

Regulations (EAR99⁴ and "ECCN 4A994"⁵), from the United States to the Karachi Nuclear Power Plant ("KANUPP") in Karachi, Pakistan, via the United Arab Emirates (UAE). NEAZ provided shipping information representing that the consignee was in the UAE but omitting the final destination for the items. BIS alleges the purpose of NEAZ's actions was to conceal the end-user, KANUPP, a Pakistani organization on the Entity List set forth in Supplement No. 4 to Part 744 of the Regulations and for which a Department of Commerce export license was required by section 744.1 of the Regulations.

D. Penalty Recommendation

[REDACTED SECTION]

E. Conclusion

Accordingly, I am referring this Recommended Decision and Order to the Under Secretary of Commerce for Industry and Security for review and final action for the agency, without further notice to the Respondent, as provided in § 766.7 of the Regulations.

Within 30 days after receipt of this Recommended Decision and Order, the Under Secretary shall issue a written order affirming, modifying, or vacating the Recommended Decision and Order. See 15 CFR 766.22(c).

Joseph N. Ingolia,
Chief Administrative Law Judge, United States Coast Guard.

Done and dated 16th of September, 2008, Baltimore, Maryland.

Certificate of Service

I hereby certify that I have served the foregoing RECOMMENDED DECISION AND ORDER upon the following party in this proceeding at the addresses indicated below by First Class Mail to:

Parvin R. Huda, Senior Counsel,
Attorneys for Bureau of Industry and Security, Office of Chief Counsel, For Industry and Security, U.S.
Department of Commerce, Room H-3839, 14th Street & Constitution Avenue, NW., Washington, DC 20230, (202) 482-5301.

NEAZ Trading Corporation, 612 Business Centre, Mumtaz Hasan Road, Off 1.1 Chundrigar Road, Karachi, Pakistan.

Dated on September 18, 2008, Baltimore, Maryland.

Debra M. Gundy,

Paralegal Specialist, Administrative Law Judges Office, U.S. Coast Guard.

[FR Doc. E8-25353 Filed 10-24-08; 8:45 am]

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⁴ EAR 99 is a designation for items subject to the Regulations that are not listed on the Commerce Control List.

⁵ "ECCN" refers to "Export Control Classification Number." See Supp. ito 15 CFR 774.

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

[05-BIS-24]

In the Matter of: Yasmin Ahmed, 612 Business Centre, Mumtaz Hasan Road, Off I.1. Chundrigar Road, Karachi, Pakistan, Respondent

Final Decision and Order

This matter is before me upon a Recommended Decision and Order ("RDO") of an Administrative Law Judge ("ALJ").

In a charging letter issued on December 15, 2005, the Bureau of Industry and Security ("BIS") alleged that Respondent, Yasmin Ahmed,¹ committed four violations of the Export Administration Regulations (currently codified at 15 CFR Parts 730-774 (2008) ("Regulations")),² issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C. app. 2401-2420 (2000)) ("Act").³

The charging letter included a total of four charges based on Yasmin Ahmed's actions as a sales representative of Advance Technical System ("ATS") of Dubai, United Arab Emirates ("UAE") in connection with unlawful shipments of U.S.-origin radar parts made to Pakistan through the UAE. Specifically, the charging letter alleged as follows:

Charge 1 (15 CFR 764.2(b)—Causing the Filing of a False Statement on Shipper's Export Declaration as to the Ultimate Destination)

On or about December 18, 2000, Ahmed caused the filing of a false statement with the U.S. Government in violation of the Regulations. Specifically, in connection with the export of radar parts ("parts"), items subject to the Regulations ("EAR99")⁴, from the United States to Pakistan via the UAE, Ahmed submitted an end-user certificate, DSP Form 83,⁵ to the

¹ Yasmin Ahmed was also known as Fatimah Mohammad and Yasmin Ahmed Tariq during the period in which the charged violations occurred.

² The charged violations occurred during the 2000-2002 period. The Regulations governing the violations at issue are found in the 2000-2002 versions of the Code of Federal Regulations (15 CFR Parts 730-774 (2000-2002)). The 2008 Regulations establish the procedures that apply to this matter.

³ Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 15, 2007 (72 FR 46,137 (August 16, 2007)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701-1706 (2000)) ("IEEPA").

⁴ EAR 99 is a designation for items subject to the Regulations that are not listed on the Commerce Control List.

⁵ The DSP Form 83, "Nontransfer and Use Certificate," is used by the State Department in

exporter that falsely stated that the Bangladeshi Air Force was the end-user of the parts. The exporter relied on the end-user information submitted by Ahmed in completing a Shipper's Export Declaration (SED) for the export of the parts which falsely stated that the country of ultimate destination was Bangladesh. The actual country of ultimate destination was Pakistan. By providing false end-user information to the exporter, Ahmed committed one violation of section 764.29((b))⁶ of the Regulations.

Charge 2 (15 CFR 764.2(c)—

Attempting to Cause a Violation of the Regulations by Submitting False End-User Information to Exporter)

On or about April 16, 2002, Ahmed attempted to cause a violation of the Regulations by submitting a false end-user certificate to the exporter in connection with the export of parts, items subject to the Regulations, from the United States to Pakistan via the UAE. The certificate stated that the Bangladeshi Air Force was the end-user of the parts. The actual country of ultimate destination was Pakistan. The exporter relied on the end-user information submitted by Ahmed in completing an airway bill listing Bangladesh as the ultimate destination of the parts.

In completing the SED for the export based on a consultation of the airway bill, however, the freight forwarder incorrectly listed UAE as the country of ultimate destination. By providing false end-user information to the exporter, Ahmed attempted to cause a violation of the Regulations. In so doing, Ahmed committed one violation of section 764.2(c) of the Regulations.

Charge 3 (15 CFR 764.2(h)—Actions Taken with Intent to Evade the Provisions of the Regulations)

In connection with the export described in Charge 1 above, Ahmed took actions with the intent to evade the provisions of the Regulations. Specifically, Ahmed took actions, including but not limited to, obtaining false signatures from a purported end-user and representative of ATS for

connection with the export of munitions items subject to the State Department's export controls. The Respondent used it here in connection with items subject to the Regulations.

⁶ Due to a typographical error, the charging letter incorrectly referred to section 764.2(g) in the last sentence of Charge One, rather than section 764.2(b). As indicated by Charge One's heading and by its content, the last sentence should have referred to 764.2(b), the violation provision that corresponds to the causing language that comprises the substance of the charge. This typographical error does not prejudice the Respondent, as it is clear that the intended reference was to section 764.2(b).

inclusion on an end-user certificate submitted to an exporter in connection with the export of parts, items subject to the Regulations, from the United States to Pakistan via the UAE. The purpose of securing the false signatures was to prepare a false end-user certificate concealing the actual destination for the parts, Pakistan. The exporter relied on the information provided in the end-user certificates in preparing an SED which falsely stated the country of ultimate destination. In so doing, Ahmed committed one violation of section 764.2(h) of the Regulations.

Charge 4 (15 CFR 764.2(h)—Actions Taken with Intent to Evade the Provisions of the Regulations)

In connection with the export described in Charge 2 above, Ahmed took actions with the intent to evade the provisions of the Regulations. Specifically, Ahmed took actions, including but not limited to, obtaining false signatures from a purported end-user and representative of ATS for inclusion on an end-user certificate submitted to an exporter in connection with the export of parts, items subject to the Regulations, from the United States to Pakistan via the UAE. The purpose of obtaining the false signatures was to prepare a false end-user certificate concealing the actual destination for the parts, Pakistan. The exporter relied on the information provided in the end-user certificates in preparing an SED which falsely stated the country of ultimate destination. In so doing, Ahmed committed one violation of section 764.2(h) of the Regulations.

