AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

106th Congress, 1st Session – – – – – – – – – – – – – – House Document 106–85

A REPORT ON THE NATIONAL EMERGENCY DECLARED BY EXECUTIVE ORDER 12924

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

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, PURSUANT TO 50 U.S.C. 1703(c)

June 25, 1999.—Message and accompanying papers referred to the Committee on International Relations and ordered to be printed

U.S. GOVERNMENT PRINTING OFFICE

69–011 WASHINGTON : 1999

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, *June 24, 1999.*

President's Periodic Report on the National Emergency

Caused by the Lapse of the Export Administration Act of 1979

for

August 19, 1998, to February 19, 1999

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. 730 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, August 14, 1996, August 13, 1997, and August 13, 1998, continuing the emergency declared in Executive Order No. 12924.

2. In 1996, I issued two Executive Orders concerning the transfer of items from the United States Munitions List to the Commerce Control List. On October 12, 1996, I issued Executive Order No. 13020 (regarding hot-section technologies for commercial aircraft engines) and on November 15, 1996, I issued Executive Order No. 13026 (regarding encryption products).

3. 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 ending February 19, 1995, August 19, 1995, February 19, 1996, August 19, 1996, February 19, 1997, August 19, 1997, February 19, 1998, and August 19, 1998. The following report covers the six-month period from August 19, 1998, to February 19, 1999. Detailed information on export control activities is contained in the most recent Export Administration Annual Report for Fiscal Year 1998 and the January 1999 Report on Foreign Policy Export Controls, required by

section 14 and section 6(f) of the Export Administration Act, respectively, which the Department of Commerce continues to submit to the Congress under a policy of conforming actions under the Executive Order to the provisions of the Export Administration Act, insofar as appropriate.

4. 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 Orders No. 12924, 13020, and 13026 to the provisions of the Export Administration Act, insofar as appropriate.

5. The expenses incurred by the Federal Government in the six-month period from August 19, 1998, to February 19, 1999, 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 (BXA). Expenditures by the Department of Commerce for the reporting period are anticipated to be $27,879,000, most of which represents program operating costs, wage and salary costs for Federal personnel, and overhead expenses.

6. 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 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.

- The U.S. Government continues to participate in submissions of export data made by member countries in the regime since the November 1996 implementation of the Wassenaar dual-use export control list. The Wassenaar members make dual-use data submissions on a semiannual basis in April and October.

- In September, October, and November 1998, BXA representatives attended working group meetings of the Wassenaar Arrangement in Vienna, Austria. Last October, Wassenaar's 33 members agreed to revise controls on telecommunications equipment and on commercial encryption products.

- In December 1998, after a two-year effort, the U.S. Government and other Wassenaar members reached an agreement to modernize and improve multilateral encryption export controls. The December agreement creates a positive control list for encryption items, thereby eliminating Wassenaar controls on all encryption at or below the 56-bit floor.

Wassenaar members agreed to remove encryption software from the General Software Note and replace it with a new cryptography note that identifies a 64-bit and below threshold for mass market encryption products. Mass market products stronger than 64-bits are still exportable but are to be controlled in the manner deemed appropriate by each Wassenaar country. The agreement extended liberalized mass market treatment to hardware. Wassenaar reporting requirements on encryption products were also eliminated. Other specific improvements included removing controls on certain consumer electronic products, such as digital video disk products and cordless telephone systems designed for home or office use.

♦ In February 1999, member countries also began an effort to assess the inter-dependency of telecommunications equipment, computers and electronic components, and production equipment, and to determine if there remains any strategic relevance for controls on these items. Member countries also began a preliminary effort to organize the regime-wide review, scheduled to take place during 1999.

Australia Group. The Australia Group (AG) is an informal multilateral forum that cooperates to impede the proliferation of chemical and biological weapons through the harmonization of export controls, the exchange of information, and other diplomatic means. The group currently consists of 30 member countries. In accordance with the AG-agreed control list, BXA maintains export licensing requirements for precursor chemicals, microorganisms and toxins, equipment, whole plants, and technology that may be used in the production of chemical or biological weapons.

♦ BXA participated actively in the furtherance of AG controls and policy initiatives during the year. At the October 1998 meeting in Paris, BXA played a leading role in a technical experts meeting discussions of various control list items, including fermenters, heat exchangers, protective suits, and genetically modified biological agents. While there were no significant changes to the items controlled, members sought to clarify and harmonize interpretations of those controls.

