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SPECIAL ISSUE BRIEF

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FROM: The American Hellenic Institute

SUBJECT: The Prohibition on Transfers of Defense Articles/Services which the US State Department has Imposed on the Republic of Cyprus.

INTRODUCTION

Congress has authorized the President to control the export and import of defense articles/services and to promulgate implementing regulations, *22 USC § 2778, 2751*. The President has delegated this authority to the Secretary of State. The International Trade in Arms Regulations (ITAR) are the set of regulations which implement the statute. The Secretary of State has authorized the Under Secretary for Arms Control and International Security through the Directorate of Defense Trade Controls of the Bureau of Political - Military Affairs to administer the ITAR and to modify them at his or her discretion.

The ITAR identifies the types and categories of defense articles/services, transfers of which are controlled. The ITAR also identifies countries to and from which transfers of defense articles/services are prohibited. These countries are set forth in the ITAR list.

In 1985, the State Department placed “Cyprus” on the ITAR list. The State Department has apparently assumed that “Cyprus” means the Republic of Cyprus. However, “Cyprus” is not a country. It is only the name of a geomorphological formation in the Eastern Mediterranean Sea. Nevertheless, due to this erroneous assumption, transfers of defense articles/services, subject to two limited exceptions, to and from the Republic of Cyprus have been and are prohibited.

INTERNATIONAL TRADE IN ARMS REGULATION (ITAR)

The ITAR sets forth the criteria for placing a country on the ITAR list and a list of the countries which are currently on the ITAR list.

A. Control of arms and imports - 22 CFR § 126.1(c)

To be placed on the ITAR list, a country must fall into at least one of the following four categories:

1. The United Nations Security Council (UNSC) mandates that the country is subject to sanctions,
2. The Secretary of State has determined that the country is a State Sponsor of Terrorism,
3. The country is subject to an arms embargo or sanctions under a US law, or
4. Whenever the export of defense articles/services would not be “in furtherance of world peace and the security and foreign policy of the United States”.

B. Prohibited exports, imports, and sales to or from certain countries
22 CFR § 126.1(d)(1)-(2)

This regulation identifies the countries to and from which transfers of defense articles/services are prohibited. The countries are grouped into the following two categories:

A. The Prohibition is Absolute - 22 CFR § 126.1(d)(1)

1. Belarus
2. Burma
3. China
4. Cuba
5. Iran
6. North Korea
7. Venezuela

B. The Prohibition Applies with Exceptions - 22 CFR § 126.1 (d)(2)

1. Afghanistan
2. Central African Republic
3. *Cyprus*
4. Democratic Republic of Congo

5. Eritrea
6. Haiti
7. Iraq
8. Lebanon
9. Libya
10. Somalia
11. South Sudan
12. Sudan
13. Zimbabwe

C. “Cyprus” - 22 CFR § 126.1(r)

“Cyprus” is listed in the category of countries to which the prohibition applies with certain exceptions. The stated exceptions are transfers for the United Nations Forces in Cyprus (UNFICYP) or civilian end users. Whether such transfers are permitted is determined on a case-by-case basis. The effect is that transfers to any branch of the military of the Republic of Cyprus are prohibited.

THE MEANING OF THE TERM “CYPRUS”

On its face, the term “Cyprus” is, at best, ambiguous. “Cyprus” is a geomorphological formation in the Eastern Mediterranean Sea. This formation is an island which has been called “Cyprus” since time immemorial. It is not a country. The only country on the island of “Cyprus” is the Republic of Cyprus. Only the Republic of Cyprus exercises sovereignty over the island of Cyprus. By its own definition, the ITAR applies only to countries. “Cyprus” is not a country. The term “Cyprus” cannot mean the Republic of Cyprus.

The Republic of Turkey invaded the Republic of Cyprus in 1974. Turkey continues to unlawfully occupy one-third of the sovereign territory of the Republic of Cyprus. It administers that territory through an unincorporated association which Turkey created and controls called the “Turkish Republic of Northern Cyprus (TRNC)”. These events have never and do not alter or compromise the sovereignty of the Republic of Cyprus over the island of Cyprus. This fact is confirmed by numerous decisions of the European Court of Human Rights (ECHR) as well as by a decision of the Court of Justice of the European Union (CJEU).

AUTHORITY OF THE UNDER SECRETARY

The scope of the authority of the Under Secretary in administering the ITAR is broad. This authority is vested in the Under Secretary. He or she can exercise the authority in his or her discretion without further review. The ITAR sets forth the following two categories of authority:

A. Authority to temporarily suspend or modify the ITAR - 22 CFR § 126.2

In the interests of the security and foreign policy of the United States, the Under Secretary can:

1. Temporarily suspend the ITAR, or
2. Modify ITAR.

B. Authority to make exceptions to the ITAR - 22 CFR § 126.3

The Under Secretary can make exceptions to the ITAR:

1. In cases of exceptional or undue hardship, or
2. When it is in the interest of the United States.

GROUNDS FOR THE EXERCISE OF AUTHORITY

The Under Secretary can exercise his or her authority to correct the anomaly of prohibiting transfers to and from the Republic of Cyprus by modifying the ITAR for the following reasons:

- A. Because “Cyprus” is not a country for the ITAR purposes, modify the regulation to clarify that the prohibition does not apply to transfers to and from the government of the Republic of Cyprus nor to and from those portions of the island of Cyprus that are not occupied by the Republic of Turkey.
- B. Even if the Under Secretary, erroneously, chooses to consider “Cyprus” to mean the Republic of Cyprus, he or she must modify the regulation because the Republic of Cyprus is not a country that falls into any one of the four categories under 22 CFR § 126.1 (c). The Republic of Cyprus is not:
 1. Subject to UNSC sanctions,

2. A country determined to be a State Sponsor of Terrorism,
3. Subject to a US arms embargo or sanctions regime,
4. A country to which exports would harm world peace the security and foreign policy of the United States. To the contrary, such exports would enhance world peace and the security and foreign policy of the United States. The Republic of Cyprus cooperates with the US on defense, search/rescue, and anti-terrorism. It is an ally of the US and a Member State of the European Union (EU).

CONCLUSION

There is no legal basis under the ITAR for the Republic of Cyprus to be on the ITAR list. On his or her own authority, the Under Secretary can remedy this situation by simply issuing the appropriate legal instrument which modifies the ITAR to exclude the Republic of Cyprus from 22 CFR § 126.1(r). Legislation is not useful nor required to accomplish this modification. All that is needed is for the Under Secretary to exercise the necessary political will to correct a blatantly illegal situation.

It is the ultimate paradox that the Republic of Cyprus is on the ITAR list but the Republic of Turkey is not. Turkey unlawfully occupies the territory of the Republic of Cyprus, willfully violates the airspace and territorial waters of Greece (a NATO ally) and obstructs US policy in Syria. Yet the US has supplied and continues to supply the Turkish occupation force with US defense articles/services. The only transfers that compromise world peace, US security and foster division on “Cyprus” are transfers made by the US to the Turkish military occupation force.