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Report to the Congress

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EXPORT CONTROLS

Assessment of Commerce Department's Report on Missile Technology Controls



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General Accounting Office
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Comptroller General
of the United States

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To the President of the Senate and the
Speaker of the House of Representatives

As required by the Export Administration Amendments Act of 1985, we are providing our assessment of the Secretary of Commerce's April 17, 1987, report to the Congress on the imposition of foreign policy controls on the export of missile equipment and technology related to nuclear weapons delivery systems. We assessed the Secretary's report for compliance with the statutory reporting requirements.

We found the Secretary's report to be in compliance with the reporting requirements of the 1985 Act. Appendix I presents the details of our assessment.

We are providing copies of this report to appropriate House and Senate Committees; the Secretaries of Commerce and State; the Director, Office of Management and Budget; and other interested parties.

Charles A. Bowsher
Comptroller General
of the United States

control provisions of the Export Administration Act, administered by the Commerce Department.

In terms of product coverage, Commerce notes that it is imposing new export license requirements only on certain technical data, not on missile-related commodities, since dual-use items were already controlled for national security reasons. Also, State Department's Office of Munitions Control already had authority to restrict exports for military purposes.

What the April 1987 controls add is the regulatory basis for the Commerce Department to restrict certain equipment and technical data to non-Soviet bloc countries where there is reason to believe they may be used to develop nuclear missile capability. Previously, exports for missile launch systems could not be restricted. Now, according to Commerce, there will be a strong presumption to deny exports of complete rocket systems and subsystems; and, with the new authority to control technical data, close scrutiny will be given to exports of design and production technology associated with items being controlled. In order for exports of sensitive missile equipment or technology to be authorized, government-to-government assurances are required regarding the use and transfer of the item or technology.

These missile equipment and technology controls differ from previous foreign policy controls in that they resulted from several years of negotiation with other countries and are being applied in a coordinated, multilateral approach. The seven cooperating countries issued identical equipment and technology guidelines, and each government will use its own national export control laws and regulations to implement the guidelines. The only other U.S. foreign policy controls that are being multilaterally applied involve certain chemicals for military use.

The controls also differ from previous foreign policy controls in that they do not clearly specify target countries. Rather, the controls are broadly aimed at ensuring that exports to non-Soviet bloc countries can be regulated.

Our Observations on the Report

The Commerce Secretary's report to the Congress, dated April 17, 1987, is in compliance with the requirements of the Export Administration Amendments Act of 1985.

controls.² However, our recent work on the Office of Munitions Control³ disclosed weaknesses in the Office's capability to review the validity of license applications, which could affect the controls' enforcement.

The report's discussion of the controls' economic impact reflects the information Commerce was able to develop on the subject. We note, in general, however, that when the foreign policy objective of a control—as in this case, nuclear non-proliferation—is expected to be of overriding importance and is widely supported, industry representatives may be reluctant to register strong economic objections to the particular controls, although they may state their general concern that any foreign policy controls damage the reputation of the United States as a reliable supplier.

Objectives, Scope, and Methodology

The Export Administration Amendments Act of 1985 requires that we assess each report of the Secretary of Commerce that concerns imposing, expanding, or extending foreign policy export controls for compliance with the Act.

To assess Commerce's report on the imposition of missile technology controls, we (1) reviewed the 1985 Act and its background to identify the requirements the report must meet, (2) examined the report for compliance with the requirements of the 1985 Act, (3) discussed development of the report with the Commerce and State Department employees who prepared the report, and (4) examined the documentation, analysis, and methodology supporting the report.

The Department of Commerce reviewed a draft of this report and stated that it was generally accurate. Commerce suggested some technical changes, which are incorporated.

Our review was performed in accordance with generally accepted government auditing standards.

²The Coordinating Committee for Multilateral Export Controls (COCOM) consists of North Atlantic Treaty Organization countries (except Iceland) and Japan. Each member incorporates commitments made in COCOM into its own laws and regulations.

³Arms Exports: Licensing Reviews for Exporting Military Items Can Be Improved (Sept. 9, 1987, GAO/NSIAD-87-211).

