

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

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, May 29, 2003.

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

DEAR MR. SPEAKER: Consistent with 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 AUGUST
19, 2002, TO FEBRUARY 19, 2003

The following report fulfills the requirements of section 204 of International Emergency Economic Powers Act (IEEPA) (50 U.S.C. 1703), and section 401(c) of the National Emergencies Act (50 U.S.C. 1641(c)). These provisions require the President to report to the Congress every 6 months on, respectively, activities undertaken pursuant to the national emergency declared in Executive Order 13222 (issued August 17, 2001), and the total expenditures directly attributable to that declaration. The following combined activities and expenditures report covers the 6-month period from August 19, 2002, to February 19, 2003.

Detailed information on export control activities is contained in the most recent Export Administration Annual Report and the January 2003 Report on Foreign Policy Export Controls, required by Section 14 and section 6(f) of the EAA, respectively, which the Department of Commerce continues to submit to the Congress under a policy of conforming actions under the Executive Order to the provisions of the EAA, as appropriate.

Since the issuance of Executive Order 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 No. 13222 to the provisions of the EAA, insofar as appropriate.

The expenses incurred by the Federal Government in the 6-month period from August 19, 2002, to February 19, 2003, that are directly attributable to the exercise of authorities conferred by the declaration of a national emergency with respect to export controls, were largely centered in the Department of Commerce's Bureau of Industry and Security (BIS).

Expenditures by the Department of Commerce for the reporting period are anticipated to be \$28,749,000, most of which represents program operating costs, wage and salary costs for federal personnel, and overhead expenses.

During the reporting period, there were several significant export control developments:

A. MULTILATERAL DEVELOPMENTS

The Wassenaar Arrangement

The Wassenaar Arrangement is a multilateral regime 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. Wassenaar members maintain export controls on the agreed Wassenaar munitions and dual-use lists through their national policies.

In September 2002, the Experts Group of the Wassenaar Arrangement agreed to definition and control list changes, including relaxed controls on analog-to-digital converters, the retention of software and technology controls for computers capable of greater than 28,000 million theoretical operations per second (MTOPS), updated controls on low-bit-rate digital voice used in command and control, and the retention of software and technology controls on the "Sensitive List" for certain machine tools.

In October 2002, Wassenaar's General Working Group exchanged information on regions and projects of concern, exports of dual-use items, and the scope of dual-use notifications among members. Discussions also centered on combating terrorism, U.S. proposals for expanded reporting of conventional arms transfers, including the establishment of a reporting category for small arms and light weapons, strengthening dual-use notification procedures by establishing a denial consultation mechanism, and adopting "catch-all" controls.

In December 2002, the Wassenaar Arrangement Plenary agreed to several significant initiatives to combat terrorism, including intensified cooperation among members to prevent the acquisition by terrorists of conventional arms and dual-use items and new means for sharing information to strengthen controls over such items. Agreement also was reached on "best practices" guidelines and criteria for the export of small arms and light weapons. To keep pace with advances in technology and developments in international security, the Plenary agreed to several control list amendments, including strengthened controls on radiation hardened integrated circuits. At the same time, taking into account the widespread availability of certain items and a broad diversity of suppliers, the Plenary agreed to raise the control threshold for computers and eliminate controls on general purpose microprocessors. Finally, the Plenary reached agreement on a Statement of Understanding that recognizes the importance of controlling arms brokering.

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

The Missile Technology Control Regime (MTCR)

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

The MTCR Plenary and Technical Experts Meeting were held in Warsaw, Poland, on September 21–27, 2002. Consensus was reached on several major technical issues, the most important being the definitions of missile range and payload, the parameters that determine if a missile system falls under the MTCR's purview. New controls on unmanned aerial vehicles designed or modified for

aerosol delivery were tentatively agreed upon, and will go into effect in 6 months barring objections by MTCR members in the interim. Agreement also was reached on the refinement and/or clarification of existing controls on propellants, navigation equipment, flight controls, and avionics.

