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DEVELOPMENTS CONCERNING THE NATIONAL EMERGENCY WITH RESPECT TO THE LAPSE OF THE EXPORT ADMINISTRATION ACT OF 1979

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

A REPORT ON DEVELOPMENTS CONCERNING THE NATIONAL EMERGENCY DECLARED BY EXECUTIVE ORDER NO. 12924 OF AUGUST 19, 1994, TO DEAL WITH THE THREAT TO THE NATIONAL SECURITY, FOREIGN POLICY, AND ECONOMY OF THE UNITED STATES CAUSED BY THE LAPSE OF THE EXPORT ADMINISTRATION ACT OF 1979, PURSUANT TO 50 U.S.C. 1703(c) AND 50 U.S.C. 1641(c).



SEPTEMBER 29, 1995.—Message and accompanying papers referred to the Committee on International Relations and ordered to be printed

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To the Congress of the United States:

As required by section 204 of the International Emergency Economic Powers Act (50 U.S.C. 1703(c)) and section 401(c) of the National Emergencies Act (50 U.S.C. 1641(c)), I transmit herewith a 6-month periodic report on the national emergency declared by Executive Order No. 12924 of August 19, 1994, to deal with the threat to the national security, foreign policy, and economy of the United States caused by the lapse of the Export Administration Act of 1979.

WILLIAM J. CLINTON.

THE WHITE HOUSE, *September 29, 1995.*

President's Periodic Report on the National Emergency
Caused by the Lapse of the Export Administration Act of 1979

1. On August 19, 1994, in Executive Order No. 12924, the President declared a national emergency under the International Emergency Economic Powers Act (IEEPA) (50 U.S.C. 1701 *et seq.*) to deal with the threat to the national security, foreign policy, and economy of the United States caused by the lapse of the Export Administration Act of 1979, as amended (50 U.S.C. App. 2401 *et seq.*) and the system of controls maintained under that Act. In that order, the President continued in effect, to the extent permitted by law, the provisions of the Export Administration Act of 1979, as amended, the Export Administration Regulations (15 C.F.R. 768 *et seq.*), and the delegations of authority set forth in Executive Order No. 12002 of July 7, 1977 (as amended by Executive Order No. 12755 of March 12, 1991), Executive Order No. 12214 of May 2, 1980, Executive Order No. 12735 of November 16, 1990 (subsequently revoked by Executive Order No. 12938 of November 14, 1994), and Executive Order No. 12851 of June 11, 1993. On August 15, 1995, the President extended the emergency declared in Executive Order No. 12924 until August 19, 1996.

2. The President issued Executive Order No. 12924 pursuant to the authority vested in me as President by the Constitution and laws of the United States, including, but not limited to, IEEPA. At that time, the President also submitted a report to the Congress pursuant to section 204(b) of IEEPA (50 U.S.C. 1703(b)). Section 204 of IEEPA requires follow-up reports, with respect to actions or changes, to be submitted every 6 months. Additionally, section 401(c) of the National Emergencies Act (NEA) (50 U.S.C. 1601 *et seq.*) requires that the President, within 90 days after the end of each 6-month period following a declaration of a national emergency, report to the Congress on the total expenditures directly attributable to that declaration. To comply with these requirements, on March 21, 1995, the President submitted a combined activities and expenditures report for the 6-month period from August 19, 1994, to February 19, 1995. The following report covers the 6-month period from February 19, 1995, to August 19, 1995.

3. Since the issuance of Executive Order No. 12924, the Department of Commerce has continued to administer and enforce the system of export controls, including antiboycott provisions, contained in the Export Administration Regulations. In administering these controls, the Department has acted under a policy of conforming actions under Executive Order No. 12924 to those required under the Export Administration Act, insofar as appropriate.

4. Since the last report to the Congress, there have been several significant developments in the area of export controls:

A. Multilateral Developments

COCOM Successor Regime. The Department of Commerce has participated in several multilateral negotiations to establish a successor regime to COCOM. Working group negotiations in the past 6 months have focused on establishment of licensing guidelines and information exchange procedures and revision of the control lists.

Australia Group. The Australia Group is an informal intergovernmental body formed in 1984 to address concerns about proliferation of chemical and biological warfare capabilities. Currently, 29 governments, representing supplier or producer countries, are members. The Australia Group operates by consensus.

