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April 22, 2020

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Department of State

2201 C St., NW

Washington, DC 20520

Dear Mr. Secretary:

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On behalf of the nationwide membership of the American Hellenic Institute (AHI), I write in connection with the *Memorandum on the Delegation of Authorities under the NDAA for FY 2020 and the Eastern Mediterranean Security and Energy Partnership Act of 2019 issued on April 14, 2020 (NDAA/Act)*.

Specifically, the President authorizes you to determine whether and when the prohibition on exports or imports of defense articles and defense can be revoked by removing the Republic of Cyprus (referred to as Cyprus) from the list of countries to which such sales are prohibited under the International Traffic in Arms Regulations (ITAR).

In 1978, Congress enacted the Eastern Mediterranean Policy (22 USC § 2373) in the wake of the Turkish invasion of Cyprus in 1974. The statute prohibited any sales of defense articles/services to Cyprus which would further the division of Cyprus, 22 USC § 2373(e). In 1987, Cyprus was placed on the list of countries to which sales of defense articles/services which is maintained under the International Traffic in Arms Regulations, (ITAR). Except for certain narrow exceptions, no license can be granted for exports or imports of defense articles and defense services destined for or originating in Cyprus, (22 CFR § 126.1(r)).

The NDAA/Act amends the above referenced prohibition provision in the Eastern Mediterranean Policy statute. It states that sales to Cyprus are not prohibited as long as the end-user is the Government of Cyprus, (PL 116-92 NDAA Title XII § 1250A (b)-(c); same provision under the Act).

However, despite this amendment, in the very next provision (§ 1250A (d)), the NDAA/Act requires that Cyprus remain on the ITAR list unless the President determines and certifies to the appropriate congressional committees on an annual basis that Cyprus:

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- A. Continues to cooperate with the U.S. in efforts to implement reforms on anti-money laundering regulations and financial regulatory oversight, and
- B. Has made and continues to take steps to deny access to Russian military vessels to Cypriot ports for re-fueling and servicing.

The net effect is that the NDAA/Act removes the legal prohibition but mandates that Cyprus remain on the ITAR list. This means that as a practical matter the prohibition remains in force.

Under the Memorandum, you are authorized to determine (1) whether Cyprus satisfies the foregoing limitations and can be removed from the ITAR list and (2) whether the conditions should be waived for one fiscal year if you determine that doing so is essential to U.S. national security interests.

Factors to Consider as to the Satisfaction of the Limitations

"Continuing to cooperate with anti-money laundering"

- A. In April 2019, Treasury Department Assistant Secretary Marshall Billingslea visited Cyprus and said that Cyprus has done outstanding work on money laundering. He said that Cyprus has made "enormous progress and improvements" in its legal framework as well as in law enforcement. Billingslea said after talks with Cyprus Finance Minister Harris Georgiades that the U.S. values its close partnership with Cyprus and looks forward to strengthening the ties.
- B. Representative Maxine Waters (D-CA), who chairs the House Committee on Financial Services, visited Cyprus in August 2019 and stated, "I am pleased to see that the close cooperation and coordination between the Republic of Cyprus and the United States is beginning to pay off. And while I would like to see additional progress toward detecting and stopping illicit financial activity, our discussions and meetings with our Cypriot hosts, for which we are grateful, leave us confident that Cyprus is up to the challenge."

"Deny access to Cyprus ports to Russian military vessels"

- A. This limitation is aimed at the 2015 agreement between Cyprus and Russia under which Russian naval vessels, which are involved in humanitarian and anti-terrorist activities, can use the port facilities of Cyprus. Consider the reason for which Russia deploys its naval vessels is humanitarian or anti-terrorism. Arguably, naval vessels which Russia deploys for these purposes are consistent with US interests in the region.
- B. This limitation raises an issue of internal affairs and national sovereignty for Cyprus. It is not a proper use of ITAR. The US should use diplomatic means to achieve this policy objective.

Factors to Consider as to Waiver

- A. In 2019, you congratulated Cyprus on its Independence Day and said in part: “Cooperation between the United States and the Republic of Cyprus is at an historic high. Our two countries are working closely together to expand commercial ties, develop natural resources, combat terrorism, improve maritime security, and promote stability in the Eastern Mediterranean region”.
- B. Given the cooperation which you cite, Cyprus must be essential to US national security interests so that the waiver is warranted.

General Authority of the Secretary of State as to ITAR

AHI has long argued that the Secretary of State is authorized under existing statutes and regulations to remove a country when he or she determines that the country never did or no longer deserves to be on the ITAR list. It has been argued that, since 22 USC § 2373(e) imposed a statutory prohibition on exports and imports of defense articles/services to and from Cyprus, Cyprus must be on the ITAR list and the Secretary was not authorized to remove it. Because the NDAA/Act has amended 22 USC § 2373(e) to permit sales of defense articles/services to the Government of Cyprus as the end user, the Secretary is now authorized to remove Cyprus from the ITAR list. Consider the following:

- A. The purpose of ITAR is to prohibit the transfer of US defense articles/services to countries which, in the opinion of the Secretary of State, will misuse them or use them in a manner which undermines peace, stability and US security interests.
- B. The prohibition applies to countries which fall into one or more of the following categories, (22 CFR § 126.1 c):
 - 1. The United Nations Security Council (UNSC) mandates that the country is subject to sanctions,
 - 2. The Secretary of State has determined that the country is a State Sponsor of Terrorism,
 - 3. The country is subject to an arms embargo or sanctions under a US law, or
 - 4. Whenever the transfer of defense articles/services to a country would not be "in furtherance of world peace and the security and foreign policy of the United States."
- C. Among the countries on the ITAR list along with Cyprus are North Korea, Iran, and Libya. Cyprus is ranked between Somalia and Zimbabwe. The only lawful reason for Cyprus to be on the ITAR list at all is if it falls into one or more of the foregoing categories. It does not.
- D. It is in the commercial interest of the U.S. for Cyprus to purchase defense articles /services from U.S. suppliers.

Keeping Cyprus on the ITAR list and imposing the limitations are at odds with the Sense of Congress set forth in the NDAA/Act. The Sense of Congress states that “allowing the export, re-export or transfer of arms subject to the [ITAR] to Cyprus would advance United States security interests in Europe” This clause makes it clear that Cyprus should not for any reason continue to be lumped with North Korea, Iran, Libya and Somalia. Either Cyprus will misuse U.S. defense articles/services and undermine peace, stability and U.S. security interests and must remain on the ITAR list or Cyprus is a reliable ally which promotes regional stability and U.S. security interests so that keeping it on the ITAR list is neither justified nor lawful. It cannot be both.

Therefore, under your general authority and your specific authority under the Memorandum, we request that you remove Cyprus from the ITAR list or at least waive the limitations.

Sincerely,

A handwritten signature in black ink, appearing to read "Nick Larigakis". The signature is fluid and cursive, with the first name "Nick" being more prominent than the last name "Larigakis".

Nick Larigakis
President

CC: Vice President Mike Pence
Mark Esper, Secretary of Defense
Philip T. Reeker, Acting Assistant Secretary of State in the Bureau of European and Eurasian Affairs, Department of State
Matthew A. Palmer, Deputy Assistant Secretary, Bureau of European & Eurasian Affairs, & Special Representative for the Western Balkans
Maria Olson, Director of the Office of Southern European Affairs, Department of State
David Berns, Deputy Director of the Office of Southern European Affairs, Department of State
Judith Garber, Ambassador of The United States to Cyprus
Isabelle Chan, Cyprus Desk Officer, Department of State
The Congress