♦ BXA supports and adheres to the AG's "no-undercut" policy that provides for notification to all members when any member denies an export license for an AG controlled item. Under the procedure, members agree to consult with the denying member before approving essentially the same transaction that was denied. The United States encourages all members to maintain a strong commitment to upholding the denials of their AG partners.

♦ All AG participants are States Parties to the Chemical Weapons Convention (CWC) and the Biological Weapons Convention (BWC). They agree that the continued maintenance of effective export controls is an important element in curbing proliferation. The members have committed to review national export licensing policies to ensure that they promote the object and purpose of the CWC and the BWC.

Nuclear Suppliers Group. The Nuclear Suppliers Group (NSG), composed of 35 member countries with 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. Formal annual plenaries are held to provide the opportunity for multilateral consultations by NSG members on nuclear proliferation concerns.

♦ In October, BXA participated in the Nuclear Suppliers Group international seminar in Vienna, Austria on U.S. intangible technology.

♦ BXA recently participated in NSG working group meetings on regime transparency and intangible technology controls that were held in Vienna, Austria, in February 1999. The NSG has begun actively examining export controls on intangible technology. The NSG has also undertaken a series of seminars for non-NSG member countries to demonstrate the openness and transparency of the regime. BXA Under Secretary William A. Reinsch is scheduled to deliver the keynote address at the next seminar in New York City in April 1999.

♦ BXA continues to issue license denials for NSG dual-use 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 decision. In addition, BXA has been active in reporting "catch-all" denials for non-controlled items destined to end-users of proliferation concern.

Missile Technology Control Regime (MTCR). The MTCR is an informal group of countries founded in 1987 by the United States and its G-7 trading partners to coordinate their national export controls for the prevention of missile proliferation. Each member, under its own laws and practices, has committed to adhere to the MTCR Guidelines for export licensing policy for items found on the MTCR Equipment and Technology Annex. The United States continued to maintain its multilateral MTCR controls, as well as its unilateral Enhanced Proliferation Control Initiative controls during the reporting period.

♦ In October 1998, BXA participated in the technical experts meeting, the Information Exchange, and the Annual Plenary for the Missile Technology Control Regime in Budapest, Hungary. At the Plenary, the United States volunteered to develop a questionnaire on "catch all" controls, distribute it to all MTCR member countries, compile the responses, and report the results back to the MTCR membership later this year. The "catch all" survey will be one of the MTCR's main activities this year, and could result in the establishment of standards for the multilateral implementation of "catch all" controls.

"Catch all" controls require that exporters obtain a license, even if one is not usually needed, if they know or are informed that the export is for use in nuclear, chemical, or biological weapons or missiles, or facilities engaged in such activities.

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. Consistent with the provisions of the Hong Kong Policy Act of 1992, the U.S. Government will continue its export licensing treatment for Hong Kong as long as Hong Kong maintains an effective and autonomous export control program. The Bureau of Export Administration aggressively monitors the status of Hong Kong's post-reversion export control program to ensure that it continues to be effective and autonomous from that of the People's Republic of China. In order to assist Hong Kong to maintain its effective export control system, the United States has agreed to share any publicly-releasable list or procedural changes adopted by the nonproliferation regimes (Australia Group, Nuclear Suppliers Group, Missile Technology Control Regime) and the Wassenaar Arrangement. In return, Hong Kong has agreed to implement all appropriate regime changes made known to it.

♦ In February 1999, Assistant Secretary for Export Enforcement F. Amanda DeBusk led an interagency U.S. delegation to visit Hong Kong to conduct bilateral export control consultations, and to ascertain if Hong Kong's system remains independent of Beijing. These discussions were fruitful, and led to a U.S. acknowledgment that the Hong Kong export control system continues to operate under the sovereignty conferred by the turnover agreement.

Macau. On December 20, 1999, the Portuguese colony of Macau will revert to the People's Republic of China under a Sino-Portuguese agreement. In January 1999, BXA led an interagency team to assess Macau's export control system, to determine if the United States could continue its present export control policy for Macau. The team found the Macau export control system to be very limited.

China. Based on agreements reached in Beijing in October 1997, during the eleventh annual meeting of the Joint Commission on Commerce and Trade (JCCT), U.S. and Chinese representatives agreed to meet with U.S. counterparts to conduct technical exchanges on agreed export control topics. These technical exchange seminars provide opportunities to discuss issues of concern, promote mutual understanding of the respective export control systems, and enhance future cooperation. The first of these meetings occurred in Washington in April 1998.

