

PERIODIC REPORT ON THE NATIONAL EMERGENCY  
CAUSED BY THE LAPSE OF THE EXPORT ADMINIS-  
TRATION ACT OF 1979

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COMMUNICATION

FROM

**THE PRESIDENT OF THE UNITED STATES**

TRANSMITTING

A 6-MONTH 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)



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THE WHITE HOUSE,  
*Washington, November 26, 2002.*

Hon. J. DENNIS HASTERT,  
*Speaker of the House of Representatives,*  
*Washington, DC.*

DEAR MR. SPEAKER: 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.

Sincerely,

GEORGE W. BUSH.



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

Since the issuance of Executive Order No. 13222, the Department of Commerce has continued to administer and enforce the system of export controls, including the 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 13222 to the provisions of the Export Administration Act (EAA), insofar as appropriate. This report to the Congress covers activities and expenditures for the 6-month period of February 19, 2002 to August 19, 2002.

The expenses incurred by the Federal Government in the 6-month period from February 19, 2002 to August 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 \$32,958,000 most of which represents program operating costs, wage and salary costs for Federal personnel, and overhead expenses.

There were several significant developments in the area of export controls during the reporting period:

A. MULTILATERAL DEVELOPMENTS

*The Wassenaar Arrangement*

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 May 2002, the Wassenaar Arrangement General Working Group exchanged information regarding regions and projects of concern, dual-use goods and technologies, and the scope of dual-use notifications. Discussions also centered around combating terrorism, and U.S. proposals for expanded reporting of conventional arms transfers, strengthening dual-use notification procedures by establishing a denial consultation procedure, and adopting "catch-all" controls within the Wassenaar.

In June 2002, the annual Licensing and Enforcement Officers Meeting was held to exchange information on national practices of licensing and enforcement procedures. Discussions included legal export of small arms/light weapons, arms brokering, control of intangible transfers of technology and software, national general li-

censing/licensing exception practices, and implementation aspects of International Import Certificates/End-User Certificates.

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, and a smaller class of specific data submissions as needed.

*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.

On April 22–24, 2002, an intersessional MTCR Technical Experts Meeting (TEM) was held in Vienna. This meeting focused on proposed changes to the MTCR Annex on inertial navigation systems, global navigation satellite systems, flight control servo valves, telemetry equipment, and missile range and payload definitions. The United States circulated several white papers for discussion.

*The Nuclear Suppliers Group (NSG)*

With 40 member states, the NSG is a widely accepted, mature, and effective export control arrangement that contributes to the nonproliferation of nuclear weapons through implementation of guidelines for the control of nuclear and nuclear-related exports. Members pursue the aims of the NSG through voluntary adherence to the Guidelines, which are adopted by consensus, and through exchanges of information on developments of nuclear proliferation concern. The Guidelines assist member states in administering national nuclear export control programs, which are focused on 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.

The Czech Republic hosted the 2002 NSG Plenary and related meetings in Prague from May 13–17. On May 13, the first Licensing and Enforcement Experts Meeting (LEEM) was held as a trial run under the chairmanship of the United Kingdom, and under the aegis of the Information Exchange Meeting (IEM). LEEM participants made presentations on licensing and enforcement infrastructure and coordination, as well as case studies. NSG members agreed that the LEEM was successful and should become a regular part of the NSG Plenary week. The IEM was also very successful, with 18 presentations by nine Participating Governments on nuclear activities of concern, analyses of export denials, and technical briefings.

The NSG Consultative Group (CG) met on May 14 and 15, and discussed U.S. counterterrorism proposals including amendments to the Guidelines and expanded information sharing. There was broad support in principle for addressing the issue of nuclear terrorism, although some delegations suggested a cautious approach on any amendments to the Guidelines. The CG recommended, and the Plenary agreed, to continue discussion of the anti-terrorism proposals.

The NSG Plenary met on May 16 and 17. The Czech Republic acceded to the Chair of the NSG. Kazakhstan was welcomed as a newly admitted member. The U.S. Acting Outgoing NSG Chair reported on the activities and work of the NSG since May 2001, including outreach contacts with non-member governments. The Plenary authorized the new NSG Chair to continue outreach contacts with China, Egypt, India, Iran, and Pakistan, and initiate contacts with Malaysia, Mexico, Indonesia, and Israel. Many delegations expressed continued concern over differing interpretations within the NSG of the NSG Guidelines, particularly if such interpretations undermine the credibility of the NSG and the objectives of the Nuclear Non-Proliferation Treaty. This issue will continue to be discussed at future NSG meetings. The Plenary welcomed the offer of the Republic of Korea to host the 2003 Plenary in May 2003.

