

9. Missile Technology (Sections 742.5 and 744)

Export Control Program Description And Licensing Policy

The United States continues its efforts to limit the proliferation of missiles capable of delivering weapons of mass destruction through its membership in the Missile Technology Control Regime (MTCR). The MTCR was formed in 1987 by the United States, Canada, France, Germany, Italy, Japan, and the United Kingdom. Its initial focus was to limit the proliferation of missiles capable of delivering nuclear weapons; in 1993, its scope expanded to include missile delivery systems for all types of weapons of mass destruction. Over the years, its membership has also expanded; in 1997, Turkey became the twenty-ninth country to become a member of the MTCR. (See Appendix II for complete list of members.)

In 1997, the MTCR also continues to seek the cooperation of non-member countries in its non-proliferation efforts. The MTCR Transshipment Seminar and Workshop series, in which Commerce plays a major role, is an outreach program for both MTCR and invited non-MTCR countries to explore different approaches to the illegal transshipment of sensitive items to missile programs worldwide. This series of seminars was initiated by the United States, with the first seminar held in Washington, D.C., in July 1996. In 1997, two "expert-level" workshops were held on legal and regulatory authority (March 1997), and licensing and enforcement (June 1997). All of the MTCR member countries and six non-member countries plus Hong Kong attended.

Other countries are also encouraged to adopt so-called "catch all" controls on items that would otherwise not be subject to a licensing requirement. Under U.S. "catch all" controls, an exporter must obtain a validated license, even if one is usually not needed, if the exporter knows or is informed by the Bureau of Export Administration (BXA) that the export is for use in nuclear, chemical or biological weapons or missile activities. U.S. persons are also restricted from activities abroad in support of nuclear, chemical or biological weapons, and missile delivery systems. These controls, initiated by President Bush in 1990 on the eve of the Persian Gulf War under the Enhanced Proliferation Control Initiative (EPCI), are designed to prevent exports that could make a material contribution to proliferation projects of concern, but are not intended to affect legitimate commercial trade. With U.S. leadership, a large majority of our non-proliferation regime partners have incorporated so-called "catch-all" export controls in their own regulatory regimes. The European Union and Australia implemented catch-all controls in 1995, as did Japan in 1996 and Argentina and South Africa in 1997. At present, approximately three-fourths of the MTCR member countries have some form of catch-all controls.

On February 3, 1997, Commerce published the "Entity List," a roster of foreign end-users who pose an unacceptable risk of diversion to nuclear and missile proliferation activities (see 15 CFR 744 Supplement No. 4, and Appendix III to this report). Commerce published additions and revisions to the list in May, June and October. With the publication of this list, Commerce requires a license for the export or reexport of otherwise uncontrolled items subject to the Export

Administration Regulations (also known as "EAR99" items) to some end-users on the list, and for specified controlled items to others. The Entity List is one part of efforts under EPCI to stem the spread of weapons of mass destruction.

The non-proliferation tenets of the MTCR are expressed in its Guidelines and the Equipment and Technology Annex; these documents form the basis of U.S. missile technology controls. The Guidelines provide licensing policy, procedures, review factors, and standard assurances on missile technology exports. The Annex is the list of items of missile-related commodities subject to controls, and is divided into two categories. Category I items include missile systems capable of delivering a 500 kg payload to at least a 300 km range, and key subsystems. Category II items include materials, components, and production and test equipment associated with Category I items, as well as missile subsystems, production facilities, and production equipment for missile systems with a 300 km range, regardless of payload.

Category I items carry a strong presumption of denial and are rarely licensed for export. Transfers of production facilities for Category I items are prohibited. Category II items are licensed only after a case-by-case review to ensure that they are not intended for use in an MTCR-class missile or a weapon of mass destruction delivery system. Commerce is responsible for administering controls on some manufacturing equipment for Category I items and all dual use items in Category II. There are approximately 120 entries on the Commerce Control List that are subject to missile technology controls.

