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AUTHORITY: Secs. 2, 38, 40, 42, and 71, Pub. L. 90-629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2780, 2791, and 2797); 22 U.S.C. 2778; E.O. 11958, 42 FR 4311; 3 CFR, 1977 Comp., p. 79; 22 U.S.C. 2658; 22 U.S.C. 287c; E.O. 12918, 59 FR 28205, 3 CFR, 1994 Comp., p. 899.

SOURCE: 58 FR 39312, July 22, 1993, unless otherwise noted.

**§ 126.1 Prohibited exports and sales to certain countries.**

(a) *General.* It is the policy of the United States to deny licenses, other approvals, exports and imports of defense articles and defense services, destined for or originating in certain countries. This policy applies to Afghanistan, Armenia, Azerbaijan, Belarus, Cuba, Iran, Iraq, Libya, North Korea, Syria, Tajikistan, Ukraine, and Vietnam. This policy also applies to countries with respect to which the United States maintains an arms embargo (e.g. Burma, China, the Federal Republic of Yugoslavia (Serbia and Montenegro), Haiti, Liberia, Rwanda, Somalia, Sudan and Zaire) or whenever an export would not otherwise be in furtherance of world peace and the security and foreign policy of the United States. Comprehensive arms embargoes are normally the subject of a State Department notice published in the FEDERAL REGISTER. The exemptions provided in the regulations in this subchapter, except §§ 123.17 and 125.4(b)(13) of this subchapter, do not apply with respect to articles originating in or for export to any proscribed countries or areas. With regard to § 123.27 the exemption does not apply with respect to articles originating in or for export to countries prohibited by a United Nations Security Council Resolution or to which the export (or for which the issuance of a license for the export) would be prohibited by a U.S. statute (e.g. by Section 40 of the Arms Export Control Act, 22 U.S.C. 2780, to countries that have been determined to have repeatedly provided support for acts of international terrorism, i.e., Cuba,

Iran, Iraq, Libya, North Korea, Sudan and Syria).

(b) *Shipments.* A defense article licensed for export under this subchapter may not be shipped on a vessel, aircraft or other means of conveyance which is owned or operated by, or leased to or from, any of the proscribed countries or areas.

(c) *Exports and sales prohibited by United Nations Security Council embargoes.* Whenever the United Nations Security Council mandates an arms embargo, all transactions which are prohibited by the embargo and which involve U.S. persons anywhere, or any person in the United States, and defense articles and services of a type enumerated on the United States Munitions List (22 CFR part 121), irrespective of origin, are prohibited under the ITAR for the duration of the embargo, unless the Department of State publishes a notice in the FEDERAL REGISTER specifying different measures. This would include, but is not limited to, transactions involving trade by U.S. persons who are located inside or outside of the United States in defense articles and services of U.S. or foreign origin which are located inside or outside of the United States.

(d) *Terrorism.* Exports to countries which the Secretary of State has determined to have repeatedly provided support for act of international terrorism are contrary to the foreign policy of the United States and are thus subject to the policy specified in paragraph (a) of this section and the requirements of section 40 of the Arms Export Control Act (22 U.S.C. 2780) and the Omnibus Diplomatic Security and Anti-Terrorism Act of 1986 (22 U.S.C. 4801, note). The countries in this category are: Cuba, Iran, Iraq, Libya, North Korea, Sudan and Syria. The same countries are identified pursuant to section 6(j) of the Export Administration Act, as amended (50 U.S.C. App. 2405(j)).

(e) *Proposed sales.* No sale or transfer and no proposal to sell or transfer any defense articles, defense services or technical data subject to this subchapter may be made to any country referred to in this section (including the embassies or consulates of such a country), or to any person acting on its behalf, whether in the United States or

abroad, without first obtaining a license or written approval of the Office of Defense Trade Controls. However, in accordance with paragraph (a) of this section, it is the policy of the Department of State to deny licenses and approvals in such cases. Any person who knows or has reason to know of such a proposed or actual sale, or transfer, of such articles, services or data must immediately inform the Office of Defense Trade Controls.

(f) *Angola*. Consistent with U.N. Security Council Resolution 864 of September 15, 1993, an arms embargo exists with respect to UNITA. Accordingly, exports subject to this subchapter are prohibited in accordance with Security Council Resolution 864, Executive Order 12865 of September 29, 1993, and the UNITA (Angola) Sanctions Regulations issued by the Office of Foreign Assets Control, Department of the Treasury, on December 10, 1993 (58 FR 64904).

[58 FR 39312, July 22, 1993, as amended at 59 FR 15625, Apr. 4, 1994; 59 FR 42158, Aug. 17, 1994; 61 FR 6113, Feb. 16, 1996; 61 FR 36625, July 12, 1996; 61 FR 41499, Aug. 9, 1996; 62 FR 37133, July 11, 1997]

#### **§ 126.2 Temporary suspension or modification of this subchapter.**

The Director, Office of Defense Trade Controls, may order the temporary suspension or modification of any or all of the regulations of this subchapter in the interest of the security and foreign policy of the United States.

#### **§ 126.3 Exceptions.**

In a case of exceptional or undue hardship, or when it is otherwise in the interest of the United States Government, the Director, Office of Defense Trade Controls may make an exception to the provisions of this subchapter.

#### **§ 126.4 Shipments by or for United States Government agencies.**

(a) A license is not required for the temporary import, or temporary export, of any defense article, including technical data or the performance of a defense service, by or for any agency of the U.S. Government (1) for official use by such an agency, or (2) for carrying out any foreign assistance, cooperative project or sales program authorized by

law and subject to control by the President by other means. This exemption applies only when all aspects of a transaction (export, carriage, and delivery abroad) are effected by a United States Government agency or when the export is covered by a United States Government Bill of Lading. This exemption, however, does not apply when a U.S. Government agency acts as a transmittal agent on behalf of a private individual or firm, either as a convenience or in satisfaction of security requirements. The approval of the Office of Defense Trade Controls must be obtained before defense articles previously exported pursuant to this exemption are permanently transferred (e.g., property disposal of surplus defense articles overseas) unless (i) the transfer is pursuant to a grant, sale, lease, loan or cooperative project under the Arms Export Control Act or a sale, lease or loan under the Foreign Assistance Act of 1961, as amended, or (ii) the defense articles have been rendered useless for military purposes beyond the possibility of restoration.

NOTE: *Special definition*. For purposes of this section, defense articles exported abroad for incorporation into a foreign launch vehicle or for use on a foreign launch vehicle or satellite that is to be launched from a foreign country shall be considered a permanent export.

(b) This section does not authorize any department or agency of the U.S. Government to make any export which is otherwise prohibited by virtue of other administrative provisions or by any statute.

(c) A license is not required for the temporary import, or temporary or permanent export, of any classified or unclassified defense articles, including technical data or the performance of a defense service, for end-use by a U.S. Government Agency in a foreign country under the following circumstances:

(1) The export or temporary import is pursuant to a contract with, or written direction by, an agency of the U.S. Government; and

(2) The end-user in the foreign country is a U.S. Government agency or facility, and the defense articles or technical data will not be transferred to any foreign person; and