerns about port security following the September 11 terrorist attacks prompted the launch in January 2002 of the Container Security Initiative (CSI) program designed to inspect high-risk containers entering U.S. ports.[1] The concern is that weapons of mass destruction might be detonated in proximity to or smuggled into a major U.S. port. By having the United States enter into bilateral agreements with nations where the world's 20 largest ports are located, the CSI program seeks to have U.S. customs and port security officials cooperating with their counterparts at these major ports where the initiative can have the greatest and fastest effect. The four goals of the CSI are to establish criteria for identifying high-risk

containers, to prescreen containers before they arrive in the United States, to use technology to quickly screen high-risk containers, and to develop secure containers.

The CSI involves increased collection of detailed information on container contents entering the United States and analysis of this information in a central location. Computer programs are designed to spot anomalies that might warrant screening; for instance, a paper importer that is hauling sophisticated equipment.[2] Containers that are deemed to be high-risk are targeted for screening. U.S. customs officials have been stationed at major international ports to work alongside local officials in screening containers and conducting inspections.

The CSI has faced some scrutiny over the past year. Because of the time required to conduct inspections, some fear that the initiative will slow trade. Complying with CSI information and shipping requirements may increase costs to ports and shippers. Sea carriers must now provide manifests and other export documentation to port officials 24 hours prior to items being loaded onto ships, and abandon past practices of last-minute cargo loadings. Some also question whether the \$35 million allocated for the CSI in the Emergency Wartime Supplemental Appropriations Act of 2003 [3] will be sufficient and whether the initiative can really provide adequate security given the number of containers that are actually screened. For example, in Hong Kong, the world's busiest port, less than two percent of the nine million containers passing through are inspected.[4] The CSI has also met some political opposition from the European Commission, which believes that the program benefits those ports, such as Rotterdam and Antwerp, that participate, and hurts those that are too small to participate.[5] The European Union moved in January of 2003 to take legal action against Germany, France, the Netherlands and Belgium, all of which participate in the CSI.[6]

Sources: [1] See U.S. Department of State Fact Sheet, "U.S. Custom Service's Container Security Initiative," February 22, 2002, <<http://usinfo.state.gov/topical/pol/terror/02022505.htm>>. An excellent source of information for recent developments related to the CSI can be found at <<http://www.csiinstitute.com>>. [2] Jane Brussy, "Companies, Ports Bear Costs of Heightened Security," *Miami Herald*, February 24, 2003. [3] "President Signs Wartime Supplemental Funding Bill Reaffirming Cargo Preference Laws On Iraq-Bound Shipments" <http://www.us-flag.org/pressigwarsu.html>. [4] Bruce Stokes, "On the Waterfront," *National Journal*, Sept. 28, 2002. [5] Gregory Couch, "U.S. Port Security Plan Irks Europeans," *New York Times*, Nov. 6, 2002. [6] Gregory Couch, "Europe Acts Against U.S. Efforts on Ports," *New York Times*, January 28, 2003.

Private U.S. Organization 'Warning List' Now in Use in 17 Former Soviet and Eastern European States

The Wisconsin Project, a nonprofit nongovernmental organization based in Washington, DC, has designed a database – the Risk Report – to help officials in countries worldwide make more accurate export control decisions and to help countries and companies keep dangerous products out of the wrong hands. The database contains a list of entities worldwide that have been recognized as contributing to the proliferation of weapons of mass destruction or to terrorism.

The Risk Report, gleaned from open source material, describes the names and activities of more than 3,500 entities in various countries. These names include those on the "early warning" lists supplied informally by certain European governments to their exporting companies, as well as the persons and companies that the U.S. Government has officially barred from U.S. trade because of export violations.

