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

COMMUNICATION

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—RECEIVED IN THE UNITED STATES HOUSE OF REPRESENTATIVES DECEMBER 2, 1996, PURSUANT TO 50 U.S.C. 1703(c) AND 50 U.S.C. 1641(c)

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THE WHITE HOUSE,
Washington, DC, December 2, 1996.

Hon. NEWT GINGRICH,
Speaker of the House of Representatives,
Washington, DC.

DEAR MR. SPEAKER: 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.

Sincerely,

WILLIAM J. CLINTON.

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, and from August 19, 1995 to February 19, 1996. The following report covers the six-month period from February 19, 1996 to August 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. During a successful plenary meeting in Vienna on July 11-12, 1996, the 33 members of the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-use Goods and Technologies approved the regime's framework document and the initial elements. The parties also approved the munitions and dual-use control lists (which include machine tools), arrangements necessary for establishing the secretariat in Vienna (including a budget), a detailed work program, and a November 1, 1996 target date for implementing the control lists. The next plenary will meet in Vienna in December 1996.

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 capabilities. This is accomplished through harmonization of export controls and the exchange of information on CBW-related activities of concern. Currently, 29 governments, representing supplier or producer countries, are members.

- 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. These changes in biological export controls were included in the revised EAR published on March 25, 1996 (61 Fed. Reg. 12714), and incorporated in the old EAR on August 8, 1996 (61 Fed. Reg. 41326).

- The AG also agreed at the October 1995 plenary to tighten controls on license-free sample shipments. Accordingly, BXA is continuing to monitor its recently revised sample shipments rule by reviewing the required quarterly reports from exporters.

- BXA will soon publish a technical adjustment to the Commerce Control List to permit the export of certain mixtures containing trace quantities of a controlled

chemical precursor to most destinations without a license.

- A U.S. delegation prepared for the October 1996 meeting for intensified information exchange on chemical and biological warfare terrorism.

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 NSG member countries are nearing completion of the effort to restructure the control language to better reflect nuclear proliferation concerns and allow for more effective implementation of export controls on 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.

- The NSG welcomed Brazil and Ukraine as new members in April 1996.

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 includes 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.

- In June 1996, a majority of the MTCR members held an intercessional meeting in Paris to discuss regional nonproliferation issues. The findings of the session will be reported to the full MTCR membership for multilateral consensus at the October plenary.

- In July 1996, the United States hosted an MTCR Transshipment Seminar in Washington. It was a ground-breaking meeting for nonproliferation regimes in that both member and non-member countries were invited to discuss common transshipment issues of concern. The results of the seminar will also be reported to the full MTCR membership in October.

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.

Hong Kong/Taiwan Talks. In May 1996, BXA participated in an interagency delegation that held export control talks with Hong Kong and British officials and with Taiwan officials. In Hong Kong the talks centered on building nonproliferation expertise among the Hong Kong officials to replace their reliance on British expertise. Hong Kong officials also came to Washington in July 1996 to participate in the Missile Technology Control Regime's transshipment seminar. Other Hong Kong officials came in August 1996 to meet with nonproliferation-control experts at BXA and at the State Department and to attend the Department of Energy's Nuclear Nonproliferation seminar. In Taiwan, talks focused on helping Taiwan authorities adopt non-proliferation controls now that they have munitions and dual-use goods controls in place.

Israeli Talks. In July 1996, a group of Israeli export control officials came to Washington for a five-day program that included participation in BXA's annual "Update" conference and briefings at the Departments of State and Defense. In addition, BXA conducted a one-day program to discuss BXA's licensing process, computer system, and export control legal authorities.

Russian Exchanges. In March 1996, BXA hosted the first preventive enforcement technical workshop with Russia. A six-person delegation, headed by the Deputy Director of Russia's State Customs Committee, met in Washington and Miami to discuss techniques and authorities for effective enforcement to prevent the proliferation of weapons of mass destruction. The program was intended to present both headquarters and field office

perspectives on interagency programs and relationships, viewed in the context of a case study presented by investigators, an assistant United States attorney, and a U.S. District Judge.

In April 1996, BXA hosted the second legal and regulatory technical forum for a seven-person delegation. The group met in Washington to receive briefings on the operation of the U.S. export control system, focusing on the responsibilities of the Commerce Department for dual-use items and related technology.

In June 1996, BXA participated in a briefing hosted by the Russian government on the operation of Russia's export control system. Russian ministries, organizations, and enterprises gave presentations regarding how munitions and military end-use items are licensed, and discussed legal and regulatory developments, as well as organizational and structural changes during the six months following the December 1995 briefings.

