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DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR 738, 740, 742 and 746

[Docket No. 160810723-6723-01]

RIN 0694-AH07

Amendments to the Export Administration Regulations: Update of Arms Embargoes on Cote d'Ivoire, Liberia, Sri Lanka and Vietnam, and Recognition of India as Member of the Missile Technology Control Regime

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: In this rule, the Bureau of Industry and Security (BIS) amends the Export Administration Regulations (EAR) to implement changes in controls on arms and related materiel to Cote d'Ivoire, Liberia, Sri Lanka, and Vietnam. BIS also updates the EAR to recognize the accession of India as a member of the Missile Technology Control Regime (MTCR).

DATES: This rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Elan Mitchell-Gee, telephone (202) 482-4252, email elan.mitchell-gee@bis.doc.gov.

SUPPLEMENTARY INFORMATION:

Background

In this rule, BIS amends the Export Administration Regulations (EAR) to implement certain United Nations Security Council Resolutions (UNSCRs) adopted in 2016 that terminated arms embargoes against Cote d'Ivoire (UNSCR 2283) and Liberia (UNSCR 2288). Further, BIS removes U.S. arms embargo-related controls on Sri Lanka to reflect the Consolidated Appropriations Act, 2016, and on Vietnam pursuant to a determination made by the Secretary of State and announced by the President.

BIS aims to harmonize the arms embargo-related provisions in the EAR, expressly or by reference, with the Directorate of Defense Trade Control's (DDTC) regulation of arms embargoes in § 126.1 of the International Traffic in Arms Regulations (ITAR), "Prohibited Exports, Imports, and Sales to or from Certain Countries." These actions further ongoing efforts to harmonize the EAR and the ITAR, and the President's Export Control Reform Initiative. The ITAR list incorporates countries subject to United Nations Security Council (UNSC) and U.S. arms embargoes. BIS primarily implements such controls through Country Group D:5 "U.S. Arms Embargoed Countries," in Supplement No. 1 to part 740 of the EAR. BIS also identifies specific countries subject to UNSC arms embargoes in part 746 of the EAR, and maintains controls on certain items pursuant to those embargoes on the Commerce Control List (CCL) in Supplement No. 1 to part 774.

Countries listed in Country Group D:5 are subject to additional restrictions in the EAR, including on *de minimis* U.S. content, license exception availability, and licensing policy for certain items. For example, license applications for the export or reexport of items classified under 9x515 or “600 series” Export Control Classification Numbers (ECCNs) to countries in Country Group D:5 are reviewed consistent with the policies in § 126.1 of the ITAR, as provided in paragraph (b)(ii) of § 742.4 of the EAR. Additionally, license applications for items controlled on the CCL for United Nations Embargo reasons and destined to countries specified in § 746.1(b) of the EAR are not approved by BIS if the authorization would be contrary to the relevant UNSCR, to the extent consistent with United States national security and foreign policy interests. As a result of this rule, the relevant additional restrictions described above no longer apply to Cote d’Ivoire, Liberia, Sri Lanka, and Vietnam.

Finally, on June 27, 2016, India acceded to the Missile Technology Control Regime (MTCR) as the 35th member. In this rule, BIS updates the EAR to recognize the status of India as a member of the Missile Technology Control Regime by amending paragraph (d) of § 742.5 to remove the reference to India as an adherent to the MTCR. This rule includes a conforming amendment.

Respective Updates to EAR Arms Embargoes and Special Controls by Country

Cote d’Ivoire

The arms embargo against Cote d’Ivoire was initially imposed through UNSCR 1572 (2004). UNSCR 2283 terminated the arms embargo against Cote d’Ivoire on April 28, 2016, in recognition of the progress achieved in the stabilization of the country, including in relation to disarmament, demobilization and reintegration, security sector reform, national reconciliation

and the fight against impunity, as well as the successful conduct of the presidential election of October 25, 2015. Accordingly, this rule removes the United Nations Embargo (UN) controls on Cote d'Ivoire by removing that country from the names of UNSC arms embargoed countries in § 746.1(b) and from Country Group D:5 in Supplement No. 1 to part 740 of the EAR.