In addition to the names of suspect buyers, the database contains descriptions of sensitive products controlled for export in the West and the reasons why each product is controlled. There are also pictures of these products and descriptions of how they are packaged for shipment. Several U.S. federal agencies use this information for export control and enforcement purposes. The governments of Armenia, Azerbaijan, Bulgaria, Croatia, the Czech Republic, Estonia, Georgia, Hungary, Kazakhstan, Latvia, Lithuania, Moldova, Poland, Romania, the Slovak Republic, Slovenia, and Uzbekistan all use the Risk Report. For more information on the Risk Report, see a demo version at <http://www.wisconsinproject.org/risk.html> or contact kelly@wisconsinproject.org.

United States Announces Proliferation Security Initiative to Interdict Shipments of WMD and Missile-Related Equipment and Technologies

In a May 31, 2003 address from Wawel Royal Castle in Krakow, Poland, U.S. President George W. Bush announced that the United States had added a new element to its emerging strategy of pre-emption to combat proliferation of weapons of mass destruction. The new effort is known as the Proliferation Security Initiative, or PSI. In his announcement, Bush stated that “When weapons of mass destruction or their components are in transit, we must have the means and authority to seize them.... The United States and a number of our close allies, including Poland, have begun working on new agreements to search planes and ships carrying suspect cargo and to seize illegal weapons or missile technologies.”[1]

John R. Bolton, Under Secretary of State for Arms Control and International Security, further explained the new initiative in testimony on June 4, 2003 to the Committee on International Relations of the U.S. House of Representatives. Bolton stated that the initiative envisions “partnerships of states working in concert, employing their national capabilities to develop a broad range of legal, diplomatic, economic, military and other tools to interdict threatening shipments of WMD and missile-related equipment and technologies” via air, land, and sea.[2]

Comprising 11 countries—Australia, France, Germany, Italy, Japan, the Netherlands, Poland, Portugal, Spain, the United Kingdom, and the United States—the initiative would allow the detaining and search of ships, aircraft, and vehicles suspected of carrying WMD-related materiel to and from countries of “proliferation concern” (in particular, North Korea and Iran) as soon as they entered member countries’ territory, territorial waters, or airspace. It would also encourage member countries to deny overflight rights to suspicious aircraft or ground them when they stop to refuel. Noncomplying aircraft could be “escorted down” to be searched.[3]

On June 12, 2003, the Spanish government hosted the first meeting of the ad hoc group in Madrid to discuss the initiative. At the meeting, members agreed to assess existing national authorities and export control regimes under which the new initiative could operate.[4]

The effort originates in part from the Bush Administration’s frustrating experience in December 2002 when Spain, alerted by a U.S. tip, seized a shipment of 15 Scud missiles headed from North Korea to Yemen.[5] The United States allowed the ship to continue after the Bush Administration determined that it lacked the authority under international law to detain the vessel and after Yemen assured the U.S. government that the missiles would be used for defensive purposes only.[6] To avoid the re-occurrence of this type of event, the new Proliferation Security Initiative will be based on the “inventive use of national laws,” rather than an attempt to re-write existing international law, which prohibits stopping vessels on the high seas or grounding aircraft in international airspace.[7] Extending the agreement into international waters or airspace would require UN backing, according to the Australian journal the *Herald Sun*. [8] The *New York Times* quoted a top White House national security official as claiming, “We’re going to use every rule available... No one has ever tried to marry the ability we have to track these shipments with the existing national authorities that are out there.”[7]

A constellation of recent events demonstrates international commitment to the effort. For instance, in April 2003, prior to the launch of the PSI, acting on a tip from the German government, French authorities ordered the captain of a French ship to unload a suspicious container when it reached an Egyptian port. The cargo originated from a German company in Hamburg and included 22 metric tons of aluminum tubes (key components of high-speed centrifuges used to manufacture highly enriched uranium for nuclear weapons). The German government had denied an export license for the shipment, which was purportedly directed to a Chinese aeronautics company, because German officials believed the company was a North Korean front.[9] In his June 4 testimony, Under Secretary Bolton also cited a combined French and German effort to intercept sodium cyanide “likely bound for North Korea’s chemical weapons program,” as an example of successful interdiction efforts.

