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PERIODIC REPORT ON THE NATIONAL EMERGENCY CAUSED BY THE LAPSE OF THE EXPORT ADMINISTRATION ACT OF 1979

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

A SIX MONTH PERIODIC REPORT ON THE NATIONAL EMERGENCY DECLARED BY EXECUTIVE ORDER 13222 OF AUGUST 17, 2001 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) AND 50 U.S.C. 1703(c)

JUNE 26, 2002.—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(c) 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 report prepared by my Administration, on the national emergency declared by Executive Order 13222 of August 17, 2001, 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.

GEORGE W. BUSH.

THE WHITE HOUSE, *June 25, 2002.*

PERIODIC REPORT ON THE NATIONAL EMERGENCY CAUSED BY THE LAPSE OF THE EXPORT ADMINISTRATION ACT OF 1979 FOR AUGUST 19, 2001 TO FEBRUARY 19, 2002

On August 17, 2001, in Executive Order 13222, I declared a national emergency under the International Emergency Economic Powers Act (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 (EAA) (50 U.S.C. App. 2401 et seq.), and the systems of controls maintained under that Act. In that order, I continued in effect, to the extent permitted by law, the provisions of the EAA, the Export Administrations Regulations (EAR) (15 C.F.R. et seq.), and the delegations of authority set forth in Executive Order 12002 of July 7, 1977 (as amended by Executive Order 12755 of March 12, 1991, and Executive Order 13026 of November 15, 1996), Executive Order 12214 of May 2, 1980, Executive Order 12851 of June 11, 1993, and Executive Order 12938 of November 14, 1994, as amended.

I issued Executive Order 13222 pursuant to the authority vested in me as President of the Constitution and laws of the United States, including, but not limited to, IEEPA. I also submitted a report to 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 and 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, to report to the Congress on the total expenditures directly attributable to that declaration. To comply with these requirements, I am submitting the following combined activities and expenditures report for the 6-month period from August 19, 2001, to February 19, 2002. Detailed information on export control activities is contained in the most recent Export Administration Annual Report for Fiscal Year 2001 and the January 2002 Report on Foreign Policy Export Controls, required by section 14 and section 6(f) of the EAA, respectively, which the Department of Commerce continues to submit to Congress under a policy of conforming actions under the Executive Order to the provisions of the EAA, as appropriate.

Since the issuance of Executive Order 13222, the Department of Commerce has continued to administer and enforce the system of export controls, including anti-boycott provisions, contained in the EAR. In administering these controls, the Department has acted under a policy of conforming actions under Executive Order 13222 to the provisions of the EAA, insofar as appropriate.

The expenses incurred by the Federal Government in the 6-month period from August 19, 2001, to February 19, 2002, 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's Bureau of Industry and Security (BIS). Expenditures by the Department of Commerce for the reporting period are anticipated to be $28,648,000, most of which represents program operating costs, wage and salary costs for federal personnel, and overhead expenses.

There have been several significant developments in the area of export controls since the EAA expired in August 2001:

A. MULTILATERAL DEVELOPMENTS

The Wassenaar Arrangement (WA)

The Wassenaar Arrangement is a multilateral regime currently consisting of 33 member countries. Its purpose is to contribute to regional and international security and stability by promoting transparency and greater responsibility in international transfers of conventional arms and dual-use goods and technologies.

In October 2001, a Wassenaar General Working Group Meeting discussed the increase in general information exchange regarding regions and projects of concern, specific information exchange on dual-use goods and technologies, and the scope of dual-use notifications. In light of the events of September 11, 2001, the United States introduced a proposal to ensure that Wassenaar's focus included combating terrorism; this proposal was subsequently approved. Discussions also centered around U.S. proposals for expanded reporting of conventional arms transfers, strengthening dual-use notification procedures by establishing a denial consultation procedure, and implementation of catch-all controls.

