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# CONTINUATION OF A WAIVER AUTHORITY WITH RESPECT TO THE REPUBLIC OF BELARUS

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## COMMUNICATION

FROM

## THE ASSISTANT SECRETARY FOR LEGISLATIVE AFFAIRS, THE DEPARTMENT OF STATE

TRANSMITTING

NOTIFICATION OF THE DETERMINATION THAT A WAIVER OF THE APPLICATION OF SUBSECTIONS (a) AND (b) OF SECTION 402 OF THE TRADE ACT OF 1974 WITH RESPECT TO THE REPUBLIC OF BELARUS WILL SUBSTANTIALLY PROMOTE THE OBJECTIVES OF SECTION 402, PURSUANT TO 19 U.S.C. 2432(c) AND (d)



JUNE 4, 2008.—Referred to the Committee on Ways and Means and ordered to be printed

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DEPARTMENT OF STATE,
*Washington, DC, June 3, 2008.*

Hon. NANCY PELOSI,
*Speaker of the House of Representatives.*

DEAR MADAM SPEAKER: On behalf of the Secretary, we are transmitting to you the Presidential determination and Report to the Congress, referred to in subsection 402(d)(1) of the Trade Act of 1974 (the "Act"), as amended, with respect to the continuation of a waiver of application of subsections (a) and (b) of section 402 of the Act to Belarus.

This document constitutes the Secretary's recommendation to continue this waiver for a further twelve-month period and includes her determination that continuation of the waiver currently in effect for Belarus will substantially promote the objectives of section 402 of the Act, and the reasons for such determination.

We hope that this information will be helpful to you and other Members of Congress. Please do not hesitate to contact us if we can be of further assistance.

Sincerely,

JEFFREY T. BERGNER,
*Assistant Secretary,*
*Legislative Affairs.*

Enclosures: As stated.

DETERMINATION UNDER SUBSECTION 402(d)(1) OF THE TRADE ACT OF 1974, AS AMENDED CONTINUATION OF WAIVER AUTHORITY FOR BELARUS

JUNE 2, 2008.

Pursuant to the authority vested in the President under the Trade Act of 1974, as amended, Public Law 93–618, 88 Stat. 1978 (hereinafter "the Act"), and assigned to the Secretary of State by virtue of Section 1(a) of Executive Order 13346 of July 8, 2004, I determine, pursuant to Section 402(d)(1) of the Act, 19 U.S.C. 2432(d)(1), that the further extension of the waiver authority granted by Section 402 of the Act will substantially promote the objectives of Section 402 of the Act. I further determine that continuation of the waiver applicable to Belarus will substantially promote the objectives of Section 402 of the Act.

This determination shall be published in the Federal Register.

CONDOLEEZZA RICE,
*Secretary of State.*

## REPORT TO THE CONGRESS CONCERNING THE EXTENSION OF WAIVER AUTHORITY FOR BELARUS

Pursuant to subsection 402(d)(1) of the Trade Act of 1974, as amended ("the Act"), and the authority assigned to me by the President in Executive Order 13346 Concerning Delegation of Certain Waiver, Determination, Certification, and Reporting Functions, dated July 8, 2004, I hereby recommend a further extension for twelve months of the waiver authority granted by subsection 402(c) of the Act. I have determined that such extension will substantially promote the objectives of section 402 of the Act, and that a continuation of the waiver currently applicable to Belarus will also substantially promote the objectives of section 402 of the Act. Exercise of the waiver authority conferred by Section 402 of the Act has permitted the United States to conclude and maintain in force a bilateral trade relations agreement with Belarus. (Exercise of the waiver authority with respect to Belarus would also allow the U.S. government to engage in credit and investment activities in Belarus, but those programs have been suspended in Belarus due to strong concerns over the Belarusian authorities' repressive economic and human rights policies.)

*Freedom of emigration situation*

The Belarusian Constitution of November 1996, although adopted illegitimately, specifically grants citizens the right to leave and return as they wish. Soviet-era restrictions on emigration in Belarus have largely, but not entirely, been dismantled, and existing restrictions are applied in a manner that generally allows free emigration. None of the human rights or Jewish organizations in Belarus report discriminatory restrictions limiting the ability of citizens to emigrate on the basis of ethnic identity. However, Soviet-era legislation restricting emigration by those with access to "state secrets" does remain in force in Belarus. There are also exit restrictions on those who are involved in criminal investigations, convicted of crimes, attempting to evade military service, or have outstanding debts to a court, such as a fine or child support obligations. These exit restrictions on Belarusian citizens apply equally whether they are exiting for the purpose of temporary travel or for emigration.

The procedure for administering these exit restrictions has recently been changed. Presidential Decree No. 643 of 17 December 2007, which took effect on January 1, 2008, abolished a system of passport exit stamps that had been previously used to grant permission for travel abroad. Under the new procedures, individuals presenting a passport at most border points to a border enforcement official are checked against a database of persons ineligible for exit. The Belarusian Committee for State Security (BKGB) and the Ministries of Justice, Internal Affairs, and Defense provide

names to the Citizenship and Migration Office of the Ministry of Internal Affairs, which maintains the database.

Since the Decree has only recently come into force, we do not have a clear picture of the extent to which the new procedure may be affecting freedom of emigration. We have serious concerns, however, that the new procedures are less transparent and more subject to manipulation than the old system. In fact, the new procedures appear to have had a negative impact on the freedom to travel abroad. At least 18 opposition politicians and civil society activists who had previously been able to exit Belarus for temporary travel reported that they were denied permission to exit when they appeared at a border crossing after the new decree came into force on January 1, 2008. In some cases, the persons denied exit were not given any legal basis for denial of their right to exit. In one case an opposition political leader was told the reason for denial of exit was an open investigation into statements critical of the regime that he had made in 2004. (This opposition leader met with President Bush in the Oval Office in December 2007.)

Although freedom to travel abroad for non-emigrant purposes is not the specific focus of section 402 of the Act, the government has continued to impose restrictions on this freedom. Other existing restrictions that impede the ability of Belarusians to exit the country remained in place during 2007 and 2008. These included a presidential decree signed in March 2005 on measures to combat trafficking in persons, which required, among other provisions, that any organization responsible for facilitating student exchanges must first receive approval for its program from the Ministry of Education. Non-governmental organizations have expressed concern that the Belarusian authorities may be using this law to prevent Belarusians from traveling abroad for legitimate purposes. A presidential decree from November 2005, which required students to get permission from the Ministry before even brief study, work, sports, cultural, or other events abroad during the school year, also remained in effect.

*Extension of the waiver*

We have repeatedly expressed our concerns to Belarus about the manner in which restrictions on exit from Belarus are applied, either for the purpose of emigration or for temporary travel. Insofar as we retain the ability to engage with the Government of Belarus on these issues, extending the current waiver will allow us to continue to promote progress by Belarus, while giving us leverage to prevent any rollback. We have expressed our deep concerns to the Belarusian authorities and condemned their actions in March and April 2008 to limit the size of our Embassy in Minsk. A reduced diplomatic presence in Minsk will hinder our efforts to engage with Belarus on freedom of emigration issues as well as our ability to accurately report on potential progress by Belarus in this area. Nevertheless, we will continue to raise our concerns with the Government of Belarus about emigration-related practices, noting that efforts to restrict emigration may result in revocation of the waiver and normal trade relations.