- o The Department of Commerce issued regulations, effective as of July 26, 1995, to remove controls to most destinations on vaccines that contain Australia Group-controlled microorganisms or toxins. The Australia Group did not reach consensus on control of vaccines, and vaccines are not useful in the development of biological weapons.

- o Australia Group members are examining the present unrestricted trade in small quantities (20 kilograms or less) of chemical precursors. The United States position is that total shipments in small quantities of a particular chemical precursor should not exceed 200 kilograms per year per consignee.

- o On April 1, 1995, Romania's application for membership to the Australia Group was approved. The Export Administration Regulations will be revised to treat Romania in a manner consistent with other Australia Group members. This revision will permit the export of certain items controlled for chemical weapons purposes to Romania without validated export licenses.

- o The Department of Commerce is implementing the Australia Group's "no undercut policy," that is, if one member denies an export of a listed item for chemical/biological weapons non-proliferation reasons, all other members agree not to approve essentially identical applications without consulting the original denying country.

Nuclear Suppliers Group (NSG). The Nuclear Suppliers Group, currently comprising 31 members, maintains a list of nuclear-related dual-use items and guidelines for their control.

- o NSG members continue to examine the present control list both to remove controls no longer warranted and to rewrite control language to better reflect nuclear proliferation concerns. A major item for revision is machine tools, as the current language was accepted on an interim basis until agreement on more specific language could be reached.

- o The Department of Commerce continues to issue license denials for NSG-controlled items as part of the "no-undercut" provision. Under this provision, a denial notification received from an NSG member country precludes other member countries from approving similar transactions without consulting the original denying country.

Missile Technology Control Regime (MTCR). The Missile Technology Control Regime, currently comprising 26 member countries that are the principal sources of supply for missile technology, is an arrangement whereby each member country, under its own national laws, has agreed to abide by multilateral Guidelines for controlling the transfer of items that contribute to missile programs. The items are identified in an Equipment and Technology Annex to the Guidelines.

- o The Department of Commerce is implementing the MTCR's "no-undercut" policy on license denials. Under this multilateral arrangement, a denial notification received from an MTCR member country precludes other member countries from approving similar transactions without consulting the original denying country.

- o In 1993 and 1994, the United States concluded bilateral missile nonproliferation agreements with Russia, South Africa, and Ukraine. These agreements are based on mutual commitments to adhere to the multilateral MTCR Guidelines. Russia became an MTCR member in August 1995 and South Africa is expected to join the regime by the October 1995 MTCR plenary.

B. Bilateral Cooperation/Technical Assistance

As part of the Administration's continuing effort to encourage other countries to implement effective export controls to stem the proliferation of weapons of mass destruction, as well as certain sensitive technologies, the Department of Commerce and other agencies conducted a wide range of discussions with a number of foreign countries, including governments in the Baltics, Central and Eastern Europe, the Newly Independent States (NIS) of the former Soviet Union, Israel and East Asia, including China, Hong Kong, the Republic of Korea, Singapore, and with the authorities of Taiwan. Highlighting the cooperative effort was a week-and-a-half long "Legal and Regulatory Technical Forum" in July 1995 with a 19-member delegation of high-ranking officials from Russia.

C. Modifications in Controls on Embargoed Destinations

Democratic People's Republic of Korea (DPRK). Commerce Department regulations on exports and reexports to the DPRK remain in force. Commerce will license certain exports and reexports consistent with the October 21, 1994, "Agreed Framework between the United States of America and the Democratic People's Republic of Korea."

Iran. Commerce Department regulations on exports and reexports to Iran remain in force. The implementation of the trade and investment embargo on Iran that the President imposed under Executive Orders Nos. 12957 of March 15, 1995, and 12959 of May 6, 1995, has been delegated to the Secretary of the Treasury in consultation with the Secretary of State.

D. Regulatory Reform

In February 1994, the Department of Commerce issued a Federal Register notice that invited public comment on ways to improve the Export Administration Regulations. The project's objective was to make the rules and procedures for the control of exports simpler and easier to understand and apply. On May 11, 1995, the Bureau of Export Administration published a proposed rule in the Federal Register simplifying the Export Administration Regulations. After the proposed rule was published, the Commerce Department conducted more than a dozen Regulatory Reform Fora around the United States to discuss the rule with the exporting community and to solicit exporters' comments and suggestions in preparation for issuing a final rule. When the formal comment period closed on July 10, 1995, the Department of Commerce had received over 65 public comments on the proposed rule. Once these comments have been reviewed and considered, the Bureau of Export Administration will revise the proposed rule and publish a final rule.

