

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(e) AND 50 U.S.C. 1641(c)



JUNE 4, 1996.—Message and accompanying papers referred to the Committee on International Relations and ordered to be printed

U.S. GOVERNMENT PRINTING OFFICE

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, *June 4, 1996.*

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, I 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, I continued in effect, to the extent permitted by law, the provisions of the Export Administration Act of 1979 (EAA), as amended, the Export Administration Regulations (15 CFR 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. As required by the National Emergencies Act (50 U.S.C. 1622(d)), I issued a notice on August 15, 1995, continuing the emergency declared in Executive Order No. 12924.

2. I 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, the IEEPA. At that time, I 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 (50 U.S.C. 1641(c)) 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, I have submitted combined activities and expenditures reports for the 6-month periods from August 19, 1994, to February 19, 1995, and from February 19, 1995, to August 19, 1995. The following report covers the 6-month period from August 19, 1995, to February 19, 1996.

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 (EAR). 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 my last report to the Congress, there have been several significant developments in the area of export controls:

A. Multilateral Developments

Wassenaar Arrangement for Export Controls for Conventional Arms and Dual-Use Goods and Technologies. The Bureau of Export Administration (BXA) of the Department of Commerce participated in several rounds of negotiations to establish a successor regime to COCOM. On December 19, 1995, 28 countries (former COCOM partners, cooperating countries, Russia, and the Visegrad states) agreed to establish a new regime, called the Wassenaar Arrangement, to control conventional arms and munitions and related dual-use equipment. The Wassenaar Arrangement will be headquartered in Austria. The first plenary meeting of the new regime was held in Vienna in April 1996.

Australia Group. The Australia Group (AG) is an informal multilateral 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 AG operates by consensus.

- At the October 1995 plenary meeting, the Biological Weapons Experts conducted a technical review of the AG biological control list, which has been in force for 3 years. There was agreement on tightening the controls on certain microorganisms and equipment (e.g., fermenters) that can be used in the production of biological weapons. Regulations are being drafted to reflect these changes in biological weapons export controls.
- The AG also agreed at the October 1995 plenary to tighten controls on license-free sample shipments. Accordingly, BXA will monitor its recently revised sample shipments rule to determine if it should be modified.
- The United States shared its experiences at the October 1995 meeting in implementing its chemical mixtures regulations, and is seeking a comprehensive understanding of how other members implement the AG mixture controls.
- Members agreed to U.S. proposals at the October 1995 meeting for intensified information exchange and other measures to better address chemical and biological warfare terrorism.

Nuclear Suppliers Group. The Nuclear Suppliers Group (NSG), currently composed of 32 member countries, maintains a control list of nuclear related dual-use items and guidelines for their control.

- NSG member countries have recently completed a technical review of the dual-use control list and are presently engaged in restructuring the present control language to better reflect nuclear proliferation concerns as well as to allow the more effective implementation of export controls for these items.
- 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, thereby assuring that the earlier denial is not "undercut." There are procedures for member countries to consult on specific denials if they wish to disagree with the original denial.

Missile Technology Control Regime. The Missile Technology Control Regime (MTCR), founded in 1987 and currently comprising 28 member countries, is an informal group whose members coordinate their national export controls to help prevent missile proliferation. Each member country, under its own national laws, has agreed to abide by multilateral MTCR Guidelines for controlling the transfer of items that contribute to missile programs. These items are identified in an MTCR Equipment and Technology Annex to the Guidelines.

- The Department continues to implement the Enhanced Proliferation Control Initiative (EPCI), which is a "catch-all" control on items that are not on the MTCR Annex, but could be used directly in projects of missile proliferation concern. As a result of U.S. leadership, similar controls have now been adopted by over half of the MTCR members.
- As a consequence of bilateral missile nonproliferation agreements with Russia and South Africa, those two countries have conformed their national export controls to MTCR standards and were formally admitted to membership in the MTCR in October 1995.
- The United States also supported Brazil's candidacy for membership in the MTCR, and Brazil was accepted unanimously in October 1995.

B. Bilateral Cooperation/Technical Assistance

As part of the Administration's continuing effort to encourage other countries to strengthen their export control systems, the Department of Commerce and other agencies conducted a wide range of discussions with a number of foreign countries.

Russian Exchanges. In October 1995, BXA hosted a large delegation of senior Russian industry executives and government export control officials. They met in Boston and in Washington, D.C., to discuss industry-government cooperation on export controls. The purpose of this program was to bring together U.S. and Russian business executives and government officials to discuss such issues as the administration of export controls, legal reform, licensing, industry compliance, and enforcement.

