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Special Report

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Recent Developments in the NIS

EURASEC Member Countries Harmonize Export Control Procedures

On July 15, 2003, the Cabinet of Ministers of the Russian Federation adopted Decree No. 423 *On Signing the Agreement Regarding Unified Export Control Procedures of the Member-States of the Eurasian Economic Community*. The decree approves the draft text of the agreement, and empowers Deputy Prime Minister Viktor Khristenko to sign the agreement for the Russian Federation.

Members of the Eurasian Economic Community (EURASEC) are Russia, Belarus, Kazakhstan, Kyrgyzstan, and Tajikistan. The agreement includes 21 articles, and its main provisions are as follows:

- The member states will introduce standardized export control norms, rules, and regulations.
- The EURASEC Integration Committee will develop control lists which are to be approved by the EURASEC Interstate Council. According to articles 3 and 8 of the agreement, control lists of items and technologies subject to export controls are to be developed by the EURASEC Integration Committee within one year after the agreement's entry into force. The lists must be approved by the EURASEC Interstate Council at the level of prime ministers.[1]
- The member states will introduce catch-all clauses into their export control procedures.
- Export licenses issued by one of the member states will be valid in all member states.
- Goods and technologies subject to export control can move freely across member states with two exceptions: first, if transfer restrictions are necessary to comply with multilateral nonproliferation commitments or to ensure national security interests of the country; and second, if it is known that the end-user is not a member state.

The establishment of unified export control procedures in the five countries is part of a broader initiative to create a EURASEC foreign trade mechanism, which, in turn, may lead to a "EURASEC economic zone." Some analysts, however, express strong doubts that EURASEC initiatives, including the export control procedures initiative, will be successful. They point to the lack of will among business communities and mid-level government officials in the EURASEC countries to support integration processes initiated by the presidents. Even if EURASEC countries follow suit (which is likely) and approve and sign the agreement, it is unclear how smoothly national export control mechanisms of the five countries will work together. It is also still unclear how member states will exchange information.

Source: [1] Postanovleniye Pravitelstva Rossiyskoy Federatsii No. 423 *O podpisanii Soglasheniya o Yedinom Poryadke Eksportnogo Kontrolya Gosudarstv-chlenov Yevraziiskogo Ekonomicheskogo Soobshchestva* [Decree No. 423 of the Government of the Russian Federation *On Signing the Agreement Regarding Unified Export Control Procedures of the Member-States of the Eurasian Economic Community*], July 15, 2003; Online Russian legal database Referent.ru <http://www.referent.ru:2005/security/1/58218/1>.

Russia Adopts New Statute for Regulating Imports of Irradiated Nuclear Fuel Assemblies

On July 11, 2003, the Russian government issued Decree No. 418 *On Regulations for Imports of Irradiated Fuel Assemblies of Nuclear Reactors to the Russian Federation*.[1] The Statute adopted by this Decree establishes regulations for implementing foreign contracts for the import of spent nuclear fuel assemblies for temporary storage, both with subsequent mandatory return of these assemblies and with their subsequent reprocessing. The Statute regulates the application mechanism of the laws *On Use of Atomic Energy*, *On Special Environmental Programs of Rehabilitation of Radiation Polluted Territories*, and Article 48 (4) of the law *On Environmental Protection*.

Upon the publication of the above-mentioned Statute by *Rossiyskaya gazeta*, Nikolay Shingarev, head of the Directorate of Government Coordination and Information Policy of the Russian Ministry of Atomic Energy (Minatom), commented on the new regulatory document by emphasizing its features. In particular, Shingarev noted that, in accordance with the new Statute, a project for the import of spent fuel assemblies must include a special environmental program detailing activities meant to reduce environmental risks related to imports of such items. Moreover, a contract is considered authorized only after it undergoes a state environmental examination. Finally, the new Statute gives preferential treatment to Russian-origin

fuel.[2] The waste resulting from its reprocessing can stay in Russia, while the waste resulting from foreign-origin fuel must be returned to the sending country.

Sources: [1] According to Decree of the Government of the Russian Federation No. 418 of July 11, 2003, previous governmental decrees No. 773 of July 29, 1995 and No. 745 of July 10, 1998 have expired. See Decree of the Government of the Russian Federation No. 418 of July 11, 2003, *Rossiyskaya gazeta* online edition, <http://www.rg.ru/oficial/doc/postan_rf/418-03.shtm>. [2] Vladimir Barshev, "Oblucheno i neopasno. Novyye pravila 'yadernoy igry'" [Irradiated and not dangerous. New rules of the 'nuclear game'], *Rossiyskaya gazeta* online edition, July 17, 2003; in *Ekologicheskaya pravda* online edition, <http://eco-pravda.km.ru/ojat/rg17il3.htm>.

Ukraine Establishes Commission to Examine Customs Performance

On June 27, 2003, President Leonid Kuchma of Ukraine signed Order No. 185/2003-RP *On Examination of Performance of Customs Bodies*.[1] This document was adopted "with the purpose of conducting an analysis of the performance of customs bodies and their compliance with legal requirements during customs inspections."[1] The Order consists of two provisions: (1) *On Conducting the Examination of the Performance of the State Customs Service of Ukraine*; and (2) *On Establishing a Special Commission under the National Security and Defense Council of Ukraine (NSDC) to Carry Out This Examination*. NSDC Deputy Secretary Trofim Kovalchuk was appointed Chairman of the Commission.[2,3]

According to Kuchma's press-secretary, Alena Gromnitskaya, the Commission on Examination of the Performance of Customs Bodies has the right to submit proposals to investigate violations of existing laws to relevant law enforcement agencies.[4] The Commission chairman can also form working groups composed of officials from the Secretariat of Ukraine's Cabinet of Ministers, central and local executive bodies, enterprises, various agencies and organizations, as well as to receive documents and materials necessary for the Commission to function.[5]

The Order *On Examination of Performance of Customs Bodies* can be viewed as a logical continuation of the course taken by President Kuchma a year and a half ago. On February 14, 2002, Kuchma met with government officials, heads of the State Customs Service, State Committee for Protection of State Borders, Security Service, Ministry of Internal Affairs, State Tax Administration, General Prosecutor's Office and its regional departments, as well as representatives of the Supreme and Economic Courts of Ukraine, to discuss issues of domestic market protection, prevention of illegal imports of commodities and budget losses as a result of import transactions. At the meeting, the Ukrainian president sharply criticized Ukraine's law enforcement agencies, and especially the State Customs Service of Ukraine, which according to Kuchma, failed to fully protect the domestic market from smuggled goods and illegal drug trafficking. Among reasons for this failure, Kuchma mentioned shortcomings of the legal system, inefficiency of customs and tariff policies, permeability of a considerable part of the state borders, corruption in the customs and law enforcement agencies, absence of proper interagency coordination among ministries and agencies, as well as lack of cooperation with relevant structures of neighboring countries.[6]

Upon completion of its work, the Commission must report results of the examination to the president and submit proposals for improving the performance of Ukraine's customs bodies.[5] It is not clear, however, whether the Commission will extend its analysis to Customs performance in preventing the export of weapons of mass destruction-related technologies.

Sources: [1] "Prezidentom Ukrainy sozdana komissiya dlya proverki deyatelnosti tamozhennykh organov" [President of Ukraine established a commission to examine the performance of customs bodies], QD Professional website, July 1, 2003, <http://www.qdpro.com.ua>. [2] Rasporyazheniye Prezidenta Ukrainy "O proverke deyatelnosti tamozhennykh organov" [Order of President of Ukraine *On Examination of Performance of Customs Bodies*], QD Professional website, June 27, 2003, <http://www.qdpro.com.ua>. [3] "SNBO navedet na tamozhne poryadok" [NSDC will establish order at customs], Chief Department of Foreign Economic Relations and Investments of Kyiv City State Administration website, June 30, 2003, <http://www.kmda-invest.gov.ua>. [4] "Tamozhnyu ozhidayet seryeznaya proverka" [Customs expects a serious examination], Obozrevatel information agency, June 27, 2003, <http://www.obozrevatel.com>. [5] "Prezident Ukrainy L. Kuchma podpisal rasporyazheniye *O proverke deyatelnosti tamozhennykh organov* [President of Ukraine signed the Order *On Examination of Performance of Customs Bodies*], CIS Office of the World Road Transport Union website, July 1, 2003, <http://www.iru-cis.ru>. [6] "Pravitelstvo dolzhno obespechit nadezhnuyu zashchitu vnutrennego rynka" [Government must secure reliable protection of the domestic market], Elektronnyye vesti, February 15, 2002, <http://www.elvisti.com>.

Changes in NIS Export Control Personnel

Personnel Change in the Export Control System of Kazakhstan

According to Presidential Edict No. 1108 of June 13, 2003, Danial Akhmetov replaced Imangali Tasmagambetov as the new Kazakhstani Prime Minister.[1] On June 17, Akhmetov signed Order No. 129-r *On the Distribution of Duties among the Prime Minister, Deputy Prime Ministers, and Head of the Office of the Prime Minister of the Republic of Kazakhstan*.[2] According to this document, Sauat Mukhametbayevich Mynbayev, appointed as a deputy prime minister by Presidential Edict No. 1115 of June 13, 2003, will supervise issues related to export controls, the accession of Kazakhstan to the World Trade Organization, information systems of state agencies, geology, subsoil use, protection of mineral resources, and the Baikonur space launch facility.[2,3] In addition, Mynbayev will coordinate the activities of state agencies in the following areas: industrial development; development of infrastructure and new technologies (industry, energy, construction, transport, and communication); interaction with CIS countries and regional associations within the CIS; and oversight of the Ministry of Industry and Trade, Ministry of Energy and Mineral Resources, Ministry of Transport and Communication, and the Agency on Information Systems and Communications.[2]

Editor's Note: Sauat Mynbayev was born in 1962. He graduated from the M. V. Lomonosov Moscow State University and has a Ph.D. in economics. Mynbayev previously worked as the president of the state-owned "Kazakhstan" stock exchange, first deputy chairman of the management board of Kazkommertsbank, first deputy minister and minister of finance, deputy head of the administration of the president of the Republic of Kazakhstan, minister of agriculture, and chairman of the management board of the joint stock company Bank of Development of Kazakhstan. His most recent position was director general of Caspian Industrial Finance Group Ltd. In June 2003, he became deputy prime minister of the Republic of Kazakhstan.[4]

Sources: [1] Edict No. 1108 of the President of the Republic of Kazakhstan of June 13, 2003, *On Appointment of D. K. Akhmetov Prime Minister of the Republic of Kazakhstan*, Database of Laws of the Republic of Kazakhstan, <http://www.zakon.kz>. [2] Order of Prime Minister of the Republic of Kazakhstan, June 17, 2003, No. 129-r, *On the Distribution of Duties among the Prime Minister, Deputy Prime Ministers and Head of the Office of the Prime Minister of the Republic of Kazakhstan*, *Kazakhstanskaya pravda*, No. 176 (24116), June 18, 2003, p. 1. [3] Edict No. 1115 of the President of the Republic of Kazakhstan, June 13, 2003, *On Appointment of S. M. Mynbayev Deputy Prime Minister of the Republic of Kazakhstan*, Database of Laws of the Republic of Kazakhstan, <http://www.zakon.kz>. [4] Official website of the Government of the Republic of Kazakhstan, <http://www.government.kz>.

New Chairman Is Appointed to the Moldovan Interdepartmental Commission on Export Controls

On August 5, 2003, Moldovan President Vladimir Voronin signed an edict, appointing Marian Lupu minister of the economy. Previously, Lupu was deputy minister of the economy and supervised external economic relations, including export controls.

Due to his new position, Lupu also assumes the position of chairman of the Interdepartmental Commission on Export Controls.