♦ In November 1998, a follow-on visit by Commerce Under Secretary William Reinsch to Beijing occurred. These discussions featured further U.S.-Chinese technical exchanges,

including Chinese description of MOFTEC's reorganization, PLA commercial activities, and Chinese efforts to certify high-performance computer end-users in China. The United States shared information on end-use visit arrangements, end-use certifications, "catch all" controls, and techniques for industry outreach.

♦ At the December 1998 twelfth annual JCCT meeting, the United States and China recognized that dialogue will benefit cooperation on export controls. Mechanisms each side will use to demonstrate this cooperation include end-use visits, seminars, and information exchange.

♦ A new program involving export control seminars with Chinese licensing officers is tentatively planned for May 1999.

India. In November 1998, BXA participated in a State Department-led delegation that visited India. The goal of the bilateral discussions was to urge India to adopt the guidelines and export control lists of the various international nonproliferation regimes. The U.S. and Indian delegations agreed to meet again in the spring of 1999 to continue the discussions.

Nonproliferation and Export Control Cooperation. During the period August 19, 1998, to February 19, 1999, BXA's Nonproliferation and Export Control Cooperation (NEC) program hosted and/or coordinated 22 technical exchanges on export controls in conjunction with representatives from the Departments of State, Defense, and Energy, and the U.S. Customs Service. These programs sought not only to familiarize the governments of Russia, Central and Eastern Europe, the Balkans, the Baltic, the Caucasus, and Central Asia with the major elements that constitute an effective international-standard export control system, but also to assist the governments in developing and strengthening their own national export control systems. These elements involve five functional areas: the Legal and Regulatory framework necessary for an effective export control system, Licensing Procedures and Control Lists, Enforcement Mechanisms, Industry-Government Relations, and System Administration and Automation Support. Programs conducted during this period are noted below, including Special Activities that related to NEC objectives. These programs have contributed to a reduction of the proliferation threat from and through the participating countries by strengthening those countries' national export control systems.

Legal and Regulatory Framework of Export Controls

♦ The first bilateral technical exchange between the United States and Tajikistan on nonproliferation and export controls took place in Washington, D.C., February 8 -12, 1999. The forum focused on the legal basis and regulatory framework for a comprehensive and effective export control system. It afforded U.S. legal and other experts the opportunity to discuss with Tajik export control officials: 1) the scope of Tajikistan's new export control law and 2) the decrees and regulations that will be needed to implement the law, including promulgation of a control list that meets international

standards. Topics included controls on exports of dual-use items and arms; multilateral control regimes on nuclear and missile technology and biological and chemical weapons controls; defense authority and perspective; and enforcement authority and implementation by U.S. Customs and by BXA's Export Enforcement organization.

♦ During the week of January 25-29, 1999, a U.S. interagency delegation participated in a follow-up conference held in Sofia, Bulgaria, which reviewed the extent of the progress that Bulgaria has made in developing its export control law.

Licensing Procedures and Control Lists

♦ Four technical exchanges on export licensing for representatives from five countries addressed the standards, practices, and procedures for export licensing, and for managing control lists. Visiting officials responsible for interpreting and implementing export control laws and decrees participated in the exchanges. The two licensing practices and procedures technical exchanges included officials from Armenia (October 19-23, 1998) and Hungary (November 2-6, 1998), and a workshop on control lists events involved participants from Georgia (October 26-30, 1998). In addition, BXA/NEC hosted a technical exchange concerning control lists, as well as licensing practices and procedures, for officials from the Kyrgyz Republic and Uzbekistan (January 11-15, 1999).

♦ From November 16-18, 1998, a BXA/NEC delegation presented an export control technical workshop on the European Union (EU) approach to control lists and commodity classification at the Center on Export Controls (CEC), a Moscow-based non-government entity. The workshop provided representatives of 15 Russian government agencies involved in export controls with an overview of the four multilateral control regimes, technical details regarding each of the international lists, and the process of integrating these lists into a consolidated national control list. The BXA/NEC delegation provided an explanation of the EU control list, addressed questions concerning the use of the EU list in the international system of export regulation of dual-use products and weapons of mass destruction, and emphasized the importance of proper classification. The delegation also demonstrated the use of Licensing Officer Instructional Simulation (LOIS) to the Russians.

Enforcement Mechanisms

♦ In December 1998, Export Enforcement officials participated in a Department of Defense/Federal Bureau of Investigation conference in Budapest, Hungary, at the International Law Enforcement Academy to discuss preventive export controls.