In accordance with section 766.3(b)(1) of the Regulations, on December 15, 2005, BIS mailed the notice of issuance of the charging letter by registered mail to Yasmin Ahmed at her last known address, which is in Pakistan. Although BIS did not receive a signed return mail receipt for the letter, the charging letter was delivered no later than on or about February 16, 2006. On or about that date, Yasmin Ahmed telephoned the BIS attorney named in the charging letter to discuss that letter, as well as the charging letter in a related administrative proceeding also initiated by BIS on December 15, 2005, in the Matter of NEAZ Trading Corporation (Docket No. 05–BIS–23). Ms. Ahmed had possession of the Yasmin Ahmed charging letter by the date of that telephone call; otherwise, she would not have known the name or direct contact information for BIS's attorney or been able to discuss the charging letter with BIS. To date, however, Yasmin Ahmed has not filed an answer to the charging letter with the AU, as required by the Regulations.

Under section 766.6(a) of the Regulations, the “respondent must answer the charging letter within 30 days after being served with notice of issuance” of the charging letter. Section 766.7(a) of the Regulations provides that the “[f]ailure of the respondent to file an answer within the time provided constitutes a waiver of the respondent’s right to appear and contest the allegations in the charging letter,” and that “on BIS’s motion and without further notice to the respondent, [the AU] shall find the facts to be as alleged in the charging letter.”

In accordance with section 766.7 of the Regulations, and because more than thirty days had passed since Ahmed had been served with the charging letter, BIS filed a Motion for Default Order that was received by the AU on July 15, 2008. This Motion for Default Order recommended that Ahmed be denied export privileges under the Regulations for a period of seven years.

On September 16, 2008, based on the record before him, the AU issued a RDO in which he found Yasmin Ahmed in default, found the facts to be as alleged in the charging letter, and held that Ahmed had committed the four violations alleged in the charging letter. The AU also recommended the penalty of denial of Yasmin Ahmed’s export privileges for seven years.

The RDO, together with the entire record in this case, has been referred to me for final action under section 766.22 of the Regulations. I find that the record supports the ALJ’s findings of fact and conclusions of law with one modification. With respect to Charge One, I modify the RDO to the extent it states at one point that Yasmin Ahmed committed one violation “of section 764.2(g) of the Regulations”, RDO at 3, because the violation set forth in Charge One, as indicated by its heading and the content of that charging paragraph, is a violation under section 764.2(b) of the Regulations. See note 6, *supra*. I also find that the penalty recommended by the AU is appropriate, given the serious nature of the violations and the importance of preventing future unauthorized exports or similar conduct in violations of the Regulations.

Based on my review of the entire record, I affirm the findings of fact and conclusions of law in the RDO with the one modification regarding Charge One that is described above.

Accordingly, it is therefore ordered:

First, that, for a period of seven (7) years from the date this Order is published in the **Federal Register**, Yasmin Ahmed, 612 Business Centre, Mumtaz Hasan Road, Off I.I. Chundrigar Road, Karachi, Pakistan, and when

acting for or on behalf of Yasmin Ahmed, her representatives, agents, assigns and employees (hereinafter collectively referred to as the “Denied Person”), may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as “item”) exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

Second, that no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and that is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or

controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, that, after notice and opportunity for comment as provided in section 766.23 of the Regulations, any person, firm, corporation, or business organization related to the Denied Person by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of this Order.

Fourth, that this Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

Fifth, that this Order shall be served on the Denied Person and on BIS, and shall be published in the **Federal Register**. In addition, the AU's Recommended Decision and Order, except for the section related to the Recommended Order, shall be published in the **Federal Register**.

This Order, which constitutes the final agency action in this matter, is effective upon publication in the **Federal Register**.

Dated: October 16, 2008.

Mario Mancuso,

Under Secretary of Commerce for Industry and Security.

**United States Department of Commerce
Bureau of Industry and Security**

In the Matter of: Yasmin Ahmed, 612 Business Centre, Mumtaz Hasan Road, Off I.I. Chundrigar Road, Karachi, Pakistan. Respondent.

