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DEVELOPMENTS CONCERNING NATIONAL EMERGENCY WITH RESPECT TO BURMA

COMMUNICATION

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

A REPORT ON DEVELOPMENTS CONCERNING THE NATIONAL EMERGENCY WITH RESPECT TO BURMA THAT WAS DECLARED IN EXECUTIVE ORDER 13047 OF MAY 20, 1997, PURSUANT TO 50 U.S.C. 1703(c)

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THE WHITE HOUSE,
Washington, May 26, 1998.

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

DEAR MR. SPEAKER: I hereby report to the Congress on developments concerning the national emergency with respect to Burma that I declared in Executive Order 13047 of May 20, 1997, pursuant to section 570 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1997, Public Law 104–208 (the "Act") and the International Emergency Economic Powers Act (IEEPA). This report is submitted pursuant to section 204(c) of IEEPA, 50 U.S.C. 1703(c) and section 401(c) of the National Emergencies Act, 50 U.S.C. 1641(c). This report discusses only matters concerning the national emergency with respect to Burma that was declared in Executive Order 13047.

On May 20, 1997, I issued Executive Order 13047 (62 *Fed. Reg.* 28301, May 22, 1997), effective on May 21, 1997, to declare a national emergency with respect to Burma and to prohibit new investment in Burma by United States persons, except to the extent provided in regulations, orders, directives, or licenses that may be issued in conformity with section 570 of the Act. I renewed this order on May 19, 1998. The order also prohibits any approval or other facilitation by a United States person, wherever located, of a transaction by a foreign person where the transaction would constitute new investment in Burma prohibited by the order if engaged in by a United States person or within the United States. This action was taken in response to the large-scale repression of the democratic opposition by the Government of Burma since September 30, 1996. A copy of the order was transmitted to the Congress on May 20, 1997.

By its terms, Executive Order 13047 does not prohibit the entry into, performance of, or financing of a contract to sell or purchase goods, services, or technology, except: (1) where the entry into such contract on or after May 21, 1997, is for the general supervision and guarantee of another person's performance of a contract for the economic development of resources located in Burma; or (2) where such contract provides for payment, in whole or in part, in (i) shares of ownership, including an equity interest, in the economic development of resources located in Burma; or (ii) participation in royalties, earnings, or profits in the economic development of resources located in Burma.

On May 21, 1998, the Department of the Treasury's Office of Foreign Assets Control (OFAC) issued the Burmese Sanctions Regulations (the "BSR" or the "Regulations"), 31 C.F.R. Part 537, to implement the prohibitions of Executive Order 13047. The Regulations apply to United States persons, defined to include U.S. citizens and permanent resident aliens wherever they are located, entities organized under U.S. law (including their foreign branches), and entities and individuals actually located in the United States. The sanctions do not apply directly to foreign subsidiaries of U.S. firms, although foreign firms' activities may be affected by the restriction on United States persons' facilitation of a foreign person's investment transactions in Burma.

The term "new investment" means any of the following activities, if such an activity is undertaken pursuant to an agreement, or pursuant to the exercise of rights under such an agreement, that is entered into with the Government of Burma, or a nongovernmental entity in Burma, on or after May 21, 1997: (a) The entry into a contract that includes the economic development of resources located in Burma; (b) the entry into a contract providing for the general supervision and guarantee of another person's performance of a contract that includes the economic development of resources located in Burma; (c) the purchase of a share of ownership, including an equity interest, in the economic development of resources located in Burma; or (d) the entry into a contract providing for the participation in royalties, earnings, or profits in the economic development of resources located in Burma, without regard to the form of participation.

Since the issuance of Executive Order 13047 on May 20, 1997, OFAC, acting under authority delegated by the Secretary of the Treasury, has implemented sanctions against Burma as imposed by the order. OFAC has issued several determinations with respect to transactions provided for by agreements and/or rights pursuant to contracts entered into by United States persons prior to May 21, 1997. One license was necessary to authorize a United States person's disinvestment in Burma, since this transaction facilitated a foreign person's investment in Burma.

On May 21, 1997, OFAC disseminated details of this program to the financial, securities, and international trade communities by both electronic and conventional media. This included posting notices on the Internet, on ten computer bulletin boards, and two fax-on-demand services, and providing the material to the U.S. Embassy in Rangoon for distribution to U.S. companies operating in Burma.

In addition, in early July, OFAC sent notification letters to approximately 50 U.S. firms with operations in or ties to Burma informing them of the restrictions on new investment. The letters included copies of Executive Order 13047, provided clarification of several technical issues, and urged firms to contact OFAC if they had specific questions on the application of the Executive order to their particular circumstances.

The expenses incurred by the Federal Government in the 6-month period from November 20, 1997, through May 19, 1998, that are directly attributable to the exercise of powers and authorities conferred by the declaration of a national emergency with respect to Burma are estimated at approximately $370,000, most of which represent wage and salary costs for Federal personnel. Personnel costs were largely centered in the Department of the Treasury (particularly in the Office of Foreign Assets Control, the Office of the Under Secretary for Enforcement, and the Office of General Counsel), and the Department of State (particularly the Bureau of Economic and Business Affairs, the Bureau of East Asian and Pacific Affairs, and the Office of the Legal Adviser).

The situation reviewed above continues to present an extraordinary and unusual threat to the national security and foreign policy of the United States. The declaration of the national emergency with respect to the Burma contained in Executive Order 13047 in response to the large-scale repression of the democratic opposition by the Government of Burma since September 30, 1996, reflected the belief that it is in the national security and foreign policy interests of the United States to seek an end to abuses of human rights in Burma, to support efforts to achieve democratic reform that would promote regional peace and stability, and to urge effective counter-narcotics policies.

In the past 6 months, the State Law and Order Restoration Council, recently renamed the State Peace and Development Council (SPDC), has shown no sign of willingness to cede its hold on absolute power. Since refusing to recognize the results of the free and fair 1990 elections in which the National League for Democracy won a vast majority of both the popular vote and the parliamentary seats, the ruling junta has continued to refuse to negotiate with pro-democracy forces and ethnic groups for a genuine political settlement to allow a return to the rule of law and respect for basic human rights. Burma has taken limited but insufficient steps to counter narcotics production and trafficking.

The net effort of U.S. and international measures to pressure the SPDC to end its repression and move toward democratic government has been a further decline in investor confidence in Burma and deeper stagnation of the Burmese economy. Observers agree that the Burmese economy appears to be further weakening and that the government has a serious shortage of foreign exchange reserves with which to pay for imports. While Burma's economic crisis is largely a result of the SPDC's own heavy-handed mismanagement, the SPDC is unlikely to find a way out of the crisis unless political developments permit an easing of international pressure. I shall continue to exercise the powers at my disposal to deal with these problems and will report periodically to the Congress on significant developments.

Sincerely,

WILLIAM J. CLINTON.

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