Program Administration

♦ During the Export Control Executive Exchange held with Kazakhstan from September 21-25, 1998, the Kazakh participants took part in a comparative discussion of the U.S. and Kazakhstani export control systems. The Kazakhs participated in briefings on U.S. export control laws, the regulatory process, licensing procedures, preventive enforcement, verification criteria, interagency activities, and outreach techniques for ensuring cooperation and compliance with regulations by the exporting community.

Industry-Government Cooperation

♦ The Commerce and State Departments led an interagency delegation that participated in an Industry-Government Relations Conference on Export Controls held in Kiev, Ukraine, on September 24-25, 1998, followed by two additional conferences on the same subject, the first at Riga, Latvia, from September 28-29, 1998, and the second at Vilnius, Lithuania, October 1-2, 1998. The roles of industrial firms and exporters in the control of dual-use goods and technologies comprised the central theme of these conferences. In all three countries, senior government export control officials explored with enterprise and private industry executives how private companies in a market economy implement internal compliance programs, keep current on export control regulations, and train their employees on export control compliance.

♦ BXA/NEC personnel led a small technical group to Poland, December 14-18, 1998, for discussions with Polish Government export control experts with the objective of furthering development of an industry-government export control forum scheduled for May 1999, as well as a Polish Industry Internal Compliance Program (ICP) job tool that the Polish Government will distribute at the forum.

♦ Between September 15, 1998, and January 25, 1999, BXA/NEC personnel and representatives from U.S. companies helped the Center on Export Controls (CEC) at Moscow, Russia, to install a pilot Internal Compliance Program at six enterprises subordinated to the Russian Space Agency (September 15-18, 1998), six enterprises subordinated to the Ministry of Economy (December 7-9, 1998), and five enterprises subordinated to the Ministry of Atomic Energy (January 25-26, 1999). The CEC will obtain feedback from the enterprises and develop an improved version to be unveiled at an industry-government forum in April 1999.

♦ During February 3-5, 1999, BXA/NEC presented a U.S.-Ukraine Internal Compliance Program (ICP) Deployment Workshop in Washington, D.C. Topics covered included the completion of the Ukraine ICP version 2.0, ICP Customization, ICP Train-the-Trainer, ICP Deployment Workshops, and ongoing training and support of the ICP.

System Automation

♦ During the reporting period, BXA/NEC helped to improve the systems automation efforts in Russia and selected Central and Eastern European countries by conducting special Authorware Software Training automation programs for Russia and Ukraine in Washington, D.C., on February 1, 1999, and for Poland on February 8, 1999. Developed to train foreign delegates in how to modify and customize their countries' Internal Compliance Programs (ICP), the Authorware software enables the delegates to make modifications in their ICP to reflect changes in the laws, regulations, and policies of their export control regimes. The delegates received hands-on training in using the ICP software as well as the Authorware software itself. Discussions included development of ICP customization training, development of Train-the-Trainer curricula, ICP deployment workshops, and ongoing coordination of responsibilities. In addition, BXA/NEC staff participated in a State-chaired on-site survey of export control automation requirements for Kazakhstan's agencies involved in export controls (November 12-13, 1998).

Special Activities

♦ From November 10-12, 1998, the United States and Kazakhstan co-hosted in Astana, Kazakhstan, the Third Regional Forum on Export Control and Nonproliferation of Weapons of Mass Destruction, for Central Asian and Caucasian countries (Armenia, Azerbaijan, Georgia, Kyrgyzstan, Tajikistan, Turkey, and Uzbekistan). The forum focused on a regional approach to nonproliferation and export controls in the major functional areas of international-standard export control systems. The participants made progress on several issues. First, they endorsed a regional approach toward the resolution of nonproliferation and export control issues; second, they agreed on the need for a regional agreement on transit/transshipment notification; third, they reached a consensus on the desirability of information exchange, possibly via an electronic web site; and fourth, they expressed a strong interest in further regional meetings. Kazakhstan delivered a comprehensive presentation of its export control system, which provided a positive example for the other countries.

♦ Two BXA/NEC staff members traveled to Russia November 19-20, 1998, to assist the Center on Export Controls in familiarizing Russian enterprises in the Tomsk region with Russian export control regulations and policies.

♦ The Monterey Institute from Monterey, California, held a Ukrainian Nonproliferation Seminar in Washington, D.C., on October 8, 1998. The seminar concluded a two-month program in the United States on nonproliferation control issues for foreign government officials. This seminar enabled Ukrainian officials to meet at various U.S. Government agencies with personnel engaged in nonproliferation export controls in order to exchange views and discuss issues of concern.

