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GENERAL COUNSEL

EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

*Memo forwarded  
to Justice by  
OMB*

September 30, 1983

Honorable William French Smith  
Attorney General  
Washington, D. C. 20530

Dear Mr. Attorney General:

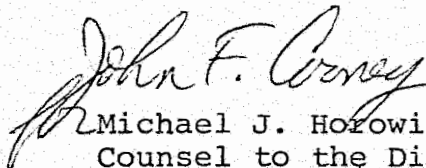
Enclosed, in accordance with the provisions of Executive Order No. 11030, as amended, is a proposed Executive order entitled "Continuation of Export Control Regulations."

The proposed Executive order was submitted by the Department of Commerce and would invoke the President's authority under the International Emergency Economic Powers Act and other statutes to declare a national economic emergency and authorize continuation of the existing system of export controls with respect to United States products and technology to foreign countries. Invocation of this emergency authority is required because the authority under the International Emergency Economic Powers Act (IEEPA) will lapse on September 30, 1983, due to Congress's failure to complete action on reauthorization legislation.

Your staff may direct any questions concerning this proposed Executive order to Mr. John F. Cooney of this office (395-5600).

This proposed Executive order has the approval of the Director of the Office of Management and Budget.

Sincerely,

  
Michael J. Horowitz  
Counsel to the Director

Enclosures



EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

September 30, 1983

MEMORANDUM FOR: THE PRESIDENT

FROM: DAVID A. STOCKMAN *DS*

SUBJECT: PROPOSED EXECUTIVE ORDER ENTITLED "CONTINUATION OF EXPORT CONTROL REGULATIONS"

SUMMARY. This memorandum forwards for your consideration a proposed Executive order which would invoke your statutory authority to declare a national emergency in order to continue in force the existing system of controls of exports of United States products and technology to foreign countries. Invocation of your emergency authority is required because the authority under which those controls are now administered, the Export Administration Act of 1979, will lapse on September 30, 1983, due to Congress's failure to complete action on reauthorization legislation.

BACKGROUND. Pursuant to the provisions of the Export Administration Act, the United States maintains an extensive series of regulations which limit access of foreign parties to United States commercial goods and technology, prohibit compliance with the boycott practices of foreign countries, and serve other vital national security, foreign relations and economic interests. Authorization for that Act will expire at midnight September 30, 1983.

The proposed order, which was transmitted by the Department of Commerce, would invoke the President's authority under the International Emergency Economic Powers Act and other statutes to declare a national economic emergency and authorize continuation of the existing system of controls. In signing this proposed order and the attached Report to the Congress, the President would determine that unrestricted access of foreign parties to United States commercial goods and technology and the existence of certain boycott practices of foreign nations constitute, in light of the expiration of the Export Administration Act, an unusual and extraordinary threat to the national security, foreign policy and economy of the United States. The proposal would declare a national economic emergency to deal with that threat. The proposed

order essentially follows the form which has been used on prior occasions when the President's emergency authorities have been utilized to prevent a lapse in this system of export controls.

Time has not permitted a full coordination of the views of the affected agencies. Several agencies (National Security Council, Defense) support the proposed order and consider it vital to the national security, foreign relations interests, and economic interests of the United States. Other agencies (Energy) object on the ground that the proposed order retains more of the existing system of controls than is warranted in an emergency. The essence of their concern is that Congress has recently demonstrated great sensitivity to Presidential invocation of emergency powers, as manifested by its narrowing of executive discretion in passing IEEPA in 1977. In their view, broad exercise of authority at this time, especially in light of the Supreme Court's recent invalidation of legislative veto provisions such as that found in IEEPA, may prompt further Congressional narrowing of the President's discretion. The Department of State, while sharing some of these concerns, would invoke IEEPA to provide authorization for continuation of the controls, but only on national security grounds.

Proponents of the order, on the other hand, believe that its issuance will not prompt such a response and that Congressional inaction is based in large part on its assumption that the President will invoke his emergency powers to retain these controls.

RECOMMENDATION. On balance, the imminent adverse national security and foreign relations consequences of delaying action are more compelling than concerns about possible Congressional reactions. I therefore recommend that you sign the proposed Executive order.

Enclosures



U.S. Department of Justice

Office of Legal Counsel

Office of the  
Assistant Attorney General

Washington, D.C. 20530

SEP 30 1983

MEMORANDUM

Re: Proposed Executive order entitled "Continuation  
of Export Control Regulations"

The attached proposed Executive order was submitted by the Department of Commerce and has been forwarded for the consideration of this Department as to form and legality by the Office of Management and Budget with the approval of the Director.

The Export Administration Act, 50 U.S.C. App. § 2401 et seq. (Act), expires at midnight on September 30, 1983. The export controls issued pursuant to its authority by the Secretary of Commerce will therefore lapse simultaneously. See Title 15, Code of Federal Regulations, Chapter III, Subchapter C, Parts 368-399. These export controls are the basic mechanism by which the United States controls the export of commercial goods and technical data. Although a bill extending the Act is pending before Congress, it has not yet been passed. The proposed Executive order is intended to permit the Department of Commerce to enforce export controls by temporarily replacing the lapsed regulations with ones issued pursuant to the International Emergency Economic Powers Act (IEEPA), 50 U.S.C. § 1701 et seq. (Supp. V 1981).

The proposed Executive order falls into two parts. The first declares a national emergency under IEEPA, 50 U.S.C. § 1701. The declaration of an emergency will be predicated on the unusual and extraordinary threat to the national security, foreign policy and economy of the United States resulting from the expiration of the Act and its controls. The second part of the proposed order will promulgate regulations identical to the Act and to those now found in 15 C.F.R. Parts 368-399 and providing for the continuation of provisions for the administration of a related section of the Arms Export Control Act, 22 U.S.C. § 2778(e) (Supp. V 1981).

The Act has expired on four previous occasions -- twice in 1972, once in 1973, and once in 1976. Each time the President issued an order extending the regulations under the predecessor statute to IEPPA, the Trading with the Enemy Act. 50 U.S.C. App. § 1 et seq. (1976). 1/ Each time this Office approved the form and legality of the President's order. 2/

In 1977, Congress enacted IEPPA to replace the Trading with the Enemy Act. Pub. L. No. 95-223, title II, 91 Stat. 1626 (1977). Authority under the Trading with the Enemy Act could be exercised during war or "any other period of national emergency declared by the President," without describing what circumstances could constitute a national emergency. IEPPA, by contrast, limits the President's declaration of a national emergency to situations in which there is

any unusual and extraordinary threat, which has its source in whole or substantial part outside the United States, to the national security, foreign policy, or economy of the United States . . . .