Recommended Decision and Order

On December 15, 2005, the Bureau of Industry and Security, U.S. Department of Commerce (BIS), issued a charging letter initiating this administrative enforcement proceeding against Yasmin Ahmed.¹ The charging letter alleged that Yasmin Ahmed committed four violations of the Export Administration Regulations (currently codified at 15 CFR Parts 730-774 (2008)) (the Regulations),² issued under the Export Administration Act of 1979, as amended (50

U.S.C. app. 2401-2420 (2000)) (the Act).³ In accordance with § 766.7 of the Regulations, BIS moved for the issuance of an Order of Default against Yasmin Ahmed because Ms. Ahmed failed to file an answer to the allegations in the charging letter issued by BIS within the time period required by the Regulations.

A. Legal Authority for Issuing an Order of Default

Section 766.7 of the Regulations states that upon motion by BIS, the Court shall enter a default if a respondent fails to properly file a timely answer to a charging letter. That section, entitled Default, provides in pertinent part as follows:

Failure of the respondent to file an answer within the time provided constitutes a waiver of the respondent's right to appear and contest the allegations in the charging letter. In such event, the administrative law judge, on BIS's motion and without further notice to the respondent, shall find the facts to be as alleged in the charging letter and render an initial or recommended decision containing findings of fact and appropriate conclusions of law and issue or recommend an order imposing appropriate sanctions.

15 CFR 766.7 (2008).

Pursuant to Section 766.6 of the Regulations, a respondent must file an answer to the charging letter "within 30 days after being served with notice of the issuance of the charging letter" initiating the proceeding. 15 CFR 766.6 (2008).

B. Service of the Notice of Issuance of Charging Letter

In this case, BIS served notice of issuance of the charging letter in accordance with § 766.3(b)(1) of the Regulations by sending a copy of the charging letter by registered mail to Yasmin Ahmed at her last known address on December 15, 2005. BIS did not receive a return mail receipt for the letter. To date, Respondent has failed to file an answer to the charging letter as required by section 766.6 of the Regulations. On or about February 16, 2006, Yasmin Ahmed, telephoned the BIS attorney named in the charging letter. Since Ms. Ahmed contacted BIS on February 16, 2006, Ms. Ahmed must have been in possession of the Charging Letter or she would not have known the BIS attorney's contact information. Clearly 30 days has passed since Ms. Ahmed received the charging letter. Accordingly, Yasmin Ahmed is in default.

³ From August 21, 1994 through November 12, 2000, the Act was in lapse. During that period, the President, through Executive Order 12924, which had been extended by successive Presidential Notices, the last of which was August 3, 2000 (3 CFR 2000 Comp. 397 (2001)), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701-1706 (2000)) ("IEEPA"). On November 13, 2000, the Act was reauthorized by Public Law No. 106-508 (114 Stat. 2360 (2000)) and it remained in effect through August 20, 2001. Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 15, 2007 (72 FR 46137 (Aug. 16, 2007)), has continued the Regulations in effect under IEEPA.

C. Summary of Violations Charged

The charging letter filed and served in this matter included a total of four charges based on Yasmin Ahmed's actions as a sales representative of Advance Technical System (ATS) of Dubai, United Arab Emirates (UAE), in connection with shipments of U.S. origin items to Pakistan. Charge I of the charging letter alleged that on or about December 18, 2000, Yasmin Ahmed caused the filing of a false statement with the U.S. Government in connection with the export of radar parts, items subject to the Regulations,⁴ from the United States to Pakistan via the UAE. Yasmin Ahmed submitted an end-user certificate, DSP Form 83,⁵ to the exporter that falsely stated that the Bangladesh Air Force was the end-user of the parts. The exporter relied on the end-user information submitted by Yasmin Ahmed in completing a Shipper's Export Declaration (SED) for the export of the parts that falsely stated that the country of ultimate destination was Bangladesh. The actual country of ultimate destination was Pakistan. By providing false end-user information to the exporter, Yasmin Ahmed committed one violation of section 764.2(g) of the Regulations.