In December 1995, BXA participated in an interagency delegation to a briefing hosted by the Russian government on the operation of Russia's export control system. Russian ministries, organizations, and enterprises gave presentations.

Central Asian/Caucasus Export Control Forum. In November 1995, BXA participated in an interagency delegation as co-hosts with Turkey in an export control forum for seven Central Asian and Caucasus states (Armenia, Azerbaijan, Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan, and Uzbekistan). Presentations were given on legal, legislative, and nonproliferation issues, including licensing, enforcement, and industry-government relations.

Nonproliferation and Export Control Cooperation. In late 1994, BXA created the Nonproliferation and Export Control Cooperation (NEC) team to marshal BXA's resources and expertise to support U.S. export control cooperation programs in the former Soviet Union, other newly emerging states in the Central Asian, Transcaucasian, and Baltic regions, and certain central European states. From August to December 1995, the NEC team, with representatives from the Departments of State, Defense, and Energy, and the U.S. Customs Service, coordinated 14 cooperative exchanges with Belarus, Kazakhstan, Ukraine, Lithuania, Bulgaria, Romania, and Poland. These cooperative exchanges focused on the legal bases for export control systems, regulatory procedures, licensing processes, preventive enforcement mechanisms, industry-government relations, and systems automation.

C. Regulatory Actions: Published and Pending
Regulatory Reform. For almost three decades, the EAR have been amended frequently to respond to various national security, nonproliferation, and foreign policy crises. Until recently, the

EAR had never been subjected to a systematic and comprehensive review for the purpose of coordinating and restructuring these many amendments to create a set of regulations that is internally consistent and easier to use. Last May, BXA published a proposed rule that included a comprehensive revision and reorganization of the EAR that will, in accordance with the goal set by the Trade Promotion Coordinating Committee, "make the regulations more user-friendly." The BXA has involved the exporting community in every step of the process, releasing early drafts as "discussion packages," conducting "town hall"-style fora in 13 States, and redrafting to incorporate the many industry comments and suggestions received once the proposed rule was published. In November 1995, BXA circulated a draft interim rule for interagency review. The BXA delivered the interim rule to the Federal Register in February for publication in March.

General License Eligibility Extended to Semiconductor Manufacturing Equipment. BXA published a final rule on February 14 to expand general license eligibility to most destinations to include certain semiconductor manufacturing equipment: ion implanters, etching systems, chemical vapor deposition equipment, certain "cluster tools," masks, reticles, and test systems.

High-Performance Computers. On January 25, BXA published a rule that implements the President's October 6, 1995, announcement of a major reform of computer export controls. The rule liberalizes export controls on all computers, and establishes four tiers of countries and a new policy for each tier. This new rule will provide significant benefit to the international competitiveness of the U.S. computer industry. This rule was effective January 22.

Nuclear Controls. On February 1, BXA published an interim rule to amend a number of Export Control Classification Numbers (ECCNs) in order to make the U.S. Nuclear Referral List conform more closely with the items contained in the multi-lateral NSG Annex published by the International Atomic Energy Agency and adhered to by the United States and other subscribing governments in the NSG. In addition, this rule removed Poland from general license General Nuclear Suppliers Group (GNSG) restrictions, and added Argentina, New Zealand, South Africa, and South Korea to the countries that are eligible to receive exports under general license GNSG.

Expansion of Foreign Policy Controls for Sudan. In December, BXA circulated for interagency review a draft rule that will establish foreign policy controls on exports to Sudan. New controls are being published with the comprehensive

revision and reorganization of the Export Administration Act. These controls are consistent with the Secretary of State's determination that the Government of Sudan has repeatedly provided support for acts of international terrorism.

Expansion of General Licenses GLX and GTDR. On December 20, 1995, BXA published a final rule that expands general license for exports for civil end-users in countries of the former Soviet Union, Romania, and the People's Republic of China (GLX) eligibility to include: microprocessors with a composite theoretical performance not exceeding 500 million theoretical operations per second, memory integrated circuits, certain digital integrated circuits, field programmable gate arrays and logic arrays, portable (personal) or mobile radiotelephones not capable of end-to-end encryption, and software to protect against computer viruses. In addition, revisions were made to expand eligibility for general license for technical data (GTDR) with written assurance to include certain virus protection software.

Specially Designed Implements of Torture. On November 28, 1995, BXA published a final rule that expanded foreign policy controls on specially designed implements of torture. Previously, such implements were controlled as "crime control and detection" commodities in the same category as handcuffs, police helmets, and shields. As such, they did not require a validated license for export to member countries of the North Atlantic Treaty Organization (NATO), Australia, Japan, or New Zealand. This new rule created a control list entry requiring a validated license for export of specially designed implements of torture to all destinations, including Canada. Applications for such exports will continue to be subject to a general policy of denial.