E. Export Enforcement

Over the last 6 months, the Department of Commerce continued its vigorous enforcement of the Export Administration Regulations through educational outreach, license application screening, spot checks, investigations, and enforcement actions. In the last 6 months, these efforts resulted in civil penalties, denials of export privileges, criminal fines, and imprisonment. Total fines imposed from February 19 through August 9, 1995, amounted to \$5,436,230 in export control and antiboycott compliance cases, including criminal fines totaling \$2,534,230, and 20 parties were denied export privileges.

o Halliburton Company Receives \$2.6 Million Civil Penalty: On July 25, Assistant Secretary for Export Enforcement John Despres signed an Order imposing a civil penalty of \$2,610,000 on the Halliburton Company of Texas. The civil penalty is the largest fine imposed by the Department for export violations and is part of a global settlement related to the unauthorized export and reexport of oil field equipment to Libya by two Halliburton subsidiaries, Halliburton Logging Services (HLS) and Halliburton Geophysical Services (HGS). HLS exported six pulse neutron generators to Libya between December 1987 and August 1989 and made three unauthorized exports of pulse neutron generators to Kuwait or Yemen between August 1988 and January 1989. HGS, through a U.K. subsidiary, made 68 unauthorized reexports of spare parts to Libya between April 1989 and April 1991 and released U.S.-origin technical data to Libyan nationals in Tunisia in May 1990 without the required validated export license.

Resolving the criminal proceedings in this case, a judge in the U.S. District Court for the Southern District of Texas accepted Halliburton's guilty plea, made pursuant to a plea agreement between the U.S. Attorney's Office and Halliburton, and imposed a criminal penalty of \$1,200,000 for three violations of the International Economic Emergency Powers Act regarding the export of the pulse neutron generators to Libya.

o Teledyne Industries Employee and Firm Convicted: On April 4, a Federal jury in Miami convicted Edward A. Johnson, an employee of Teledyne Industries, Inc., on charges related to the illegal export of zirconium to Chilean arms maker Carlos Cardoen. The jury also convicted Swissco Management Group, Inc., a U.S. company controlled by Cardoen. The zirconium was used to manufacture cluster bombs sold to Iraq. The government had charged that export licenses submitted to the Commerce Department falsely claimed the zirconium was going to be used for civilian mining purposes in Chile and Peru.

Johnson, a salesman at the Teledyne Wah Chang division in Albany, Oregon, was convicted on two counts of making false statements to the Commerce Department on export license applications, one count of violating the Arms Export Control Act and criminal conspiracy. He was sentenced to 41 months imprisonment and fined \$25,000. Swissco was convicted of conspiracy and of violating the Export Administration Act and fined \$1,309,203.

Teledyne, which was also a defendant in the case, pled guilty to related charges in January and agreed to pay \$12.9 million in criminal and civil penalties to resolve charges in this case, as well as a related case in the United States District Court for the District of Columbia. In addition, the Teledyne Wah Chang division had its export privileges denied for 3 years by the Department of Commerce. The last 2 years and 9 months of the denied period was suspended. Cardoen and two of his employees are also charged but remain in Chile.

o Federal Jury Convicts Two Individuals, Companies in FMI Case: On March 31, a Federal jury in Boston convicted two New England-based high technology companies and their top two officers of illegally exporting equipment to India that could be used in the manufacture of missiles. Specifically, the defendants were found guilty of conspiring to export manufacturing equipment that could be used to help produce carbon-carbon, a material used in the production of missiles, to the Defense Research Development Laboratory in India, which has ties to the Indian government's Ministry of Defense.

Fiber Materials, Inc. (FMI), a Maine corporation, its wholly owned subsidiary, Materials International of Acton, Massachusetts, and the companies' top two officers -- Walter L. Lachman of Concord, Massachusetts, and Maurice H. Subilia, Jr., of Kennebunkport, Maine -- were each found guilty of one count of violating the Export Administration Act and one count of conspiracy. Special Agents from Export Enforcement and U.S. Customs Service investigated the case.

5. The expenses incurred by the Federal Government in the 6-month period from February 19, 1995, to August 19, 1995, that are directly attributable to the exercise of authorities conferred by the declaration of a national emergency with respect to export controls were largely centered in the Department of Commerce, Bureau of Export Administration. Expenditures by the Department of Commerce are to be approximately \$20,000,000, most of which represents program operating costs, wage and salary costs for Federal personnel and overhead expenses.