Second, the charging letter alleged that on or about April 16, 2002, Yasmin Ahmed attempted violate the Regulations by submitting a false end-user certificate to the exporter in connection with the export of radar parts, items subject to the Regulations, from the United States to Pakistan via the UAE. The certificate stated that the Bangladesh Air Force was the end user of the radar parts. The actual country of ultimate destination was Pakistan. The exporter relied on the end-user information submitted by Yasmin Ahmed in completing an airway bill listing Bangladesh as the ultimate destination of the parts. In completing the SED for the export based on a consultation of the airway bill, the freight forwarder incorrectly listed UAE as the country of ultimate destination. By providing false end-user information to the exporter, Yasmin Ahmed attempted to cause a violation of the Regulations, namely, the filing of a SED with false end-user information, and thereby violated section 764.2(c) of the Regulations.

Charge 3 of the charging letter alleged that in connection with the December 18, 2000, transaction (described in Charge 1 of the charging letter), Yasmin Ahmed took actions with the intent to evade the provisions of the Regulations. Specifically, she took actions, including but not limited to, obtaining false signatures from a purported end-user who was actually a representative of ATS for inclusion on an end-user certificate submitted to an exporter in connection with the export of radar parts, items subject to the Regulations, from the United States to Pakistan via the UAE. The purpose of securing the false signatures was to prepare

⁴ These parts are designated as "EAR 99," a designation for items subject to the Regulations that are not listed on the Commerce Control List.

⁵ The DSP Form 83, "Nontransfer and Use Certificate," is used by the State Department in connection with the export of munitions items subject to the State Department's export controls. In this instance, the Respondent used it to conceal the end-user of an item that was subject to the EAR.

¹ Yasmin Ahmed was also known as Fatimah Mohammad and Yasmin Ahmed Tariq during the period in which the charged violations occurred.

² The charged violations occurred during the 2000-2002 period. The Regulations governing the violations at issue are found in the 2000-2002 versions of the Code of Federal Regulations (15 CFR Parts 730-774 (2000-2002)). The 2008 Regulations establish the procedures that apply to this matter.

a false end-user certificate concealing the actual destination for the radar parts, Pakistan. The exporter relied on the information provided in the end-user certificates in preparing a SED that falsely stated the country of ultimate destination as Bangladesh. In so doing, Yasmin Ahmed committed one violation of section 764.2(h) of the Regulations.

Finally, in connection with the April 16, 2002, transaction described in Charge 2 of the charging letter, Yasmin Ahmed took actions with the intent to evade the provisions of the Regulations. Specifically, Yasmin Ahmed took actions, including but not limited to, obtaining false signatures from a purported end-user who was actually a representative of ATS for inclusion on an end-user certificate submitted to an exporter in connection with the export of radar parts, items subject to the Regulations, from the United States to Pakistan via the UAE. The purpose of obtaining the false signatures was to prepare a false end-user certificate concealing the actual destination for the radar parts, Pakistan. The exporter relied on the information provided in the end-user certificates in preparing a SED which falsely stated the country of ultimate destination as Bangladesh. In so doing, Yasmin Ahmed committed one violation of section 764.2(h) of the Regulations.

D. Penalty Recommendation

[REDACTED SECTION]

E. Conclusion

Accordingly, I am referring this Recommended Decision and Order to the Under Secretary of Commerce for Industry and Security for review and final action for the agency, without further notice to the Respondent, as provided in § 766.7 of the Regulations.

Within 30 days after receipt of this Recommended Decision and Order, the Under Secretary shall issue a written order affirming, modifying, or vacating the Recommended Decision and Order. See 15 CFR 766.22(c).

Hon. Joseph N. Ingolia,
Chief Administrative Law Judge, United States Coast Guard.

Done and Dated 16th September, 2008,
Baltimore, Maryland.

Certificate of Service

I hereby certify that I have served the foregoing RECOMMENDED DECISION AND ORDER upon the following party in this proceeding at the addresses indicated below by First Class Mail to:

Parvin R. Huda, Senior Counsel,
Attorneys for Bureau of Industry and Security, Office of Chief Counsel For Industry and Security, U.S. Department of Commerce, Room H-3839, 14th Street & Constitution Avenue, NW., Washington, DC 20230, (202) 482-5301.