In November 2001 and February 2002, WA Expert Group meetings reviewed Wassenaar controls on conventional arms and dual-use goods and technologies. The proposals discussed at the November meeting were in the areas of electronics, computers, telecommunications, encryption, and machine tools. Proposals discussed at the February 2002 meeting focused on electronics, computers, machine tools, sensors and lasers, navigation and avionics, the definition of "specially designed," and Wassenaar's munitions list. Discussions also were held to seek agreement to relax controls on microprocessors and computers in light of rapid technological advances and controllability factors. The majority of Wassenaar members advocated a complete decontrol of general purpose microprocessors and a drastic liberalization of computer controls. However, members could not come to consensus on these issues. With a few notable exceptions, there was little agreement on changes to the dual-use and munitions control lists. Further discussions in these areas will resume during the April 2002 list review.

In December 2001, a special Expert Group meeting—to discuss controls on general purpose microprocessors and computers, and the annual Plenary meeting were held. Members underlined the importance of strengthening export controls and reaffirmed their commitment to maintain responsible national policies in the licensing of exports of arms and sensitive dual-use items. The Plenary approved the U.S. proposal to add prevention of the acquisition of

conventional arms and dual-use goods and technologies by terrorist groups as a focus of the regime. The Plenary approved a revised statement of understanding on intangible transfers of technology and software, agreed to subject two additional sub-categories of military items to mandatory arms export reporting, and agreed to a number of control list amendments. The Plenary also agreed to continue the study of options for increasing the efficiency of export controls, including a catch-all mechanism and a denial consultation procedure. These measures will be discussed during the May 2002 General Working Group Meeting.

The United States also continues to participate in submissions of export data made by regime members. Wassenaar members make dual-use data submissions on a semi-annual basis in April and October.

The Missile Technology Control Regime (MTCR)

The MTCR is an informal multilateral nonproliferation regime of 33 countries that have agreed to coordinate their national export controls for the prevention of missile proliferation. Each member, under its own laws and practices, adheres to the export licensing policy reflected in the MTCR Guidelines for items found on the MTCR Equipment and Technology Annex.

The United States participated in the annual MTCR Plenary held in Ottawa, Canada on September 24–28, 2001. At the Plenary, the MTCR Partners shared information about activities and programs of missile proliferation concern, agreed that the risk of proliferation of WMD and their means of delivery remained a major concern for global and regional security, and considered additional steps they can take, individually and collectively, to prevent the proliferation of delivery systems for weapons of mass destruction. To this end, the Partners held a special meeting for enforcement officers to foster greater cooperation in stopping and impeding specific shipments of missile proliferation concern. They also reaffirmed the important role played by export controls and the need to strengthen them further and implement them vigorously. The Partners also discussed ways to promote outreach to non-members on key controls and the need to strengthen them further and implement them vigorously in addition to key issues such as the global missile threat, missile related export controls and transshipment.

The Nuclear Suppliers Group (NSG)

The NSG, composed of 39 countries and the European Commission as a permanent observer, is an informal group of nations concerned with the proliferation of nuclear weapons.

The NSG has established guidelines to assist member nations in administering national nuclear export control programs. Controls are focused on certain categories of goods: nuclear material, equipment and technology unique to the nuclear industry, and so-called nuclear dual-use items that have both nuclear and non-nuclear applications.

At the annual NSG Plenary held in May 2001, members agreed that the two segments of the NSG organization devoted to dual-use (Commerce Department) and "trigger list" (Nuclear Regulatory Commission for components, and Department of Energy for tech-

nology and services) items would be combined into one administrative unit. To reflect this new structure, members agreed to establish a new Consultative Group (CG) that will meet twice a year to review the guidelines, control lists, and overall activities of the NSG. The first meeting of the CG, which replaces the NSG Dual Use Regime, the Information Sharing Working Group, and the Transparency Working Group, occurred in Vienna, Austria, on November 29, 2001. It was also agreed that the NSG would consider having an intensified dialogue with non-NPT parties.

At this first CG meeting, it was agreed to limit the number of items caught by a control on linear displacement measurement devices through the addition of a technical note of explanation in the NSG Guidelines. This clarification will limit the control to those more sophisticated items that are directly useful in the creation of weapons of mass destruction. Agreement also was reached to hold the first Export Enforcement Experts meeting at the 2002 NSG Plenary to be held in Prague, the Czech Republic in May 2002; to review the NSG Guidelines for ways to address the nuclear terrorism threat; and to hold the 2003 NSG Plenary in South Korea.