The Nuclear Suppliers Group (NSG)

The NSG is comprised of 40 Participating Governments that contribute to the nonproliferation of nuclear weapons by voluntary implementation of guidelines on the export of nuclear and nuclear-related dual-use items and through exchanges of information on nuclear proliferation concerns.

The NSG agreed at an Extraordinary Plenary meeting in December 2002: (i) to adopt U.S. proposed anti-terrorism amendments to the NSG's Guidelines; (ii) to issue a press statement alerting supplier states to concerns about the North Korean (DPRK) nuclear weapons program; and (iii) to authorize the Chairman to communicate with key non-member supplier and transit states to alert them to the risks of diversion of controlled and non-controlled equipment, materials, and technology to the DPRK nuclear weapons program.

The Australia Group (AG)

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

The AG convened a Technical Experts Meeting in Paris, France, during the week of February 10, 2003, to discuss the possible addition of new controls—as proposed by the United States—on certain chemical precursors and toxic chemicals. Export controls on biological agents, as well as U.S.-proposed control on agricultural sprayers that can be used in the delivery of biological agents, also were discussed. These issues will be discussed further at the AG Plenary in June 2003.

The Chemical Weapons Convention (CWC)

The CWC is an international treaty that bans chemical weapons and monitors the legitimate production, processing, consumption, export, and import of certain toxic chemicals and precursors that could contribute to the development of weapons of mass destruction. Certain export control provisions needed to implement the CWC 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. Convention requirements relating to the export of firearms subject to the EAR have been implemented. However, those requirements pertaining to transit and explosives continue to be reviewed by an interagency working group.

B. ENCRYPTION/HIGH PERFORMANCE COMPUTER AND MICROPROCESSOR POLICY

Encryption

During the reporting period, BIS conducted seminars in Washington, D.C.; Minneapolis, Minnesota; and Santa Clara, California, on the June 2002 amendments to the encryption regulations. The Department of Commerce's Bureau of Industry and Security also continued to consult with industry and the interagency community on emerging technical and policy issues to assure the continued effectiveness of encryption export controls. The Department of Commerce's Bureau of Industry and Security also processed technical review requests and export license applications for a wide variety of products with encryption features.

High Performance Computer and Microprocessor Controls

There were no revisions to high performance computer (HPC) export control policy during the reporting period. The Department of Commerce's Bureau of Industry and Security continued to work with industry and interagency expert groups to explore alternatives to the current HPC export control metric based on MTOPS.

On January 14, 2003, BIS published a regulation that streamlined export controls on general purpose microprocessors, which are used worldwide in commercial applications, such as personal computers and cell phones. Under the new rule, a license only is required to export general purpose microprocessors to designated terrorism-supporting countries or to military end-uses or end-users in countries posing national security concerns (e.g., China and Russia). This action is consistent with a decision made by the Wassenaar Arrangement in February 2002 to decontrol general purpose microprocessors, and was necessary to ensure a level playing field for U.S. industry in the growing commercial market for microprocessors, yet protect U.S. national security interests.

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.

Singapore, Malaysia, and Thailand

From October 11–23, 2002, Under Secretary of Commerce Kenneth I. Juster led a delegation consisting of representatives from the Departments of State and Commerce to Singapore, Malaysia, and Thailand. The purpose of the trip was to consult with senior

government officials and industry representatives in these countries on trade security issues, including export control matters and the Department of Commerce's Transshipment Country Export Control Initiative (TECI). The trip also sought to gain support from the countries for the STAR Initiative (Secure Trade in the APEC Region) and to promote attendance by these countries in an international conference on transshipment and export control issues that was held in Bangkok from December 11–13, 2002. The Bangkok conference was organized and funded by the State Department's Export Control and Related Border Security Assistance (EXBS) program. As a result of this visit, each country agreed to participate in the conference in Bangkok, and BIS received a positive response and willingness to cooperate on trade security initiatives from senior government officials in all three countries.