C. Regulatory Actions: Published and Pending

♦ India/Pakistan. On May 13, 1998, President Clinton reported to Congress a determination, under the authority of Section 102 of the Arms Export Control Act, that the Indian nuclear tests of May 11, 1998, and May 13, 1998, had violated Section 102 of the Arms Export Control Act and thus required the imposition of sanctions. The President subsequently announced on May 30, 1998, that Pakistan violated the Act with its nuclear tests of May 28, 1998, and May 30, 1998. The Act lists seven specific sanctions, one of which is: "The authorities of Section 6 of the Export Administration Act of 1979 shall be used to prohibit exports to that [sanctioned] country of specific goods and technology (excluding food and other agricultural commodities), except that such prohibition shall not apply to any transaction subject to the reporting requirements of Title V of the National Security Act of 1947 (relating to congressional oversight of intelligence activities)." On June 18, 1998, in response to the nuclear explosions by India and Pakistan, the Administration announced its new policy towards the two countries, including certain export sanctions.

- On November 19, 1998, the United States published a regulation codifying the June 18, 1998, imposition of a policy of denial for the export or reexport of U.S. origin items controlled for nuclear non-proliferation and missile technology reasons to India and Pakistan.

- In addition, this regulation identified Indian and Pakistani government, military, parastatal, and private-sector entities involved in activities of concern and imposed a restrictive export policy. Applications to export or reexport the restricted items are reviewed with a presumption of denial.

♦ Wassenaar Arrangement. On March 5, 1999, BXA published a rule that made corrections and clarifications to the Commerce Control List. The rule implemented the January 1998 amendments to the List of Dual-Use Goods and Technologies of the Wassenaar Arrangement. This rule also expanded License Exception availability both for cooling fluids to many destinations and for certain software and technology to Japan. BXA plans to publish further changes to the Commerce Control List in April 1999, which will implement the December 1998 amendments to the Wassenaar Arrangement List of Dual-Use Goods and Technologies.

♦ Encryption. Changes to encryption controls based on recent Wassenaar Arrangement changes will appear in a separate regulation, currently pending. BXA also plans to publish changes to encryption controls based on public comments and further development of Administration policy.

♦ Chemical Weapons Convention (CWC) In January 1999, BXA reached an agreement with the Department of State on a rule that amends the Export Administration Regulations so as to implement the CWC's transfer notification and end-use certification requirements for certain chemicals. As part of the paperwork to accompany the CWC amendment to the Regulations, BXA has drafted a foreign policy report to Congress. Once cleared by the Department of State, BXA will forward the entire regulatory package to the Office of Management and Budget for approval.

♦ Satellites. As a result of the National Defense Authorization Act of Fiscal Year 1999, BXA will publish in March 1999 a rule retransferring jurisdiction over commercial communication satellites to the Department of State.

♦ Entity List. BXA anticipates the addition to the Entity List -- resulting in additional licensing requirements -- of three Russian entities suspected of export control violations concerning weapons of mass destruction. BXA expects to list additional entities as circumstances warrant

♦ Cuba. The U.S. embargo on Cuba came at a time when Cuban actions seriously threatened the stability of the Western Hemisphere, and the Cuban Government had expropriated property from U.S. citizens without compensation. In March 1982, because of Cuba's support for insurgent groups that have engaged in terrorism, the Secretary of State designated it as a state sponsor of terrorism under Section 6(j) of the Export Administration Act. More recently, however, the Administration has taken a number of steps to expand the flow of humanitarian assistance to the people of Cuba, and to help strengthen independent civil society and religious freedom in that country.

- In January 1999, President Clinton announced that the United States, among other things, will authorize exports of food and certain agricultural commodities sold to individuals and independent non-government entities in Cuba. BXA is working with the concerned agencies and intends to publish the implementing regulations by early spring.

♦ OAS Firearms Convention. In December 1998, Commerce notified Congress of a foreign policy control change affecting U.S. exports of shotguns and explosives. As a member of the Organization of American States (OAS), the United States has agreed to obtain foreign import certificates prior to the approval of any U.S. exports firearms and explosives to OAS member countries. Under Commerce jurisdiction, this will impose a new burden on U.S. shotgun and explosives exporters. BXA will publish the regulation in the spring of 1999.