50 U.S.C. § 1701(a)(Supp. V 1981). IEPPA's legislative history makes clear that Congress intended for the President to have the authority under IEPPA to respond to the situation created by the failure of Congress to reauthorize the exercise of power under the Export Administration Act. As stated in a committee report at the time of the enrollment of IEPPA:

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1/ See Exec. Order No. 11677, 3 C.F.R. 719 (1971-1975 Comp.); Exec. Order No. 11796, 3 C.F.R. 888 (1971-1975 Comp.); Exec. Order No. 11810, 3 C.F.R. 905 (1971-1975 Comp.); Exec. Order No. 11940, 3 C.F.R. 150 (1977 Comp.).

2/ See Memorandum for the President from Roger C. Crampton, Assistant Attorney General, Office of Legal Counsel, July 31, 1972; Memorandum to Files from Savery M. Gradoville, Attorney-Adviser, Office of Legal Counsel, July 26, 1974; Memorandum for the President from Antonin Scalia, Assistant Attorney General, Office of Legal Counsel, September 27, 1974; Memorandum for J.T. Smith, General Counsel, Department of Commerce from Antonin Scalia, Assistant Attorney General, Office of Legal Counsel, September 29, 1976.



The committee rejected administration recommendations that it make the Export Administration Act permanent legislation, because it feels that such important regulatory legislation should be periodically reviewed. The committee expects that future lapses of the Export Administration Act can and will be avoided, if necessary, by means of continuing resolutions. Should a lapse occur, however, the authority of title II of this bill could be used to continue the Export Administration Regulations in effect if, and to the extent that, the President declared a national emergency as a result of such lapse according to the procedures of the National Emergencies Act.

H.R. Rep. No. 95-459, 95th Cong., 1st Sess. 13 (1977).

Those who violate these regulations will be subject to civil and criminal penalties. Because the regulations will be promulgated under IEPPA, its penalty provisions will apply, 50 U.S.C. § 1705 (Supp. V 1981), although the violations charged will refer back to the Export Administration Act's regulations. This incorporation by reference occurred in a case brought when the Act was extended under the Trading with the Enemy Act in 1976. See United States v. Spawr Optical Research, Inc., 685 F.2d 1076, 1078 n.1 (9th Cir. 1981), cert. denied, 103 S.Ct. 1194 (1983).

The Department of Commerce believes that the lapse of the export control regulations will expose the United States to unusual and extraordinary threats of the kind contemplated by IEPPA. <sup>3/</sup> Among these are the threats posed by the access of unfriendly nations to our high technology material and the damage done to relations with our allies if we are unable to enforce certain United Nations trade boycotts. It may be argued, of course, that not all of the currently effective export controls are equally important such that their lapse will expose the United States to an "unusual and extraordinary threat." However, a material ingredient of

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<sup>3/</sup> These concerns, which have been described to us generally by the Commerce Department, are detailed in the memorandum which the Department of Commerce will be forwarding to you for transmittal to Congress. 50 U.S.C. § 1703(b).

the crisis stems from the sudden absence of so many and different restrictions and the aggregate impact that that may have on our ability to control transfers of various types of goods and technology to foreign countries. The authority to make factual determinations necessary to the invocation of IEEPA is firmly committed to the President's discretion by that statute, and we believe that a court would accord substantial deference to your determination. See Dames & Moore v. Regan, 453 U.S. 657, 672-674 (1981).

There may be alternative authority for some of the controls under the United Nations Participation Act of 1945, 22 U.S.C. § 287c and residual presidential authority under Article II of the Constitution. The extent to which this act or Article II would provide a possible independent basis of authority for extending particular export controls would have to be determined in each instance.

Assuming that you are satisfied with the material prepared by the Department of Commerce and are able to make the required determination, we believe that the proposed Executive order is acceptable as to form and legality.

Theodore B. Olson  
Assistant Attorney General  
Office of Legal Counsel





U.S. Department of Justice

Office of Legal Counsel

Office of the  
Assistant Attorney General

Washington, D.C. 20530

The President,

The White House.

My dear Mr. President:

I am herewith transmitting a proposed Executive order entitled "Continuation of Export Control Regulations."

This proposed order was submitted by the Department of Commerce and it has been forwarded for the consideration of this Department as to form and legality by the Office of Management and Budget with the approval of the Director.

The proposed Executive order is approved as to form and legality.

Respectfully,

Theodore B. Olson  
Assistant Attorney General  
Office of Legal Counsel

EXECUTIVE ORDER

- - - - -

CONTINUATION OF EXPORT CONTROL REGULATIONS

By the authority vested in me as President by the Constitution and laws of the United States of America, including section 203 of the International Emergency Economic Powers Act (50 U.S.C. 1702) (hereinafter referred to as "the Act"), and 22 U.S.C. 287c,

I, RONALD REAGAN, President of the United States of America, find that the unrestricted access of foreign parties to United States commercial goods, technology, and technical data and the existence of certain boycott practices of foreign nations constitute, in light of the expiration of the Export Administration Act of 1979, an unusual and extraordinary threat to the national security, foreign policy and economy of the United States and hereby declare a national economic emergency to deal with that threat.

Accordingly, in order (a) to exercise the necessary vigilance over exports from the standpoint of their significance to the national security of the United States; (b) to further significantly the foreign policy of the United States, including its policy with respect to cooperation by United States persons with certain foreign boycott activities, and to fulfill its international responsibilities; and (c) to protect the domestic economy from the excessive drain of scarce materials and reduce the serious economic impact of foreign demand, it is hereby ordered as follows:

Section 1. Notwithstanding the expiration of the Export Administration Act of 1979, as amended (50 U.S.C. 2401 et seq.), the provisions of that Act, the provisions

for administration of that Act and delegations of authority set forth in Executive Order No. 12002 of July 7, 1977 and Executive Order No. 12214 of May 2, 1980, shall, to the extent permitted by law, be incorporated in this Order and shall continue in full force and effect.