Yasmin Ahmed, 612 Business Centre,
Mumtaz Hasan Road, Off I.I
Chundrigar Road, Karachi, Pakistan.

Dated on September 18, 2008, Baltimore, Maryland.

Debra M. Gundy,

Paralegal Specialist, Administrative Law Judges Office, U.S. Coast Guard.

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DEPARTMENT OF COMMERCE

Bureau of Industry and Security

[Docket No. 0810071328-81331-01]

Impact of Implementation of the Chemical Weapons Convention on Commercial Activities Involving "Schedule 1" Chemicals Through Calendar Year 2008

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Notice of inquiry.

SUMMARY: The Bureau of Industry and Security (BIS) is seeking public comments on the impact that implementation of the Chemical Weapons Convention, through the Chemical Weapons Convention Implementation Act and the Chemical Weapons Convention Regulations, has had on commercial activities involving "Schedule 1" chemicals during calendar year 2008. The purpose of this notice of inquiry is to collect information to assist BIS in its preparation of the annual certification to the Congress, which is required under Condition 9 of Senate Resolution 75, April 24, 1997, in which the Senate gave its advice and consent to the ratification of the Chemical Weapons Convention.

DATES: Comments must be received by November 26, 2008.

ADDRESSES: You may submit comments by any of the following methods:

- E-mail: wfisher@bis.doc.gov.

Include the phrase "Schedule 1 Notice of Inquiry" in the subject line;

- Fax: (202) 482-3355 (Attn: Willard Fisher);

- Mail or Hand Delivery/Courier: Willard Fisher, U.S. Department of Commerce, Bureau of Industry and Security, Regulatory Policy Division, 14th Street & Pennsylvania Avenue, NW., Room 2705, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: For questions on the Chemical Weapons Convention requirements for "Schedule 1" chemicals, contact James Truske, Treaty Compliance Division, Office of Nonproliferation and Treaty Compliance, Bureau of Industry and Security, U.S. Department of Commerce, Phone: (202) 482-1001. For questions

on the submission of comments, contact Willard Fisher, Regulatory Policy Division, Office of Exporter Services, Bureau of Industry and Security, U.S. Department of Commerce, Phone: (202) 482-2440.

SUPPLEMENTARY INFORMATION:

Background

In providing its advice and consent to the ratification of the Convention on the Prohibition of the Development, Production, Stockpiling, and Use of Chemical Weapons and Their Destruction, commonly called the Chemical Weapons Convention (CWC) (the Convention), the Senate included, in Senate Resolution 75 (S. Res. 75, April 24, 1997), several conditions to its ratification. Condition 9, titled "Protection of Advanced Biotechnology," calls for the President to certify to Congress on an annual basis that "the legitimate commercial activities and interests of chemical, biotechnology, and pharmaceutical firms in the United States are not being significantly harmed by the limitations of the Convention on access to, and production of, those chemicals and toxins listed in Schedule 1." On July 8, 2004, President Bush, by Executive Order 13346, delegated his authority to make the annual certification to the Secretary of Commerce.

The CWC is an international arms control treaty that contains certain verification provisions. In order to implement these verification provisions, the CWC established the Organization for the Prohibition of Chemical Weapons (OPCW). The CWC imposes certain obligations on countries that have ratified the Convention (i.e., States Parties), among which are the enactment of legislation to prohibit the production, storage, and use of chemical weapons, and the establishment of a National Authority to serve as the national focal point for effective liaison with the OPCW and other States Parties for the purpose of achieving the object and purpose of the Convention and the implementation of its provisions. The CWC also requires each State Party to implement a comprehensive data declaration and inspection regime to provide transparency and to verify that both the public and private sectors of the State Party are not engaged in activities prohibited under the CWC.

"Schedule 1" chemicals consist of those toxic chemicals and precursors set forth in the CWC "Annex on Chemicals" and in Supplement No. 1 to part 712 of the Chemical Weapons Convention Regulations (CWCRR) (15 CFR parts 710-722). The CWC identified these toxic chemicals and