In a parallel effort intended to deprive North Korea of hard currency needed for the purchase of missile and WMD material, Australian authorities discovered 50 kilograms of heroin on a North Korean ship in April and charged members of the crew with aiding and abetting the import of an illegal product. In early June 2003, over 1,000 Japanese police officers, customs officials, and shipping regulators submitted a ferry

line—suspected of trafficking hard currency to North Korea—to aggressive safety inspections and customs examinations, resulting in immediate suspension of the service.[7]

On June 17, 2003, while en route to Phnom Penh, Secretary of State Colin Powell announced in a press briefing that the PSI would be discussed at the annual security meetings hosted by ASEAN, the Association of South East Asian Nations, and ARF, the Asian Regional Forum. North Korea has not taken the news lightly: the official daily *Rodong Sinmun* called it part of a premeditated war plan and stated, “nobody can vouch that this blockade operation will not lead to such a serious development as an all-out war.” The daily also threatened Japan directly for its recent efforts to step up inspections of visiting North Korean ships, accusing Japan of involvement in the “U.S. policy to isolate and stifle” North Korea.[3]

The initiative has been lauded throughout Europe as an encouraging sign of the Bush Administration’s reinvigorated commitment to multilateralism. However, its success depends in large part not only on whether and how the logistical, legal, and economic issues are resolved, but on broad-based participation, including, experts say, that of China and Russia.

Sources: [1] U.S. Department of State Press Release, “Bush Urges NATO Nations to Unite in Fight Against Terrorism,” May 31, 2003, <<http://usinfo.state.gov/topical/pol/terror/texts/03053103.htm>>. [2] Testimony of John R. Bolton to the Committee on International Relations, U.S. House of Representatives, June 4, 2003, <www.house.gov/international_relations/108/>. [3] Nicholas Kravev, “U.S. Seeks Asian Aid for Ship Searches,” *Washington Times*, June 17, 2003. [4] “Meeting Chairman’s Statement”, Press Release, Proliferation Security Initiative, Madrid, June 12, 2003 (provided by the U.S Department of State). [5] “Spain: U.S. Apologize over Scud Ship,” CNN website, <http://edition.cnn.com/2002/WORLD/asiapcf/east/12/12/missile.ship/> [6] “Bush Aims for International Agreement on Plane and Ship Searches,” *Morning Star*, June 2, 2003. [7] David E., Sanger “Cracking Down on the Terror-Arms Trade,” *New York Times*, June 15, 2003. [8] John Kerin, “Dagnet to Seize N Korean Weapons,” *Herald Sun*, June 17, 2003. [9] “Germany Intercepts Suspect Nuclear-Related Shipment to N. Korea,” Agence France Presse, April 26, 2003.

U.S. Official Comments on Export Controls in Western Europe and Key NIS Countries

In testimony on June 5, 2003 before the U.S. Helsinki Commission, U.S. Under Secretary of State for Arms Control and International Security John Bolton reviewed export control developments in Western Europe, Belarus, Central Asia, Moldova, Russia, and Ukraine. The Helsinki Commission is an arm of the United States Congress that monitors developments at the Organization for Security and Cooperation in Europe (OSCE).

Bolton underscored the success of U.S. efforts to help states enhance their export control systems, but noted that a number of OSCE countries still need additional assistance to develop appropriate legal frameworks and increase enforcement capabilities to combat transfers of sensitive goods and technologies. Among the states in this category, Bolton stated, “Russia, Ukraine, and Kazakhstan have retained significant WMD materials and expertise from the Soviet era. The U.S. Export Control and Related Border Security Assistance Program (EXBS) continues to work with these countries to enhance enforcement capabilities and promote industry compliance with national laws.” He also said, “Countries in Central Asia and the Caucasus are high-risk transit and smuggling routes from source countries. We continue to work with them to build effective legal control and enhance border control capabilities.”