Sec. 2. All rules and regulations issued or continued in effect by the Secretary of Commerce under the authority of the Export Administration Act of 1979, as amended, including those published in Title 15, Chapter III, Subchapter C, of the Code of Federal Regulations, Parts 368 to 399 inclusive, and all orders, regulations, licenses and other forms of administrative action issued, taken or continued in effect pursuant thereto, shall, until amended or revoked by the Secretary of Commerce, remain in full force and effect, the same as if issued or taken pursuant to this Order, except that provisions of sections 203(b)(2) and 206 of the Act (50 U.S.C. 1702(b)(2) and 1705) shall control over any inconsistent provisions in the regulations with respect to, respectively, certain donations to relieve human suffering and civil and criminal penalties for violations subject to this Order. Nothing in this section shall affect the continued applicability of administrative sanctions provided for by the regulations described above.

Sec. 3. Provisions for the administration of section 38(e) of the Arms Export Control Act (22 U.S.C. 2778(e)) may be made and shall continue in full force and effect until amended or revoked under the authority of section 203 of the Act (50 U.S.C. 1702). To the extent permitted by law, this Order also shall constitute authority for the issuance and continuation in full force and effect of rules and regulations by the President or his delegate, and all orders, licenses, and other forms of administrative action issued, taken or continued in effect pursuant thereto, relating to the administration of section 38(e).

Sec. 4. <sup>a</sup>This Order shall be effective as of 12:01 a.m. October 1, 1983,<sup>a</sup> and shall expire upon the enactment into law of a bill reauthorizing the Export Administration Act.

THE WHITE HOUSE,

# **WHITE HOUSE CORRESPONDENCE TRACKING WORKSHEET**

☐ O - OUTGOING☐ H - INTERNAL☐ I - INCOMINGDate Correspondence  
Received (YY/MM/DD) \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_Name of Correspondent: Peter Wallison☐ MI Mail Report

User Codes: (A) \_\_\_\_\_ (B) \_\_\_\_\_ (C) \_\_\_\_\_

Subject: Presury's Comments on a proposed Executive Order entitled "Continuing the Regulations Previously Provided for by the Export Administration Act"**ROUTE TO:****ACTION****DISPOSITION**

Office/Agency	(Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
<u>W/Holland</u>		ORIGINATOR	<u>83/10/03</u>			<u>1/1</u>
		Referral Note:				
<u>W/ATO4</u>		<u>I</u>	<u>83/10/03</u>			<u>1/1</u>
		Referral Note:				
<u>W/ATO9</u>		<u>A</u>	<u>83/10/03</u>			<u>1/1</u>
		Referral Note:				
			<u>1/1</u>			<u>1/1</u>
		Referral Note:				
			<u>1/1</u>			<u>1/1</u>
		Referral Note:				

**ACTION CODES:**

A - Appropriate Action  
C - Comment/Recommendation  
D - Draft Response  
F - Furnish Fact Sheet  
to be used as Enclosure

I - Info Copy Only/No Action Necessary  
R - Direct Reply w/Copy  
S - For Signature  
X - Interim Reply

**DISPOSITION CODES:**

A - Answered  
B - Non-Special Referral  
C - Completed  
S - Suspended

**FOR OUTGOING CORRESPONDENCE:**

Type of Response = Initials of Signer  
Code = "A"  
Completion Date = Date of Outgoing

Comments: \_\_\_\_\_

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### PRESIDENTIAL REPLY

Code	Date	Comment	Form
C    _____	_____	Time: _____	P- _____
DSP    _____	_____	Time: _____	Media: _____

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 n - 6 - Ronald  
 n - 7 - Ronnie

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 X - Miscellaneous  
 Y - Study



THE GENERAL COUNSEL OF THE TREASURY  
WASHINGTON, D.C. 20220

RAA/PR

SEP 30 1983

Dear Mr. Horowitz:

You have asked for Treasury's comments on a proposed Executive order prepared by the Department of Commerce entitled "Continuing the Regulations Previously Provided for by the Export Administration Act" and a proposed proclamation with respect to the controls presently in effect under the authority of the Export Administration Act concerning the national interest.

In the event that the Senate fails to pass a resolution temporarily extending the termination date of the existing Export Administration Act (EAA) until such time as a final bill is enacted into law, the Department of Commerce believes the only way in which the controls may remain in effect is for the President to invoke the procedures set forth in the International Emergency Economic Powers Act (IEEPA). IEEPA requires the President to declare the existence of a national emergency with respect to an "unusual and extraordinary threat, which has its source in whole or substantial part outside the United States, to the national security, foreign policy, or economy of the United States," prior to exercising IEEPA authorities.

Since it is by definition an emergency statute, we are reluctant to use IEEPA except under the most extraordinary circumstances. Congress enacted IEEPA because of concern about excessive use of national emergencies under the Trading With the Enemy Act. To date, IEEPA has been invoked only in the unusual case of the Iranian hostage crisis. Use of emergency Executive powers in a situation which is partially the result of the failure of Congress to enact temporary extending legislation could be viewed by Congress as an inappropriate use of the statute and could result in future restrictions upon the power of the Executive to invoke IEEPA.

At the same time, some of our trading partners may see the President's use of IEEPA in this situation as an indication that the Administration will use emergency powers freely, casting doubt on the safety of foreign investments in the United States. Thus, while the Treasury Department agrees that the expiration of the EAA will have serious detrimental effects on our national security, foreign policy and domestic economy, we urge caution in exercising this authority.

Despite these concerns, our review of the legislative history of IEEPA makes it clear that Congress sanctioned the use of IEEPA as a temporary measure in the highly unlikely event that Congress failed to complete action to extend the EAA prior to its expiration. The House Committee on International Relations stated in H. Rept. 95-459 that:



The Committee expects that future lapses of the Export Administration Act can and will be avoided, if necessary, by means of continuing resolutions. Should a lapse occur, however, the authority of Title II of this bill could be used to continue the Export Administration Regulations in effect if, and to the extent that, the President declared a national emergency as a result of such lapse according to the procedures of the National Emergencies Act.