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With respect to the report's discussion of the availability from foreign sources of the controlled items, we note that it focuses on the countries participating in the control regime as the major suppliers of comparable items. It does not present information on whether other countries which also have sophisticated missile capabilities (such as the Soviet Union, China, and certain European countries) have made missile equipment and technology available to interested buyers and thus may be capable of undermining the controls. Furthermore, because Section 6h of the Export Administration Act, 2405h U.S.C. 50 App. (Supp. III (1985)), requires the Secretary to approve license applications when there is foreign availability in sufficient quantity and comparable quality from sources outside the United States, the absence of information on the availability of missile equipment and technology from these countries does not readily facilitate Congressional determination of whether the Department is properly administering the statute's foreign availability requirement.¹

The report also does not present any of the information compiled by Commerce's Office of Foreign Availability regarding the capability of several countries (Argentina, Brazil, Egypt, India, Israel, South Korea, Indonesia, Iran, Libya, Pakistan, and Taiwan) as suppliers of less sophisticated missile-related equipment and technology. Since these countries fall within the broad perspective of potential supplier nations for missile equipment and technology, we believe it would be appropriate, for purposes of completeness, to include this type of information in future reports to the Congress.

With regard to the information presented on the ability of the United States to enforce the controls, it should be noted that such controls are part of a coordinated, multilateral effort, and their effectiveness depends on the thoroughness of each individual country's export control effort. Commerce officials stated that enforcing the controls would present no new problems, because most of the controlled items were already covered by arms export controls administered by State Department's Office of Munitions Control or national security controls administered multilaterally through the Coordinating Committee (COCOM)

¹The recently reported Chinese sale of intermediate-range missiles to Saudi Arabia may raise particular questions regarding the availability of Chinese missile technology and equipment. However, it does not raise an issue of the Department's compliance with section 6h during the period covered by its report, since we have seen no indication that Commerce was aware of the sale at the time the report was issued.

Assessment of Commerce Report Imposing Controls on Missile Technology Exports

The Export Administration Act of 1979, as amended, authorizes the President to establish export controls for economic, national security, and foreign policy reasons. With respect to foreign policy controls, the 1979 Act provides that, subject to certain limitations, the President, through the Secretary of Commerce, may prohibit or curtail exports to the extent necessary to support the foreign policy objectives of the United States. The 1979 Act was most recently amended by the Export Administration Amendments Act of 1985 (Public Law 99-64) to, among other things, limit the President's use of foreign policy controls. For example, any time the Secretary imposes, expands, or extends export controls, he must first (1) consult with Congress, (2) make certain determinations regarding the impact, significance, and effectiveness of proposed controls, and (3) submit a report to Congress.

The 1985 Act also requires that we assess the Secretary's reports to Congress for compliance with the statutory reporting requirements.

Our review showed that the Secretary's report to the Congress on the April 1987 imposition of foreign policy controls on exports of missile equipment and technology meets the requirements of the 1985 Act. Like the Secretary's recent previous reports to Congress on foreign policy controls, it addresses the subjects specified in the law: (1) the control's purpose, (2) probability that the control will achieve its intended purpose, (3) compatibility of the control with U.S. foreign policy objectives, (4) reaction of other countries to the control, (5) economic impact of the control, (6) ability of the United States to enforce the control, (7) consequences of modifying the control, (8) alternative means for achieving the control's purpose, and (9) foreign availability of the controlled item.

Nature of the Controls

On April 16, 1987, the U.S. government announced its participation in a formal multinational effort to limit the risks of nuclear proliferation through the control of exports of missile equipment and technology related to nuclear weapons delivery systems. The controls are described in the "Guidelines" and "Annex" agreed to by the United States and six other countries (Canada, France, the Federal Republic of Germany, Italy, Japan, and the United Kingdom). According to the Commerce Department, these guidelines are identical for all seven countries and resulted from discussions that began in 1982.

The principal U.S. laws under which the Guidelines and Annex are implemented are the Arms Export Control Act, administered by the State Department, and the national security and foreign policy export

