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

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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. 1641(c)



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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 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, *May 6, 1997.*



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, 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. As required by the National Emergencies Act (50 U.S.C. 1622(d)), I issued notices on August 15, 1995 and August 14, 1996 continuing the emergency declared in Executive Order 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, 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 six 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 six-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 six-month periods from August 19, 1994 to February 19, 1995, from February 19, 1995 to August 19, 1995, from August 19, 1995 to February 19, 1996, and from February 19, 1996 to August 19, 1996. The following report covers the six-month period from August 19, 1996 to February 19, 1997.
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. The Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies currently has thirty-three member countries. During a general working group meeting of the Wassenaar Arrangement in September 1996, some members voluntarily exchanged information on certain license approvals and denials. In this session, the members also agreed on procedures for "confidentiality of information." In the following month's working session, the members conducted the first formalized reporting on licensing information. In December 1996, members met for the second plenary session of the Wassenaar Arrangement and elaborated the 1997 work program. There will be working group sessions in February, April and May 1997 to complete the 1997 list review and to continue the information exchanges. A plenary session may be held in June 1997.

Australia Group. The Australia Group (AG) is an informal multilateral body formed in 1984 to address concerns about the proliferation of chemical and biological warfare (CBW) capabilities. This is accomplished through harmonization of export controls and the exchange of information on CBW-related activities of concern. Currently, 30 governments, representing supplier or producer countries, are members.

As of October 1996, the Republic of Korea (South Korea) became the thirtieth member of the Australia Group. South Korea is to be treated as an AG member under U.S. regulations. This includes exemption from certain license requirements under the Export Administration Regulations for items controlled for CBW proliferation reasons.

On February 12, 1997, the Bureau of Export Administration (BXA) published a technical adjustment to the Commerce Control List to permit the export of solvents containing trace quantities of a controlled chemical precursor to most destinations without a license.

Nuclear Suppliers Group. The Nuclear Suppliers Group (NSG), currently composed of 34 member countries, maintains a control list of nuclear related dual-use items and guidelines for their control.

The Department of Commerce continues to issue license denials for NSG-controlled items as part of the "no-undercut" provision of the NSG. 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.

The Department of Commerce has also notified the NSG of denials for non-NSG controlled items that have been denied under the Enhanced Proliferation Control Initiative (EPCI) due to concerns about the end user. Other NSG members have also notified the NSG of denials under their "catch-all" controls for items that are not on the NSG Dual Use Control List.

The NSG is planning a "transparency" seminar in October 1997, in Vienna, Austria to discuss nuclear exports of the NSG member countries and their obligations under the Nuclear Non-Proliferation Treaty.

Missile Technology Control Regime (MTCR). 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 United States has continued to implement the MTCR controls during the reporting period.

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 government representatives of a number of foreign countries.

China. BXA officials met with the Director General of the Science and Technology Office in China's Ministry of Foreign Trade and Economic Cooperation, and members of his staff in September 1996 to discuss export controls. BXA is seeking a follow-up meeting.

Hong Kong. In November 1996, a BXA official began work with Hong Kong's Trade Department for a six-month period, in response to a request from the Hong Kong Government for technical assistance with commodity classifications and other technical issues. The Hong Kong Trade Department has been dependent on the British for technical expertise. They are now developing the expertise of their own officials who will be operating independently when Hong Kong reverts to the People's Republic of China on July 1, 1997.

Export Enforcement Visit to Malta and Cyprus. In November 1996, the Special Agent-in-Charge of Export Enforcement's Boston Field Office and other U.S. officials met with Maltese and Cypriot customs officials to discuss efforts to prevent illegal shipments, inspect air and marine carriers for such goods, investigate dubious end-users, and use automation to reduce the technical burden on customs and police officials.

Nonproliferation and Export Control Cooperation. In early 1994, BXA established the Nonproliferation and Export Control Cooperation (NEC) team to coordinate BXA's activities in support of U.S. export control cooperation programs involving the former Soviet Union, other newly emerging states in the Central Asian, Transcaucasian, and Baltic regions, and certain European states. From September 1996 to February 1997, the NEC team worked with representatives from the Departments of State, Defense, and Energy, and the U.S. Customs Service to coordinate technical exchanges with Russia and with the three Baltic states of Estonia, Latvia and Lithuania, in addition to the activities with Belarus, Ukraine and the Central Asian and Caucasian states noted below.