With these considerations in mind, it is the view of this Department that adverse Congressional reaction to the invocation of IEEPA can be minimized if the Presidential proclamation and Executive order make it clear that: (1) those controls continued in effect under the authority of IEEPA merely freeze the status quo both in substance and procedure--no attempt is being made to pre-empt any amendments Congress may wish to impose and (2) the emergency controls are temporary in duration--only until such time as Congress enacts definitive legislation of the same general character as the existing EAA.

Accordingly, there should be no reference in the draft proclamation to "and to amend that system from time to time as necessary or desirable." Also, the following Section should be added to the proclamation:

"The national emergency which I have declared in this proclamation shall terminate upon enactment into law of legislation which safeguards the national security, foreign policy and economy of the United States and which covers the areas now covered by the Export Administration Act."

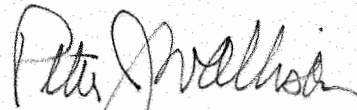
In addition to these changes to the Proclamation, we have two significant technical problems with the Executive Order. First, although it would repromulgate the EAA Executive Orders and regulations under IEEPA, it would fail to repromulgate the terms of the EAA itself. Since both the EAA Executive Orders and the regulations rely upon and implement the terms of the EAA without repeating its language, they form an incomplete regulatory scheme unless the terms of the EAA itself are available as binding law. The results would be unpredictable and potentially nonsensical. In our view the proposed Executive Order should be altered by inserting a new section 1, and renumbering all succeeding sections. The new section should read:

SECTION 1. The terms of the Export Administration Act of 1979, as amended, 50 U.S.C. App. section 2401 et seq., in effect on September 30, 1983, are hereby incorporated by reference into this Executive Order, and are promulgated

as law on the authority of IEEPA insofar as they are not inconsistent with IEEPA's terms or this Executive Order.

Our second technical problem relates to the provisions of the proposed Executive Order relating to the rules and regulations under the EAA. As now drafted, that section provides that the rules and regulations are to "remain in full force and effect, the same as if issued or taken pursuant to this order". If those regulations were "issued or taken pursuant to this order", a question would arise whether some of them would have to be issued in accordance with the notice and comment provisions of the Administrative Procedures Act. Rather than complicate the Executive Order with "emergency" findings that attempt to avoid those requirements, we believe that it would be preferable to simply incorporate the terms of the regulations into the Executive Order, making them binding but not subject to the Administrative Procedures Act in the first instance.

Sincerely,

A handwritten signature in dark ink, appearing to read "Peter J. Wallison", written in a cursive style.

Peter J. Wallison  
General Counsel

Mr. Michael J. Horowitz  
Counsel to the Director  
Executive Office of the President  
Office of Management and Budget  
Washington, D.C. 20503

TO THE CONGRESS OF THE UNITED STATES:

Pursuant to Section 204(b) of the International Emergency Economic Powers Act, 50 U.S.C. 1703, I hereby report to the Congress that I have today exercised the authority granted by this Act to continue in effect the system of controls, contained in 15 C.F.R. Parts 368-399, including restrictions on participation by United States persons in certain foreign boycott activities, which heretofore has been maintained under the authority of the Export Administration Act of 1979, as amended, 50 U.S.C. 2401 et seq. In addition, I have made provision for the administration of Section 38(e) of the Arms Export Control Act, 22 U.S.C. 2778(e).

1. The exercise of this authority is necessitated by the expiration of the Export Administration Act on September 30, 1983, and the resulting lapse of the system of controls maintained under that Act.

2. In the absence of controls, foreign parties would have unrestricted access to United States commercial products, technology and technical data, posing an unusual and extraordinary threat to national security, foreign policy, and economic objectives critical to the United States. In addition, United States persons would not be prohibited from complying with certain foreign boycott requests. This would seriously harm our foreign policy interests, particularly in the Middle East. Controls established in 15 C.F.R. 368-399, and continued by this action, include the following:

National security export controls aimed at restricting the export of goods and technologies which would make a significant contribution to the military potential of any other country which would prove detrimental to the national security of the United States;

Foreign policy controls which further the foreign policy objectives of the United States or its declared international obligations in such widely recognized areas as human rights, anti-terrorism, and regional stability;

Nuclear nonproliferation controls that are maintained for both national security and foreign policy reasons, and support the objectives of the Nuclear Nonproliferation Act;

Short supply controls that protect domestic supplies; and

Antiboycott regulations that prohibit compliance with foreign boycotts aimed at countries friendly to the United States.

3. Consequently, I have issued an Executive Order to continue in effect all rules and regulations issued or continued in effect by the Secretary of Commerce under the authority of the Export Administration Act of 1979, as amended, and all orders, regulations, licenses, and other forms of administrative actions under that Act, except where they are inconsistent with sections 203(b)(2) and 206 of the International Emergency Economic Powers Act.

4. The Congress and the Executive have not permitted export controls to lapse since they were enacted under the Export Control Act of 1949. Any termination of controls could permit transactions to occur that would be seriously detrimental to the national interests we have heretofore sought to protect through export controls and restrictions on compliance by United States persons with certain foreign boycotts. I believe that even a temporary lapse in this system of controls would seriously damage our national security, foreign policy and economic interests and undermine our credibility in meeting our international obligations.

5. The countries affected by this section vary depending on the objectives sought to be achieved by the system of controls instituted under the Export Administration Act. Potential adversaries are seeking to acquire sensitive United States goods and technologies. Other countries serve as conduits for diversion of such items. Still other countries have policies that are contrary to United States foreign policy or nuclear nonproliferation objectives, or foster boycotts against friendly countries. For some goods or technologies, controls could apply even to our closest allies in order to safeguard against diversion to potential adversaries.

THE WHITE HOUSE,

EXECUTIVE ORDER

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CONTINUATION OF EXPORT CONTROL REGULATIONS

By the authority vested in me as President by the Constitution and laws of the United States of America, including section 203 of the International Emergency Economic Powers Act (50 U.S.C. 1702) (hereinafter referred to as "the Act"), and 22 U.S.C. 287c,

I, RONALD REAGAN, President of the United States of America, find that the unrestricted access of foreign parties to United States commercial goods, technology, and technical data and the existence of certain boycott practices of foreign nations constitute, in light of the expiration of the Export Administration Act of 1979, an unusual and extraordinary threat to the national security, foreign policy and economy of the United States and hereby declare a national economic emergency to deal with that threat.