In summary, the licensing requirements and policy for missile technology controls described in Parts 742.5 and 744 of the EAR are as follows:

- A. A license is required for the export to all destinations (except Canada) of those dual-use items specifically identified on the Commerce Control List as controlled for missile technology reasons. These items are controlled on a multilateral basis by the MTCR. Munitions-related items are controlled and licensed through the Department of State.
- B. A license is required for any destination, including Canada, for the export or reexport of all items subject to the EAR, when the exporter knows that the item is either (1) destined for a missile project listed in the footnote to Country Group D:4 in the EAR, or (2) will be used in the design, development, production, or use of missiles in or by a country listed in Country Group D:4.¹
- C. The Department may inform the exporter that a license is required for any item because there is an unacceptable risk of use in, or diversion to, such activities anywhere in the world.
- D. Licensing restrictions also apply to certain forms of "knowing" participation and support by U.S. persons, including foreign branches of U.S. companies, in missile activities in countries of concern specified in the regulations. The restrictions apply to the export, reexport or transfer of any item, including foreign origin items, by a U.S. person where the person knows the item will be

used in the design, development, production, or use of missiles in or by such countries. Support activities requiring a license include financing, freight forwarding, transportation and other comparable assistance by which a person facilitates an export, reexport or transfer. In addition, no U.S. person may perform any contract, service or employment knowing it will assist in missile activities in a country of concern.

E. Applications for export licenses will be considered on a case-by-case basis to determine whether the export would make a material contribution to the proliferation of missiles.

Analysis of Control as Required by Section 6(f) of The Act

A. The Purpose of the Control

The purpose of this control is to curtail the availability of goods and technology that could contribute to missile proliferation. Regulating exports of specific types of missile related equipment and technology, in coordination with other suppliers of these materials, helps limit the destabilizing spread of missile systems and related technology around the world. This control complements U.S. and international nuclear, chemical, and biological non-proliferation efforts by blocking development of unmanned delivery systems for weapons of mass destruction.

This control lends clear U.S. support to the collective effort of the other 28 member countries of the MTCR and underscores our resolve to address mounting international concern regarding missile proliferation. A multilateral arrangement to honor other members' denials of licenses and to support such denials through a "no undercut" commitment enhances global efforts to prevent missile proliferation and prevents unfair commercial advantage or disadvantage to members.

B. Considerations and/or Determinations of the Secretary of Commerce:

1. **Probability of Achieving the Intended Foreign Policy Purpose.** Despite the foreign availability of some controlled items, cooperation between the United States, its MTCR Partners, and other like-minded countries, many of which are major producers of the items under control, has hindered the efforts of proliferators to successfully develop or acquire highly accurate missiles that are militarily effective. The Secretary has determined that the extended controls are likely to achieve the purpose of limiting the spread of missile delivery systems.

2. **Compatibility with Foreign Policy Objectives.** Halting the spread of missiles and related equipment and technology worldwide is a key U.S. national security goal. This control is consistent with, and contributes to, this important U.S. policy objective. Moreover, U.S. membership in the MTCR and rigorous application of the MTCR Guidelines and Annex complement the existing nuclear, chemical and biological non-proliferation control policies by working actively to curb the spread of missile technology and equipment for the use of such

weapons.

3. Reaction of Other Countries. The Secretary has determined that the reaction of other countries to these controls will not render the controls ineffective or be counterproductive to U.S. policy. The United States is confident that other members of and adherents to the MTCR, many of whom are also the leading Western suppliers of missile technology, will continue to support and strengthen this control regime. The MTCR Partners share information regarding denials of MTCR Annex items and are committed to consult before approving an essentially identical export denied to a specific end user by another Partner ("no undercut" policy). The MTCR Partners also share information about activities of potential proliferation concern and have cooperated to interdict certain transactions. In addition, both the number of MTCR member and non-member countries willing to cooperate with the Regime have increased over the past few years. At the 1997 Tokyo MTCR Plenary, the Partners also reaffirmed their commitment to combat the missile proliferation threat from non-member countries. Finally, the United States and its MTCR Partners have actively engaged in an outreach program to encourage additional countries to adhere to the Guidelines and implement effective export controls on MTCR items.