Chemical Mixtures. On October 19, 1995, BXA published a final rule that implements the agreement reached by the AG in December 1994 on certain technical revisions in the AG's harmonized controls on chemical weapons precursors. The rule refines and clarifies the scope of controls on exports of sample shipments and mixtures containing controlled precursor and intermediate chemicals. The rule also revised the list of countries eligible to receive AG benefits under U.S. regulations by adding Poland, the Slovak Republic, and Romania.

D. Strategic Industries/Economic Security

In late 1994, the National Security Advisor directed that an interagency study be prepared to assess the current and future international market for software products containing encryption (PRD/NSC-48). The directive was in response to

industry claims that U.S. export controls on certain powerful encryption technologies were providing no benefit to national security, and were hampering the software industry's ability to compete in the global marketplace. On January 11, the Department of Commerce announced the public release of the study, jointly prepared by BXA and the National Security Agency. The study provides an in-depth evaluation of the international market, reviews the availability of foreign encryption software, and assesses the impact that U.S. export controls for encryption have had on the competitiveness of the software industry. The study found that the U.S. software industry still dominates world markets, but the existence of strong export controls, both in the United States and other major countries, is slowing the growth of the international market.

E. Export Enforcement

Over the last 6 months, the Department of Commerce continued its vigorous enforcement of the EAR 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 penalties imposed from August 10, 1995, through February 15, 1996, amounted to \$3,226,750 in export control and antiboycott compliance cases, including criminal fines totaling \$255,000; in addition, 14 parties were denied export privileges.

Two Companies and an Individual Penalized Total of \$1.45 Million for Alleged Antiboycott Violations. On August 29, 1995, Assistant Secretary for Export Enforcement John Despres signed an order imposing civil penalties totaling \$1,446,400 on Parbel of Florida, Inc., formerly known as Helena Rubinstein, Inc., and Cosmair, Inc., both subsidiaries of L'Oreal, S.A., the French cosmetic company, and on Bruce L. Mishkin, an employee of Cosmair, Inc., for 291 alleged violations of the antiboycott provisions of the EAA and EAR.

The Department of Commerce alleged that, in 1989, in response to a request from L'Oreal, S.A., Helena Rubinstein, Inc., and Bruce L. Mishkin each furnished or agreed to furnish 144 items of information about Helena Rubinstein, Inc.'s business relationships with or in Israel. The Department further alleged that Cosmair, Inc., did not prevent Mr. Mishkin from furnishing information about Helena Rubinstein, Inc.'s business relationships with or in Israel. The Department alleged that, in so doing, Cosmair, Inc., violated the EAR by permitting the doing of an act prohibited by the EAR.

The companies and Mishkin each agreed to pay the civil penalties in separate but related settlements, which combined, constitute one of the largest for the Office of Antiboycott Compliance (OAC). Under the terms of the Consent Agreements, Parbel paid \$1,387,000, Mr. Mishkin paid \$50,400, and Cosmair paid \$9,000 to settle the allegations.

California Man Penalized for Alleged Export Control Violations Involving Shotguns to Namibia and South Africa. On November 28, 1995, Assistant Secretary for Export Enforcements John Despres imposed a 15-year denial of export privileges and a \$60,000 civil penalty on James L. Stephens, president and co-owner of Weisser's Sporting Goods, National City, California, for the alleged illegal export of certain U.S.-origin shotguns to Namibia and South Africa.

The Department alleged that, between 1990 and 1992, Stephens conspired with overseas parties to export and, on two separate occasions, actually exported, U.S.-origin shotguns with barrel lengths 18 inches and over to Namibia and South Africa without applying for and obtaining from the Department the validated export licenses he knew or had reason to know were required under the EAA and EAR. In addition, the Department alleged that, in furtherance of the conspiracy, and in connection with each of these exports, Stephens made false or misleading representations of material fact to a U.S. agency in connection with the preparation, submission, or use of export control documents.

In a separate matter, Weisser's Sporting Goods pled guilty on November 20, 1995, in the Southern District of California, to one criminal count of violating U.S. export control laws in connection with the export of shotguns to South Africa. Sentencing for the criminal violation took place on January 16, 1996. Weisser's Sporting Goods was fined \$30,000 and placed on 3 years' probation.

Illinois Company and its French Subsidiary Penalized \$550,000 for Alleged Antiboycott Violations. On November 29, 1995, Assistant Secretary for Export Enforcement John Despres signed an order imposing civil penalties totaling \$550,000 on Sundstrand Corporation ("Sundstrand") and its wholly owned subsidiary, Sundstrand International, S.A. Zone Industrielle de Dijon-Sud ("Sundstrand Dijon"), for alleged violations of the antiboycott provisions of the EAA and the EAR.