Accordingly, in order (a) to exercise the necessary vigilance over exports from the standpoint of their significance to the national security of the United States; (b) to further significantly the foreign policy of the United States, including its policy with respect to cooperation by United States persons with certain foreign boycott activities, and to fulfill its international responsibilities; and (c) to protect the domestic economy from the excessive drain of scarce materials and reduce the serious economic impact of foreign demand, it is hereby ordered as follows:

Section 1. Notwithstanding the expiration of the Export Administration Act of 1979, as amended (50 U.S.C. 2401 et seq.), the provisions of that Act, the provisions

for administration of that Act and delegations of authority set forth in Executive Order No. 12002 of July 7, 1977 and Executive Order No. 12214 of May 2, 1980, shall, to the extent permitted by law, be incorporated in this Order and shall continue in full force and effect.

Sec. 2. All rules and regulations issued or continued in effect by the Secretary of Commerce under the authority of the Export Administration Act of 1979, as amended, including those published in Title 15, Chapter III, Subchapter C, of the Code of Federal Regulations, Parts 368 to 399 inclusive, and all orders, regulations, licenses and other forms of administrative action issued, taken or continued in effect pursuant thereto, shall, until amended or revoked by the Secretary of Commerce, remain in full force and effect, the same as if issued or taken pursuant to this Order, except that provisions of sections 203(b)(2) and 206 of the Act (50 U.S.C. 1702(b)(2) and 1705) shall control over any inconsistent provisions in the regulations with respect to, respectively, certain donations to relieve human suffering and civil and criminal penalties for violations subject to this Order. Nothing in this section shall affect the continued applicability of administrative sanctions provided for by the regulations described above.

Sec. 3. Provisions for the administration of section 38(e) of the Arms Export Control Act (22 U.S.C. 2778(e)) may be made and shall continue in full force and effect until amended or revoked under the authority of section 203 of the Act (50 U.S.C. 1702). To the extent permitted by law, this Order also shall constitute authority for the issuance and continuation in full force and effect of rules and regulations by the President or his delegate, and all orders, licenses, and other forms of administrative action issued, taken or continued in effect pursuant thereto, relating to the administration of section 38(e).



Sec. 4. This Order shall be effective as of 12:01 a.m. October 1, 1983, and shall expire upon the enactment into law of a bill reauthorizing the Export Administration Act.

THE WHITE HOUSE,



MEMORANDUM

THE WHITE HOUSE

WASHINGTON

October 9, 1983

FOR: RICHARD A. HAUSER

FROM: PETER J. RUSTHOVEN *PJR*

SUBJECT: Providing for Continued Effectiveness  
of Export Administration Act Regulations

The Senate did not, prior to the present recess, act to extend the Export Administration Act. Hence, if relevant provisions of the Act and implementing regulations are to remain in effect beyond the present expiration date (October 14, 1983), it will apparently be necessary for the President to issue before October 15 an Executive Order declaring a "national emergency," along the lines of the proposed Order prepared and approved, but not issued, at the end of last month.

To assist you in reviewing the new implementing documents that will presumably be prepared this week, attached are copies of (1) the initial materials on this issue circulated by Michael Horowitz on September 29, which include the Commerce Department memorandum signed by Deputy General Counsel Irving Margulies; (2) a copy of the Treasury Department comments on the draft Executive Order; and (3) the September 30 OLC memorandum approving and forwarding the final draft of that Order.

In addition, you may wish to note the following:

° As we discussed, I advised Carol Williams of OLC that we do not object to State, Commerce and other interested agencies reviewing OLC's September 30 memorandum and attachments.

° Section 4 of the draft Executive Order provided that it would "expire upon the enactment into law of a bill reauthorizing the Export Administration Act." I told Williams (as I told Margery Waxman of Treasury when she proposed this on the afternoon of September 30) that I dislike "self-terminating" clauses of this sort, which invite problems about exactly what kind of legislation (other than a simple extension of the present language of the Act) constitutes "reauthorization."

The purpose of this provision was to emphasize that the action being taken is intended as a temporary, stop-gap measure. I agree with making that point, and believe the whole Order should explicitly be cast in that context. On the termination provision, however, it would be preferable simply to state the President's "intent" to revoke the Executive Order and the "national emergency" when an extension is passed. Williams

says that she and Ted Olson agree, so this should be changed in any future drafts. I wanted to alert you to it, however.

° The International Emergency Economic Powers Act ("IEEPA"), under which the President would act, requires prior consultation with the Congress but does not specify the form that such consultation must take. On the only other emergency declaration under IEEPA (the Iranian hostage crisis), the Executive Clerk's file (required to be kept on each emergency) reflects no written or other formal consultation. Hence, one issue that needs to be reviewed is exactly how and precisely with whom in the Congress the President should "consult" before he acts. ||

The President is also required to notify Congress immediately upon his declaration of an emergency. For the Iran emergency, a simple message was prepared. In the current instance, a draft message, which would have forwarded the Executive Order had it been signed, was prepared and can presumably be updated.

° I have raised with Williams, John Cooney of OMB and Bob Kimmitt of NSC the question whether the previous proposal simply to extend all regulations on an emergency basis should be reexamined, since (a) it seems clear that the "emergency" rationale applies more persuasively to some provisions than to others, and (b) we now have a few more days lead-time than before. Everyone seemed to think this should be reviewed. \*

As a substantive matter, though, I am not sure whether it would in fact be better to extend only the more important of the Act's provisions and regulations. While the argument for a selective approach is clear, there are advantages (assuming a legislative solution will be worked out in the relatively near future) of keeping the current structure intact and not letting anything lapse. Certainly, this should make the legal situation after any legislative extension a "cleaner" one. Moreover, there is substance (as well as convenience) in the "seamless web" analysis that says all aspects of export controls are tied to important foreign policy interests. And we do have the legal blessing of OLC for a blanket extension.

To some degree, we will have to rely on the export control "experts" in evaluating the practical significance of these factors. I do think, however, that we will need to make sure that all sides of this issue are considered.