India

In furtherance of the November 2001 pledge by President Bush and Prime Minister Vajpayee to stimulate U.S.-India high-technology commerce, Under Secretary Juster led an interagency delegation of senior officials from the Department of Commerce, the Department of State, and the White House to New Delhi, Mumbai, and Bangalore, India, from November 8–17, 2002. The purpose of the trip was to deliver the United States Government response to several Government of India proposals to stimulate U.S.-India high-technology trade. The U.S. delegation reached agreement with the Government of India on establishing the India-U.S. High Technology Cooperation Group, which will be a formal mechanism to discuss a wide range of high-technology trade issues, including sensitive export control issues. The U.S. delegation also presented facts that helped dispel Indian misperceptions that U.S. export controls on nuclear and missile items are a significant barrier to increased high-technology trade.

Panama

From January 14–17, 2003. Under Secretary Juster led a delegation to Panama to consult with senior government officials on trade security issues and TECI. This trip also sought to promote participation in U.S. export control assistance programs. As a result of this visit, the Government of Panama agreed to cooperate with the United States on export controls and trade security and designated a governmental point-of-contact for future discussions on these matters.

Nonproliferation and Export Control International Cooperation Program

During the reporting period, BIS's Nonproliferation and Export Control International Cooperation Programs (NEC) was involved in 27 technical exchanges on export controls, including: (i) a forum in August 2002 to initiate the U.S.-India Export Control Cooperative Exchange Program; (ii) the Fourth International Conference on Export Controls in Warsaw, Poland, in October 2002; (iii) the Regional Forum on Transshipment Controls in Bangkok, Thailand, in December 2002; and (iv) a February 2003 meeting on the Regional Transit Agreement for the Caucasus and Central Asian for six par-

ticipating countries, which concluded a 3-year effort to finalize a draft agreement and summary protocol.

These exchanges sought to familiarize participating governments with the major elements of an effective export control system and to assist these governments in developing and strengthening their national export control systems. These elements include: (i) the necessary legal and regulatory framework, (ii) licensing procedures and control lists, (iii) enforcement mechanisms, (iv) industry-government relations, and (v) system administration and automation support. The intent of these programs is to reduce the proliferation threat from/through these countries by strengthening their national export control systems.

D. REGULATORY ACTIONS: PUBLISHED AND PENDING

During the reporting period, BIS published several amendments to the EAR.

On August 29, 2002, BIS published a rule amending several provisions of the EAR related to nuclear controls. The rule reformatted approximately 50 Export Control Classification Numbers (ECCNs) on the Commerce Control List (CCL) to make them conform more closely with the language used to identify such items on the European Union (EU) and Nuclear Suppliers Group (NSG) dual-use lists. The rule amended the EAR to reflect the membership of Belarus, Cyprus, Slovenia, and Turkey in the NSG.

On September 18, 2002, BIS amended the EAR by clarifying that all production equipment and facilities related to the production of missile technology items described in ECCNs IB115, IB117, 9B115, 9B116 are subject to the EAR and controlled on the CCL.

On September 23, 2002, BIS published a rule that revised the CCL to clarify which "space qualified" items identified under certain ECCNs are subject to the EAR. A separate rule published concurrently by the U.S. Department of State clarifies which "space qualified" items are on the U.S. Munitions List and, therefore, subject to the International Traffic in Arms Regulations. The rule also added "regional stability" as a reason for control for certain items in Category 6 of the CCL.

On November 21, 2002, BIS published a notice removing S.B. Submarine Systems Co., Ltd. (located in the People's Republic of China), from the "Unverified List." This action followed the completion of a post-shipment verification (PSV) at the company's facilities. BIS established the "Unverified List" with the publication of a notice in the Federal Register on June 14, 2002. The "Unverified List" consists of foreign endusers and consignees that have been involved in export transactions in which BIS officials (or other federal officials acting on BIS's behalf) have been unable to perform pre-license checks or PSVs for reasons outside the control of the United States Government. Participation of a person on the "Unverified List" in any proposed export transaction is considered by BIS to raise a "red flag" for purposes of the "Know Your Customer" guidance set forth in EAR. Under that guidance, the "red flag" requires heightened scrutiny by the exporter before proceeding with the transaction.