Nonproliferation and Export Control Cooperation. In early 1996, BXA established the Nonproliferation and Export Control Cooperation (NEC) team as an entity within the Office of the Under Secretary to coordinate BXA's resources and expertise 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 February to August 1996, the NEC team, with representatives from the Departments of State, Defense, and Energy, and the U.S. Customs Service, coordinated 12 cooperative exchanges with Ukraine, Kazakstan, Belarus, Bulgaria, and Romania, in addition to the activities with Russia noted above.

C. Regulatory Actions: Published and Pending

Commodity Jurisdiction: Communications Satellites and Hot Section Technology. In July, BXA circulated for interagency review a final rule that amends the Commerce Control List (CCL) to control all commercial communications satellites transferred from the U.S. Munitions List. This rule also expands national security and foreign policy controls on commercial communications satellites and hot section technology for the development and production of commercial aircraft engines, and clarifies the jurisdiction for developmental aircraft for civil use.

Implementation of the Wassenaar Arrangement. BXA is drafting regulations to implement the Wassenaar Arrangement. We anticipate that the rule will be published in late 1996. In July, BXA circulated for interagency review a final rule that adopts the Wassenaar Arrangement's national security controls for materials processing items and expands license exception eligibility for certain numerically controlled machine tools,

units specially designed for machine tools, and certain spin forming and flow forming machines for civil end-users in the former COCOM-proscribed destinations, while extending controls on other machine tools.

Chemical Weapons Convention Regulations. BXA is drafting regulations to implement the obligations of the United States upon receiving the advice and consent of the Senate to ratification of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction (CWC). The CWC regulations will impose new reporting requirements on U.S. industry for the production, processing, consumption, import and export of certain chemicals useful in the development of chemical weapons.

Expansion of Foreign Policy Controls for Sudan. On June 14, BXA circulated for interagency review a final rule that imposes foreign policy controls on exports to Sudan under section 6(a) of the Export Administration Act of 1979, as amended (EAA), and reflects controls imposed in 1993 on Sudan under section 6(j) of the EAA. This revision is consistent with the Secretary of State's determination that the Government of Sudan has repeatedly provided support for acts of international terrorism. BXA notified Congress of the decision to extend foreign policy controls on exports to Sudan on January 21, 1996 in the Department of Commerce Annual Foreign Policy Report, and incorporated these controls through an interim rule published in the Federal Register on March 25, 1996.

Imposition of Economic Sanctions on Iran. On March 5, 1996, BXA published a final rule in the Federal Register that implemented the imposition of additional economic sanctions on Iran as a result of the issuance of Executive Order 12959 on May 6, 1995. The Executive Order delegates implementation responsibility to the Department of the Treasury's Office of Foreign Assets Control, including authority for exports and certain reexports.

D. Regulatory Reform

On March 25, 1996, BXA published in the Federal Register an interim 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 regulation more user-friendly." This rule also implemented a new numbering system for the Commerce Control List to correspond to the numbering system used by the European Union. BXA has involved the exporting community in every step of the process, releasing early drafts as "discussion packages," conducting "town hall" meetings in 13 states, and redrafting to incorporate the

many industry comments and suggestions received from the proposed rule. The provisions of the new EAR became effective April 24, 1996. Exporters may use either the "old" EAR or the "new" EAR until December 31, 1996.

E. Executive Order for License Processing.

Executive Order No. 12981 for the Administration of Export Controls became effective on February 5, 1996. The Executive Order implements export control procedural reforms while providing greater protection of national security and nonproliferation interests. Such reforms were advanced by the Administration last year in its proposal for a new Export Administration Act. Executive Order 12981 institutes firm time limits for export license application review by other U.S. agencies and establishes an orderly procedure to resolve interagency disputes that limits the right to escalate disagreements to political-level officials. This procedure results in establishing further accountability throughout the review process. The maximum time permitted to process licenses is reduced by 25%, with all cases resolved or escalated to the President, if necessary, no later than 90 calendar days after their receipt by the BXA.

F. 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.

G. Strategic Industries/Economic Security

Denied License Foreign Availability Determination. At the request of a U.S. firm, BXA initiated a denied license foreign availability assessment on November 6, 1995, involving three export license applications for the People's Republic of China (PRC). The purpose of the denied license assessment procedure is to determine whether a specific export license application should be approved on the grounds of foreign availability. On March 15, 1996, the Assistant Secretary for Export Administration determined that foreign availability existed for semiconductor automated test equipment (ATE) controlled for national security reasons described in the export license applications that had

been denied by BXA. However, an interagency review of the denied export license applications resulted in a decision to maintain the license denials pursuant to the provisions of the Enhanced Proliferation Control Initiative (EPCI), because the proposed exports would have made a material contribution to the missile-related activities of the Peoples Republic of China. The license denials were maintained, notwithstanding evidence of foreign availability, because foreign availability procedures apply only to the extent that an item is controlled for national security reasons.