Bolton stressed that problems remain controlling sensitive exports from Western European states. “Although Western European countries maintain rigorous and effective export controls on WMD and missile-related goods and materials,” he stated, “proliferators and associated networks nonetheless continue to seek machine tools, spare parts for dual-use equipment, and widely available material, scientific equipment, and specialty metals. Western countries also are an important source for the proliferation of WMD-related information and training.”

Bolton also provided an update on U.S. views of Ukrainian export activities: “We have had serious discussions of, conducted a policy review in response to, and sent a joint US/UK team to Kiev to investigate allegations of a possible transfer of the Kolchuga passive detection system to Iraq. Although the issue of whether a transfer took place was never resolved, the policy review concluded that continued engagement with Ukraine was in the interest of the United States, including engagement on proliferation issues. In the wake of the review, we shifted some FY03 assistance to Ukraine away from the central government and to programs that more directly promote democratic reform with special emphasis on media

freedom, while preserving programs critical to U.S. national security, including nonproliferation assistance.”

Bolton noted that the United States continues to have concerns regarding Belarusian military sales. “Belarus is one of the least responsive OSCE member states, and has done little to show it is serious about nonproliferation,” he testified. “We raised allegations of arms transfers by Belarus with that government in February 2002, reiterating the U.S. position that Belarus should not be in the business of selling arms to countries with histories of supporting terrorism or fomenting regional conflict. We stressed that, if Belarus genuinely wanted to improve its image and end its self-imposed isolation, it needed to make the right choices on these issues. We have no direct government-to-government assistance programs (aside from periodic exchanges) with the Government of Belarus.”

Bolton concluded his testimony with an example of the difficulties some countries face in implementing export controls. “One final example illustrates the difficulties between government will and the challenge posed by unscrupulous entities,” he commented. “The Government of Moldova has taken positive steps in the area of nonproliferation, although its legal and export control systems are still developing. At the same time, in May 2002, the United States imposed missile proliferation sanctions on two Moldovan entities, Cuanta S.A. and Computer & Comunicatii SRL, and Moldovan national Mikhail Vladov, pursuant to the Iran Nonproliferation Act of 2000. The sanctions were imposed for the knowing involvement in the transfer of equipment and technology controlled under Category II of the Missile Technology Control Regime (MTCR) Annex that contributed to MTCR-class (Category I) missile programs in Iran. These same transfers also required recent sanctions under the separate missile sanctions law.”

The complete text of Bolton’s comments may be found at <http://usinfo.state.gov/topical/pol/arms/03060503.htm>.

Editor’s note: The OSCE includes 55 participating States from Europe, Central Asia and North America. It is active in early warning, conflict prevention, crisis management and post-conflict rehabilitation. For more information on the organization see the official website: <http://www.osce.org>.

Export Control in Focus

Using Lists to Prevent Business with Unauthorized Parties

Some supplier countries publish lists of individuals or companies known to be involved in the illegal procurement of goods. Because export controls serve a variety of purposes, agencies within a country may maintain their own lists of companies or individuals, items, and destinations that are considered sensitive. While countries in the European Union do not maintain publicly accessible lists of denials of export privileges, these countries employ “catch-all” enforcement regimes, and denial orders issued for exporters are shared amongst EU states to prevent exporters from simply shipping their goods from a different country. In Japan and the United States, such lists are publicly available.

United States

In the United States, exporters can obtain the most current information on U.S. export restrictions and denials in the *Federal Register*. These include the following lists:

Denied Persons List: The Denied Persons List includes persons or businesses that have been denied export privileges by the U.S. government. Consequently, they may not, directly or indirectly, participate in any way in any transaction involving any commodity, software, or technology exported or to be exported from the United States that is subject to the Export Administration Regulations (EAR), or in any other activity subject to the EAR. This includes prohibiting the denied person from benefiting in any way from transactions involving items exported or to be exported from the U.S., as well as prohibiting others from exporting or re-exporting on behalf of a denied person.[1] The Denied Persons List may be accessed at <http://www.bis.doc.gov/dpl/thedeniallist.asp>.