Currently, the Commission includes the following members:

Marian Lupu	Minister of the Economy, Chairman of the Commission
Victor Gaiciuc	Minister of Defense, Deputy Chairman of the Commission
Sergiu Spataru	Director of Dual-Use Goods Circulation Control Division of the Ministry of the Economy, Secretary of the Commission
Ion Stavila	Deputy Minister of Foreign Affairs
Vladimir Botnari	Deputy Minister of Internal Affairs
Valdimir Cravcenco	Deputy Minister of Industry
Anatolie Gozun	Deputy Director of the Service of Information and Security
Vitalie Slipenchi	Deputy General-Director of the Department of Customs
Leonid Bolocan	Director of the Division of Special Problems of the State Chancellery

The composition of the Commission was originally approved by Government Decision No. 1039 on October 3, 2001. This decision provides for the nomination of new members without a new government decision.

The Commission performs the following functions:

- reviews proposals with regard to signing or adhering to international, bilateral, and multilateral agreements on nonproliferation of weapons of mass destruction and other strategic goods;
- implements controls on fulfilling Moldova's obligations pursuant to international and intergovernmental agreements on nonproliferation and the control of movements of weapons of mass destruction and other strategic goods;
- deliberates and makes decisions with regard to issuing export, re-export, import, and transit authorizations of strategic goods through the territory of the Republic of Moldova; and
- makes decisions on suspending export, re-export, import, and transit licenses for strategic goods, if license holders violate the existing legal provisions, or if the suspension is required by international agreements or national policy decisions.

The Commission may establish working groups, including representatives from other ministries and agencies, in order to review and draft proposals and solve problems that might arise in conducting the control of export, re-export, import, and transit of strategic goods. The activity of the Commission is supported by the Dual-Use Goods Circulation Control Division within the Ministry of the Economy.

The Commission may convene whenever necessary, but no less than twice a year. In general, however, the Commission holds meetings once a month. The Commission's resolutions are adopted by a simple majority of votes and are recorded in protocols. All resolutions are binding on all government agencies and economic agents of the Republic of Moldova.

Prime Minister Kasyanov Redistributes Export Control Responsibilities

On June 28, 2003, due to the appointment of former Governor of St. Petersburg Vladimir Yakovlev to the position of sixth deputy prime minister by Presidential Edict No. 677 of June 16, 2003, Prime Minister Mikhail Kasyanov redistributed responsibilities among his deputy prime ministers.[1,2,3] More particularly, responsibilities for export control oversight have been transferred from Aleksey Kudrin to Boris Aleshin, former head of the State Committee of the Russian Federation for Standardization and Metrology (Gosstandart), who was nominated to be fifth deputy prime minister by Presidential Edict No. 459 of April 24, 2003.[4] In case of temporary absence, Aleshin's duties will be assumed by deputy prime ministers Vladimir Yakovlev and Viktor Khristenko.[2] In addition to this, in accordance with Presidential Edict No. 791 of July 21, 2003, Aleshin was appointed chairman of the Commission on Export Control of the Russian Federation, while V. Pyarin, A. Kudrin, and M. Fradkov were excluded from the Commission.[5] By replacing Kudrin with Aleshin as the chairman of the Commission, Edict No. 791 effectively rescinded Presidential Edict No. 66 of January 21, 2003.[5,6]

Editor's Note: Aleshin's responsibilities include the following areas: trade and economic relations with foreign countries; state support for industrial exports; technical regulation; standardization, measurements, certification and the issuance of patents; export control; industrial and scientific-technical policies; policy on innovations; support of entrepreneurship and of small and medium businesses; reduction of administrative restrictions in the economy; anti-monopoly policy; state investment policy and stimulation of private investments; and economic mobilization policy.[7]

Sources: [1] "Vladimir Yakovlev stal shestim zamestitelem predsedatelya pravitelstva RF" [Vladimir Yakovlev became the sixth deputy prime minister of the government of the Russian Federation], Strana.ru, June 16, 2003, <http://www.strana.ru>. [2] "Kasyanov raspredelil obyazannosti v pravitelstve" [Kasyanov distributes responsibilities in the government], Gazeta.ru, June 30, 2003; in Integrum Techno, <http://integrum.com>.[3] "Novoye raspredeleniye obyazannostey mezhdu vitse-premerami: Kudrin" [New distribution of responsibilities between the deputy prime ministers: Kudrin], ITAR-TASS, June 30, 2003; in Integrum Techno, <http://integrum.com>. [4] "Putin naznachil Borisa Aleshina zamestitelem Predsedatelya Pravitelstva RF" [Putin appointed Boris Aleshin deputy prime minister of the government of the Russian Federation], ARMS-TASS, April 24, 2003, <http://www.arms-tass.ru>. [5] Ukaz Prezidenta Rossiyskoy Federatsii No. 791, *O vneseniy izmenenii v sostav Komissii po eksportnomu kontrolyu Rossiyskoy Federatsii* [Edict No. 791 of the President of the Russian Federation *On introducing changes in the composition of the Commission on export control of the Russian Federation*], July 21, 2003, President of the Russian Federation website,

<http://www.kremlin.ru>. [6] On the composition of the Russian Export Control Commission see: "New Appointee to the Russian Export Control Commission," *NIS Export Control Observer*, No. 4, April 2003, pp. 5-7, <http://cns.miis.edu/nis-excon>. [7] For the official list of Boris Aleshin's duties, see Government of the Russian Federation website, <http://www.government.ru/government/minister/sphere.html?he_id=717>.

International Export Control and WMD Security Assistance Programs

United States Assists Moldovan Customs, Ministry of Defense

On May 30, 2003, the United States donated 34 VAZ vehicles to the Moldovan Customs Department as part of the U.S. Department of State-funded Export Control and Related Border Security (EXBS) program.[1,2] The vehicles will be used to enhance security and prevent smuggling and illegal trafficking of arms and drugs along the Moldovan side of the Dniester River.[1] The United States has provided over $1 million worth of equipment to Moldovan border guards, customs, and emergency services through the EXBS program, including vehicles, computers, cellular phones, radios, bulletproof vests, and night vision goggles. In the next few years, the U.S. government will supply an additional $2 million worth of equipment to Moldova through the EXBS program.[1]

In addition, on June 10, 2003, the United States donated 57 Chevrolet trucks worth a total of $321,000 to the Moldovan Ministry of Defense. These vehicles follow a 1999 donation of 15 vehicles to the Moldovan military.[3]

Editor's Note: Situated on the left bank of the Dniester River and predominantly populated by non-Moldovan population (mostly Russian and Ukrainian,) the Transdniester region is a secessionist part of the Republic of Moldova. Reacting to Moldova's declaration of sovereignty of June 23, 1990, the communist leaders declared the formation of the Transdniester Moldovan Republic (Pridnestrovskaya Moldavskaya Respublika or PMR) on September 2, 1990. The Transdniester separatists began to assume control over the local administration and the first clashes with Moldovan police units were reported in November 1990. Following the failed coup in Moscow in August 1991, the Moldovan Parliament issued a declaration of independence from the Soviet Union on August 27, 1991, which prompted the Supreme Soviet of the self-proclaimed Transdniester Republic to vote to join the USSR on September 2, 1991. Beginning in December 1991, the tensions started to escalate culminating in a wide-scale military confrontation in June 1992 in which the Moldovan armed forces were driven out from the left bank and from the strategically important city of Bendery on the right bank of the Dniester River. According to numerous reports, throughout the conflict the paramilitary forces of separatists enjoyed open support from the Russian 14th Army positioned on the left bank. The conflict ended with a ceasefire agreement mediated by the Russian Federation and signed in Moscow on July 21, 1992. The agreement established demilitarized security zone extending for 10 kilometers on both sides of the Dniester River, which has been patrolled by the peacekeeping forces consisting of Russian, Moldovan and Transdniestrian units since July 29, 1992.[5] However, the efforts to resolve the conflict spearheaded by the Organization for Security and Cooperation in Europe (OSCE) thus far have led to a political stalemate. The Russian Federation began the phased withdrawal of its 14th Army from Transdniestria in spite of vigorous opposition from the separatist government. In accordance with the decisions made at the 1999 OSCE summit in Istanbul, the Russian Federation committed itself to withdraw the 14th Army from the Transdniester region by the end of 2002. The deadline for the complete withdrawal was later extended to December 31, 2003.[6] With the industrial facilities inherited from the Soviet times and the vast ammunition depots of the 14th Army, the unrecognized Transdniester Republic remains a lawless enclave, which has been recently described as one of the major international hubs of arms trafficking and other criminal activities.[7]

Sources: [1] Agentstvo voyennykh novostey, May 30, 2003; in "US Assists Moldova in Strengthening Border Protection," FBIS Document CEP2003030000240. [2] For a concise description of the EXBS program see: "United States Export Control Initiatives," *NIS Export Control Observer*, No. 7, July 2003, p. 7, <http://cns.miis.edu/nis-excon>. [3] "Mezhdunarodnoye sotrudnichestvo" [International cooperation], MRTsDS Moldova, June 1, 2003; in Integrum Techno, <http://www.integrum.ru>. [4] Moldova," CIA World Factbook, <http://www.cia.gov/cia/publications/factbook/geos/md.html>. [5] OSCE Mission to Moldova, "Transdniestrian Conflict: Origins and Issues," June 10, 1994, OSCE Conflict Prevention Centre, Vienna, Austria; online version at the U.S. Department of State website, <http://www.state.gov/documents/organization/13611.pdf>. [6] "Russia Continues to Withdraw Military Property from Transdniestria," RIAN, March 15, 2003; Pravda on-line edition (Pravda.ru),

<http://english.pravda.ru/cis/2003/03/15/44461.html>. [7] Peter Landesman, "Arms and the Man," *The New York Times Magazine*, August 17, 2003, <http://www.nytimes.com/2003/08/17/magazine/17BOUT.html>.

OSCE Provides Equipment to Georgian Border Guards

In June and July 2003, Georgian border guards received two donations of equipment through the Organization for Security and Cooperation in Europe (OSCE) with funding from the European Union and the United States.[1,2,3] The first donation, made on June 28, 2003, consisted of radios, uniforms, mountaineering equipment, boots, ponchos, binoculars, and other items worth a total of 100,000 Euros ($114,350 as of June 28, 2003), purchased by the OSCE through a grant from the EU.[1,2] The second donation, consisting of $800,000 worth of 4-wheel drive patrol vehicles, medical evacuation stretchers, boots, stoves, torches, binoculars, and first aid kits purchased through U.S. government funding, was received a month later, on July 29, 2003 by Lieutenant General Valeriy Chkheidze, chairman of the Georgian State Border Guard Department.[3]

Editor's Note: The OSCE Border Monitoring Operation was launched in Georgia in December 1999 to monitor the Chechen segment of the Georgian-Russian border. The OSCE's mandate was subsequently expanded to cover the Ingushetian and Daghestani sections of the Georgian border in December 2001 and December 2002 respectively.[1,2,3] Personnel from the OSCE are unarmed, and rely on the Georgian border guards for protection and security.[2]

Sources: [1] Interfax, June 28, 2003; in "OSCE Donates 100,000 Euros Worth of Tools to Georgian Border Guards," FBIS Document CEP20030628000019. [2] "OSCE helps Georgian Border Guards to better patrol the border," Organization for Security and Co-operation in Europe Mission to Georgia, June 27, 2003, <http://www.osce.org>. [3] "US grant helps Georgian Border Guards and OSCE to enhance cooperation in border monitoring," Organization for Security and Cooperation in Europe Mission to Georgia, July 29, 2003, <http://www.osce.org>.