#### *The Australia Group (AG)*

The AG is an informal multilateral export control 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 non-members. 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.

In April 2002, five U.S. proposals developed by the Department of Commerce that broaden AG export controls on commodities and technology useful in the production of chemical/biological weapons, were submitted for consideration at the intersessional AG Technical Experts Meeting (TEM). In May 2002, technical experts from five AG member-nations—Germany, Japan, Switzerland, the United Kingdom, and the United States—reached common positions on technical issues proposed for review at the AG Plenary.

At the AG Plenary held in June 2002, agreement was reached on export control additions on intangible technology transfers, biological technology, biological production equipment, and the addition of eight biological agents to the AG control list. Consensus was also reached to adopt licensing guidelines that include chemical-biological terrorism as an explicit focus of the regime, and on the universal licensing of exports of biological agents to non-AG members and AG members alike, with the exception of intra-European Union trade. These unprecedented measures were taken to collectively strengthen the regime, and broaden its nonproliferation focus.

In July 2002, technical experts from France, Germany, Italy, Japan, the Netherlands, Switzerland, the United Kingdom and the United States reviewed technical proposals for possible consideration at the next AG Plenary schedule for June 2003 in London.

#### *The Chemical Weapons Convention*

The Chemical Weapons Convention 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 destruc-

tion. Certain export control provisions of the Convention are reflected in the EAR.

#### *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 states signed to control the illicit trafficking of firearms. The Convention was signed in 1998 but awaits ratification by a number of OAS member states, including the United States. The Convention requires OAS member states to establish a program to issue authorizations for the import and export of firearms. Most of the Convention requirements relating to the export of firearms have been executed, however, those requirements pertaining to transit and explosives continue to be reviewed by an interagency working group.

### B. ENCRYPTION/HIGH PERFORMANCE COMPUTER POLICY

#### *Encryption*

In June 2002, a rule was published in the *Federal Register* updating the U.S. encryption export policy. The rule amends the Export Administration Regulations to reflect changes that were made in the Wassenaar Arrangement List of dual-use items. As a result of the revisions made by this rule, mass market encryption commodities and software with symmetric key lengths exceeding 64 bits may be exported and reexported to most destinations without a license, following a 30-day review by the U.S. Department of Commerce. In addition, the rule expands License Exception Encryption Commodities and Software (ENC) eligibility to authorize exports and reexports of information security test, inspection, and production equipment controlled under Export Control Classification Number (ECCN) 5B002. Finally, the rule updates and clarifies the notification, review, licensing, and post-export reporting requirements that apply to certain encryption items.

#### *High Performance Computer and Microprocessor Controls*

In March 2002, a rule was published in the *Federal Register* implementing the President's January 2002 decision to revise U.S. export controls on high performance computers (HPCs). There was a statutorily-required 60-day waiting period between the time of the President's announcement and the issuance of the implementing regulations. HPCs with a composite theoretical performance of up to 190,000 millions of theoretical operations per second (MTOPS) can now be exported to Computer Tier 3 countries under License Exception Computers (CTP) without advance approval or notification. The rule also moves Latvia from Computer Tier 3 to Computer Tier 1 (effective May 2) and adds Australia, New Zealand, Norway, Switzerland, and Turkey to the list of countries eligible for exports and reexports of software and technology for the development, production, or use of HPCs under license exception.



## C. BILATERAL COOPERATION/TECHNICAL ASSISTANCE

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

*Republic of China (Taiwan)*

In July and August 2002, the United States Government—acting through the American Institute in Taiwan—hosted consultations with visiting delegations from Taiwan. The July consultations were held to discuss recent changes in U.S. and Taiwan export controls, including effective dual-use export control licensing procedures and practices and included a discussion on the impact of the changes in Taiwanese investment and technology transfer policy towards China. The August 2002 consultations involved in-depth discussions on the requirements of the Chemical Weapons Convention (CWC) and how these requirements relate to transfers of CWC scheduled chemicals to Taiwan.