Unverified List: The Unverified List includes names and countries of foreign persons who in the past were parties to a transaction for which an end-use visit (a pre-license check or a post-shipment verification) could not be conducted for reasons outside of the U.S. government's control. Transactions involving parties on the Unverified List are considered by the Bureau of Industry and Security (BIS) to raise a "red flag," which warrants heightened scrutiny of those involved in such a transaction. The fact that an end-user is listed on the Unverified List does not create a new licensing requirement for exports to these end-users. If exporters can satisfy themselves that the transaction does not involve a proliferation activity or does not violate any other provision of the EAR, then the exporter may proceed with the transaction, subject to normal licensing requirements. The Unverified list includes 13 parties in Hong Kong, Malaysia, the People's Republic of China, Singapore, and the UAE.[2] The Unverified List may be found at http://www.bis.doc.gov/Enforcement/UnverifiedList/unverified_parties.html.

Entity List: The Entity List is a listing of foreign end-users who have been determined to present an unacceptable risk of diversion of material that could be used to develop weapons of mass destruction or the missiles used to deliver those weapons. This list puts exporters on notice of export license requirements that apply to exports to these parties. While this list assists exporters in determining whether an entity poses proliferation concerns, the list is not comprehensive because the U.S. government, in order to protect intelligence information, among other reasons, does not publish the names of all entities that are ineligible to receive exports that might contribute to weapons of mass destruction programs. This list stems from the Enhanced Proliferation Control Initiative (EPCI) of 1990 to limit the spread of missile and nuclear, chemical, and biological weapons technology. Under EPCI, the Commerce Department can impose licensing requirements on exports and reexports that otherwise would not require a license where there is an unacceptable risk of use in or diversion to activities related to nuclear, chemical or biological weapons or missile proliferation, even if the end user is not primarily engaged in weapons-related activities. The Entity List may be found at <http://www.bis.doc.gov/Entities/Default.htm>. [3]

Specially Designated Nationals and Blocked Persons List: The Office of Foreign Assets Control at the U.S. Department of Treasury imposes controls on transactions and has the authority to freeze foreign assets under U.S. jurisdiction. Activities are targeted against foreign countries, terrorists, international narcotics traffickers, and those engaged in activities related to the proliferation of weapons of mass destruction. The Specially Designated Nationals List may be accessed at <http://www.ustreas.gov/offices/enforcement/ofac/sdn/index.html>. [4]

Debarred List: The Office of Defense Trade Controls at the U.S. Department of State controls the export and import of defense articles covered by the United States Munitions List (USML). Persons and organizations on the List of Debarred Parties have been convicted of violating or of conspiracy to violate the Arms Export Control Act (AECA), and are prohibited from participating in the export of defense articles and defense services. While the website is periodically updated, the most recent information can be obtained from the *Federal Register*. The List of Debarred Parties may be accessed at <http://pmdtc.org/debar059.htm>. [5]

Sensitive Countries List: The Sensitive Countries List is composed of 25 countries which are considered by the U.S. Department of Energy to be involved in activities that affect United States national security interests, including nuclear proliferation, regional instability, and/or support for terrorism. The Sensitive Countries List may be obtained at <http://www.llnl.gov/expecon/sensitive.html>. [6]

Japan

End User List: The End User List, issued by the Ministry of Economy, Trade, and Industry (METI), provides exporters with a list of end users in foreign countries that raise high concern of involvement in WMD programs. The list includes over 80 companies and organizations from Israel, Iran, India, the DPRK, Syria, China, Pakistan, Libya, and Afghanistan.[4] The End User list may be accessed at <http://www.meti.go.jp/policy/ampo/catch-all/userlist/document/2003-EndUserList.xls>.