United States to Assist in Installation of New Radiation Monitors in Uzbekistan

A May 2003 article in the Uzbekistani weekly *Nalogovyye i tamozhennyye vesti* described a meeting at which officials and experts from the U.S. Defense Threat Reduction Agency (DTRA), Lawrence Livermore National Laboratory, the U.S. Embassy in Tashkent, and the State Customs Committee of Uzbekistan discussed the installation of additional portal monitors at border checkpoints in Uzbekistan. As of May 31, 2003, seven vehicle and four pedestrian monitors were in place at the Gisht Kuprik (Tashkent Oblast), Alat (Bukhara Oblast), Tashkent-Aero (Tashkent Airport), and Ayritom (Surkhandarya Oblast) customs checkpoints. Officials at the meeting proposed the installation of additional monitors, including eleven vehicle and seven railcar monitors.

At the meeting, U.S. officials announced the creation of a new assistance program, the Department of Defense WMD Proliferation Prevention Program, which is part of the Cooperative Threat Reduction program. Under the WMD Proliferation Prevention Program, the United States will provide Uzbekistan with funds to install the additional monitors and to train officers and personnel working with the equipment to ensure efficient functioning of security measures at customs checkpoints. Installation of the monitors and related training will be carried out by Lawrence Livermore National Laboratory and the U.S. Department of Energy, and will be funded by the U.S. Department of State.[1,2,3]

Editor's Note: Portal monitors are stationary monitoring devices that can be positioned along a road or railway to detect radioactivity in passing vehicles or pedestrians without impeding traffic.[4]

Sources: [1] *Nalogovyye i tamozhennyye vesti*, May 31, 2003; in "US Defense Experts, Uzbek Customs Officials Discuss Installation of New Monitors," FBIS Document CEP20030531000092. [2] *Nalogovyye i tamozhennyye vesti*; in "Tamozhnya za razoruzheniye" [Customs for disarmament], Informatsionnoye agentstvo Zhakhon website, <http://jahon.mfa.uz/ARHIV/2003/5/31052003.htm>. [3] For more information on the WMD Proliferation Prevention Program, see "U.S. Export Control Initiatives," *NIS Export Control Observer*, July 2003, pp. 6-8, CNS website, <http://cns.miis.edu/nis-excon>. [4] "Portal Monitors," Polimaster Ltd. website, <http://www.polimaster.com/en/products/monitors.htm>.

United States Donates Vehicles to Turkmenistan

On June 25, 2003, the U.S. Embassy in Turkmenistan presented 40 new UAZ jeeps to First Deputy Commander of the State Border Service of Turkmenistan Colonel Annageldy Gummanov.[1,2] Colonel Gummanov thanked the U.S. representatives for providing technical assistance and noted that the UAZ

vehicles would be invaluable for Turkmenistani border guards who patrol the rugged terrain of the state border.[2]

The donation of vehicles was part of the U.S. government assistance program "Export Control and Related Border Security" (EXBS) and was intended to increase the effectiveness of the Turkmenistani State Border Service "in preventing the illegal movement of people and material related to weapons of mass destruction (WMD) across the border of Turkmenistan," according to the U.S. Embassy's press release.[1,3] The EXBS program in Turkmenistan was launched in 2001, when the U.S. government provided a patrol boat to the coast guard forces of the State Border Service of Turkmenistan positioned on the Caspian Sea.[2] The EXBS senior advisor at the U.S. Embassy in Ashkhabad, Stephen Parker, told the ITAR-TASS news agency that in the near future, the U.S. government would donate satellite navigation devices to Turkmenistani border guards.[2] In addition, under the auspices of the EXBS program, special training sessions were organized for Turkmenistani border guards and custom officials in July of 2003.[2]

Sources: [1] "U.S. Embassy Presents 40 UAZ jeeps to Turkmen Border Service," U.S. Embassy in Ashgabat, Turkmenistan; Official Press Release, PAS No. 95, June 25, 2003, <http://www.usemb-ashgabat.rpo.at>. [2] "SShA peredali v dar turkmenskim pogranichnikam 40 avtomobilei UAZ" [U.S.A. donated 40 UAZ vehicles to the Turkmenistani border guards], ITAR-TASS, June 25, 2003; in Integrum Techno database, <http://www.integrum.com>. [3] For a concise description of the EXBS program see: "United States Export Control Initiatives," *NIS Export Control Observer*, No. 7, July 2003, pp. 6-8; <http://cns.miis.edu/nis-excon>.

Commodity Identification Training in Kazakhstan

In 2003, the U.S. Department of Energy (DOE) International Nuclear Export Control Program (INECP) initiated a commodity identification training (CIT) program with customs and enforcement agencies in the former Soviet Union. INECP began discussions on establishing a CIT with representatives of the Baltic States, the Caucasus, Ukraine, Kazakhstan, and Uzbekistan in 2003. The goal of this program is to establish a permanent and indigenous nuclear export control training program in INECP-partner countries that introduces and familiarizes inspectors, managers, and officers of export control enforcement agencies with the domestic and international nuclear export control obligations of their respective countries, as well as with the nuclear-related, dual-use commodities that may transit their customs houses or border posts. CIT is not designed to turn customs inspectors into nuclear scientists. Instead, its goal is to establish a core of indigenous technical experts who can familiarize customs authorities with commodities on a continuous basis, while serving as a dependable technical resource for enforcement agencies to rely on when nuclear dual-use commodities are intercepted. Once the initial program is in place, the INECP envisions that the partner country would then sustain the program indefinitely.

In a meeting with Kazakhstani government representatives on June 5, 2003, Director of the U.S. Department of State Office of Export Control Cooperation John Schlosser established a commitment between the Kazakhstani and U.S. governments on the creation of CIT for both the Kazakhstani Customs Control Agency and Border Guards. The certification of Kazakhstani nuclear export control experts as CIT trainers, as well as the initial training of inspectors will be partly funded by the Export Control and Border Security program. Schlosser was joined by a team of DOE National Nuclear Security Administration representatives, led by Mark A. Scheuer, deputy program manager of the International Nuclear Export Control Program.

Previous low-level discussions with the government of Kazakhstan had resulted in recognition that high-level support for CIT in Kazakhstan was necessary. To this end, First Deputy Chairman of the Customs Control Agency Amaniaz Yerzhanov and Deputy Director of the Border Guard Service Major-General Tursyn Uazhanov participated in the June 5 meeting. Representatives of the Kazakhstani Ministry of Foreign Affairs and the Kazakhstan Atomic Energy Committee also participated. Both Yerzhanov and Uazhanov had been briefed about the CIT, and enthusiastically endorsed the assignment of implementation of CIT to the Kazakhstan Atomic Energy Committee and the Nuclear Technology Security Center, a Kazakhstani non-governmental organization. Yerzhanov and Uazhanov recognized the value not only of the training itself for their inspectors, but also the value of strengthening relations between their agencies and Kazakhstan's technical community.

Pacific Northwest National Laboratory, the U.S. implementing body, and the Nuclear Security Technology Center are negotiating the statements of work for identifying organizations and planning training strategies.

The initial "train-the-trainer" certification of Kazakhstan's nuclear export control experts is anticipated to take place in spring 2004. U.S. nuclear export control experts from the U.S. national laboratories will participate in this certification, and likely provide a U.S. perspective in the initial CIT workshops for enforcement authorities.

Embargoes and Sanctions Regimes

United States Lifts Sanctions on India and Pakistan

On June 20, 2003, the U.S. Department of State announced that it will consider issuing export licenses for defense articles, defense services, and related technical data to India and Pakistan on a case-by-case basis, officially ending sanctions on the two countries.[1] Sanctions were imposed on India and Pakistan on May 20, 1998, and June 17, 1998, respectively, under the Glenn Amendment to the Foreign Assistance Act after both countries conducted several nuclear explosions.[2,3] The Glenn Amendment prohibits U.S. assistance to any non-nuclear weapon state (as defined by the Nuclear Non-Proliferation Treaty) that conducts a nuclear explosion.[3] However, according to Jay Greer, spokesman for the Bureau of Political-Military Affairs in the State Department, the June 20 announcement was not a change in policy, but rather was meant to "make sure everybody knew where we stood."[4] The announcement was intended to officially state what had become policy almost two years earlier, when U.S. President Bush issued a waiver of the Glenn Amendment sanctions on September 22, 2001, after determining that the sanctions no longer served U.S. national security interests.[3]

In addition, Missile Technology Control Regime Category I missile sanctions imposed on Pakistan by the United States for missile-related cooperation with Chinese entities expired on November 21, 2002. The expiration of these sanctions permits exports of items on the United States Munitions List to the Pakistani Ministry of Defense and the Pakistani Space and Upper Atmosphere Research Commission.[3]

According to Joel Johnson, vice president of international affairs for the Aerospace Industries Association in Washington, D.C., the lifting of sanctions is unlikely to cause a large increase in the amount of defense-related trade between the United States and the two countries. However, it may result in some additional arms transfers, including a possible sale of F-16 jet fighters to Pakistan.[4]

Sources: [1] "State Department will consider export licenses for India, Pakistan," *Aerospace Daily*, June 23, 2003; in Lexis-Nexis Academic Universe, <http://www.lexis-nexis.com>. [2] Steve LaMontagne, "India-Pakistan Sanctions Legislation Fact Sheet," Council for a Livable World website, June 11, 2001, <http://www.clw.org/control/indopaksanctions.html>. [3] Department of State, "Bureau of Political-Military Affairs; Export of Defense Articles and Defense Services to India and Pakistan," *Federal Register Online*, June 20, 2003, <http://wais.access.gpo.gov>. [4] Nick Johnson, "Analysts see no big gains in lifting of trade sanctions," *Aerospace Daily*, June 24, 2003; in Lexis-Nexis Academic Universe, <http://www.lexis-nexis.com>.

United States Publishes New Rule on Specially Designated Global Terrorists

On June 6, 2003, the Bureau of Industry and Security (BIS) of the U.S. Department of Commerce published a new rule amending the Export Administration Regulations (EAR) that would impose a license requirement on the export and reexport of any item subject to the EAR to persons designated as terrorists in Executive Order (E.O.) 13224 of September 23, 2001. Executive Order 13224, issued by U.S. President George W. Bush shortly after the attacks of September 11, 2001, requires that the assets of individuals designated as Specially Designated Global Terrorists by the U.S. Department of State and the U.S. Department of Treasury's Office of Foreign Assets Control be frozen, and prohibits U.S. citizens from engaging in any transaction with these individuals. In issuing its new rule, BIS is taking action consistent with E.O. 13224 and several United Nations Security Council resolutions that require member states to freeze assets of terrorist organizations.

The new rule also amends the Commerce Department's EAR by expanding existing export and reexport controls to Specially Designated Terrorists and Foreign Terrorist Organizations. A January 1999 BIS rule imposed a license requirement on exports and reexports to Specially Designated Terrorists and Foreign Terrorist Organizations, but did not restrict the export from abroad or reexport of EAR99 items. (See below.) The new June 2003 rule requires a license whether the item to be exported is on the Commerce Control List or is classified as EAR99.

An item designated as EAR99 is one which falls under U.S. Department of Commerce jurisdiction but is not listed on the Commerce Control List. Items designated as EAR99 generally consist of low-technology consumer goods and do not require a license in many situations. However, if a proposed export of an EAR99 item is to an embargoed country, to an end-user of concern, or in support of a prohibited end-use, a license may be required.[2]

Editor's Note: Specially Designated Global Terrorists are individuals listed in E.O. 13224 of September 2001. Specially Designated Terrorists and Foreign Terrorist Organizations are listed in E.O. 12947 of January 1995 and in the 1996 Anti-Terrorism and Effective Death Penalty Act, respectively. Some individuals designated as Specially Designated Global Terrorists have also been designated as Specially Designated Terrorists or Foreign Terrorist Organizations or both.[1]

Sources: [1] "Imposition and Expansion of Controls on Designated Terrorists; Global Terrorism Sanctions Regulation; Final Rules," Federal Register, June 6, 2003, BIS website, <http://www.bis.doc.gov/PoliciesAndRegulations/TerroristReg6_6.htm>. [2] "Introduction to Commerce Department Export Controls," BIS website, <http://www.bis.doc.gov/licensing/exportingbasics.htm>.