On November 25, 2002, BIS amended the EAR to remove the special controls on the export and reexport of arms-related items

imposed on July 14, 1998, on the Federal Republic of Yugoslavia (Serbia and Montenegro) (FRY). The rule also made a minor clarification to the arms embargo-based controls in place with respect to Rwanda pursuant to UNSC Resolution 918 of May 17, 1994.

On January 14, 2003, BIS published a revision to the EAR regarding export controls on general purpose microprocessors. This rule streamlined export controls on general purpose microprocessors. A license is now required only for the export of general purpose microprocessors to designated terrorism-supporting countries or to military end-users or end-users in countries posing national security concerns.

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 of Industry and Security 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 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 quarterly reports. Two reports were submitted to the Congress during this reporting period. The first report covered July-September 2002, and the second covered October-December 2002. Section 906(c) of the TSRA requires the submission of a biennial report to the Congress. BIS submitted its first such report, covering the 2-year period since the enactment of TSRA, on October 28, 2002.

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 two, continued two, and closed one study during this time. The GAO initiated eight, continued 15, and closed 15 studies 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

In the reporting period, Office of Enforcement Analysis (OEA) continued to improve its visa Review Program. This program tar-

gets 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.

Office of Enforcement Analysis activities also include a plan to target and prioritize pre-license checks (PLC) and post shipment verifications (PSV) 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.

On December 31, 2002, as required by the National Defense Authorization Act for FY 1998 (NDAA), BIS delivered to the Congress its fifth annual report on HPC exports to Computer Tier 3 countries (e.g., China and Russia), compiled by OEA.

Office of Export Enforcement

During the reporting period, Office of Export Enforcement (OEE) opened 346 investigations, some of which led to both criminal and administrative sanctions. A total of \$2,114,000 in civil penalties and criminal fines were imposed for violations during this period. OEE also issued 11 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.

Significant enforcement activities during the reporting period included:

On November 4, 2002, BIS announced that Sigma-Aldrich Corporation of St. Louis, Missouri, and two of its subsidiaries agreed to pay a \$1,760,000 fine to settle charges involving illegal exports of biological toxins. The settlement was reached after a significant legal ruling in the Commerce Department's favor by an administrative law judge adjudicating the dispute. The penalty is the largest imposed by the Commerce Department in a case involving biological toxins, and one of the largest penalties ever paid to the Department for export control violations.

On January 7, 2003, BIS announced that Silicon Graphics, Inc. (SGI), of Mountain View, California, pled guilty to charges that SGI had violated Commerce Department regulations by illegally exporting high performance computers to a Russian nuclear weapons laboratory in 1996. SGI agreed to pay \$1 million in criminal fines to resolve the charges. In a related administrative case, SGI agreed to pay \$182,000, the maximum penalty authorized under the EAR, to settle civil charges arising from the same exports.

Office of Antiboycott Compliance (OAC)

Office of Antiboycott Compliance implements the antiboycott provisions of the EAA and the EAR. Office of Antiboycott Compliance performs three main functions: (i) enforcing the EAR, (ii) assisting the public in complying with antiboycott provisions, and (iii) compiling and analyzing information regarding international boycotts. During the reporting period, OAC opened five cases and closed 12

investigations. Office of Antiboycott Compliance also made six public presentations on the antiboycott regulations.

Office of Antiboycott Compliance enforcement activities involved an agreement pursuant to which Mercator, Inc., an Englewood Cliffs, New Jersey exporter, agreed to pay a \$30,000 civil penalty to settle allegations that Mercator violated the antiboycott regulations and U.S. export control laws in connection with shipment of chemicals to Iran through the United Arab Emirates. This was a joint case developed by the OAC and BIS's Boston Field Office.

Office of Antiboycott Compliance also assisted the public in complying with the antiboycott provisions by responding to 558 requests for advice on application of the antiboycott provisions to specific export transactions. Also, OAC participated in public presentations on compliance with the antiboycott regulations at six conferences and seminars in Detroit, Boston, Orlando, and Washington, D.C.