Sources: [1] "The Denied Persons List," BIS website, <<http://www.bxa.doc.gov/dpl/StandardOrders.htm>>. [2] "Q&A on Unverified List June 14, 2002," BIS website, <http://www.bis.doc.gov/Enforcement/UnverifiedList/UnverifiedListQnAs6_13_02.html>. [3] "The

Entity List,” BIS website, <<http://www.bxa.doc.gov/Entities/Default.htm>>. [4] “Mission Statement,” Office of Foreign Assets Control website, <<http://www.ustras.gov/offices/enforcement/ofac/>>. [5] “Defense Trade Controls – List of Parties Being Debarred for Arms Export Control Act Convictions,” Office of Defense Trade Controls website, <<http://pmdtc.org/debar059intro.htm>>. [6] “DOE Sensitive Countries List,” Lawrence Livermore National Laboratory website, <<http://www.llnl.gov/expcon/sensitive.html>>

Workshops and Conferences

IAEA Conference for the Radioactive Source Industry

On April 28-30, 2003 in Vienna, Austria, the International Atomic Energy Agency (IAEA) brought together most of the major manufacturers and suppliers of radioactive sources along with some government officials for the Technical Meeting to Enhance the Safe and Secure Design, Manufacture, and Supply of Radioactive Sources. Following on the heels of the March International Conference on the Security of Radioactive Sources geared toward government officials representing most of the IAEA member states, the technical meeting focused on the contributions that manufacturers and suppliers of radioactive sources could make toward enhanced security of their products.

Because of concerns that implementing better security measures would not occur unless the radioactive source industry reached consensus, the active involvement and interest of representatives of most of this industry indicated to those in attendance that a level economic playing field might stem from this meeting. Major companies represented at the conference included MDS Nordion (the world’s largest producer of medical isotopes, based in Canada), AEA Technology QSA (which distributes sources to more than 30 countries), Isotope Products (which is based in Germany and the United States and produces more than 80 radioisotopes), Russia’s Mayak Industrial Production Association, REVISS Services (a UK-based company formed in 1992 by the linking of PO Mayak, Amersham – a British pharmaceutical company, and Techsnabexport – Russia’s commercial nuclear products export company), and the South African Nuclear Energy Corporation, which through its business division, Nuclear Technology Products, produces many radioisotopes for medical and industrial uses.

One of the meeting’s most important sessions covered the safe and secure management of radioactive sources. Two types of sources, in particular, received much attention: cesium chloride and americium-beryllium sources. Cesium chloride that contains radioactive cesium-137 poses a greater threat of dispersion in a radiological dispersal device (RDD) than other commercial radioactive materials because it typically comes in a powdered form when used in large amounts in irradiators. In contrast, the smaller cesium sources tend to be fashioned into a ceramic form, which is more difficult to disperse. The industry participants generally agreed that finding and developing substitutes for powdered cesium chloride would reduce the risk of radioactive materials dispersal. Some Department of Energy (DOE) laboratories, such as Los Alamos National Laboratory, have been working on designing such substitutes. On learning this news, many manufacturers expressed interest in collaborating with DOE in working toward bringing powdered cesium chloride alternatives to market. Most of the cesium chloride sources used worldwide originate from Mayak. For small radioactive cesium sources, a Mayak representative said that the customer can request the cesium source either in powdered chloride or ceramic form. For large cesium sources, Mayak produces the powdered chloride form because reportedly some engineering problems preclude use of the ceramic form.

Americium-beryllium sources employed in oil well-logging are of concern because the frequent transnational movement of these materials by the oil industry makes them harder to control. Several companies manufacture these sources. According to a conference participant, about 2,000 of the most potent well-logging sources are in use worldwide. However, government regulatory authorities may not know how many are in their country because of the transnational nature of the oil industry.

Another important conference session involved discussions concerning disposition of disused sources. Labeling a disused source as waste could inhibit its transport across borders and eventual return to the manufacturer for proper recycling or disposal. The European Union is trying to develop a uniform set of regulations that would facilitate return of sources to the manufacturer and that would address issues such as financial liability and time limits for how long a user can keep a source. To alleviate some of the source

tracking problems that can arise when a company goes out of business, the participants appeared to agree that regulators should consider keeping records on sources for at least 30 years.