Illicit Trafficking in the NIS

Cesium Shipment Detained in Ukraine

On June 24, 2003, traffic policemen seized a large amount of cesium at the eight kilometer mark of the Smila-Cherkasy motorway in central Ukraine. Having stopped an Opel Kadett taxi for a simple document check, the policeman involved was about to let the car drive on, when he noticed that the taxi's two passengers were very nervous and agitated. A second inspection revealed that the passengers carried a bag containing a cylindrical object that was marked with radioactivity warning signs. The container was emitting 4,200 microroentgens per hour, while the natural background is about 18. The stretch of road was cordoned off immediately. Reportedly, no one was hurt. The taxi driver and the two passengers were detained at the scene. Later, the driver, who apparently was just giving the two young men a ride, was released, and the two passengers were placed under arrest. A criminal case has been opened.[1]

Unofficial sources in Kiev report that the seized cesium came from an unspecified military facility in Ukraine. It was being transported by the people in the car to be sold first to a "law enforcement officer" in Ukraine who was then planning to sell it to a customer on the black market at an undisclosed location.[2]

Editor's Note: 4,200 microroentgens per hour is still in the low dose range. Assuming that the source material is Cesium-137, that there was little or no shielding, and the measurement was made one meter away (i.e., not on contact with the material), then the radioactivity contained in the source was approximately 14 millicuries.
However, if the source was protected by a thick shielding, the amount of cesium was probably greater because shielding reduces the measured rate of radioactivity emission.

Sources: [1] A. Lubenskiy, "Ukrainskiye gaishniki poymali. . . radioaktivnoye taksi" [Ukrainian road police captured…a radioactive taxi], Pravda.ru, June 25, 2003; in Integrum Techno, <http://www.integrum.com.>. [2] Center for International Trade and Security Interview with a U.S. Embassy Official in Kiev, July 20, 2003.

Summaries from the NIS Press

Tajikistan and IAEA Sign Safeguards Agreement

In July 2003, Tajikistan and the International Atomic Energy Agency (IAEA) signed an agreement on *Application of Safeguards Related to the Treaty on Non-proliferation of Nuclear Weapons*, and an additional protocol to this agreement.[1,2] According to the agreement, signed by Tajikistani Minister of Foreign Affairs Talbak Nazarov and IAEA representatives, the Republic of Tajikistan accepted safeguards with regard to all source or special fissionable material in all peaceful nuclear activity within its territory, under its jurisdiction, or carried out under its control, wherever the activity takes place, exclusively for the purpose of verification that this material is not used in nuclear weapons programs or other nuclear explosive devices.[2,3] [*Editor's Note: According to Item 3 of Article XX "Definitions" of the Statute of the*

IAEA, the term "source material" means uranium containing a mixture of isotopes occurring in nature; uranium depleted in the isotope 235; thorium; any of the foregoing in the form of metal, alloy, chemical compound, or concentrate; any other material containing one or more of the foregoing in such concentration as the Board of Governors shall from time to time determine; and such other material as the Board of Governors shall from time to time determine. According to Item 1 of Article XX, the term "special fissionable material" means plutonium-239; uranium- 233; uranium enriched in the isotopes 235 or 233; any material containing one or more of the aforementioned; and such other fissionable material as the Board of Governors shall from time to time deter mine; the term "special fissionable material" does not include source material.][4] The IAEA pledged not to interfere with Tajikistan's use of nuclear materials for peaceful purposes or its international cooperation in the field of peaceful nuclear activities. In addition, in accordance with the agreement, the IAEA will comply with the existing regulations on health protection, security, and physical protection, and take all measures to protect commercial, technological, and industrial secrets, and other confidential information.[2] The issue of developing cooperation with the IAEA was raised last year during a December 12, 2002 meeting of Tajikistani Deputy Prime Minister Faridun Mukhiddinov with representatives of the U.S. Department of Energy, regional project manager Mehri Sohrabi from the IAEA Department of Technical Cooperation, and representatives of the Academy of Sciences of the Republic of Tajikistan.[5] Participants at the meeting discussed issues related to radiation safety in Tajikistan and the development of a draft law, *On Establishing Regulatory Authority in the Field of Nuclear and Radiation Safety*. The IAEA representative proposed the adoption of the so-called framework law *On Establishing Regulatory Authority* and several additional laws, such as *On Radiation Protection of the Population*, *On Safety of Nuclear Waste,* and *On Safety of Transportation of Nuclear Waste*. At the meeting, the IAEA donated radiation measuring equipment worth $100,000 to Tajikistan.[5]

In summer 2003, the Madzhlisi Oli (Tajikistan's parliament) adopted the law *On Radiation Safety*, the draft of which was submitted for the parliament's consideration by the government in February 2003.[6] During deliberations on the draft law in the Madzhilis Namoyandagon (lower house of parliament), parliamentarians also discussed the creation of an Agency on Radiation Safety under the auspices of the Academy of Sciences of the Republic of Tajikistan, which would work jointly with representatives of the Ministry of Emergency and Civil Defense, Ministry of Health, Ministry of Industry, Ministry of Environmental Protection, and the Academy of Sciences. The law provides for the distribution of responsibilities of local authorities, principles for maintaining radiation safety, and obligations arising from the use of radioactive sources. The new law also regulates the order of transportation of nuclear materials and radioactive substances, and their possible transit through the country's territory within the framework of international agreements.[6]

Editor's Note: The Republic of Tajikistan has been a member of the IAEA since 2000 and does not possess nuclear weapons. The Argus nuclear reactor designed for the Laboratory of Nuclear-Physical Analysis Methods and Control was built in Dushanbe in 1991, though it was never loaded with fuel.[7] During the Soviet era, uranium for the Soviet nuclear industry and nuclear weapons program was mined in Tajikistan.[6] The latest inventory conducted by the Ministry of Environmental Protection of the Republic of Tajikistan, the agency that controls all radioactive sources in the country, revealed that there are 34 tailing dumps of radioactive and toxic waste in the country, containing a total of 210 million tons of radioactive substances. Eighty percent of the waste is in the form of mine rock. Of 22 burial sites in Tajikistan, 11 contain radioactive waste. Of the 11, only six sites have been properly sealed.[8] A tailing dump is a complex of special structures and equipment designed for storage or burial of harmful waste produced by the ore mining and processing industry.[9]

Sources: [1] Galina Gridneva, "Tadzhikistan i MAGATE podpisali soglasheniye o vzaimnykh garantiyakh v svyazi s Dogovorom o nerasprostranenii yadernogo oruzhiya" [Tajikistan and the IAEA signed an agreement on mutual safeguards related to the Treaty on Nonproliferation of Nuclear Weapons], Official website of the Ministry of Atomic Energy of the Russian Federation, July 7, 2003, <http://www.minatom.ru/presscenter/text.php?ssd=19077.txt>. [2] "Tadzhikistan i MAGATE: podpisano soglasheniye" [Tajikistan and the IAEA: an agreement signed], Khovar information agency, July 7, 2003, <http://khovar.tojikiston.com>. [3] "Tadzhikistan i MAGATE podpisali dogovor po yadernomu vooruzheniyu" [Tajikistan and the IAEA signed an agreement on nuclear weapons], Khabar Kyrgyz national information agency, July 8, 2003, <http://www.kabar.kg/03/Jul/08/95.htm>. [4] Statute of the International Atomic Energy Agency, approved by the IAEA General Conference on October 1, 1999; IAEA official website, <http://www.iaea.or.at/worldatom/Documents/statute.html#A1.20>. [5] "O radiatsionnoy bezopasnosti strany" [On radiation safety of the country], Khovar information agency, December 12, 2002, <http://khovar.tojikiston.com>. [6] "Rastvornyy yadernyy reaktor "Argus" [Argus nuclear reactor], Official website of Krasnaya Zvezda Federal State Unitary Enterprise,

<http://www.redstaratom.ru/argus.htm>. [7] For more information on the Argus nuclear reactor and Tajikistan's nuclear profile visit the Newly Independent States Nuclear Missile Database produced by the Monterey Institute's Center for Nonproliferation Studies for the Nuclear Threat Initiative (NTI), <http://www.nti.org/db/nisprofs/tajikis/overview.htm>. [8] "Chto vazhno znat v Tadzhikistane tomu, kto ishchet OMU?" [What does the one who seeks WMD need to know in Tajikistan?], *Vecherniy Dushanbe*, No. 30 (294), July 25, 2003, p. 7. [9] "Gigantskiy opolzen mozhet razrushit uranovoye khvostokhranilishche" [Gigantic landslide can destroy the uranium tailing dump], Bellona Foundation website, June 5, 2003, <http://www.bellona.no/ru/international/russia/incidents/29489.html>.

Russian Authorities Expose Illegal Flow of Technological and Scientific Knowledge to the United States

A June 11, 2003 article entitled "Scientific Secrets Sold on the Sly," published in *Rossiyskaya gazeta* raises the issue of illegal transfer of technological and scientific knowledge from Russia to foreign countries, including the United States.[1] In particular, the article quotes several alleged attempts by Western companies to gather information for commercial advantage on the activities of leading scientific centers in Russia, which work on developing breakthrough technologies.

An example highlighting the inefficient protection of intellectual property in the Russian Federation today is the case involving a Boston-based company – Pragmatic Vision International (PVI), LLC – and its Russian affiliate Algorithm, located in St. Petersburg, Russia. According to the article, Mr. Simon Litvin, the former vice-president of Pragmatic Vision International, who resides permanently in the United States, was stopped at St. Petersburg's Pulkovo Airport on an unspecified date. The head of the office of the Russian State Customs Service at the Pulkovo Airport, Major-General Andrey Ozoling stated that while conducting a routine customs control, "our operatives began to examine his luggage, [and] they discovered a sizeable package of technical documentation." Because there was very little time left before the departure, customs officials confiscated the documents for further analysis by experts. However, Mr. Litvin was allowed to proceed to fly to the United States via Helsinki.

Subsequently the expert examination established that the seized documentation contained scientific-technical information on manufacturing optical narrowband modifiable spectral filters and producing semiconductor material. These items are included in the *List of Dual-Use Goods and Technologies, the Export of Which Is Subject to Control*. Based on these findings, the Pulkovo Airport customs officials launched a criminal investigation, which was later transferred to the Federal Security Service's (FSB's) Directorate for St. Petersburg and the Leningrad Oblast. The investigation led the FSB operatives to the offices of the Russian company Algorithm, which was co-founded by Mr. Litvin. According to the article in *Rossiyskaya gazeta*, the materials obtained from Algorithm indicated that the company systematically collected and transferred to the United States information on cutting-edge dual-use technologies developed in Russia. Furthermore, FSB investigators discovered that Algorithm had no internal compliance program that would allow employees to identify what scientific information is subject to Russia's export control regulations. In fact, the decision regarding the export or transfer of scientific-technical information abroad was delegated to almost any employee. FSB officials also alleged that representatives of U.S. intelligence services frequently visited PVI offices in Boston and expressed interest in PVI's ties with its partners in Russia.

The article observes that in spite of the Russian government's efforts to bring the legislative framework on the protection of intellectual property in line with internationally accepted principles and practices, these initiatives have had unsatisfactory results so far. A. Sapozhkov, Head of Department at the St. Petersburg Institute of the Prosecutor General's Office, noted that numerous amendments to Article 189 of the Criminal Code of the Russian Federation, which establishes the penalties for illegal technology transfers, had created loopholes that rendered Article 189 inapplicable.