♦ Counterterrorism. In December 1998, Commerce informed Congress and forwarded to OMB a regulatory change expanding restrictions on exports and reexports of dual-use items to specially designated terrorists and foreign terrorist organizations. These new controls further the counterterrorism policy of the United States by enabling Commerce to use its full enforcement mechanisms to investigate supplies to such entities of U.S.-origin goods and technology and to use its resources to increase public awareness of U.S. counterterrorism measures. The regulation was published in the Federal Register on January 8, 1999.

D. Licensing of Items Transferred to or from the International Traffic in Arms Regulations

Encryption

During the past six months, BXA carried out a number of activities to implement the President's encryption policy initiative. These activities included license processing, participation in multilateral discussions, participation in interagency discussions on policy and licensing, and public outreach.

BXA continues to manage a significant licensing workload in FY '99, including review of export license applications, requests for license exception eligibility for certain encryption products and end-users, as well as for mass market encryption software releases.

BXA continued to participate in two multilateral working groups established by Ambassador David Aaron, the President's Special Envoy for Cryptography. The Encryption Export Controls Working Group, which BXA chairs, sought to harmonize countries' encryption export control regimes, and its work supported multilateral discussions in the Wassenaar Arrangement. The Compatible Infrastructures Working Group, on which BXA serves as a member, continued its task with developing common technical approaches to digital commerce in areas such as digital signatures, certificate authorities, and encryption for confidentiality.

BXA continued to work with other agencies of the U.S. Government to streamline both encryption policy and licensing. On September 22, 1998, BXA published a regulation to implement new policy guidelines on exports to banks and financial institutions, as announced by Commerce Secretary William M. Daley in July 1998. This regulation permits the export of strong encryption under a license exception to banks and financial institutions headquartered in 46 countries, including their worldwide branches, for securing private financial communications and transactions.

On September 16, 1998, Vice President Gore announced an important update for encryption policy that strengthened the Administration's support for electronic commerce by permitting the export of strong encryption when used to protect sensitive financial, health, medical, and business proprietary information in electronic form. BXA published regulations to implement the Vice

President's policy update on December 31, 1998. This new rule includes a series of steps to further streamline exports and reexports of key recovery products and other recoverable products that allow law enforcement, under proper legal authority, recovery of the plain text. The new regulation permits the export of 56-bit hardware and software worldwide to any end user under a license exception. It also eliminates most restrictions on exports of encryption items to subsidiaries of U.S. corporations and allows exports and reexports under a license exception to insurance companies, health and medical organizations, and online merchants. Furthermore, favorable licensing treatment will be given to 'strategic partners' of U.S. companies.

As a member of the Interagency Working Group on Cryptography Policy, BXA worked to promulgate these regulations, and to clarify and refine encryption policy in order to make it more transparent to the exporting community and to the public. BXA also worked with licensing agencies to improve the encryption licensing process in order to ensure timely licensing decisions and to minimize undue burdens on U.S. industry.

Finally, BXA participated in a number of public events during the reporting period to educate exporters and the general public on the goals of the Administration's encryption export control policy and the details of the Bureau's licensing requirements. In addition to participating in a number of seminars, representatives of the Encryption Division provided training to Commerce representatives in BXA's Western Regional Office so that they could be more responsive to the numerous Silicon Valley companies affected by the controls. BXA also continued to hold meetings of the President's Export Council Subcommittee on Encryption, including a January 1999 meeting in Silicon Valley. This Committee fulfills Vice President Gore's commitment to establish a formal mechanism to provide industry, users, State and local law enforcement, and other private-sector representatives with the opportunity to advise the U.S. Government on the future of commercial encryption policy.

E. Export License Information

During the reporting period, BXA continued to receive many requests for export licensing information through the Freedom of Information Act and through discovery requests during enforcement proceedings. Under section 12(c) of the Export Administration 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

Export Enforcement (EE) continued, through its three constituent offices, its programs of prevention of diversions, investigation/enforcement of the export control provisions of the Export Administration Regulations, and enforcement of the antiboycott provisions of the Export Administration Regulations.

Prevention Activities. Export Enforcement's prevention activities included selecting transactions for pre-license checks and post-shipment verifications by representatives of U.S. diplomatic posts, and "safeguards" visits, in which EE personnel traveled to other countries to verify the details of sensitive export transactions and to advise the host governments on export control issues. Finally, EE's prevention activities included outreach visits to domestic firms and programs to foster enforcement cooperation with other governments.