*Nonproliferation and Export Control International Cooperation Program*

During the reporting period, the Nonproliferation and Export Control International Cooperation Program (NEC) hosted, participated in, and/or coordinated 29 technical exchanges on export controls in conjunction with representatives from the Departments of Defense, Energy, State, and Treasury (U.S. Customs Service). The technical exchanges included the Sixth Regional Forum on Nonproliferation Export Control, held in Tashkent, Uzbekistan during April 2002 for eight participating Central Asian/Caucasus countries; a transshipment enforcement conference in May 2002 in Barcelona, Spain, featuring participation by ten Middle Eastern countries, fourteen EU countries and Turkey; and a Regional Nonproliferation Export Control Enforcement Workshop held in Bucharest, Romania in June 2002 for eleven participating Central and Southeast European Countries. The programs sought not only to familiarize the governments of Central and Eastern Europe, the Baltic and the Balkans, the Caucasus, Kazakhstan, Kyrgyzstan, Tajikistan, and Uzbekistan with the major elements comprising an export control system that meets international standards for effectiveness, 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 also included special activities and multilateral conferences that related to NEC objectives. These programs have contributed to a reduction of the proliferation threat from and through the participating countries by strengthening these countries' national export control systems.

## D. REGULATORY ACTIONS: PUBLISHED AND PENDING

*Wassenaar Arrangement*

On March 8, 2002, a rule was published in the *Federal Register* revising certain national security export control parameters in Category 4 (Computers) of the Commerce Control List to conform with changes in the Wassenaar Control List agreed to in December 2000.

On June 6, 2002, a rule was published in the *Federal Register* revising encryption export controls (Category 5—Part 2, Information Security) to conform with changes in the Wassenaar Control List agreed to in December 2000. The rule implementing the 2001 Wassenaar changes is pending interagency review.

*High Performance Computers and Microprocessors*

On March 8, 2002, a rule was published in the *Federal Register* implementing the President's Announcement of January 2, 2002, that liberalized controls on exports and reexports of high performance computers under License Exception Computers (CTP).

On March 21, 2002, a rule was published in the *Federal Register* liberalizing controls on exports and reexports of microprocessors to certain civil end-users under License Exception Civil End-Users (CIV).

*Missile Technology*

On May 20, 2002, a rule was published in the *Federal Register* implementing the changes agreed to at the September 2001 Missile Technology Control Regime (MTCR) Plenary Meeting. The rule implementing the 1999 MTCR changes is pending interagency review.

*Australia Group and Chemical Weapons Convention Controls*

On May 31, 2002, a rule was published in the *Federal Register* implementing agreements reached at the October 2001 plenary meeting of the Australia Group and Australia Group intersessional decisions. The rule clarifies controls on mixtures and certain reexports of Chemical Weapons Convention-controlled items. Finally, the rule added Nauru and Uganda to the list of countries that are currently States Parties to the Chemical Weapons Convention.

## 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 No. 13222's directive to carry out the provisions of the EAA, to the extent permitted by law.

During the reporting period, BIS submitted quarterly reports to the Congress on the actions taken relating to exports of agricultural commodities to Cuba. Section 906(b) of the Trade Sanctions Reform and Export Enhancement Act of 2000 (TSRA) (Title IX of

Pub. L. 106–387), as amended, requires the submission of these quarterly reports. Two reports were submitted to the Congress during the IEEPA reporting period. The first report covered January–March 2002, and the second covered April–June 2002. A third report—covering July–September 2002—was submitted that covers a portion of the IEEPA reporting period.

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 General Accounting Office (GAO). Specifically, the OIG initiated 3 studies and GAO initiated 12, continued 15, and closed 11 studies. (BIS has 27 GAO studies open and closed 11 during this time frame.)

G. EXPORT ENFORCEMENT

In the reporting period, BIS through its offices of Enforcement Analysis, Export Enforcement, and Antiboycott Compliance, continued its programs to prevent diversions of controlled items, investigate and enforce export control violations, and enforce U.S. antiboycott 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 on 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 (NDAA), BIS delivered to the Congress its fourth annual report on HPC exports to Computer Tier 3 countries.

*Office of Export Enforcement (OEE)*

During the reporting period, OEE opened 564 investigations, some of which led to both criminal and administrative sanctions. A total of \$975,000 in civil penalties and criminal fines were im-

posed for violations during this period. OEE also issued 69 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 Antiboycott Compliance (OAC)*

OAC implements the antiboycott provisions of the EAA and the EAR. OAC performs three main functions: enforcing the EAR, assisting the public in complying with antiboycott provisions, and compiling and analyzing information regarding international boycotts. During the reporting period, OAC opened ten cases, closed 13 investigations, and imposed \$59,000 in civil penalties.