According to the head of the northwestern branch of the Federal Agency for Legal Protection of Results of Intellectual Activities of Military, Special, or Dual Use (FAPRID), a division of the Ministry of Justice of the Russian Federation Aleksandr Gayev, who specializes in investigating illegal know-how transfers from Russia, the nation's most significant scientific and technological achievements are in the military or dual-use fields and represent the products of state investments in science and technology. Therefore, the rights to the results of such intellectual activities belong to the state, and the transfer of such documentation is

subject to export controls, Gayev says. However, according to Gayev, most of the legal assessments performed at FAPRID take place on request from customs officials after the suspect export is interdicted.[1]

Editor's Note: On May 6, 2003, the Boston-based company GEN3 Partners acquired Pragmatic Vision International, LLC. According to the press release announcing this event, Pragmatic Vision International, LLC is described as a "technology development group," and GEN3 Partners is presented as "a science-based technology company specializing in the delivery of breakthrough solutions and real innovation results."[2]

Source: [1] Sergey Alekhin, "Nauchniye tainy iz pod poly" [Scientific Secrets Sold on the Sly], *Rossiyskaya gazeta*, No. 113 (3227), June 11, 2003; in Integrum Techno, <http://www.integrum.com>. [2] "GEN3's Globalized Technology Development Stays Ahead of the Trends. GEN3 Partners Joins Forces with PVI to Provide Clients with Unmatched, Value-Added Results through International Professional Services," GEN3Partners, NewsRelease, May 6, 2003, <http://www.pragmaticvision.com/sub/press_news.html>.

Innovative Smugglers in Kyrgyzstan Bypass Customs

In the town of Kara-Suu, near the city of Osh, in southern Kyrgyzstan, officers from Kyrgyzstan's financial police recently uncovered an innovative smuggling system along the banks of the Shakhrikhan canal, which serves as the border between Uzbekistan and Kyrgyzstan.

During the day, Kyrgyzstani citizens cross the bridge over the canal into Uzbekistan. While in Uzbekistan, they locate houses that lie directly across from their own on the banks of the canal. They then purchase goods and store them at the Uzbekistani houses – with permission of their owners, before returning to their homes across the canal in Kyrgyzstan. At night, the Kyrgyzstani citizens and their Uzbekistani accomplices create a pulley system using ropes similar to a clothesline, by which the goods purchased earlier in the day are sent across the canal from Uzbekistan to Kyrgyzstan.

According to Deputy Head of the Financial Police Directorate Col. Kanibek Aydarov, another method used to avoid customs consists in using rafts made of used inner tubes and wooden planks to smuggle bags of goods across the border, thus bypassing the checkpoint on the bridge. In an inspection of three Kyrgyzstani citizens' houses on Nurokhunov Street, which runs along the canal, police found 3,140 liters of gasoline, 320 liters of diesel fuel, 370 liters of motor oil, and over 150 kilograms of fertilizers. The individuals involved were charged with smuggling.

Source: *Osh Sadoci*, June 28, 2003; in "Kyrgyzstan: Smugglers Find Ways to Bypass Customs in South," FBIS Document CEP20030701000150.

Council of CIS Defense Ministers Approves Draft Resolution on MANPADs

On June 9, 2003, CIS defense ministers gathered in Shuchinsk (Akmolinskaya Oblast) Kazakhstan, to discuss a draft resolution establishing stricter controls on sales and exports of man-portable air defense systems (MANPADS), particularly the Igla and Strela systems (NATO designations SA-16 Gimlet and SA-7 Grail, respectively).[1,2,3,4] The meeting was a follow-up to an action plan adopted in late May 2003, at the G8 summit in Evian, France, entitled "Enhance Transport Security and Control of Man-Portable Air Defense Systems (MANPADS): A G8 Action Plan."[2,5] At the summit, G8 leaders recognized the threat posed to military forces and civilian aviation by large numbers of MANPADS in circulation worldwide and declared their intent to implement strict export and stockpile controls.[2] At the June 2003 meeting, the Council of CIS Defense Ministers agreed to approve the draft resolution, which will be considered by the Council of CIS Ministers of Foreign Affairs in September 2003 and finally by the Council of CIS Heads of States before it enters into force. The draft resolution would ban sales of MANPADS to non-state actors, and require signatories to share information on MANPADS stockpiles and exports, and to dismantle surplus systems.[5] The draft was signed by ministers of defense from Armenia, Belarus, Kazakhstan, Kyrgyzstan, Moldova, Russia, and Tajikistan. Uzbekistan signed the draft resolution later, on July 3, 2003. The draft resolution was not signed by Azerbaijan, Georgia, Turkmenistan, and Ukraine. It is unclear why these countries did not sign the draft.[3]

Editor's Note: MANPADS are small, portable, and easily concealable surface-to-air missile systems designed to be carried and fired by one person.[2] MANPADS have been used in many conflicts

worldwide, including Operation Desert Storm in 1991 and in Angola, Chad, Nicaragua, and Colombia.[1] These easy-to-use missiles lend themselves to use by terrorists, as demonstrated by the November 29, 2002, incident in which two Strela SAMs narrowly missed a civilian Israeli Boeing 757 carrying 261 passengers shortly after takeoff in Kenya.[6] Russia has firsthand experience of the destructive potential of MANPADS from its wars in Afghanistan and Chechnya. U.S.-made Stinger missiles shot down 167 Soviet aircraft in Afghanistan. Several Russian helicopters have been lost to Soviet-made MANPADS in Chechnya, including an MI-26 transport helicopter shot down on August 19, 2002, killing 121 of the 147 people aboard.[1,7,8] Russian military leaders claimed that the serial numbers of the missiles captured by Russian troops in Chechnya came from Georgian stockpiles. Several reports indicate that 140 to 150 missiles are missing from a Georgian storage depot. However it is not clear whether the serial numbers of the missing missiles match those of the missiles found by Russian troops in Chechnya.[1,9]

Sources: [1] Nikolay Poroskov, "Rossiya sbivayet mechtu terroristov" [Russia dashes the dreams of terrorists], *Vremya novostey*, June 10, 2003; in Integrum Techno, <http://www.integrum.com>. [2] "Enhance Transport Security and Control of Man-portable Air Defence Systems (MANPADS): A G8 Action Plan," G8 website, <http://www.g8.fr/evian/english/navigation/2003_g8_summit/summit_documents/enhance_transport_security_and_control_of_man-portable_air_defence_systems_-_manpads_-_a_g8_action_plan.html>. [3] ITAR-TASS, June 10, 2003; "Defense Ministers of Five CIS Member States Fail To Sign SAM Systems Agreement," FBIS Document CEP20030610000118. [4] CNS Correspondence with Moldovan export control official, August 21, 2003. [5] Aleksey Nikolskiy and Oleg Gavrish, "Ivanov ne spravilsya" [Ivanov was unsuccessful], *Vedomosti*, June 11, 2003; in Integrum Techno, <http://www.integrum.com>. [6] Agence France Presse, November 29, 2003; in "Missiles used in Kenya attacks were probably SAM-7s: Israeli official," Lexis-Nexis Academic Universe, <http://www.lexis-nexis.com>. [7] Sergey Ostanin, "Probe suggests missile as cause of Mi-26 crash in Chechnya," ITAR-TASS, September 17, 2003; in Lexis Nexis Academic Universe, <http://www.lexis-nexis.com>. [8] James Graham, "Military Officers 'Negligent' Over Helicopter Crash," *Scotland on Sunday*, September 8, 2002; in Lexis Nexis Academic Universe, <http://www.lexis-nexis.com>.[9] Sergey Blagov, "Russia strengthens its military shield," *Asia Times Online*, June 11, 2003, <http://www.atimes.com>.

Kazakhstan and China to Boost Customs and Border Cooperation

According to a June 23, 2003 report from the Kazakh TV channel Khabar, Kazakhstani customs officials, border guards, scientists from the Sanitary and Epidemiology Service, managers of the national railway company Kazakhstan Temir Zholy, and their Chinese counterparts organized a conference at Kazakhstan's Dostyk (Friendship) railway station on the Kazakhstani-Chinese border to discuss prospects for expanding cooperation in bilateral railway cargo shipments.[1] The parties plan to install high-tech equipment on the border to minimize the time spent on customs procedures. As the first step, Kazakhstani authorities installed the Yantar (Amber) radiation control system at Dostyk railway station. It is expected that the new equipment, which is capable of detecting sources of ionizing radiation without requiring trains to stop, will help reduce the number of cases in which Chinese firms have demanded Kazakhstan take back shipments of scrap metal, on the grounds that they are contaminated with radioactive materials. Chinese companies have already returned 40 trains of scrap metal with suspected radiation to Kazakhstan this year alone.[1,2] The parties agreed that experts from the Kazakhstani Sanitary and Epidemiology Service would participate in the joint certification of Kazakhstani goods shipped to China at the Chinese railway station Alashankou.

In addition, Kazakhstan and China also consider resuming the passenger rail service between the two countries given that China succeeded in stemming the spread of severe acute respiratory syndrome (SARS).[1] According to Khabar, cargo shipments through the Dostyk-Alashankou transport corridor reached 5.8 million tons in 2002. Experts believe that the corridor's capacity can be increased to 7 million tons in 2003 and to 12 million tons over the next two or three years. Kazakhstan now imports almost four times less cargo from China than it exports.[1]

In June 2003, Kazakhstani and Chinese customs officers met at the Horgos border checkpoint (Kazakhstan) to discuss bilateral customs cooperation and developed a data-sharing mechanism in the form of an information bulletin designed by the Kazakhstani side. The bulletin contains information on transport vehicles such as type of vehicle and license plate numbers, as well as value and volume of trans-border shipments. The information exchange will take place twice a month and will allow a comparative analysis of shipments that cross the Kazakhstani-Chinese border as well as a more effective collection of customs duties. The parties also agreed to cooperate in fighting the smuggling of goods, arms, ammunition, drugs, and other psychotropic substances, ferrous and non-ferrous metals, currency and valuables, literature of extremist nature, as well as human trafficking.[3,4]

Sources: [1] "Na stantsii Dostyk tamozhenniki, pogranichniki, vedushchiye spetsialisty sanitarno-epidemiologicheskogo kontrolya i natsionalnoy kompanii Kazakhstan temir zholy obsuzhdali, kak uluchshit rabotu mezhdunarodnogo koridora" [At Dostyk station, customs officers, border guards, leading specialists of the sanitary and epidemiological control and Kazakhstan Temir Zholy national

company discussed ways to improve the work of the international corridor], TV Channel Khabar, June 23, 2003, TV Channel Khabar website, <http://www.khabar.kz/index.php3?date=2003-06-23&parent_id=1003479943>. [2] For more information on the return of scrap metal to Kazakhstan, see "Scrap Metal Returned to Kazakhstan," *NIS Export Control Observer*, No. 2, February 2003, p. 13: <http://cns.miis.edu/pubs/nisexcon/>. [3] "Dostignuta dogovorennost" [Agreement reached], *Kazakhstanskaya pravda* online edition, June 12, 2003: <http://www.kazpravda.kz/archive/12_06_2003/nr.html#nr5>. [4] "Tamozhenniki Kazakhstana i Kitaya reshili sotrudnichat" [Customs officers from Kazakhstan and China decided to cooperate], *Panorama*, No. 23, June 13, 2003.

