

CONTINUATION OF WAIVER UNDER THE TRADE ACT
OF 1974 WITH RESPECT TO THE REPUBLIC OF
BELARUS

COMMUNICATION

FROM

THE ASSISTANT SECRETARY, LEGISLATIVE
AFFAIRS, THE DEPARTMENT OF STATE

TRANSMITTING

NOTIFICATION OF THE DETERMINATION THAT A CONTINUATION
OF A WAIVER CURRENTLY IN EFFECT FOR THE REPUBLIC OF
BELARUS WILL SUBSTANTIALLY PROMOTE THE OBJECTIVES OF
SECTION 402, OF THE TRADE ACT OF 1974, PURSUANT TO 19
U.S.C. 2432(c) AND (d)



JUNE 23, 2010.—Referred to the Committee on Ways and Means and
ordered to be printed

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UNITED STATES DEPARTMENT OF STATE,
Washington, DC, June 23, 2010.

Hon. NANCY PELOSI,
Speaker of the House of Representatives,
Washington, DC.

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 for 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,

RICHARD R. VERMA,
Assistant Secretary, Legislative Affairs.

Enclosure: As stated.

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 relationship 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 generally allowing free emigration. None of the human rights or religious minority organizations, including Jewish organizations, in Belarus report discriminatory restrictions limiting the ability of citizens to emigrate on the basis of ethnic or religious 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. In practice, these restrictions have arbitrarily restricted the temporary travel of opposition activists and we believe they could impact activists’ freedom of emigration.

The procedure for administering these exit restrictions was changed with Presidential Decree No. 643 of December 17, 2007, which took effect on January 1, 2008. The decree abolished a system of passport exit stamps used previously to grant permission for travel abroad. Under the new procedures, individuals presenting a

passport to a border enforcement official at most border points 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 of such persons to the Citizenship and Migration Office of the Ministry of Internal Affairs, which maintains the database. We have not received any reports this procedure is affecting freedom of emigration. However, we are concerned it is less transparent and more subject to manipulation than the old system, and may have been used to arbitrarily discourage temporary travel abroad. During 2009 and the first part of 2010, we received several reports from opposition politicians and civil society activists that they were detained and harassed when they appeared at a border crossing, before being allowed to depart the country. Although freedom to travel abroad for non-emigrant purposes is not the explicit focus of section 402 of the Act, it is relevant because restrictions on temporary travel can be problematic in themselves and could potentially be used to restrict the freedom of emigration as well.

Other existing restrictions that impede the ability of Belarusians to exit the country remained in place during 2009 and the first half of 2010. These restrictions included a presidential decree signed in March 2005 on measures to combat trafficking in persons, which required, among other provisions, any organization responsible for facilitating student exchanges to first receive approval for its program from the Ministry of Education. Non-governmental organizations have expressed concern 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.

The Belarusian authorities have engaged the Governments of Latvia, Lithuania, and Poland on agreements to allow visa-free, temporary cross-border travel for their citizens. An agreement with Poland has been signed and is awaiting ratification by the Polish Parliament. Discussions with Latvia and Lithuania are continuing. We believe these agreements will substantially improve the ability of Belarusian citizens residing along the border with these countries to travel abroad temporarily.

We have repeatedly expressed our concerns to the Belarusian authorities about the manner in which restrictions on exit from Belarus are applied, either for the purpose of emigration or for temporary travel. We have also repeatedly encouraged the Belarusian authorities to move forward their discussions with Latvia, Lithuania, and Poland on visa-free, temporary cross-border travel. In an October 2008 meeting, the Government of Belarus provided assurances it would address restrictions on temporary travel. We will continue to monitor the implementation of exit restrictions, especially as they apply to opposition and civil society activists.

Extending the waiver will substantially promote the objectives of Section 402 of this Act, because it will allow us to continue our constructive engagement with the Government of Belarus on expanding the freedom of emigration. We will continue to raise our con-

cerns with the Government of Belarus about emigration-related policies, noting efforts to restrict emigration may result in revocation of the waiver and Normal Trade Relations.

MAY 27, 2010.

Determination Under Subsection 402(d)(1) of the Trade Act of
1974, as Amended—Continuation of Waiver Authority for
Belarus.

Pursuant to the authority vested in the President under the Trade Act of 1974, as amended, Pub. L. 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*.

HILLARY RODHAM CLINTON,
Secretary of State.

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