Central Asia/Caucasian Non-Proliferation Forum. In September 1996, BXA organized, with the Department of State, an export control and non-proliferation forum in Washington for officials from Armenia, Azerbaijan, Georgia, Kazakstan, Kyrgyzstan, Tajikistan, Turkmenistan, and Uzbekistan. U.S. and Turkish export control officials made presentations on legal and regulatory authority for dual-use and munitions controls, control list review, license review, preventive enforcement, U.S. Customs enforcement, and industry outreach.

Belarus Preventive Enforcement Workshop. In October 1996, BXA hosted a delegation from Belarus in Washington where Office of Export Enforcement representatives made presentations on headquarters operations and interagency cooperative efforts. The Belarusians traveled to Dallas, Texas, where the delegation met with Dallas Field Office personnel, a federal judge, a U.S. Attorney, and Customs officials.

Ukraine Exchanges. During the reporting period, BXA coordinated four exchanges with Ukrainian export control officials.

In September 1996, BXA led an interagency technical delegation to Kiev to provide assistance in implementation of the Ukrainian automated export licensing system.

In October 1996, eight high-level Ukrainian officials participated in an export control cooperation executive exchange in Washington. More than thirty experts from the Departments of Commerce, Defense, Energy, Treasury and State and from U.S. companies provided executive briefings. Key themes included export control administration, interagency coordination, legal elements, licensing practices, preventive enforcement, industry-government relations, automation, and customs techniques.

Also in October 1996, the Special Agent in Charge of the Office of Export Enforcement's Miami Field Office led an interagency team to a Preventive Enforcement Forum in Kiev to present case studies of export enforcement actions and to conduct exercises involving verification of actual licensed export transactions between the United States and Ukraine.

In January 1997, BXA organized an in-depth technical exchange in Washington on control lists, licensing procedures, and regulatory development for eight Ukraine export control experts charged with interpreting and implementing the national export control laws.

#### C. Regulatory Actions: Published and Pending

Commercial Communications Satellites and Hot Section Technology for the Development, Production or Overhaul of Commercial Aircraft Engines. BXA accepted jurisdiction over commercial communications satellites and hot section technology, formerly on the U.S. Munitions List, in a rule published on October 21, 1996. This rule also imposed enhanced national security and foreign policy controls on these items.

Encryption Items Transferred from the U.S. Munitions List to the Commerce Control List. On December 30, 1996, BXA published an interim rule transferring jurisdiction over commercial encryption products from the State Department to the Commerce Department. Additionally, this rule established a License Exception for export of recoverable encryption products meeting certain criteria. This exception also allows shipment of certain non-recoverable encryption products through December 31, 1998, provided the exporter commits to develop, produce, or market recoverable products.

Implementation of the Wassenaar Arrangement. BXA has circulated for interagency review the implementation of the Wassenaar Arrangement, including a revised Commerce Control List and new reporting requirements. The revised Commerce Control List continues to reflect the European Union list. We anticipate publishing this rule in spring of 1997.

D. Regulatory Reform

After publishing its comprehensive revision and reorganization of the Export Administration Regulations on March 25, 1996, BXA continues to receive public comments and suggestions. On December 4, 1996, BXA published a rule reorganizing and clarifying License Exceptions in response to comments from the exporting community. On December 23, BXA published revisions to the computer controls. Two follow-up rules making corrections and clarifications are in the interagency clearance process.

E. Export License Information

During this reporting period, BXA continued to receive many requests for export licensing information in enforcement proceedings and under the Freedom of Information Act. BXA continues to withhold from public disclosure information obtained for the purpose of consideration of, or concerning, export license applications, unless the release of such information is determined by the Under Secretary to be in the national interest, pursuant to Executive Order No. 12924's directive to carry out the provisions of the Export Administration Act, to the extent permitted by law.

F. Export Enforcement

Over the last six 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 six months, the efforts resulted in civil penalties, denials of export privileges, criminal fines, and imprisonment. Total penalties imposed from August 19, 1996, through February 14, 1997, amounted to \$606,600 in export control and antiboycott compliance cases, including criminal fines totaling \$130,600; in addition, twelve parties were denied export privileges.