4. Economic Impact on United States Industry. In extending these controls, the Secretary has determined that the economic impact does not outweigh the foreign policy benefit of the control. There were no major changes or revisions to the MTCR Annex or U.S. missile technology controls on dual-use items in 1996 or 1997. The focus of the control is limited to those goods and technologies that would contribute to missile development. Therefore, the MTCR affects only a confined list of commodities and has limited economic impact on the export of the majority of dual-use commodities.

Multilateral support for the MTCR Annex by other major suppliers of controlled technologies and products helps restrain the flow of missile-related goods and technologies to activities and projects of proliferation concern. Multilateral cooperation from other MTCR members to honor members' export denials through a "no undercut" policy helps ensure that no member country obtains an unfair commercial advantage in the pursuit of foreign sales.

In FY 1997, a total of 1405 licenses were approved to all destinations controlled for missile technology, at a dollar value of \$765,285,871. A total of 37 licenses were denied, at a dollar value of \$21,261,706. A total of 97 applications were returned without action, with a dollar value of \$10,542,334.

5. Enforcement of Control. To meet the challenge of the effective enforcement of these controls, Commerce has redirected resources toward preventive enforcement, and conducts an extensive on-going outreach program to educate appropriate companies about export controls and to increase their awareness of "red flags" that may indicate potentially risky transactions. This program is an important component of Commerce's efforts to prevent companies from illegally exporting dual-use products or equipment that could be used to make missiles.

C. Consultation with Industry

Changes or issues involving the MTCR Annex are discussed primarily in the Transportation Technical Advisory Committee (TransTAC). There are also regular consultations with other relevant TACs on missile-related issues. The MTCR Annex can be amended by a consensus decision of all MTCR Partners. Commerce participates in interagency working groups that review proposed changes to the Annex.

D. Consultation with Other Countries

Ongoing consultations with the other members of the MTCR are a fundamental element of U.S. missile technology controls. The membership of the MTCR continues to expand, as other significant potential suppliers recognize the importance of this cooperative mechanism to restrict the proliferation of missile systems. Consultations with non-MTCR countries are also an essential element of U.S. missile non-proliferation policy. As noted above, the U.S. government shares information about activities of concern with other countries and seeks to prevent or stop certain transactions. The United States also shares denial information with its MTCR Partners. Although these export controls are coordinated multilaterally, final decisions are made at the national level.

E. Alternative Means

To participate fully in the MTCR, the United States must be able to prevent the export of equipment and technologies relevant to the development of missiles. The missile technology control provisions of the National Defense Authorization Act of FY 1991 provide for the imposition of export, import, and procurement sanctions on foreign entities engaged in certain kinds of activities relating to the transfer of MTCR Annex items to non-MTCR adherent countries. In the past, sanctions have been imposed on entities in China, India, North Korea, Pakistan, and Russia. A goal of the missile sanctions is to encourage the governments of the sanctioned entities to adopt responsible non-proliferation behavior.

Diplomatic efforts by the United States and the MTCR Partners to encourage additional countries, including other potential suppliers of missile technology, to abide by the MTCR Guidelines are on-going. These efforts are aimed at encouraging non-MTCR members to adhere unilaterally to the MTCR Guidelines and implement effective export controls on missile items.

F. Foreign Availability

The foreign availability of missile systems and launch vehicles prior to the imposition of MTCR-based controls was examined. Foreign capabilities outside the MTCR include, but are not limited to China (PRC), Egypt, India, Israel, Taiwan, and Ukraine. Some of these countries abide by the MTCR Guidelines and apply MTCR-type controls. The United States has approached and will continue to approach other nations that produce MTCR Annex-controlled items to urge vigilance in reviewing requests to export these items and to rigorously apply the MTCR

Guidelines to help prevent missile proliferation worldwide.

ENDNOTES

1. *The countries in Country Group D:4 include Bahrain, China (PRC), Egypt, India, Iran, Iraq, Israel, Jordan, Kuwait, Lebanon, Libya, North Korea, Oman, Pakistan, Qatar, Saudi Arabia, Syria, the United Arab Emirates, and Yemen.*