° The foregoing raises a more general point -- namely, that it continues to be unclear precisely who (if anyone) is taking the lead in ensuring that the various agencies involved review the legal and policy issues in time to permit preparation of the best advice and implementing materials for the President. Given our experiences of a week or so ago, I strongly suspect

that no one will coordinate this project in a satisfactory way unless our office gets directly involved; plainly, the normal OMB "Executive Order review" process is not going to yield the analysis and coordination an issue of this importance needs.

In short, it might be a good idea to arrange for a meeting of the relevant parties (which would include State, Treasury, Justice [OLC], Commerce, NSC and OMB) as soon as possible this week. I suspect OLC may share the desire to have this overall matter reviewed in a more focused way, and (since Bob Shanks, who worked on this before, will be out of the office) that Olson may be the first person with whom you would want to discuss this.

Attachments

cc: Fred F. Fielding

If any questions, please  
call Jordan Luke, Assistant  
General Counsel, 566-5405

THE WHITE HOUSE  
WASHINGTON

TO: JOHN ROBERTS

FROM: *Richard A. Hauser*  
*Deputy Counsel to the President*

X

FYI: \_\_\_\_\_

COMMENT: \_\_\_\_\_

ACTION: \_\_\_\_\_



EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

GENERAL COUNSEL

October 13, 1983

MEMORANDUM

TO: Dick Hauser  
FROM: Mike Horowitz *MH*  
SUBJECT: IEEPA Executive Order

Per our conversation, I am attaching a memo from Charlie Kolb of my staff that racks up agency positions and spells out Commerce's explicit concerns about a weekend hiatus. Also attached is a rack up of agency positions and a letter sent to me reflecting the concerns of the Jewish Community about including the anti-boycott provisions in the IEEPA order.

Attachment



EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

October 13, 1983

MEMORANDUM

TO: Mike Horowitz

FROM: Charles Kolb *CEM*

SUBJECT: Proposed Executive Order Entitled "Continuation of Export Control Regulations" -- Agency Positions

I have spoken with at least one representative from each of the following agencies who reported as follows concerning the above-styled proposed Executive Order:

Commerce (Michael Levitt, 377-3151) -- supports Executive Order as prepared on September 30, 1983; strongly fears results of weekend hiatus. His concerns were:

- o Lapse of antiboycott provisions would permit companies previously barred to share business information with Arab countries.
- o Sensitive national security items may be shipped abroad.
- o Short-supply items such as red cedar and certain petroleum products may be shipped abroad (tankers reportedly lining up already to receive them).
- o Lapse would mean inability to engage in cooperative embargo with NATO allies concerning certain strategic items on the COCOM list (e.g., items allies agree cannot go to Eastern block countries).
- o Lapse would possibly jeopardize ongoing investigations.
- o Lapse may temporarily suspend administrative denial orders.
- o Lapse will permit companies to avoid recordkeeping obligations.
- o Lapse may make future prosecution of offenses harder in cases where companies will argue alleged improper activity occurred during lapse (government will bear burden of proof).



State (Richard Elliott, 632-0242; Jim Thessan, 632-0321) -- suggested modification in letter to President indicating that State is concerned about potential narrowing of executive discretion; would invoke IEEPA only to keep in place our national security controls while permitting our other export controls to lapse; would delete "to the extent permitted by law" language in Sections 1 and 3 of the Executive Order as unnecessary and may prompt challenges to the Order's scope.

Energy (Erick Fygi, 252-5284) -- did not speak with Fygi but September 30, 1983 memorandum to Mike Horowitz from Energy's General Counsel suggested concern over "national emergency" basis for the Executive Order; also concerned over potential Congressional restriction of President's ability to invoke such authority in the future.

Justice (Carol Williams, 633-3865) -- supports Executive Order; made only minor technical changes to the draft.

Treasury (Terry Thiele, 566-5404) -- no change from September 30, 1983, justification for Executive Order, although indicated that there may be evolution within the agency as to appropriate option to be followed; was unaware of agency's thinking but said it would be discussed with Secretary Regan for SIG meeting this afternoon.

Defense (John McNeill, 695-2604) -- no major changes.

National Security Council (Paul Thompson, ext. 3046) -- no comment as of yet.

cc: Robert Willmore

Agency Positions on IEEPA and Proposed Executive Order

<u>Agency</u>	<u>Position</u>	<u>Comment</u>
Department of Commerce	Support E.O.	Strongly fears results of weekend hiatus.
Department of State	Support E.O.	Suggested modification in letter to President indicating that State is concerned about potential narrowing of executive discretion; would invoke IEEPA only to keep in place our national security controls while permitting our other export controls to lapse; would delete "to the extent permitted by law" language in Sections 1 and 3 of the Executive Order as unnecessary and may prompt challenges to the Order's scope.
Department of Energy	Support E.O.	September 30, 1983, memorandum to Mike Horowitz from Energy's General Counsel suggested concern over "national emergency" basis for the Executive Order; also concerned over potential Congressional restriction of President's ability to invoke such authority in the future.
Department of Justice	Support E.O.	Made only minor technical changes to the draft.
Department of Treasury	Support E.O.	Indicated that there may be evolution within the agency as to appropriate option to be followed.
Department of Defense	Support E.O.	No major changes.
National Security Council	Support E.O.	No comment as of yet.

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Executive Vice-President  
BENJAMIN R. EPSTEIN

Anti-Defamation League **ADL** of B'nai B'rith  
Washington, D.C. Office

DAVID A. BRODY  
Director

MARVIN S. RAPPAPORT  
Associate Director

October 12, 1983

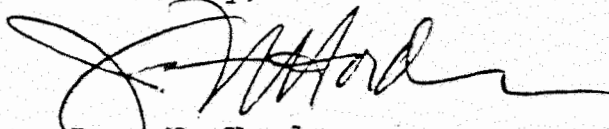
Mr. Michael Horowitz  
Counsel to the Director  
Office of Management and Budget  
Room 472  
Old Executive Office Building  
Washington, D. C. 20503

Dear Mr. Horowitz:

The Export Administration Act will expire on October 14, 1983, and with Congress currently in recess, a lapse of the Act's anti-boycott provisions will result. Those provisions which were strengthened in 1977, following extensive negotiations between the Jewish and business communities, have overwhelming bipartisan support. They represent a key bulwark in our nation's commitment to protect American firms from the coercion of unsanctioned foreign boycotts, such as the Arab boycott.