The Australia Group (AG)

The AG is an informal multilateral nonproliferation regime that seeks to impede the proliferation of chemical and biological weapons through the harmonization of export controls, an exchange of information on global proliferation activities, and outreach to nonmembers. The 33-member countries meet annually and communicate intersessionally to review and refine the list of controlled chemicals, biological agents, and related equipment and technology.

At the October 2001 AG Plenary Session, the Group reaffirmed the members' continued collective belief in the AG's viability, importance and compatibility with the Chemical Weapons Convention (CWC) and Biological Weapons Convention (BWC). Responding to the terrorist events of September 11, AG participants also agreed that strengthening the regime to better counter CBW proliferation and CBW terrorism should be a priority. Participants agreed to several proposals aimed at plugging loopholes in current AG export controls; they also agreed that export controls, regional nonproliferation and countering CBW terrorism will be the main focus of the Group for the foreseeable future. Members also continued to agree that full adherence to the CWC and Biological Weapons Convention (BWC) by all governments will be a key to achieving a permanent global ban on chemical and biological weapons, and that all states adhering to these Conventions must take steps to ensure that their national activities support these goals. The Group welcomed Bulgaria as its newest member and reaffirmed its commitment to continue its active outreach program of briefings for non-AG countries, and to promote regional consultations on export controls and nonproliferation to further awareness and understanding of national policies in these areas.

At a February 2002 intercessional meeting, an understanding was reached on two Department of Commerce proposals that would create export controls on biotechnology, and change the criteria for controls on chemical process valves. Three other Commerce proposals that would expand controls on shipments of dual-use chemi-

cals, biological agents, and related equipment to include items useful in terrorist activities were favorably considered. These proposals were considered in detail at a Technical Experts Meeting in March 2002. AG export controls currently focus on items that can support militarily significant, state-run programs. The United States is seeking to augment AG controls with measures directed at commodities and technology that can be used to support terrorist activities.

The Chemical Weapons Convention (CWC)

The CWC is an international arms control and nonproliferation treaty that bans chemical weapons and monitors the legitimate production, processing, consumption, export, and import of certain toxic chemicals and precursors that could contribute to the development of weapons of mass destruction. Certain export control provisions of the Convention are reflected in the EAR.

B. ENCRYPTION/HIGH PERFORMANCE COMPUTER POLICY

Encryption

To conform with Wassenaar changes, the Administration conducted a review of encryption policy to revise relevant provisions of the EAR. The Bureau of Industry and Security (BIS) also examined its encryption classification and licensing process to update these processes within the proposed policy revisions. As part of this policy and process review, BIS worked with industry representatives, technical advisory committees, and interagency groups to balance security and economic concerns. The Regulations and Procedures Technical Advisory Committee (RPTAC) held meetings on September 11 and December 4, 2001, to seek input from industry.

United States encryption export control policy continues to rest on a three-prong foundation: technical reviews of encryption products prior to export; post-export reporting requirements; and license reviews of certain exports of strong encryption to foreign government end-users. The proposed changes to encryption policy continue to support these foundations and align U.S. policy with multilateral policy agreed to at Wassenaar.

The charter fulfillment of the President's Export Council Subcommittee on Encryption (PECSENC) also occurred during the reporting period. Since the PECSENC's inception on May 16, 1997, it worked to support the growth of electronic commerce and protect public safety and national security interests. In two meetings in 2001, the PECSENC reviewed the national security and business implications of post-export reporting requirements and provided to BIS a set of recommendations for possible changes and updates. The PECSENC's charter expired on September 30, 2001.

High performance computer and microprocessor controls

Export controls on high performance computer (HPCs) and microprocessor were further revised between August 20, 2001, and February 19, 2002. On January 2, 2002, the Administration announced its decision to update controls for HPCs and microprocessors by raising the HPC control threshold on Computer Tier 3 countries from 85,000 to 190,000 Millions of Theoretical Oper-

ations per Second (MTOPS) and increasing microprocessor control levels from 6,500 to 12,000 MTOPS. The Administration also will move Latvia from Computer Tier 3 to Computer Tier 1.