International Developments

United States, European Union Officials Sign Joint Statement on WMD Proliferation

At the first session of a U.S.-EU summit held at the White House on June 25, 2003, U.S. President George W. Bush, European Council President Konstandinos Simitis, and European Commission President Romano Prodi issued a joint statement on proliferation of WMD.[1] The summit and joint statement were hailed as a major step forward in improving coordination of U.S. and EU policies on WMD.[2] The three leaders acknowledged the threat posed by WMD to international peace and security and pledged to use "all means available" to avert WMD proliferation, including development of new arms control regimes and reinforcement of existing regimes, such as the Nuclear Non-Proliferation Treaty. In their statement, the leaders emphasized the need for strict implementation and compliance with regimes and supported the possibility of non-routine inspections, as well as using "other measures in accordance with international law," to combat proliferation. The statement emphasized the need to enforce the IAEA's Safeguards Agreements and Additional Protocols as the standard for nuclear cooperation and nonproliferation, and called on all states with nuclear facilities or activities to ratify and implement the agreements without delay. Stronger export controls and the need for catch-all regimes were also mentioned as crucial to preventing proliferation, as was the importance of cooperative threat reduction programs, such as those conducted in the former Soviet Union with international support. Lastly, the statement condemned North Korea's nuclear weapons program and expressed "serious concern" with Iran's nuclear program, particularly its pursuit of a complete nuclear fuel cycle.[1]

The joint statement by the United States and the European Union follows the approval on June 16, 2003, of an action plan for curbing WMD proliferation by EU foreign ministers at the General Affairs and External Relations Council meeting in Luxembourg.[3] Entitled "Basic Principles for an EU Strategy Against the Proliferation of WMD," the document covers many of the positions later adopted in the U.S.- EU joint statement, but also acknowledges that "the best solution to the problem of proliferation of WMD is that countries should no longer feel they need them [WMD]."[3,4] The action plan recommends that the European Union allocate €7.5 million ($8.9 million as of June 2003) from the Common Foreign and Security Policy budget to continue the EU-sponsored disarmament and nonproliferation program in Russia. It also recommends that member states increase their contributions to the IAEA safeguards budget. In addition, the plan also calls for peer reviews of the export control systems of member states.[4] The full text of the action plan may be accessed at http://ue.eu.int/pressdata/EN/reports/76328.pdf.

Sources: [1] Federal Document Clearing House, June 25, 2003; in "Joint Statement on Proliferation of Weapons of Mass Destruction," Lexis-Nexis Academic Universe, <http://www.lexis-nexis.com>. [2] Judy Dempsey, *Financial Times*, June 26, 2003; in "US and EU agree on halting spread of arms weapons of mass destruction," Lexis-Nexis Academic Universe, <http://www.lexis-nexis.com>. [3] *European Report*, June 18, 2003; in "Armaments: EU foreign ministers approve action plan for weapons of mass destruction," Lexis-Nexis Academic Universe, <http://www.lexis-nexis.com>. [4] "Basic Principles for an EU Strategy against Proliferation of Weapons of Mass Destruction," European Union website, June 16, 2003, <http://ue.eu.int/pressdata/EN/reports/76328.pdf>.

Japan Seeks to Harmonize Asian Export Controls

On October 28-30, 2003, Japan will host the 10th annual Asian Export Control Seminar in Tokyo. The seminar brings together export control officials from 14 Asian countries, including China (with special representation from Hong Kong), Japan, Malaysia, Singapore, South Korea, and Thailand, as well as Australia, the United Kingdom, and the United States. According to Takeo Hiranuma, Japan's Minister of Economy, Trade and Industry (METI), the participants will discuss ways to cooperate in preventing procurement of materials that could be used for manufacturing WMD.[1]

Although Japan has sought to coordinate export controls in the region for some time and has one of the most developed export control systems in the Asian region, recent leaks of technology from the country have led some to call for tighter controls. Now Japan is cracking down on companies that have long been suspected of providing North Korea with equipment that can be used to develop WMD.[2,3] In June 2003, five Japanese citizens were also arrested on suspicion of illegally exporting equipment to Iran that could be used to develop solid fuel for missiles.[2]

Sources: [1] "Japan to Host Export-Control Dialogue in Asia to Curb WMD," *Japan Economic Newswire*, June 19, 2003. [2] "Japanese Firm Attempts to Export Banned Goods to North Korea," *NIS Export Control Observer*, No. 7, July 2003, pp.19-20, <http://cns.miis.edu/nis-excon>. [3] Sachiko Sakamaki and Doug Struck, "Japan Cracks Down on Firms Tied to North Korea," *The Washington Post*, May 22, 2003.

U.S. Department of Defense and Department of Homeland Security Officials Raid 18 U.S. Firms over Alleged Arms Sales to Iran

On July 10, 2003, officials from the Bureau of Immigration and Customs Enforcement (ICE) of the U.S. Department of Homeland Security and the Defense Criminal Investigative Service (DCIS) of the U.S. Department of Defense executed search warrants on 18 companies, located in 10 states, suspected of exporting items and military technology listed in the U.S. Munitions List without first obtaining the proper licenses from the Department of State.[1,2] Officials also served seven subpoenas in the investigation.[2] According to ICE officials, the firms are suspected of illegally exporting components for HAWK missiles, F-14 Tomcat fighters, F-4 Phantom fighters, F-5 fighters, C-130 Hercules cargo transports, and military radars, as well as other equipment, to a company called Multicore Ltd. (London, U.K.), also known as AKS Industries, a front company involved in purchasing items for the Iranian military.[3]

Investigations into London-based Multicore's activities began in February 1999, when officials from the U.S. Customs Service and the U.S. Department of Defense began investigating a Bakersfield, California company known as Multicore, which turned out to be a subsidiary of the London-based Multicore, over purchases of parts for F-14 Tomcat fighters.[3] The purchases were suspicious because only two military services in the world fly the F-14 – the U.S. Navy and the Iranian Air Force.[1,3] During a December 2000 search of Multicore's storage facility in Bakersfield, officials seized thousands of aircraft and missile components that were slated for export to Iran via Singapore and seized $430,000 in cash.[1,3] In December 2000, customs agents also arrested two Multicore officials, Saeed Homayouni, a naturalized Canadian from Iran, and Yew Leng Fung, a Malaysian citizen.[2] Homayouni pleaded guilty in June 2001 to one count of conspiracy to violate the *Arms Export Control Act* and the *International Emergency Economic Powers Act* and was sentenced to two years in prison. At the same time, Yew Leng Fung pleaded guilty to misprision of a felony (deliberately concealing one's knowledge of a felony) and was sentenced to 10 months in prison.[1,2] In September 2001, both were sentenced in the Southern District of California.[2]

British authorities opened an investigation into the London-based Multicore's activities and, during a May 2002 search, found thousands of aircraft and missile components, as well as Iranian documents requesting purchase of the parts from Multicore.[1,3] British authorities arrested Saeed Homayouni's brother, Soroosh Homayouni, in the course of the investigation. Prosecution of Soroosh Homayouni's case is pending in the United Kingdom.[2] According to documents seized by British officials, over 50 U.S. companies had shipped defense articles from the United States directly to the London-based Multicore since the shutdown of the company's Bakersfield office in December 2000.[1]

To date, no arrests have been made or charges filed as a result of the July 10, 2003 searches.[1] The companies searched were Assorted Hardware, Wichita, Kansas; Centerfield Pump Inc., Tomball, Texas; Jay Tex Inc., Mount Pleasant, Texas; Space Age Supply Inc., Crowley, Texas; Sunrise Helicopter, Spring, Texas; Alamo Aircraft, San Antonio, Texas; Quintron Aircraft Parts, Waukesha, Wisconsin; DG Air Parts, Jacksonville, Oregon; Talon Aviation, Lake Charles, Louisiana; Orion International, Charleston, South Carolina; Aerospace Technologies International, Boulder, Colorado; Instrument Support Inc., Holbrook, New York; Instrument Associates, Port Washington, New York; Harry Krantz Co., Garden City Park, New York; Island Components Group, Bohemia, New York; Continental Cable Company, Hinsdale, New Hampshire; Brandex Corp., Sunrise, Florida; and Jet Midwest Inc., Kansas City, Kansas.[4]

Sources: [1] Tom Brune, *Newsday*, July 11, 2003; in "U.S.-Iran Contraband Affair; Feds search 18 companies in arms probe," Lexis-Nexis Academic Universe, <http://www.lexis-nexis.com>. [2] "ICE Agents Search 18 Firms in 10 States Suspected of Illegally

Exporting Military Components to Iranian Arms Network," July 10, 2003, U.S. Department of Homeland Security website, <http://www.dhs.gov/dhspublic/display?content=1071>. [3] Jerry Seper, *The Washington Times*, July 11, 2003; in "U.S. raids firms over arms gear sold to Iran; Says parts for jets illegally exported," Lexis-Nexis Academic Universe, <http://www.lexis-nexis.com>. [4] Stephen Seitz, "NH firm raided by U.S. Customs," *The Union Leader*, July 11, 2003; in MSNBC News, <http://www.msnbc.com>.

French Court Sentences Uranium Smugglers to Jail

On May 6, 2003, a Paris court sentenced three men to jail terms of up to three years for attempting to sell highly enriched uranium (HEU), a material usable as the core of a nuclear weapon. The court sentenced Serge Salfati, 36, to an 18-month term, with all but six months suspended. Yves Ekwella, 34, received 10 months, with all but four suspended, while Raymond Lobe, 52, was sentenced to three years, with all but two years suspended.[1] Salfati is a French national. Ekwella and Lobe are Cameroon nationals.[2]

The three individuals were arrested in Paris in July 2001 for possessing a vial containing five grams of uranium enriched to 80% uranium-235. The vial was allegedly presented as a sample to potential buyers, who could then purchase several kilograms of HEU for approximately €130,000 per gram ($113,334 as of July 2001).[1] Roughly 25 kilograms would be required for a nuclear weapon. Police discovered the uranium in the course of an unrelated investigation into a financial scam by Salfati.[2] According to a report in *Nucleonics Week*, while conducting surveillance of Salfati, agents of the French Research and Financial Investigations Squad learned that he was offering uranium to potential buyers.[3] An inspection of Ekwalla's van and clothes by specialists from the French Atomic Energy Commission revealed an elevated level of radioactivity. The uranium was then found in a glass vial contained in a larger lead cylinder. [3,4]

A subsequent search of Salfati's apartment uncovered several plane tickets to Eastern European countries and "documents of analyses of nuclear products written in Cyrillic, which gives reason for suspecting an origin in Russia or a country of the East."[2] Lobe said he brought the uranium from Romania in March 2001, but gave various accounts as to its origin.[1]

While the police and the court were unable to conclusively determine the origin of the material, an October 2001 report submitted by French nuclear specialists to a Paris judge indicated the HEU was "of Russian origin." However, Police authorities said they believed the HEU came from Ukraine.[1,4]

Sources: [1] "French court sentences three men with uranium to jail," Agence France Presse, May 6, 2003; in Lexis-Nexis Academic Universe, <http://lexis-nexis.com>. [2] Tanguy Berthemet and Michele Bietry, "Enriched Uranium Seized in the Middle of Paris," *Le Figaro*, July 23, 2001; in "Enriched Uranium Seized in Paris," FBIS Document EUP20010723000399. [3] "Police Nab Three Suspects in France's First U-235 Smuggling," *Nucleonics Week*, July 26, 2001. [4] "Uranium seized in France could have made low grade bomb," Agence France Presse, October 21, 2001; in Lexis-Nexis Academic Universe, <http://www.lexis-nexis.com>.