On behalf of the Anti-Defamation League of B'nai B'rith, the American Jewish Committee, and the American Jewish Congress, I hereby request that should the President invoke the International Economic Emergency Powers Act, he include the anti-boycott provisions in his Executive Order.

Sincerely,



Jess N. Hordes  
Associate Director

JNH:dlc

cc Michael Gale

ID # 174846 CU

TA 003

WHITE HOUSE  
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Received (YY/MM/DD) 1/1Name of Correspondent: Michael J. Horowitz☐ MI Mail Report

User Codes: (A) \_\_\_\_\_ (B) \_\_\_\_\_ (C) \_\_\_\_\_

Subject: Proposed Executive Order and  
Proclamation - "Continuing the Regulations  
Previously Provided for by the Export  
Administration Act"

## ROUTE TO:

## ACTION

## DISPOSITION

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<u>W Holland</u>	ORIGINATOR	<u>83/09/29</u>			<u>1/1</u>
<u>W AT09</u>	Referral Note: <u>A</u>	<u>83/09/29</u>			<u>1/1</u>
	Referral Note:	<u>1/1</u>			<u>1/1</u>
	Referral Note:	<u>1/1</u>			<u>1/1</u>
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D - Draft Response  
F - Furnish Fact Sheet  
to be used as EnclosureI - Info Copy Only/No Action Necessary  
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EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET

DATE: 9/29

TO: Fred Fielding

FROM: John Cooney GCO, X-5600

FYI

SEP 29 1983

OMB FORM 38  
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September 29, 1983

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Enclosed are a proposed Executive order entitled "Continuing the Regulations Previously Provided for by the Export Administration Act" and a proposed proclamation with respect to the controls presently in effect under the authority of the Export Administration Act concerning the national interest.


In accordance with the provisions of Executive Order No. 11030, as amended, they were submitted to this office, along with the enclosed transmittal letter, by the Department of Commerce.

Your urgent attention is requested to these proposals.

On behalf of the Director of the Office of Management and Budget, I would appreciate receiving any comments you may have concerning these proposals. If you have any comments or objections they should be received no later than close of business, Thursday, September 29, 1983.

Comments or inquiries may be submitted by telephone to Mr. John F. Cooney of this office (395-5600).

Sincerely,

  
Michael J. Horowitz  
Counsel to the Director

Enclosures

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Mr. Cooney  
DO: OGC: JFCooney:mjr:9/29/83

Mr. Farrah  
Ms. Horner  
Ms. Walker  
Mr. Dyer

Official File-EO Records  
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OGC Chron  
Mr. Keel  
Mr. DuSault



**GENERAL COUNSEL OF THE  
UNITED STATES DEPARTMENT OF COMMERCE**  
Washington, D.C. 20230

September 28, 1983

MEMORANDUM FOR:       MICHAEL J. HOROWITZ  
                          Counsel to the Director  
                          Office of Management and Budget

FROM:                 110N/IRVING P. MARGULIES  
                          Deputy General Counsel

SUBJECT:              Continuation of Export Controls

The Export Administration Act of 1979, as amended (the Act), is the basic statutory authority for controlling the export of commercial goods and technical data. It also prohibits compliance with certain boycott practices of foreign nations. By its terms, it will expire on September 30, 1983, unless appropriately extended. Without the authority provided by the Act, exports of commercial goods and technical data could take place without restriction, with potential serious detrimental effects on our national security, foreign policy and domestic economy. Furthermore, compliance with foreign boycott practices would no longer be prohibited by legislation specifically directed at such conduct.

As you know, for the last several months Congress has been considering comprehensive legislation to extend the Act's authority. If the Act is not temporarily extended by the Congress prior to September 30, or if the President does not approve the export administration bill presented to him before then, we have prepared the necessary documentation to continue nearly all existing export controls under the authority of the International Emergency Economic Powers Act (IEEPA). Those documents are attached.

The IEEPA (50 U.S.C. §1701 et seq.) authorizes the President to exercise wide-ranging powers to regulate foreign commerce, including exports, in order "to deal with any unusual and extraordinary threat, which has its source in whole or substantial part outside the United States, to the national security, foreign policy, or economy of the United States." However, in order to exercise such powers, the President must declare a national emergency with respect to such threat. He must also, "in every possible instance", consult with the Congress before exercising the authorities granted to him, consult with Congress regularly thereafter regarding the exercise of such authorities, and immediately upon exercise of the authorities, transmit a detailed

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report to the Congress regarding the declared national emergency and the measures taken to deal with it.

Under section 207(b) of IEEPA the Congress, by concurrent resolution, may terminate the state of national emergency and bring an end to the controls imposed because of it. This legislative veto provision is unconstitutional under the Supreme Court's holding in Immigration and Naturalization Service v. Chadha, and thus inoperative. The remainder of the statute continues unaffected if the veto provision is severable. Under the Supreme Court's test and guidelines, the veto provision clearly appears severable. The statute itself includes a severability clause and the remaining portions of the statute are fully operative as a law without the veto provision.

Thus far, use of the IEEPA has been limited to matters involving the freezing of assets in connection with the Iranian hostage crisis. Consequently, any use the President may make of it for other purposes will probably come under close scrutiny. This is especially true in this instance since past uses of emergency authority \*/ to continue export controls in effect during lapses in the authority of the Act have been criticized by the Congress. On the other hand, the legislative history of the IEEPA clearly seems to indicate that that legislation can be used to continue the Export Administration Regulations in effect during lapses in the Act's authority, "if, and to the extent that, the President declared a national emergency as a result of such lapse according to the procedures of the National Emergencies Act."

The question left unanswered by the legislative history is whether all the Export Administration Regulations, and therefore all export controls, can be continued in effect, or only part of such regulations or controls -- for example those in the national security area, but not those dealing with foreign policy, short supply, or foreign boycotts -- can be continued. I believe that for the reasons set forth in the accompanying documents, a continuation of nearly all the regulations and controls meets the national emergency standard set forth in the IEEPA. Moreover, I believe as a matter of policy, it is important for the President to order such continuation.