As of February 19, 2002, the Administration also had implemented one revision to Category 4 of the Commerce Control List (CCL) and the License Exception for computer exports to conform to Wassenaar changes that removed national security controls on expert system software as described by Export Commodity Control Number 4D003.b.

The Administration continues to seek private sector input on HPC and microprocessor controls through regular discussions with industry groups, such as the Information Security Technical Advisory Committee (ISTAC). The ISTAC is comprised of leading industry experts and has worked with BIS to find alternative measurement tools for controls on HPCs and microprocessors.

C. 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 with a wide range of discussions with a number of countries.

The Middle East

A transshipment initiative in the Middle East included a delegation to the United Arab Emirates in October 2001. United States officials made presentations on various aspects of export controls as part of this initiative.

Eastern Europe

In September 2001, the United States participated in the Third Annual International Conference on Export Controls, which was held in the United Kingdom, and co-hosted by the United States and the United Kingdom. Thirty European countries participated in the conference, which considered the status of international export control programs, assessed programs geared toward improving the export control systems of the nations of the former Soviet Union, and developed recommendations to improve the international export control system.

Nonproliferation and Export Control International Cooperation Program

From August 20, 2001, through February 19, 2002, interagency representatives participated in 23 technical exchanges on export controls. The exchanges included the "Symposium for International Export Control officials" in Washington, DC and the Third Drafting Workshop for the central Asia and Caucasus region Draft Regional Transit Agreement. These exchange sought to familiarize participating governments with the elements of an export control system consistent with international standards, and to assist these governments to develop and strengthen their own export control systems.

Firearms convention

The Inter-American Convention Against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives, and Other

Related Materials (Firearms Convention) is a treaty that Organization of American States (OAS) member countries signed to control the flow of firearms. The Convention was signed in 1998 but awaits ratification by a number of OAS member countries, including the United States. The Convention requires OAS member states to establish a program to issue authorizations for the import and export of firearms. Although BIS has implemented most of the Convention requirements related to the export of firearms, the United States has not executed those pertaining to transit and explosives. An interagency working group was continuing its work on this issue at the end of the reporting period.

D. REGULATORY ACTIONS: PUBLISHED AND PENDING

Wassenaar Arrangement

On January 3, 2002, BIS published a final rule revising certain entries controlled for national security reasons in Categories 1, 2, 3, 5 Part I (Telecommunications), 6, 7, and 9 of the CCL to conform with changes in the Wassenaar Control List agreed to in December of 2000.

Entity list

On December 21, 2001, BIS published a rule amending the EAR to remove two Russian Entities from the Entity List found at Supplement 4 to part 744 of the EAR. The State Department determined on November 17, 2000, that it was in the foreign policy and national security interests of the United States to remove nonproliferation measures on these two entities.

Missile technology

On December 20, 2001, BIS issued an Advance Notice of Proposed Rulemaking to review the existing license exemption contained within the EAR for the export of missile technology (MT)-controlled items to Canada. This action was recommended by the Government Accounting Office (GAO) in a report entitled: "Export Controls: Regulatory Change Needed to Comply with Missile Technology Licensing Requirements" (GAO–01–530). BIS sought comments on how removing the existing licensing exemption for MT-controlled exports to Canada would affect industry and more specifically the exporting community. Comments were due by February 19, 2002.

India and Pakistan: Lifting of sanctions

On September 22, 2001, the President waived sanctions placed on India and Pakistan in May 1998, including those sanctions implemented by regulations issued on November 19, 1998. On October 1, 2001, BIS published a rule implementing the waiver of these sanctions by removing the policy of denial for exports and reexports of items controlled for Nuclear Proliferation (NP) and MT reasons to India and Pakistan and restoring the use of license exceptions for these items for entities not on the Entity List. In addition, this rule removed a large number of Indian and Pakistani entities from the Entity List.