Proliferation Security Initiative Enters Rougher Waters

According to U.S. Under Secretary of State for Arms Control and International Security John Bolton, progress on the Proliferation Security Initiative (PSI) is being made "at light speed."[1,2] Yet the group's second meeting on July 9-10, 2003 in Brisbane, Australia, revealed some diplomatic and legal hurdles that threaten to hinder its development. Foremost among them are growing differences among coalition members over how aggressive the PSI can and should be. The United States wants to push ahead full-throttle, while Australia and Japan − North Korea's only neighbors within the group thus far − are reluctant to be overly provocative. Bolton caused a flap when he stated after the meeting that "there is broad agreement within the group that we have [the] authority" to begin interdictions on the high seas and in international airspace, claiming that the strategy is "not only legitimate, it's necessary self-defense."[3] He explained that existing international law provides interdiction authorization in three cases: when ships do not display any nation's flag, they can be boarded and seized as pirate ships; when ships use a "flag of convenience" and the nation chosen gives the United States or its allies permission to board; and lastly, under a "general right of self-defense" given a serious belief that the vessels carry WMD material.[4] The International Maritime Organization has stated that formal review of the *Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation* is underway to determine the extent to which it might provide a basis for interdictions.[5]

Even if the letter of the law proves Bolton correct in his view that the United States currently possesses the authority to begin interdictions in international zones, the spirit of his comments worries many in Australia and East Asia. A representative of the Australian activist group Just Peace protested just prior to the Brisbane meeting that "Our government seems prepared to join the US in vigilante attacks on the high seas," adding, "if these plans continue, we shall be seeing Australian troops committed not to the defense of Australia, but rather to international kangaroo court justice."[6] Japan is concerned that the PSI has become overly preoccupied with North Korea, while the effort was intended to focus on other nations like Iran, Syria, and Cuba, as well.[7] There are some signs that bilateral negotiations are underway between member countries with regard to some of the issues that the PSI has raised. To cite one instance, Japanese Prime Minister Junichiro Koizumi has cautioned Australian Defense Minister John Downer against pursuing any military options against North Korea, and he has refused to support any plans of a military blockade of the country.[8]

Despite these friction points, the group did achieve consensus on a few key issues at the Brisbane meeting. Members pledged to share intelligence on arms trafficking and initiate a series of air and sea training exercises in the Mediterranean Sea, the Indian Ocean, and the Pacific Ocean. Slated to begin as early as September, these exercises will utilize "both military and civilian assets."[9] Thus far, no timetable for the interdiction operations has been set. Further hurdles remain ahead, in particular the issue of whether to seek UN approval for interdictions in international areas.

Editor's Note: On May 31, 2003, 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. According to U.S. Under Secretary of State for Arms Control and International Security John R. Bolton, 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.[10] 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 material 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.[11]

Sources: [1] Agence-France Presse, July 10, 2003. [2] For more information on PSI, see "United States Announces Proliferation Security Initiative to Interdict Shipments of WMD and Missile-Related Equipment and Technologies,",*NIS Export Control Observer*, June 2003, p. 11. <http://cns.miis.edu/pubs/nisexcon/pdfs/ob_0306e.pdf> or Rebecca Weiner, "Proliferation Security Initiative to Stem Flow of WMD Matériel," CNS website, <http://cns.miis.edu/pubs/week/030716.htm>. [3] *Deutsche-Presse Agentur*, July 10, 2003. [4] Greg Sheridan, "US 'free' to tackle N Korea," *The Australian,* July 9, 2003. [5] Michael Evans, "US plans to seize suspects at will," *The Times,* July 11, 2003. [6] Nikki Todd, "Activists hit out at PSI plans to stop weapons trade," *AAP Newsfeed,* July 9, 2003. [7] John Kerin, "Fear US will push N Korea into fight," *The Australian,* July 10, 2003. [8] Mark Riley, "Japan Warns Australia: Softly, Softly on Korea," *Sydney Morning Herald,* July 17, 2003. [9] Agence-France Presse, July 10, 2003. [10] Testimony of John R. Bolton to the Committee on International Relations, U.S. House of Representatives, June 4, 2003, <wwwa.house.gov/international_relations/108/>. [11] Nicholas Kralev, "U.S. Seeks Asian Aid for Ship Searches," *The Washington Times*, June 17, 2003.

Export Control in Focus

The Challenge of Intangible Technology Controls

International export control officials are intensifying efforts to find new approaches for regulating intangible technology transfers, including scientific publications, technical documentation, source code, blueprints, and other information that is militarily sensitive and can be transferred via the Internet and other electronic media.[1] The challenge of controlling sensitive information and know-how in a globalized Internet age is proving to be a daunting task. Today a scientist or engineer can transfer volumes of controlled know-how and information via an e-mail attachment to any locale in the world in seconds. Many Western universities train foreign nationals in sensitive technology fields. Encryption software can be

freely downloaded from the Internet. These intangible channels of technology transfer are changing definitions of what constitutes an "export" and rendering the notion of border control meaningless.

How do governments prevent the transfer of sensitive data via the Internet, at scientific meetings, or over the phone, etc.? Over the past several years, governments have begun efforts to coordinate and harmonize policies, albeit slowly. Many governments are just now seeking to redefine the concept of "export" more broadly, and to disentangle efforts to regulate "intangible" technology, such as codes and blueprints, from efforts to regulate the "intangible" means, such as websites, e-mail, and fax that are used to transfer such items.

The U.S. approach to the issue of controlling technology is relatively straightforward. Unlike many countries, the United States makes no distinction between tangible and intangible technology transfers. U.S. officials are concerned with simply determining whether or not a commodity, as well as the technology related to the development, use, or production of that commodity, is subject to control. The medium by which a technology or item is transferred is a separate issue. Thus, if a controlled technology is to be shared with foreign nationals at a conference, or transferred in the form of code to a foreign entity, it is subject to U.S. export regulations.[2]

Other countries and multilateral regimes have taken steps in recent years to establish regulations and initiate dialogue on intangible technology transfers. The European Union introduced intangible technology control regulations on September 28, 2000. Specifically, EU Regulation 1334 of 2000 expands the definition of "export" to include "the transmission of software or technology by electronic media, fax, or telephone to a destination outside of the Community." However, the scope of the EU Regulation does not cover (Article 3-3) "the supply of services or the transmission of technology if that supply or transmission involves cross border movement of natural persons." In 1999, member states of the Wassenaar Arrangement issued a statement affirming the need to control intangible transfers.[3] In 1999, the Missile Technology Control Regime hosted a seminar in Germany on intangible technology transfer in order to facilitate understanding of how proliferant state groups draw on scientific conferences, plant visits, and student exchanges to obtain sensitive missile technology and know-how.[4] Members of the Australia Group agreed in 2002 to control the intangible transfer of information that could be used for the production of chemical and biological weapons.[5] Developing multilateral standards for intangible technology transfer, however, is complicated by the lack of consensus about the meaning of key legal terms.

Efforts of some governments to develop new controls on intangible technology transfers have run into challenges from groups concerned with protecting free speech, scientific openness, free trade, and the free flow of information. For example, recent efforts in the United States to tighten visa screening have drawn criticism from U.S. universities and businesses that are struggling to recruit foreign nationals for study and work. The challenge for many nations is to balance security interests with commercial, scientific, and civil liberty considerations.

Most experts agree that enforcing regulations governing the transfer of intangible technology transfers will be problematic. Monitoring the electronic communications of all groups and individuals possessing sensitive technology and know-how is simply not feasible, nor considered to be desirable. Investigating and prosecuting companies, groups, and individuals involved in the illicit transfers of intangible technology is equally problematic because of evidentiary requirements and other legal issues. Some have surmised that controls on intangibles are unlikely to be adequately enforced, given the few prosecutions of export violations involving *tangible* technologies, such as machine tools or filament winding machines.[6]

These enforcement challenges associated with enforcing controls on intangible technology have led most officials to emphasize the need for outreach and education of industry groups and academia. There is also some reason to believe that companies and groups intent on protecting intellectual property, securing computer networks, and preventing piracy will find common interests with government in regulating access to controlled information.[3]

Sources: [1] This concern with intangibles was reflected in discussions at the International Conferences on Export Controls held over the past three years. For conference proceedings, see the International Conference on Export Control website, <www.exportcontrol.org>. [2] On the U.S. approach to controlling intangibles, see Karen Day, Chief Counsel for Export

Administration, "The Experience of One Nation that has Implemented Intangible Transfer Controls," September 27, 2000, presentation at the International Conference on Export Controls, <http://www.bxa.doc.gov/news/archive2000/DayOxfordSpeech.htm>. [3] Proceedings of the 2000 International Conference on Export Controls, Oxford, U.K., September 26-28, 2000, <www.exportcontrol.org>. [4] See the Missile Technology Control Regime website <http://www.mtcr.info/english/objectives.html>. [5] Press release of the Australia Group, June 7, 2002, Australia Group website, <http://www.australiagroup.net/press_07_06_02.html>. [6] For information on the challenges associated with enforcing controls on intangibles, see Terence Palfrey, "Weapons of Mass Destruction and Intangible Technologies: The Limits of the Law," *The Monitor*, Vol. 6, No. 3 (Summer 2000), CITS website, <http://www.uga.edu/cits/publications/monitor.htm>. This edition of the *Monitor* also contains several other articles on challenges associated with controls on intangible technology transfers.

Workshops and Conferences

International Conference on the Safety of Transport of Radioactive Material

On July 7-11, 2003, an International Conference on the Safety of Transport of Radioactive Material was held in Vienna, Austria. The Conference was organized by the International Atomic Energy Agency (IAEA) and co-sponsored by the International Civil Aviation Organization (ICAO), International Maritime Organization (IMO), and Universal Postal Union (UPU) in cooperation with the International Air Transport Association (IATA) and International Organization for Standardization (ISO).[1] Over 490 experts, including government officials, package designers and manufacturers, consignors, carriers, consignees, radiological protection officers, and emergency responders from 80 IAEA member states and 13 international organizations, attended the conference to exchange information on issues related to the safe and secure transport of nuclear materials by land, sea, and air. The participants also discussed the application, implementation, and effectiveness of the existing IAEA standards, and formulated recommendations on encouraging further international cooperation in this area.[1,2]

Speaking at the opening session of the conference, IAEA Director General Mohamed ElBaradei said that "despite the strong safety record and general good performance in this area, some concerns remain regarding the transport of radioactive material" and expressed hope that the conference would "serve as a forum to better understand these concerns, and to answer relevant underlying questions," such as the comprehensiveness, uniformity of application, and possible improvements of the present regulatory control system for the transport of radioactive materials.[3] Emphasizing the need for timely and effective communication on issues related to the transport of radioactive material, ElBaradei noted that the need for transparency should be reconciled with current security requirements necessitated by increasing concerns about nuclear security and the prevention of nuclear terrorism.[2,3] The conference documents can be found at http://www-rasanet.iaea.org/programme/radiation-safety/trans-safety.htm.

Editor's Note: As the organization with the statutory mandate to establish or adopt standards of safety for protection of health against exposure to ionizing radiation, the IAEA was requested in 1959 by the United Nations Economic and Social Council (ECOSOC) to draft recommendations on the transport of radioactive substances. As a result, in 1961, the IAEA issued Regulations for the Safe Transport of Radioactive Material (the IAEA Transport Regulations). These regulations were periodically reviewed and, as appropriate, have been amended or revised. The IAEA Transport Regulations, the latest version of which was issued in 2000, serve as the basis for the "Model Regulations" of the ECOSOC Committee of Experts on the Transport of Dangerous Goods, which in turn serve as the basis for the international modal regulatory documents issued by the International Civil Aviation Organization for air transport, the International Maritime Organization for sea transport, the United Nations Economic Commission for Europe for road, rail, and inland waterway transport in Europe, and the Universal Postal Union for transport by post. The member states of these modal transport-related organizations are generally bound to regulate according to the requirements, and thus with the IAEA Transport Regulations.

Sources: [1] The Announcement of the International Conference on the Safety of Transport of Radioactive Material, July 7-11, 2003, Vienna, Austria, IAEA website, <http://www-pub.iaea.org/MTCD/Meetings/Announcements.asp?ConfID=101>. [2] "UN nuclear watchdog meets to enhance safe transport of radioactive materials," UN News Center, July 7, 2003; UN website, <http://www.un.org/apps/news/story.asp?NewsID=7644&Cr=radioactive&Cr1=materials>. [3] Dr. Mohamed ElBaradei, Director General of the IAEA, Statement to the International Conference on the Safety of Transport of Radioactive Material, Vienna, Austria, July 7, 2003; IAEA website, <http://www.iaea.org/worldatom/Press/Statements/2003/ebsp2003n013.shtml>.

Special Report

Capturing Technology Transfers through Global R&D Investment: Can Export Controls Cope?