Since 1949, export controls have never lapsed despite temporary lapses in the basic authorizing legislation. Previous administrations have always seen fit to continue controls under standby authority no matter what the political cost involved. Continuing the controls is essential to maintaining an orderly control system and in preserving national interests in the national security, foreign policy, economic, and anti-boycott areas. Furthermore, certain of the controls must be continued in order to keep various international commitments which the United States has made. These involve sanctions on all exports to

\*/ That authority, section 5(b) of the Trading With the Enemy Act, is no longer available in the present context.

military and police entities in South Africa, which were imposed pursuant to U.N. Security Council action. Our commitment to cooperate with our COCOM allies in the control of the export of certain strategic commodities to Soviet bloc countries would be undermined if our national security controls were allowed to lapse. This in turn might prompt those allies to ignore certain of the COCOM commitments thereby possibly leading to the disintegration of the international export control system we have worked so hard to develop.

Allowing controls to lapse until acceptable legislation from Congress was forthcoming could also be very politically damaging to the Administration. Each part of the export control system is supported by strong and varying public interest groups who could be expected to express strong criticism should all or part of the controls be allowed to lapse. Continuing the controls under emergency authority will probably not go without some criticism, but will also be seen as decisive action to protect the national interest. The very act of declaring a national emergency could be explained as a technical legal measure needed in order to continue export controls and therefore should not result in the creation of a panic or crisis atmosphere.

I therefore recommend that the President sign the proposed executive order and proclamation if acceptable legislation to extend the Act's authority is not presented to him by September 30.

Attachments

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PRESIDENTIAL PROCLAMATION

WHEREAS, the national security, foreign policy and domestic economy concerns which have led the Executive and the Congress of the United States to conclude that the controls presently in effect by or under the authority of the Export Administration Act of 1979, as amended (50 U.S.C. App. §§2401 et seq.) are important to our national interests;

WHEREAS, these concerns appear likely to persist for the indefinite future;

WHEREAS, these concerns, in their respective spheres, constitute an unusual and extraordinary threat to the national security, foreign policy and economy of the United States and have their origin largely in the conduct of the foreign and military policy of foreign governments and in foreign economic activity and include foreign boycott actions directed against countries friendly to the United States;

WHEREAS, certain of the controls imposed by or under the authority of the Export Administration Act carry out international obligations or undertakings or provide for this country's

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cooperation with important international coordination arrangements;

WHEREAS, any termination of export controls, even for a brief period, could permit export transactions to occur which could be seriously detrimental to the national interests we have heretofore sought to protect through such controls; and

WHEREAS, the dislocation of this country's international trade due to a temporary lapse in the specific statutory authorities provided by the Export Administration Act can best be minimized by continuing a system of regulations and administrative practices as identical as possible with that currently in effect;

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, acting under the authority vested in me by the Constitution and the statutes, including, but not limited to, the International Emergency Economic Powers Act and the National Emergencies Act, do proclaim as follows:

1. I hereby declare a national emergency which requires action to be taken pursuant to Presidential authority to deal with the threats which up to the present time have warranted the controls imposed under the Export Administration Act.

ADMINISTRATIVE COPY

2. I shall promptly issue an Executive Order to direct and empower the Secretary of Commerce to take all necessary or appropriate action to administer under the authority of this Proclamation a system of controls, requirements and procedures that will continue, insofar as possible, the system presently in effect under the Export Administration Act, and to amend that system from time to time, as necessary or desirable.

This Proclamation shall take effect at 12:01 a.m., October 1, 1983

IN WITNESS WHEREOF, I have hereunto set my hand this \_\_\_\_ day of September in the year of our Lord nineteen hundred and eighty-three, and of the Independence of the United States of America the two hundred and eighth.

---

RONALD REAGAN

EXECUTIVE ORDER \_\_\_\_\_

CONTINUING THE REGULATIONS PREVIOUSLY PROVIDED FOR BY THE  
EXPORT ADMINISTRATION ACT

By virtue of the authority vested in me by the Constitution and statutes of the United States of America, including section 203 of the International Emergency Economic Powers Act (50 U.S.C. §1702), and as President of the United States of America, and in view of the existence of the national emergency declared by Presidential Proclamation No. \_\_ of September \_\_, 1983, and the importance of continuing (a) to exercise the necessary vigilance over exports from the standpoint of their significance to the national security of the United States; (b) to further significantly the foreign policy of the United States including policy with respect to cooperation by United States persons with certain foreign boycott activities, and to fulfill its international responsibilities; and (c) to protect the domestic economy from the excessive drain of scarce materials and reduce the serious inflationary impact of foreign demand, it is hereby ordered as follows:

SECTION 1. Notwithstanding the expiration of the Export Administration Act of 1979, as amended (50 U.S.C. App. §§2401 et seq.), the provisions for administration of that act contained in

Executive Order 12002 of July 7, 1977 and Executive Order 12214 of May 2, 1980, shall continue in full force and effect under the authority vested in me as President of the United States of America by section 203 of the International Emergency Economic Powers Act (50 U.S.C. §1702).

SECTION 2. All rules and regulations issued or continued in effect by the Secretary of Commerce under the authority of the Export Administration Act of 1979, as amended, including those published in Title 15, Chapter III, Subchapter B, of the Code of Federal Regulations, Parts 368 to 399 inclusive, and all orders, regulations, licenses and other forms of administrative action issued, taken or continued in effect pursuant thereto, shall, until amended or revoked by the Secretary of Commerce, remain in full force and effect, the same as if issued or taken pursuant to this Order, except that provisions of sections 203(b)(2) and 206 of the International Emergency Economic Powers Act (50 U.S.C. §§1702(b)(2) and 1705) shall control over any inconsistent provisions in the regulations with respect to, respectively, certain donations to relieve human suffering and civil and criminal penalties for violations subject to this Order. The foregoing shall not affect the continued applicability of administrative sanctions provided for by the regulations.

SECTION 3. Provisions for the administration of section 38(e) of the Arms Export Control Act (22 U.S.C. §2778(e)) may be

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made and shall continue in full force and effect until amended or revoked under the authority of section 203 of the International Emergency Economic Powers Act, and this Order shall constitute authority for the issuance and continuation in full force and effect of rules and regulations by the President or his delegate, and all orders, licenses, and other forms of administrative action issued, taken or continued in effect pursuant thereto, relating to the administration of section 38(e) of the Arms Export Control Act.

---

RONALD REAGAN

THE WHITE HOUSE

September \_\_, 1983

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