Liberia

The arms embargo against Liberia was initially imposed through UNSCR 788 on November 19, 1992, and was continued through subsequent resolutions, including UNSCR 1903 (2009). The UNSC terminated the arms embargo against Liberia on May 25, 2016, through UNSCR 2288, in recognition of that country's progress in the past 13 years in building stable, effective and resilient national institutions. Accordingly, this rule removes the UN controls on Liberia by removing that country from the names of UNSC arms embargoed countries in § 746.1(b) and from Country Group D:5 in Supplement No. 1 to part 740 of the EAR.

Sri Lanka

The Department of State imposed a U.S. arms embargo on Sri Lanka on March 24, 2008, in accordance with the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2008 (Div. J, Pub. L. 110–161). However, licensing restrictions on Sri Lanka articulated in section 7044(e) of the Consolidated Appropriations Act, 2015 (Pub. L. 113-235) and in previous appropriations acts, were not carried forward in section 7044(e) of the Consolidated Appropriations Act, 2016 (Pub. L. 114-113). On May 4, 2016, DDTC announced that it would begin reviewing license applications for Sri Lanka on a case-by-case basis. Accordingly, this rule removes Sri Lanka from Country Group D:5 in Supplement No. 1 to part 740 of the EAR.

Vietnam

Starting in the 1960s, the Department of State imposed a lethal arms sales embargo against Vietnam. Pursuant to a determination by the Secretary of State, the President announced the United States' termination of the U.S. arms embargo against Vietnam on May 23, 2016, in furtherance of deepening and broadening ties between the United States and Vietnam since the normalization of diplomatic relations. Accordingly, BIS removes Vietnam from Country Group D:5 in Supplement No.1 to part 740 the EAR.

International Export Control Regime Update: India, Member MTCR

On June 27, 2016, India formally acceded to the MTCR as the 35th member. Prior to India's MTCR membership, India's commitment to the U.S.-India bilateral understanding contributed to the country's status as an "MTCR adherent" and placed the country among likeminded MTCR members in Country Group A:2 in Supplement No. 1 to part 740. In this rule, BIS formally recognizes India's status as a member of MTCR by removing the reference to India as only an "MTCR adherent" from paragraph (d) of § 742.5 of the EAR.

Conforming Amendment

Footnote notations appear next to countries listed in the Commerce Country Chart in Supplement No. 1 to part 738 of the EAR that are subject to UNSC arms embargos. BIS removes that notation for Cote d'Ivoire and Liberia to conform to the termination of UNSC arms embargoes against those countries.

Export Administration Act

Although the Export Administration Act expired on August 20, 2001, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as amended by Executive Order 13637 of March 8, 2013, 78 FR 16129 (March 13, 2013) and as extended by the Notice of August 4, 2016, 81 FR 52587 (August 8, 2016), has continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act. BIS continues to carry out the provisions of the Export Administration Act, as appropriate and to the extent permitted by law, pursuant to Executive Order 13222 as amended by Executive Order 13637.

Rulemaking Requirements

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distribute impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been determined to be not significant for purposes of Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to respond to, nor is subject to a penalty for failure to comply with, a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid OMB control number. This rule affects

two approved collections: (1) the Simplified Network Application Processing + Redesign system (control number 0694-0088), which carries a burden hour estimate of 43.8 minutes, including the time necessary to submit license applications, among other things, as well as miscellaneous and other recordkeeping activities that account for 12 minutes per submission; and (2) License Exceptions and Exclusions (0694-0137). This rule is not expected to increase the number of submissions under these collections.

3. This rule does not contain policies with Federalism implications as that term is defined under E.O. 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military or foreign affairs function of the United States under 5 U.S.C. 553(a)(1). This final rule implements U.S. multilateral commitments pursuant to United Nations Security Council arms embargoes. The sanctions against Cote d'Ivoire and Liberia were promulgated in part to fulfill U.S. obligations and serve collective security interests by implementing United Nations Security Council arms embargoes.

