

Appendix 13

U.S. Department of Homeland Security
Washington, DC 20528



**Homeland
Security**

November 17, 2003

The Honorable Henry J. Hyde
Congress of the United States
Chairman, Committee of International Relations
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Thank you for your letter dated July 16, 2003, and for your comments on the concerns I raised on the provisions of the Department of State authorization bill (H.R. 1950), which would grant concurrent criminal jurisdiction to the Federal Bureau of Investigation for violations of the Arms Export Control Act.

Since our telephone conversation and the receipt of your letter, I have engaged in discussion with the Department of Justice. We have reached a consensus that the concurrent jurisdiction is not necessary, and the FBI and the Department of Homeland Security have developed a mutually agreeable solution under existing statutory authority. I do apologize for the tardiness of my response to your letter. I am grateful for your leadership and support, and I will make sure our responses are timelier in the future.

The second issue raised by your July letter concerns the proposed exemption for munitions list items destined for the United Kingdom and Australia. I agree completely with your comment that any exemption needs to be approached with an abundance of caution and scrutinized as to any negative impact on law enforcement operations. Based upon that perspective, I have reviewed the proposed legislative exemption and the specific law enforcement requirements that are to be included in the memorandum of understanding and international agreement with the United Kingdom. These have been negotiated by the Department of State and the Department of Justice.

Based upon my understanding of the specific requirements included in the agreements with the United Kingdom and Australia, DHS has no objection to the proposed exemption for these nations. In the case of the United Kingdom, the United States Government has negotiated an agreement in which the United Kingdom has agreed that qualifying firms would be vetted by the United States before qualifying for participation in the program. Furthermore, the firm must enter into an agreement with the Ministry of Defense that requires companies to maintain and produce documents, submit to audits and in general to cooperate in preventing and investigating diversions of U.S.-origin defense items. It should be noted that firms that fail to cooperate in such a fashion

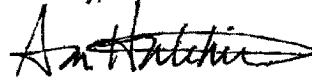
will face disqualification from using the exemption (at the sole discretion of the United States) and may be subject to civil penalties.

You also asked me to respond to question 18 from your letter to Secretary Powell. I have enclosed this response for your consideration.

Please advise if you would like to discuss this matter further.

Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Asa Hutchinson". The signature is written in a cursive style with a long horizontal flourish at the end.

Asa Hutchinson
Under Secretary
Border and Transportation Security

Enc.

Question 18: In light of GAO's report concerning lessons to be learned in the Canada exemption, has the Department sought the opinion of the Department of Homeland Security ("DHS") regarding the impact of the proposed waivers on U.S. Customs' inspections responsibilities and whether there is any additional burden involved that would detract from other Customs priorities or for which additional resources by Customs will be needed? If so, please describe DHS' response. Has the Department updated its guidance to Customs concerning Canada since the GAO report?

Answer: In its response to your June 25 letter to Secretary of State Powell, the State Department indicated that the Department of Homeland Security would provide a response to your question about the impact of the proposed International Traffic in Arms Regulations (ITAR) country exemptions on Customs and Border Protection's (CBP) inspection responsibilities and limited resources. We at this time cannot quantify the specific burdens placed on CBP that the new exemptions will impose. Depending on the volume of license exempt cargo moving through each port, these proposed ITAR country exemptions could increase or significantly increase the workloads and require additional inspectors. To automate the processing of electronic export information via the Automated Export System (AES), programming changes and funding for those changes will be required. The programming changes would be used to verify those exports against the proposed ITAR country exemptions, and to target potential shipments in violation of the exemptions. Automation of the electronic export information will provide for rapid movement from the United States to the foreign destination for legitimate shipments and effective enforcement for those shipments being exported contrary to regulations. These programming changes are necessary to ensure that U.S. Munitions List commodities go to authorized end-users and do not end up in the hands of terrorists or other criminal organizations. Note, effective October 18, 2003 it became mandatory to file electronic export information (Shipper's Export Declarations) for all U.S. Munitions List shipments, including license exemptions, via AES. AES is a valuable tool for the tracking of U.S. defense exports and the enforcement U.S. export control laws, both under license and license exemption. To date, the Department has not updated its guidance to Customs concerning Canada.