By Kathleen Walsh, Senior Associate and Projects Director, Linking Trade, Technology & Security Program, Henry L. Stimson Center

The information technology revolution that sparked the current wave of economic globalization has ignited many new trends in business, technology, and innovation. The latest is a dramatic rise in outsourcing by high-tech industry of not only jobs and services to subsidiaries and joint ventures located overseas, but also of high-tech research and development (R&D) work. Although our understanding of this phenomenon is still very limited, data published recently by the U.S. National Science Foundation document the increasingly global nature of corporate R&D.[1] What is most striking is that many of these new R&D programs are appearing in developing countries, such as India and China. For example, a recent study by the Washington-based Henry L. Stimson Center estimates that over the past dozen years, leading multinational corporations in the computer and telecommunications industries have established as many as 200 high-tech R&D programs in the People's Republic of China.[2] This new and growing trend toward overseas R&D poses important questions and potential concerns not only for American labor and economic interests, but for U.S. export control policy as well.

There are two general areas of potential concern with regard to export controls governing commercial high-tech R&D conducted overseas.[3] The first is the question of whether existing export controls can sufficiently capture innovations that are developed overseas. The second question concerns intangible technology transfers and whether and how to license such transfers to foreign nationals employed by overseas R&D enterprises. Although U.S. government officials contend that existing export controls are sufficient to address both of these concerns, the emergence of high-tech corporate R&D in countries that are not traditional U.S. allies − and that, in some cases, have troublesome proliferation records − is a new phenomenon that poses an important challenge to U.S. export control policy and practice.[4]

With regard to the first concern − innovations developed by research enterprises located overseas that are funded by private U.S. corporations − existing U.S. export control regulations might, indeed, capture these capabilities. But this is by no means guaranteed. For instance, one way current export control policy could address the possibility of significant new technologies being developed overseas is through the extraterritorial application of U.S. export control regulations. Under U.S. law, re-exports of technology or products that are developed outside the United States are considered to be U.S.-controlled commodities if based on, or incorporating, more than 25% (or, for some countries, 10%) U.S.-origin technology.[5] In other words, innovations developed abroad using mostly U.S. technology would be governed by U.S. export controls if exported to a third party. But what of successive generations of technological innovations developed overseas? How long might it be before the level of U.S.-origin technology falls below these thresholds and beyond the reach of U.S. export controls? Does this matter more today given the fact that high-tech innovations might increasingly be developed first overseas? Also, might U.S. firms be restricted by the *host country's* export control laws from exporting back to the United States innovations developed by R&D subsidiaries abroad. These and other concerns will grow as more U.S. high-tech firms expand their R&D activities abroad.

Another way innovations developed overseas, at least in some cases, might be captured by today's export controls is through the language used to define which technologies and what level of technical capabilities are covered under the U.S. Export Administration Regulations (EAR). For example, the EAR broadly applies to telecommunications technologies designed to function underwater.[6] Presumably, therefore, existing regulations would govern any new telecom innovations designed with that capability and falling within the broad scope of technical specifications that the EAR outlines. In this way, even future technologies developed overseas using U.S. technology could conceivably fall under present-day regulatory controls. But not all EAR controls are as broadly defined. At the same time, there is a danger that this

approach could be too widely applied to all areas of high-tech innovation, which would certainly prove counterproductive. Therefore, if U.S. officials wish to effectively capture tomorrow's innovations developed by U.S. corporate R&D units overseas, they will have to work even more closely with industry to help identify significant new technology trends.[7]

In addition to controlling *tangible* R&D results – that is, new equipment and products -- emerging from overseas R&D investment, there is the arguably more important question of how to control *intangible* technology transfers − the critical know-how that may lead to innovations. Here, U.S. export control policy is more problematic. Although U.S. law requires U.S. commercial firms to obtain an export license in order to hire foreign nationals from certain countries to work on sensitive dual-use technologies in the United States, there is no such requirement for foreign nationals hired at commercial R&D ventures overseas.[8] In other words, the commercial "deemed export" rule applies − in practice − *only* to foreign nationals located in the United States.[9] This makes little sense, particularly given the rapidly growing number of foreign nationals from these same countries, who are working for U.S. corporate high-tech R&D enterprises overseas.

But simply applying the deemed export rule to overseas R&D ventures is not the answer. The deemed export rule is considered by both critics and supporters to be largely ineffective due to a widespread lack of understanding regarding this regulation and a record of very limited corporate compliance. In addition, the information available to investigators charged with conducting background checks on foreign nationals working in the United States is limited at best; this task would be made even more difficult, if not impossible, if attempted on foreign nationals working for U.S.-invested firms abroad. Thus, merely applying what is an ineffective export control policy to R&D personnel overseas would only compound the problem and likely undermine any benefits derived from international R&D activities.

This predicament suggests one of two ways forward: either the deemed export rule as applied to foreign nationals in the United States is becoming increasingly irrelevant given the shift in R&D abroad and should be abandoned, or a more effective system needs to be put in place to monitor intangible technology transfers that are with growing frequency occurring overseas. Given continuing concerns over proliferation, terrorism, and the changing international security environment, the idea of abandoning deemed export licensing altogether is unlikely to receive widespread political support. Therefore, a new approach to export controls is needed to address the issue of intangible technology transfers via overseas R&D.

A number of alternatives exist, although all would require substantial reforms of existing regulations and practice. One option would be to adopt a similar approach to that imposed by U.S. law on munitions trade. That is, to treat intangible technology transfers the same way as they are treated in large cooperative or transnational defense industry projects (as revised under the Defense Trade Security Initiative). In such cases, the U.S. firm and the project as a whole may be issued a State Department license that incorporates all related (and foreseeable) tangible and intangible technology transfers. The Commerce Department's Special Comprehensive License could conceivably be applied in a similar manner. Another approach, proposed by the Business Roundtable, an association of leading U.S. corporations, would be to issue a license exception to the deemed export rule for internal communications and other intangible technology transfers between a multinational's company headquarters and its many subsidiaries overseas (as is the case for commercial encryption software).[10] Yet these and similar concepts have been proposed over the past several years and continue to encounter challenges in the U.S. Congress. Thus, they are unlikely to succeed in the near term.

A third option − possibly implemented in concert with one or the other above approaches over time − would be to establish an electronic notification process (rather than a full licensing review) to monitor potentially sensitive high-tech R&D activities in countries of concern overseas. Similar to reforms applied to encryption software, private U.S. companies or subsidiaries conducting R&D abroad might simply be required to alert officials of foreign nationals they intend to hire and the work they will conduct. This could be done on a regular, pre-notification basis under a "default to decision" process (meaning approval is expected unless specific government concerns are raised). This sort of process would meet the 24/7 demands of the international business cycle. More importantly, the value of the latter approach would be to

provide government officials with up-to-date information on the number and general background of foreign nationals hired by U.S.-invested high-tech firms overseas to do R&D and the type of research work they are conducting. Over time, this system would provide a useful statistical record and some degree of confidence for U.S. officials regarding the scope and trendline of global R&D activities and technology transfers, while not unduly interfering with global enterprise. In addition, instituting an electronic notification process is likely to take less time and effort to achieve than the other suggested alternatives. If so, this process could provide in the near-term a means of opening up a much-needed window onto this rapidly evolving phenomenon.

Although global R&D is recognized as a significant new trend in international affairs, the available data pertaining to overseas R&D investment is surprisingly sparse. The information that companies could provide through a modified export control process would enhance our understanding of this phenomenon and help alleviate any undue concerns. In the case of high-tech R&D investments in China, for instance, the more we understand what high-tech inputs and know-how U.S. investors may be providing *and developing* abroad, the more capable and secure we should be in analyzing any future military-security concerns that might arise as a result. Under present export control policy, however, we are missing the complete picture.

Sources: [1] See, for example, National Science Board, *Science and Engineering Indicators — 2002* (NSB-02-1) (Arlington, VA: National Science Foundation, 2002). [2] For a detailed discussion of this trend and its implications, see Kathleen Walsh, *Foreign High-Tech R&D in China: Risks, Rewards and Implications for US-China Relations*, The Henry L. Stimson Center (June 2003); for an on-line version please visit the official website of the Henry L. Stimson Center: <http://www.stimson.org>. [3] It is important to note that "fundamental research" is exempt from U.S. export controls. In terms of corporate research, the EAR states that "Research conducted by scientists or engineers working for a business entity will be considered 'fundamental research' at such time and to the extent that the researchers are free to make scientific and technical information resulting from the research publicly available without restriction or delay based on proprietary concerns or specific national security controls…." But because most of the overseas R&D in question is conducted as proprietary research, this exception would not apply. "Scope of the Export Administration Regulations," Export Administration Regulations, Part 734, §734.8(6)(d), updated June 17, 2003. [4] Author interviews with U.S. Department of Commerce officials (August 2003). [5] See "Guidance on Reexports and other Offshore Transactions Involving U.S.-Origin Items" Bureau of Industry and Security, U.S. Department of Commerce, April 16, 2003, <http://www.bis.doc.gov/Licensing/ReExportGuidance.htm>. [6] For example, the Commerce Control List outlines a broad range of possible technological capabilities related to underwater telecom equipment that would be controlled. The scope of controls is broadly defined, for instance, incorporation: "Telecommunication transmission equipment and systems, and specifically designed components and accessories therefore, having any of the following characteristics, functions or features…" Commerce Control List, *Export Administration Regulations*, Supplement No. 1 to Part 774, Category 5-Telecommunications, §774(b), updated April 2, 2003, p. 2. [7] The Commerce Department administers several Technical Advisory Committees (TACs), whose purpose is to solicit industry and expert advise on emerging technologies, business practices, and other technical and regulatory concerns. [8] According to the Commerce Department's Bureau of Industry & Security (which licenses controlled dual-use technologies), a deemed export is "An export of technology or source code (except encryption source code) [that] is 'deemed' to take place when it is released to a foreign national within the United States." US Department of Commerce, "Deemed Exports FAQ," online at http://www.bis.doc.gov/DeemedExports/DeemedExportsFAQs.html#1. The deemed export rule detailed in the Export Administration Regulations, §734.2(b)(2)(ii). For an assessment of current deemed export licensing, see US General Accounting Office (GAO), *Export Controls: Department of Commerce Controls Over Transfers of Technology to Foreign Nationals Needs Improvement*, GAO-02-972 (Washington, DC: US Government Printing Office, September 2002). The Commerce Department's Office of Inspector General is due to complete a comprehensive review of deemed export controls and corporate compliance by 2007. See US Department of Commerce, Office of Inspector General, *Bureau of Export Administration: Annual Follow-Up Report on Previous Export Control Recommendations, as Mandated by the National Defense Authorization Act for Fiscal Year 2000*, Final Inspection Report No. IPE-15290 (September 2002), p. 3, fn. 5. [9] See Kathleen Walsh, *Foreign High-Tech R&D in China: Risks, Rewards and Implications for US-China Relations*, pp. 121-123. Generally, these licenses are triggered by foreign visa applications (mainly H1-B and L-1 visas) for employment in the United States. According to Commerce documents, "Virtually all [deemed export] licenses are for foreign nationals graduating from US universities as opposed to foreign workers moving to the US." More than three-quarters of the Commerce Department's annual deemed export licenses are issued for foreign nationals from China (60%) or Russia (20%), and the vast majority of these licenses (85%) are issued to the same 25 high-tech firms. See Bernie Kritzer on "Deemed Export Licensing Discussion," in Minutes of Regulations and Procedures Technical Advisory Committee (RPTAC) meeting (March 4, 2003), available online at http://bxatac.doc.gov/. [10] *Statement of the Business Roundtable on Export Controls: A Plan for Comprehensive Reform* (February 9, 2001), available online: <http://www.brtable.org/document.cfm/501>. See also, "Industry Addresses Rules on Intra-Company Transfers," *The Export Practitioner* (March 2001), pp. 15-16; and "Industry Group Proposes Overhaul of Deemed Rule," *The Export Practitioner* (July 2001), p. 4.

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