Sundstrand is a Rockford, Illinois-based manufacturer and exporter of aerospace and industrial equipment. Sundstrand Dijon is a repair and testing facility for Sundstrand equipment located in Dijon, France. While neither admitting nor denying

the alleged violations, Sundstrand agreed to pay a \$350,000 civil penalty to settle allegations that, on 175 occasions between October 1988 and June 1993, it failed to report to the Department its receipt of boycott-related requests from the United Arab Emirates (UAE). Sundstrand Dijon agreed to pay a \$200,000 civil penalty to settle allegations that, on 100 occasions during the same period, it failed to report to the Department its receipt of boycott-related requests from UAE, Bahrain, and Yemen.

Swiss and U.S. Companies Denied Export Privileges and Corporate Officers Fined for Illegal Exports. On January 11, 1996, Assistant Secretary for Export Enforcement John Despres denied the export privileges of Lasarray Corporation of Irvine, California, and Lasarray, S.A., of Switzerland. The period of the denial is 2 years. Additionally, Ernst Uhlmann, a Swiss businessman who owned Lasarray, received a civil penalty of \$50,000 (with \$25,000 suspended); Eugene T. Fitzgibbons, the former president of Lasarray Corporation, received a civil penalty of \$20,000 (with \$10,000 suspended); and Edwin Barrowcliff, a former vice president of Lasarray Corporation, received a civil penalty of \$20,000, all of which is suspended. The Department alleged that, between 1990 and 1991, Lasarray unlawfully exported base wafer integrated circuits to Switzerland without the required validated export license.

Civil Penalty of \$400,000 Imposed on Illinois Company for Alleged Export Control Violations. On January 31, 1996, the Assistant Secretary for Export Enforcement John Despres signed an order imposing a \$400,000 civil penalty on U.S. Robotics Access Corp. of Skokie, Illinois, for 123 alleged violations of the EAA and Regulations. The Department of Commerce alleged that, on 41 separate occasions between June 1990 and June 1992, U.S. Robotics exported U.S.-origin, high-speed computer modems from the United States to South Africa, Liechtenstein, Czechoslovakia, New Zealand, and Singapore, without obtaining from the Department the required validated licenses. In connection with each of these exports, the Department also alleged that the company falsely represented on air waybills and Shipper's Export Declarations that the modems qualified for export under general license when, in fact, a validated license was required. To settle the allegations, U.S. Robotics will pay \$300,000 of the \$400,000 penalty the Department imposed. Payment of the remaining \$100,000 is suspended for 1 year and will be waived if, during the 1-year period of suspension, U.S. Robotics does not violate the Act, Regulations, or any conditions of the Department's order.

Civil and Criminal Penalties Imposed on Oregon Company.
On February 12, 1996, Assistant Secretary for Export Enforcement John Despres imposed a civil penalty of \$40,000 (\$20,000 suspended for 1 year) on Patrick Lumber, of Portland, Oregon, for allegedly violating the embargo on exports to Libya. On the same day, Patrick Lumber was sentenced to pay a criminal fine of \$225,000 by the United States District Court in Portland, Oregon, following the company's guilty plea to a two-count indictment charging it with violating the IEEPA. The United States charged that, in 1993, Patrick Lumber exported two shipments of yellow pine wood worth over \$800,000 from the United States to Libya in violation of the IEEPA.

Under Secretary Affirms ALJ Decision and Order Imposing \$10,000 Civil Penalty on Florida Freight Forwarder for Antiboycott Violations. On October 30, 1995, the Under Secretary for Export Administration affirmed the May 1, 1995, decision of the Administrative Law Judge (ALJ) that Stair Cargo Services, Inc., of Miami, Florida, a subsidiary of Intertrans Corporation of Dallas, Texas, committed two violations of the antiboycott provisions of the Act and Regulations. The ALJ found that, in 1988, a Stair Cargo branch office in Inglewood, California, complied with a boycott-related request from Kuwait to provide the name of a supplier of goods and services for clearance by Kuwaiti boycott authorities, thereby furnishing information about that firm's business relationships with persons known or believed to be blacklisted. The ALJ also found that Stair Cargo failed to report to the Department its receipt of the boycott-related request, as required by the Regulations. The ALJ imposed a civil penalty of \$10,000 for these violations.

5. The expenses incurred by the Federal Government in the 6-month period from August 19, 1995, to February 19, 1996, 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 anticipated to be \$18 million, most of which represents program operating costs, wage and salary costs for Federal personnel, and overhead expenses.