Industry representatives repeatedly expressed concern about the danger that differing regulatory requirements among countries could create an “uneven playing field” that could leave some at a competitive disadvantage. Although industry representatives all acknowledged the need for greater security following September 11, 2001, manufacturers were reluctant to spend money on new security controls and procedures unless they have confidence that others in the industry are taking similar steps. This first IAEA technical meeting made substantial progress toward reaching consensus in the radioactive source industry for universal improvements in security. Follow-up meetings, yet to be held, should offer the opportunity to continue down this path.

Special Report

China’s Export Controls: New Signs of Progress?

By Kathleen Walsh, Senior Associate and Director of the Stimson Center Fellowship in China, Henry L. Stimson Center

During a state visit by U.S. Deputy Secretary of State Richard L. Armitage to the People’s Republic of China (PRC) in August 2002, Chinese officials made a surprise statement announcing the first of a series of new export control regulations governing trade in chemical and biological weapons precursors and the ballistic missiles that could be used to deliver them.[1] These are welcome measures by China’s government, particularly in view of the ongoing War on Terrorism. The question remaining for many is whether these efforts signal a fundamental change in China’s view on nonproliferation and export controls. In other words, do these new measures indicate a shift from rhetorical support to effective implementation of export controls?

There are a number of reasons to think that the regulations announced last fall do indicate a change in China’s outlook and seriousness on these issues. First, the new measures focus on improving China’s export control process so as to make it more comprehensive, effective, and transparent. The newly promulgated regulations update previous rules and are accompanied by detailed control lists, both of which closely follow international practice. The Missiles and Missile-Related Items and Technologies Export Control List (issued on August 22, 2002), for instance, tracks closely with the Control List comprising the Annex to the Missile Technology Control Regime (MTCR). Note, however, that China remains the only major nuclear supplier that is not a member of the Nuclear Suppliers Group. Similarly, the twin regulations announced in October 2002 on Export Control of Dual-Use Biological Agents and Related Equipment and Technologies and the Measures on Export control of Certain Chemicals and Related Equipment and Technologies mirror the measures and control lists employed by the Australia Group.

Included as part of this new legal framework and licensing process are sizeable financial penalties for violations, as well as a “catch-all” clause. The catch-all provision is a measure, widely promoted by U.S. officials, governing trade to sensitive end-users even where the technology is not specifically controlled. Furthermore, the new licensing system enables PRC officials to easily amend export control regulations and control lists, as needed. For example, China recently added to its export control list Tri-Butyl-Phosphate (TBP), which a PRC entity is alleged to have sold to North Korea in December 2002.[2]

Perhaps most importantly, China is taking a number of additional steps that demonstrate its interest in improving upon these measures. For instance, in conference settings and in print, Chinese scholars already have identified a number of key flaws in the PRC’s newly announced export control measures and licensing system (e.g., the need to train Chinese industry more broadly in the application of export controls, particularly in light of the new catch-all provision).[3] This type of open critique is unusual in China and likely significant. Rather than condemning such commentaries, government officials have encouraged (and, in some cases, are funding) analytic efforts intended to help develop a more effective export control system. Consequently, university-based experts on arms control are now engaged in research and analysis of the licensing models, principles, and procedures employed in the United States and elsewhere in an

effort to “get smart” on export control matters. Similar undertakings preceded China’s accession to several international arms control treaties in the 1990s.

In addition to non-governmental efforts, China’s Ministry of Foreign Trade and Economic Cooperation (MOFTEC) has conducted training sessions for PRC officials, including an unprecedented workshop in February 2003 intended to explain the new licensing system. Moreover, following the Tenth National People’s Congress that concluded in March 2003, MOFTEC was folded into a new Ministry of Commerce. Export controls should be elevated under this new ministry, which is expected to include an entire division devoted to export control concerns.[4] Taken together, these and related nongovernmental efforts signal a new outlook by Beijing on the need for effective nonproliferation controls and suggest a more serious commitment to safeguarding sensitive technologies. Recent conversations with Chinese interlocutors suggest this new outlook is due not only to U.S. pressures, but is in response to the PRC’s own internal calculus that nonproliferation is critical to China’s national interest. The events of 9-11 also made clear to China the dangers it, too, faces from global proliferation of weapons of mass destruction.

