

Missile Technology FAQs

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Q.1: What kind of documentation or information is required in support of a license application for an item subject to missile technology export controls or when the item to be exported will be used in a missile project or program?

A.1: The information provided with your application should include technical specifications or brochures on the items you wish to export. Information that substantiates the legitimate activities of the end-user should be supplied as well. You should also include import or end-user certificates if the item is also subject to national security controls. For items to be used in a missile project or program, at a minimum, always specify the maximum capable range and payload of the delivery system or launch vehicle. Any information regarding the specific project or program should be provided; note if there is any U.S. government funding or oversight involved. You can also include open-source information from Web sites, marketing brochures, etc. All this information will assist licensing officers in their evaluation, determination, and licensing recommendations for the case. Including this information could prevent potential delays in the processing of the case and avoid a return of the application without action. The documentation requirements for export license applications are explained in detail in Part 748 of the EAR.

Q.2: I am a manufacturer of inertial navigation systems (INS) that are controlled for Missile Technology (MT) reasons. We often get calls from airlines for replacement of broken bench stock spares or INS units in permanent service. Are there any license exceptions that I can use?

A.2: Yes, depending upon the situation, License Exceptions TMP, RPL, TSU, and AVS may be available for these types of items related to safety of flight. See Part 740 of the EAR for an explanation of when these license exceptions may apply.

Q.3: Do special rules apply for exporting missile technology to China?

A.3: Yes. Section 1512 of the Strom Thurmond National Defense Authorization Act (NDAA) requires a Presidential certification to Congress prior to the export to China of missile technology-controlled items, except for certain items used in manned aircraft. Authority for this certification has been delegated to the Secretary of Commerce, however, they can still take several months, and you should allow for substantial processing time for these applications. The Secretary must certify that the export will not be detrimental to the U.S. space launch industry and will not measurably improve the missile or space launch capabilities of China.

Q.4: When is a license required for export of non-MT controlled items for use in missile activities?

A.4: Items not specifically controlled for MT reasons can also be controlled under section 744.3 of the EAR ("catch-all", or EPCI, controls). Items require a license if they will be used in the design, development, production, or use of:

- Rocket systems (including ballistic missile systems, space launch vehicles, and sounding rockets) or unmanned aerial vehicles (including cruise missile systems, target drones, and reconnaissance drones) capable of a range of at least 300 km for use in or by a country listed in Country Group D:4 (see Supplement No. 1 to Part 738 of the EAR)
- Any rocket system or unmanned aerial vehicles in a D:4 country where system characteristics or use are unknown
- Any rocket systems or unmanned aerial vehicles for the delivery of chemical, biological, or nuclear weapons to anywhere in the world, except by governmental programs for nuclear weapons delivery of the Nuclear Non-Proliferation Treaty Nuclear Weapons States that are also members of NATO

Q.5: What is the “no undercut” policy in the MTCR?

A.5: In the MTCR, as well as the Nuclear Suppliers Group and the Australia Group, there is a "no undercut" policy. This means that if your license is denied because the United States determined it was detrimental to national security or foreign policy, the United States will notify the other members of the regime, who have agreed to consult with the United States before approving an export of the same or similar items to the same end-user. This does not apply to "catch all" denials of items not on the MTCR annex, but in practice many countries take into consideration denials by regime partners when reviewing other license applications.

Q.6: How does EPCI affect exports of items for missile-related activities?

A.6: The term "Enhanced Proliferation Control Initiative" is not defined or generally used in the Export Administration Regulations. Under its original meaning, it included both the list-based controls on missile related items (as well as chemical, biological, and nuclear items) and controls on normally uncontrolled items that need a license because of the end-use or end-user. The term "EPCI" has come to be used informally to refer to the latter "catch all" controls and refers to the controls set out in section 744 of the EAR.

Q.7: We recently received an offer to supply a gear making machine (ECCN 2B993) to a tank and cannon factory in China. My boss told me to apply for a license because of EPCI. Is this an EPCI activity?

A.7: No, there are no EPCI (catch-all) controls on the manufacture of conventional arms. Conventional arms production is not an activity set out in Part 744 of the EAR. However, you need to determine if there are any activities that are described in Part 744 (i.e. missile/nuclear/chemical-biological weapons) at this facility.

Q.8: I am a distributor of college textbooks. I often get requests from foreign customers for engineering textbooks containing information on missile technology. Should I be worried about EPCI/'catch-all' controls?

A.8: Written materials that are publicly available, such as college textbooks, are not subject to the Export Administration Regulations. However, a "U.S. person," as that term is defined in the EAR, may not support certain missile activities in any of a number of ways, including the provision of goods, the performance of a contract, and employment. See Part 744.6. While the textbooks would not, in themselves require an export license, they could be part of the impermissible support that a U.S. person is providing to a missile project and amount to a violation of the EAR.

Q.9: My firm recently had an export license for a machine tool denied. The reason for denial was missile related. This item isn't even controlled for missile reasons. What's going on?

A.9: Any license application can be reviewed for all proliferation concerns (not only those stated in the reasons for control.) In this instance, the item was denied because the transaction would make a material contribution to the proliferation of missiles.

Q.10: What factors are used to evaluate "catch-all" items?

A.10: When reviewing licenses for items caught under section 744.3 of the EAR, the following factors will be taken into consideration:

- (i) The specific nature of the end use
- (ii) The significance of the export in terms of its contribution to the design, development, production, or use of missiles
- (iii) The capabilities and objective of the missile and space programs of the recipient country
- (iv) The nonproliferation credentials of the importing country

- (v) The types of assurances or guarantees against design, development, production, or use of missiles that are given in a particular case
- (vi) The existence of a pre-existing contract

Q.11: What license exceptions are available for MT items?

A.11: Items other than some radar, accelerometers, gyros and corresponding test equipment, software, and technology may be exported as part of a manned aircraft, land vehicle, or marine vehicle or as replacement parts for such under license exceptions TMP, RPL, TSU, and AVS. Anti-friction bearing and bearing systems (2A001) or radial ball bearings (2A101) may be exported under TMP or RPL as one-for-one replacement for equipment previously exported.

Q.12: What is meant by Category I, Category II, and MTCR-controlled missiles and unmanned aerial vehicles?

A.12: The MTCR considers missile systems or unmanned aerial vehicles that have a range of 300 km and the ability to carry a payload of 500 kg as Category I, and there is a strong presumption of denial for the export of such items. Category II missile systems and unmanned aerial vehicles are those that have a range of 300 km, but do not have the payload capability of Category I. Export of Category II systems are evaluated on a case-by-case basis. Both Category I and Category II items are MTCR-controlled. Missile systems or unmanned aerial vehicles that do not meet the range and payload capabilities of Category I and Category II are not MTCR-controlled. While most Category I and II complete systems fall under the jurisdiction of the Department of State, these categorizations can impact the licensing decisions on dual-use (Commerce controlled) commodities when evaluating the intended end use of the items, the capabilities of the destination country, and the risk of diversion of items.