H. Short Supply Controls

Alaskan North Slope Crude Oil. On May 31, 1996, BXA published a final rule authorizing certain exports of Alaskan North Slope crude oil under license exception "TAPS." This rule was issued pursuant to Section 201 of the Alaska Power Administration Asset Sale and Termination Act (November 28, 1995) and the President's April 28, 1996 determination under the Act that such exports are in the national interest. BXA's authority to enforce the conditions of license exception TAPS still depend on the provisions of the Export Administration Act continued in effect pursuant to the national emergency declared by the President in E.O. 12924.

I. 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, these efforts resulted in civil penalties, denials of export privileges, criminal fines, and imprisonment. Total penalties imposed from February 15, 1996 through August 18, 1996, amounted to $781,560 in export control and antiboycott compliance cases, including criminal fines totalling $24,560; in addition, six parties were denied export privileges.

Subtech President Sentenced To Ten Months' Imprisonment For Violation Of Trade Embargo In Iraq: On February 13, 1996, Walton McCarthy, the President of Subtech, Inc., New Hampshire, was sentenced in the U. S. District Court in Boston to ten months imprisonment and three years supervised release for violations of the U.S. trade embargo with Iraq. McCarthy must also make restitution in the amount of $29,260 and pay a special assessment of $50. Subtech, Inc., received a sentence of five years probation and restitution in the amount of $29,260 (to be offset by any restitution paid by McCarthy) and pay a special assessment of $200. McCarthy and Subtech, Inc. pled guilty to selling an underground tactical command shelter to an undercover agent,

knowing it was to be exported to Iraq illegally. The case was investigated by Export Enforcement's Boston Field Office, the U.S. Customs Service, and the Naval Criminal Investigative Service. An administrative case seeking denial of export privileges under Section 11(h) of the Export Administration Act is currently being pursued.

Massachusetts Businessman, New Jersey Freight Forwarder Plead Guilty to Illegal Shipments of Police Equipment to Romania: On March 15, 1996, William McNeil, Vice-President of Protech Armor Products and former Vice-President and Treasurer of Custom Armoring Corporation of Pittsfield, Massachusetts, and Brian O'Day, former export manager for Elite Worldwide Services in Newark, New Jersey, pled guilty in the U.S. District Court for the District of Columbia to charges that they illegally shipped electronic riot shields to Romania in 1991. The shields were controlled for shipment to Romania for foreign policy and human rights reasons. Their pleas are the result of investigations conducted by Export Enforcement's Boston Field Office.

Northern CA Businessman Pleads Guilty in Joint Case: On March 4, 1996, Humberto Jose Agrela pled guilty to an Information filed by the U.S. Attorney's Office in Fresno, California. Doing business as Basic Export Inc., of Modesto, California during 1994 and 1995, Agrela solicited orders for computer components and received payments from foreign customers, but never shipped the orders and kept the money. As part of the plea agreement, Agrela agreed to make full restitution of $193,299.68 to five known victim foreign companies. The Information to which Agrela pled guilty on March 4, 1996, was the result of a joint investigation conducted by the U.S. Customs Service in Sacramento, the FBI, and Export Enforcement's San Jose Field Office.

ISP International Spare Parts GmbH Settles Alleged Violations for Reexports to Libya: On June 11, 1996, Assistant Secretary for Export Enforcement John Despres ordered ISP International Spare Parts GmbH of Germany to pay a civil penalty of $40,000 fine and imposed a ten-year denial of export privileges, the last three years of which are suspended, to resolve allegations that ISP conspired to reexport and reexported oil field equipment to Libya from Malta and Germany without the required authorization. Additionally, Assistant Secretary Despres imposed a ten-year denial of export privileges, the last nine years of which are suspended, on ISP's director, Wolfgang Nothacker. The case was a result of an investigation by Export Enforcement's New York Field Office.

Abbott Subsidiaries Receive $75,000 in Administrative Penalties for Boycott Violations: On May 10, 1996, Assistant

Secretary for Export Enforcement John Despres ordered three subsidiaries of Abbott Laboratories to pay a total of $75,000 in civil penalties to settle three antiboycott cases. Abbott Laboratories, located in Abbott Park, Illinois, voluntarily disclosed the matter to Export Enforcement's Office of Antiboycott Compliance.

The Office of Antiboycott Compliance (OAC) alleged that the Sequoia Turner Corporation, a Mountain View, California based manufacturer and exporter of pharmaceutical products, furnished one item of information about its business relationships with Israel in connection with an export transaction to Jordan and failed to report four receipts of boycott requests from Jordan and the United Arab Emirates. Sequoia Turner agreed to pay a $6,000 civil penalty for the five alleged violations.