NDAA Activities. On January 7, 1999, BXA delivered its first annual report on high performance computer exports to the Congress. The report went to the Senate Committees on Banking, Housing, and Urban Affairs, and Armed Services, and the House Committees on International Relations and Armed Services. This report, required by the National Defense Authorization Act of 1998 (NDAA), identifies high performance computer exports with processing speeds over 2,000 Million Theoretical Operations Per Second to "Tier III" countries and describes the results of the Department's post-shipment verifications of the destination and end-use of those computers within the past 12 months. Although there are 50 Tier III countries, five -- China, Israel, Russia, India, and the United Arab Emirates -- accounted for over 95 percent of the exports in the annual report.

Shipper's Export Declaration Program. The Office of Enforcement Analysis (OEA) reviews copies of the Shipper's Export Declarations (SEDs) filed by exporters and, using a computerized index of data fields, produces a list of SEDs targeted for closer review, focusing particularly on licensed shipments, shipments bound for destinations of concern, shipments of strategic commodities of proliferation concern, and other criteria. Through this review, OEA identifies SEDs that may indicate violations of the Export Administration Regulations and refers them to the Office of Export Enforcement.

Office of Antiboycott Compliance Activities. The Office of Antiboycott Compliance continued to supply the State Department with information on boycott requests received by U.S. persons. The State Department uses this information in its discussions with boycotting countries concerning ending the Arab boycott of Israel. The Office of Antiboycott Compliance opened 11 and closed 10 investigations between August 20, 1998, and February 19, 1999.

Office of Export Enforcement. The Office of Export Enforcement opened 509 and closed 548 investigations during the reporting period. The following paragraphs summarize the results of the major cases that the Office of Export Enforcement completed.

Investigations.

N.V. Advanced Technology Company

On August 20, 1998, BXA imposed a $10,000 civil penalty on N.V. Advanced Technology Company of Belgium to settle allegations that, on two separate occasions, N.V. Advanced Technology reexported U.S.-origin electronic equipment from Belgium to Russia without obtaining the required reexport

authorization. The electronic equipment was controlled for reexport to Russia for national security reasons.

Chemicals Export Company
On September 3, 1998, BXA imposed a $16,000 civil penalty on Chemicals Export Company of Boston, Massachusetts, for allegedly exporting sodium cyanide to Peru, Venezuela, and Guatemala, without obtaining the required export licenses. The export of sodium cyanide is controlled for non-proliferation reasons.

Southern Information Systems
On September 3, 1998, BXA imposed a $25,000 civil penalty on Southern Information Systems (SIS) in Taiwan, to settle allegations that SIS illegally reexported to Vietnam telecommunications equipment incorporating U.S.-origin components exceeding the *de minimis* level, without obtaining the required reexport authorization.

Herb Kimiatek, doing business as Kimson Chemical, Inc.
On September 4, 1998, BXA imposed a $20,000 civil penalty on Herb Kimiatek, individually and doing business as Kimson Chemical, Inc., of Boston, Massachusetts, to settle allegations relating to the illegal export of sodium cyanide from the United States to the Dominican Republic, without obtaining the validated export license Kimiatek knew, or had reason to know, was required by the Export Administration Regulations. The export of sodium cyanide is controlled for non-proliferation reasons.

Syntex S.A. De C.V.; Palmeros Forwarding; Villasana and Company
On September 4, 1998, BXA imposed a $65,000 civil penalty on Syntex, S.A. de C.V. (Syntex), Mexico, to settle allegations that Syntex caused, aided, or abetted the export of hydrogen fluoride from the United States to Mexico without the required licenses. A portion of the penalty, $32,500, was suspended for one year, and will thereafter be waived, provided Syntex commits no violations of the Export Administration Regulations during the probationary period.

BXA also ordered Palmeros Forwarding and Villasana & Company, Inc., both of Laredo, Texas, to pay a $50,000 and a $2,500 civil penalty, respectively, and ordered the export privileges of both companies denied for two years. Palmeros and Villasana, while acting as agents for Syntex, prepared and used export control documents representing that the chemicals needed no Commerce licenses, when, in fact, licenses were required. In both cases, the civil penalties and denial of export privileges were suspended for a two-year probationary period, and will thereafter be waived, provided that neither party commits any violations of the EAR during that period.

Paul Dufault; Ed Jentz; Robert J. Gaudu

On September 30, 1998, Paul Dufault of Fairport, New York, and Ed Jentz of Oyster Bay, New York, were each assessed a $25,000 civil penalty to settle charges that they conspired to evade U.S. export control laws restricting exports to Libya. Robert J. Gaudu of Victor, New York, who had been charged as a co-conspirator, was assessed a $25,000 penalty on September 16, 1998.