Australia Group and Chemical Weapons Convention Controls

On September 28, 2001, BIS published a rule implementing agreements reached at the October 2000 plenary meeting of the AG. This final rule amended the CCL and the corresponding export licensing provisions in the EAR to liberalize controls and certain medical, analytical, diagnostic, and food testing kits, implement a new AG policy on mixtures, and clarify controls on certain chemical manufacturing equipment. Furthermore, the rule added Cyprus and Turkey to the countries that participate in the AG, thereby eliminating license requirements for exports and reexports of certain AG-controlled items to these countries. This rule also amended the CWC-related provisions in the EAR to clarify the export license requirements and policies for certain toxic chemicals and precursors listed in the Schedules of Chemicals contained within the Annex on Chemicals to the CWC. Finally, this rule updated the list of countries that are currently States Parties to the CWC by adding the following countries: Azerbaijan, Colombia, Dominica, Eritrea, Gabon, Jamaica, Kazakhstan, Kiribati, Liechtenstein, Malaysia, Mozambique, Nicaragua, San Marino, The United Arab Emirates, Yemen, the Federal Republic of Yugoslavia (Serbia and Montenegro), and Zambia.

E. EXPORT LICENSE INFORMATION

During the reporting period, BIS continued to receive many requests for export licensing information through the Freedom of Information Act and through discovery requests during enforcement proceedings. Consistent with section 12(c) of the EAA, BIS 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 13222's directive to carry out the provisions of the EAA, to the extent permitted by law.

F. OFFICE OF INSPECTOR GENERAL AND THE GENERAL ACCOUNTING OFFICE STUDIES

During the reporting period, BIS continued its cooperation with the Office of Inspector General (OIG) and the GAO. Specifically, OIG continued two and closed two studies, and GAO initiated 14, continued 16, and closed three studies.

G. EXPORT ENFORCEMENT

In the reporting period, BIS's Export Enforcement, through its offices of Enforcement Analysis, Export Enforcement, and Anti-Boycott Compliance, continued its programs to prevent diversions of controlled items, investigate and enforce export control violations, and enforce U.S. anti-boycott rules.

Office of Enforcement Analysis (OEA)

In the reporting period, OEA continued to expand its Visa Review Program. This program targets visa applications of foreign nationals who may be entering the United States to access technology controlled for national security reasons or to procure items useful

for weapons of mass destruction programs. The Visa Review Program also provided leads to BIS's Office of Export Enforcement relating to possible terrorist activities identified subsequent to the terrorist attacks of September 11, 2001.

OEA prevention activities also include a plan to target and prioritize pre-license checks (PLCs) and post-shipment verifications (PSVs) to ensure that such end-use visits reflect the full range of U.S. export control concerns. PLCs validate information on export license applications, including end-user reliability. PSVs strengthen assurances that exporters, shippers, consignees, and end-users comply with the terms of export licenses. The overall objective for conducting PLCs and PSVs is to detect and prevent the illegal transfer of controlled U.S.-origin items.

Another OEA activity is to compile information regarding parties of concern and to maintain a watch list. Parties on the watch list are screened against names of license applications received by BIS to assess diversion risks, identify potential violations, and determine the reliability of proposed end-users of controlled U.S. items.

On December 20, 2001, as required by the National Defense Authorization Act for FY 1998, BIS delivered to the Congress its fourth annual report on HPC exports to Computer Tier 3 countries.

Office of Export Enforcement (OEE)

During this reporting period, OEE opened 489 investigations, some of which led to both criminal and administrative sanctions. A total of $4,419,000 in civil penalties and criminal fines were imposed for violations during this period. OEE also issued 70 warning letters in cases of minor violations, informing the recipients that OEE had reason to believe they had violated the EAR, and that increased compliance efforts were warranted.

Office of Anti-boycott Compliance (OAC)

OAC implements the anti-boycott provisions of the EAA and the EAR. OAC performs three main functions: enforcing the EAR, assisting the public in complying with anti-boycott provisions, and compiling and analyzing information regarding international boycotts. During the reporting period, OAC opened nine cases, closed 13 investigations, and imposed $9,000 in civil penalties.

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