Abbott GmbH, a German based manufacturer and exporter of pharmaceutical products, agreed to pay a $36,000 civil penalty to settle allegations that, on one occasion, Abbott GmbH agreed to refuse to do business with boycotted companies in connection with an export transaction to the United Arab Emirates. OAC also alleged that Abbott GmbH failed to report 33 receipts of boycott requests from Kuwait, Qatar, Iraq, Bahrain, Saudi Arabia and the United Arab Emirates.

The third subsidiary, Abbot Laboratories S.A. based in Geneva, Switzerland, agreed to pay a $33,000 civil penalty to settle allegations against it.

David McKeeve/McNeil International Convicted of Violating U.S. Export Control Laws, U.S. Sanctions on Libya: David McKeeve was arrested in November 1995 by Special Agents from Export Enforcement's Boston Field Office as he was attempting to export computer equipment illegally to Libya.

On May 30, a U.S. District Court jury in Boston, Massachusetts convicted McKeeve, a national of the United Kingdom, and his Scotland-based company, McNeil International of violating the Export Administration Regulations and the International Emergency Economic Powers Act's embargo on Libya and with conspiracy and making false statements.

On August 22, 1996, McKeeve was sentenced to 51 months in federal prison, 36 months of supervised release, and a $150 special assessment. McNeil International was fined $125,000 (the projected profit by McNeil International for the transaction) and a $200 special assessment. Additionally, a forfeiture order has been granted for the computer equipment valued at $330,000. The Office of Export Enforcement will initiate administrative proceedings based upon the convictions.

Sombergs Arrested for Illegal Exports Possibly Related to Aum Religious Cult: On June 3, 1996, Milton Somberg, President, and his son Howard Somberg, Vice President, of Rothco in Smithtown, New York, were arrested by Special Agents from Export Enforcement's New York Field Office and from the U.S. Customs Service.

In a complaint filed in the U.S. District Court for the Eastern District of New York, the two were charged with illegally exporting military and police products regulated by the U.S. Departments of State and Commerce. The illegal exports included stun guns, tear and pepper gas, handcuffs, night vision equipment, semi-automatic ammunition magazines, deactivated hand grenades and chemical protective suits. The illegal exports were destined to various countries, including Japan, Peru, Bolivia, Paraguay and the Czech Republic.

The investigation which led to the arrests began after the receipt of allegations of possible links between U.S. military and police surplus equipment firms and the Aum Shinrikyu ("Aum"), a Tokyo based religious sect whose leader is currently being prosecuted for the March 20, 1995, fatal sarin gas attack on the Tokyo subway system. The investigation revealed that in the days prior to the March 20 attack, a company owned by the Aum had contracted with Rothco for the purchase and export of 400 Israeli-made gas masks. On March 2, 1995, Rothco shipped ten cartons of the gas masks, falsely labeled as "facemasks," to Fremont, California, for transshipment to Tokyo. U.S. Customs agents seized the gas masks prior to their scheduled export to Japan.

The Sombergs were arraigned before Magistrate Arlene Lindsay at the U.S. Courthouse in Hauppauge, New York and were released on $25,000 bond each. A hearing date will be scheduled.

Sigma Chemical Penalized for Illegal Biotoxin Exports: On July 9, 1996, Assistant Secretary for Export Enforcement John Despres ordered Sigma Chemical Company of St. Louis, Missouri to pay $480,000 in civil penalties to settle allegations that between July 1992 and January 1993, it violated export controls on biological agents by shipping U.S.-origin biotoxins to various countries without the required export licenses on 48 separate occasions.

The action against Sigma was the result of an investigation by Export Enforcement's Chicago Field Office, and was prompted by a 1992 study by the General Accounting Office of U.S. and international efforts to ban biological weapons, requested by

then-Senator Al Gore. This is the first case imposing civil penalties on a firm for exporting biological agents illegally.

Arab Banking Corporation to Pay Civil Penalty for Alleged Antiboycott Violations: On July 8, 1996, Assistant Secretary for Export Enforcement John Despres ordered the Arab Banking Corporation (ABC), a New York branch of Arab Banking Corporation of Bahrain, to pay a $30,500 civil penalty on ABC to settle allegations that, between April 1990 and July 1993, ABC failed, on three occasions, to maintain a record related to a boycott request from Jordan, and on seven occasions, failed to report receipt of boycott requests from Iraq, Syria, and Jordan, as required by the antiboycott regulations.

5. The expenses incurred by the Federal Government in the six-month period from February 19, 1996 to August 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 $16 million, most of which represents program operating costs, wage and salary costs for Federal personnel, and overhead expenses.

O