The civil settlements resolved charges that Dufault, Jentz, and Gaudu conspired to ship U.S.-origin computer systems to Libya. BXA charged the alleged co-conspirators with making false and misleading representations to both Commerce Department and Custom Service officials about the computers' destination. The equipment was seized by BXA's Office of Export Enforcement and the U.S. Customs Service before it could be exported.

In addition to the penalties, Dufault, Jentz and Gaudu were each denied export privileges for a three-year period. The denial periods were suspended, and will thereafter be waived provided that the parties do not violate the Export Administration Regulations during the three-year probationary period.

Thane-Coat, et al.

On October 23, 1998, BXA renewed an order temporarily denying the export privileges of Export Materials, Inc., Stafford, Texas, and TIC, Ltd., Freeport, the Bahamas, in a "standard" format. On the same date, BXA renewed an order temporarily denying the export privileges of Thane-Coat, Inc., Stafford, Texas; its president, Jerry Vernon Ford; and its vice president, Preston John Engebretson, in a "non-standard" format. In addition, certain exports by Thane-Coat, Ford, and Engebretson are subject to monitoring and inspection by OEE Special Agents.

In renewing the temporary denial orders, BXA alleged that it had reason to believe that, between 1994 and 1996, Thane-Coat, Inc., through Ford and Engebretson, and using Export Materials, Inc. and TIC, Ltd., made approximately 100 shipments of U.S.-origin pipe coating materials, machines, and parts valued at $35 million to Libya via the United Kingdom and Italy, without the authorizations required under U.S. law, including the Export Administration Regulations. BXA became aware of the shipments as a result of a joint investigation conducted by OEE's Dallas Field Office, the U.S. Customs Service and the U.S. Attorney's Office in Houston, Texas.

The Export Administration Regulations allow for issuance of a temporary denial order when the order is necessary in the public interest to prevent an imminent violation of the Export Administration Act or Regulations.

Yuri Montgomery
On November 15, 1998, Yuri Montgomery pleaded guilty to violating the Export Administration Act and IEEPA in connection with the illegal export of ballistic helmets, stun guns, handcuffs and laser sights to Macedonia and Slovenia. On January 14, 1999, Montgomery was sentenced in U.S. District Court to 36 months' probation.

John R. Strome
On December 17, 1998, John R. Strome, president of the firm Brevard International Technical Services, Inc., Melbourne, Florida, pleaded guilty in U.S. District Court in Orlando, to charges related to the illegal exports to Iran, Iraq, and Libya. Strome, a Canadian national, pleaded guilty to conspiracy to violate IEEPA and the Export Administration Regulations by exporting pumps and industrial equipment and machinery to Iran, Iraq, and Libya via intermediaries in Canada and the United Kingdom.

A&C International
On January 8, 1999, a federal grand jury returned an indictment against Yufeng Wang, a.k.a. Alan Wang, charging him with three counts of violating U.S. export control laws and one count of submitting a false statement. As a result of the indictment, on February 12, 1999, Wang was arrested as he reentered the United States from China, and he is currently being held without bail.

Francisco Javier Ferreiro-Parga; Jose Luis Sesin; Kenneth Broder
On January 25, February 1 and 2, 1999, BXA issued orders denying the export privileges of Francisco Javier Ferreiro-Parga of Coruna, Spain for 10 years; Jose Luis Sesin of Miami, Florida, for eight years; and Kenneth Broder of the Dominican Republic, for nine years. Ferreiro-Parga, Sesin, and Broder were convicted of violating IEEPA by exporting goods to the Dominican Republic that were transshipped to Cuba without the required export licenses. The orders were a collateral consequence of those convictions and are authorized under Section 11(h) of the Export Administration Act.

Aluminum Company of America (Alcoa)
On February 19, 1999, the Under Secretary for Export Administration, William Reinsch, imposed a $750,000 civil penalty on Aluminum Company of America (Alcoa) for 100 violations of the Export Administration Regulations (EAR). Reinsch affirmed the findings of an Administrative Law Judge that Alcoa had committed 50 violations of the EAR by exporting sodium fluoride and potassium fluoride to Jamaica and Suriname without the required export licenses. Additionally, ALCOA made false statements in connection with each of the 50 shipments. ALCOA's export compliance program did not recognize that the

chemicals in question had been added to the Commerce Control List. The export of the chemicals is controlled for non-proliferation reasons.

○