Furthermore, arms embargoes were imposed on Sri Lanka and Vietnam by the United States to advance national and regional stability and security. Termination of these embargoes under the EAR recognizes progress in the security situations in Cote d'Ivoire and Liberia, changes in legislative mandates related to Sri Lanka, and the evolution of U.S. relations with Vietnam, and updates the EAR to bring it in line with those changes, including with international authorities supported by the United States and which already are in effect. Lastly, these updates and the recognition of India as a member of the MTCR help to prevent confusing the public as to the status of the named destinations for purposes of export controls under the EAR. No other law

requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are not applicable. Therefore, this regulation is issued in final form and is made effective immediately upon publication.

List of Subjects

15 CFR Part 738

Exports.

15 CFR Part 740

Administrative practice and procedure, Exports, Reporting and recordkeeping requirements.

15 CFR Part 742

Exports, Terrorism.

15 CFR Part 746

Exports, Reporting and recordkeeping requirements.

Accordingly, parts 738, 740, 742 and 746 of the Export Administration Regulations (15 CFR parts 730-774) are amended as follows:

PART 738—[AMENDED]

1. The authority citation for part 738 continues to read as follows:

Authority: Authority: 50 U.S.C. 4601 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c; 22 U.S.C. 3201 *et seq.*; 22 U.S.C. 6004; 42 U.S.C. 2139a; 15 U.S.C. 1824a; 50 U.S.C. 4305; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 4, 2016, 81 FR 52587 (August 8, 2016).

Supplement No. 1 to Part 738—[Amended]

2. Supplement No. 1 to part 738 “Commerce Country Chart” is amended by removing the footnote notation number 1 from “Cote d’Ivoire” and “Liberia”.

PART 740—[AMENDED]

3. The authority citation for part 740 continues to read as follows:

Authority: Authority: 50 U.S.C. 4601 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 7201 *et seq.*; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 4, 2016, 81 FR 52587 (August 8, 2016).

Supplement No. 1 to Part 740—[Amended]

4. Supplement No. 1 to part 740, Country Group D, is amended by:
 - a. Removing the entries for “Cote d’Ivoire”, “Liberia” and “Sri Lanka”; and

- b. Removing the “X” under column D:5 “U.S. Arms Embargoed Countries” for “Vietnam”.

PART 742 – [AMENDED]

5. The authority citation for part 742 continues to read as follows:

Authority: 50 U.S.C. 4601 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; Sec. 1503, Pub. L. 108–11, 117 Stat. 559; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Presidential Determination 2003-23, 68 FR 26459, 3 CFR, 2004 Comp., p. 320; Notice of November 12, 2015, 80 FR 70667 (November 13, 2015); Notice of August 4, 2016, 81 FR 52587 (August 8, 2016).

§742.5—[Amended]

6. Section 742.5 is amended by removing the clause “, and India as an MTCR adherent,” from the first sentence of paragraph (d).

PART 746 – [AMENDED]

7. The authority citation for 15 CFR part 746 continues to read as follows:

Authority: 50 U.S.C. 4601 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 287c; Sec 1503, Pub. L. 108-11, 117 Stat. 559; 22 U.S.C. 6004; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; E.O. 12854, 58 FR 36587, 3 CFR, 1993 Comp., p. 614; E.O. 12918, 59 FR 28205, 3 CFR, 1994 Comp., p. 899;

E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13338, 69 FR 26751, 3 CFR, 2004 Comp., p 168; Presidential Determination 2003-23, 68 FR 26459, 3 CFR, 2004 Comp., p. 320; Presidential Determination 2007-7, 72 FR 1899, 3 CFR, 2006 Comp., p. 325; Notice of May 3, 2016, 81 FR 27293 (May 5, 2016); Notice of August 4, 2016, 81 FR 52587 (August 8, 2016).

§746.1—[Amended]

8. Section 746.1 is amended by removing “Cote d’Ivoire (Ivory Coast),” and “Liberia,” from the list of countries in paragraph (b)(2).

Dated: October 28, 2016.

Kevin J. Wolf,

Assistant Secretary for Export Administration.

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