Nonetheless, China’s export control policy still leaves room for improvement and will continue to be a source of friction in U.S.-China relations. For example, China’s missile control list does not include some key technologies listed in the MTCR Annex, nor do the regulations prohibit altogether the sale of ballistic missiles abroad.[5] According to the Director General on Arms Control and Disarmament for China’s Ministry of Foreign Affairs, the new regulations do not change PRC policy on exporting missiles, but merely provide a regulatory and licensing system by which to regulate this trade.[6] Also, the regulations apparently were designed primarily in consultation with China’s aerospace industry, ignoring the concerns and dynamics of other industries that involve trade in dual-use technologies. China’s continued inclusion as a global proliferator in the CIA’s semiannual report on *The Acquisition of Technology Relating to Weapons of Mass Destruction and Advanced Conventional Munitions* and recently announced U.S. sanctions against the PRC firm NORINCO, testify to the U.S. Government’s dissatisfaction with China’s implementation thus far of its export control measures.[7]

Therefore, it is only how PRC officials enforce these new regulations that will demonstrate the extent of China’s commitment to nonproliferation. The measures announced in 2002 represent an important step forward and a significant improvement to China’s regulatory process. Most encouraging, however, are the PRC’s apparent efforts to get it right this time.

Sources: [1] See “China Issues Missile, Chemical, and Biological Export Control Laws,” *NIS Export Control Observer*, No.2, February, 2003, pp.14-15. [2] See Ministry of Commerce, “The Ministry of Commerce and The General Administration of Customs Notice No. 5 (April 17, 2003),” <http://preview.english.moftec.gov.cn/article/200304/20030400083988_1.xml>; and Bill Gertz, “Panel to Probe China’s Nuclear-Related Sales to North Korea: Beijing Says Reports of Transfer to Pyongyang ‘Not Worth Comment’,” *Washington Times* (December 20, 2002), p. A3. [3] See, for instance, Li Bin, “Comments on the Chinese Regulation on Missile Technology Export Control,” CDI-Tsinghua Joint Program on Cooperative Security (August 26, 2002), <<http://learn.tsinghua.edu.cn/homepage/S00313/eexctl.htm>>. [4] The Ministry of Commerce officially replaced MOFTEC on March 25, 2003. See “China’s Ministry of Commerce Begins Operations,” *People’s Daily Online*, March 26, 2003, <http://english.peopledaily.com.cn/200303/25/eng20030325_113953.shtml>. However, it is expected to take some time before the new Ministry is able to fully integrate and update the functions of the three former bureaucracies it absorbed. Conversation with visiting Chinese scholar, April 14, 2003. [5] For a detailed comparison of China’s missile control list and the MTCR Annex, see Philip Saunders, “Preliminary Analysis of Chinese Missile Technology Export Control List: Preliminary Conclusions,” Center for Nonproliferation Studies, Monterey Institute of International Studies (September 6, 2002), <http://cns.miis.edu/research/china/pdfs/prc_msl.pdf>. [6] “China Calls on US to End Sanctions Following New Regulations on Missile Export Controls,” *Agence France Press*, August 27, 2002. [7] See, for instance, Michael Dobbs and Glenn Kessler, “U.S. Penalizes Chinese Firm Over Alleged Missile Aid to Iran,” *Washington Post*, May 23, 2003, p. A21. The notice of sanctions levied against NORINCO are contained in *The Federal Register*, vol. 68, no. 100 (May 23, 2003), pp. 28314-28315. Central Intelligence Agency, “Unclassified Report to Congress on the Acquisition of Technology Relating to Weapons of Mass Destruction and Advanced Conventional Munitions, 1 January - 30 June 2002” (April 2003), http://www.cia.gov/cia/reports/721_reports/jan_jun2002.html#15.

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