**North Carolina Firm Receives \$122,500 Penalty for Illegal Export of Titanium and Maraging Steel:** On January 22, 1997, the Department imposed a \$122,500 civil penalty on Allvac, a Monroe, North Carolina, manufacturer, to settle allegations that the company violated the Export Administration Regulations (EAR). Based on an investigation conducted by Export Enforcement's

Washington Field Office, the Department alleged that Allvac made 48 shipments of titanium alloy products from the United States to Australia, China, France, Ireland, Israel, Italy, Japan, Germany, Switzerland, Taiwan, and the United Kingdom, as well as one shipment of a maraging steel product from the United States to Germany, all without the required U.S. export licenses. The shipments of the titanium alloy and maraging steel products, which are controlled for nuclear nonproliferation reasons, occurred from September 1991 to June 1993. Allvac voluntarily disclosed these shipments to the Department, and the Department agreed to suspend payment of \$47,500 of the penalty for one year, and then to waive payment of that amount provided Allvac commits no violation of the EAR during that period.

**Ohio Company Receives \$160,000 Civil Penalty for Illegal Titanium Shipments:** On January 8, 1997, the Department imposed a \$160,000 civil penalty on RMI Titanium, of Niles, Ohio, to settle allegations that the company violated the Export Administration Act and Regulations. Based on an investigation conducted by Export Enforcement's Washington Field Office, the Department alleged that RMI Titanium made six shipments of titanium alloy products to France and Israel without obtaining the required U.S. export licenses. The Department also alleged that the company made false and misleading statements of material fact on export control documents. The export of titanium alloy products is controlled for nuclear nonproliferation purposes.

**Texas Company Charged for Illegal Export of Computers to Chinese Nuclear Equipment Factory:** On December 20, 1996, New World Transtechnology (NWT), Galveston, Texas, pled guilty to a criminal information that charged the company with two counts of violating the International Emergency Economic Powers Act, and one count of making false statements. A criminal fine of \$10,000 was imposed and a special assessment fine of \$600 was levied against NWT.

Export Enforcement's Dallas Field Office initiated an investigation of NWT based on information provided by Export Enforcement's San Jose Field Office. As a result of the Dallas Field Office's investigation, the criminal information filed in the Galveston, Texas, division of the U.S. District Court for the Southern District of Texas, alleged that NWT had exported three Sun Microsystems computers to a nuclear equipment factory located in the People's Republic of China in August 1992, without the required validated export license. It was also alleged that, in October 1992, NWT attempted to illegally export a MIPS computer to the same destination in the People's Republic of China. Export Enforcement Special Agents seized another computer before it could be shipped to China via Hong Kong.

**Korelski, Doornbos, Plead Guilty to Conspiracy, Fined and Denied Export Privileges for Illegal Exports to Libya:** On December 18, 1996, the Department imposed a four-year denial of export privileges on both Doornbos GmbH of Solingen, Germany, and its general manager, Helmut Korelski, to settle allegations that they conspired to evade export control laws which restrict shipments of U.S.-origin equipment to Libya. As a result, neither Doornbos nor Korelski may engage in any transaction involving commodities, technology, or software exported from the United States.

Based on a joint investigation conducted by Export Enforcement's Washington Field Office and the U.S. Customs Service, the Department alleged that Doornbos and Korelski acquired U.S.-made machine parts and construction equipment by claiming that the ultimate destination was Germany, when in fact the goods were sold to the Dong Ah Consortium for use in the Great Man-made River Project in Libya. As a result of the investigation, Doornbos and Korelski also pled guilty to one count of conspiracy and Doornbos received a criminal fine of \$500,000 in U.S. District Court in Ohio.

**Ohio Company Receives \$200,000 Civil Penalty for Attempted Export of Five-Axis Milling Machines to PRC:** On October 2, 1996, Yuchai America Corporation of Cleveland, Ohio, agreed to pay a civil penalty of \$200,000 for alleged violations of the Export Administration Regulations. As the result of an investigation conducted by Export Enforcement's New York Field Office, the Commerce Department alleged that Yuchai America attempted to export two five-axis milling machines to the People's Republic of China without the required validated U.S. export license in May 1994, and made false and misleading statements of material fact on export control documents. Yuchai America neither admitted nor denied the allegations. Yuchai America is an affiliate of Yuchai Machinery Company, Ltd. of China.

5. The expenses incurred by the Federal Government in the six-month period from August 19, 1996 to February 19, 1997 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 \$20 million, most of which represents program operating costs, wage and salary costs for Federal personnel, and overhead expenses.