

# Wisconsin Project on Nuclear Arms Control

**Gary Milhollin**

Professor, University of Wisconsin School of Law  
Director

**EXPORTS BIND TERRORIS\***

**U.S. Export Licenses to Iran and Syria: 1986-1990**

**by Gary Milhollin**

**July 1991**

From 1986 to 1990, the U-S. Commerce Department **approved** over \$300 million worth of sensitive American exports to Iran and Syria. Most of these were "dual-use" items, capable of making nuclear weapons or **long-range** missiles if diverted from their claimed civilian purposes. The record of these exports, compiled from Commerce Department data, has just become **available**. Three **hundred seventy** two exports worth **over \$282 million were approved** to **Iran, and** 129 exports worth **over \$23 million were approved** to Syria.

**These approvals were** made in spite of the U-S. policy against international terrorism. Iran and Syria have both been implicated in the bombing of Pan American Flight 103, which sent 270 persons to their deaths at Lockerbie, Scotland. To combat these countries' support for such terrorist acts, Congress put Iran and Syria on a special "terrorism list" under U.S. export law. From 1986 to 1990, the U.S. Export Administration **Regulations** (Section **785-4**) **provided** that an **enumerated** list of sensitive, high-technology items "would generally be denied" to both countries.

In spite of this denial rule, millions of dollars worth of these exports were approved. The Commerce Department records reveal why some of the approvals were made, but by no means explain them **all**. Some were **made because** of loopholes in the anti-terrorism regulations; others because of an informal practice of servicing U-S.-origin goods abroad. Still others, however, **seem** to have been made because the regulations were ignored-

### **Iran**

From October 1987 through 1990, the Commerce Department approved the following exports from the list of items that would "generally be denied:"

- Roughly \$600,000 worth of **navigational**, radar and communication equipment in thirteen cases.<sup>1</sup> If diverted from their stated uses, these exports could aid Iran in such tasks as missile targeting. Six of the cases appeared to fall under the denial rule with no reason for approving them. One or two could have benefitted from the "contract sanctity" exemption, under which the denial rule does not

apply to exports made under contracts entered into before October 22, 1987.<sup>2</sup> Five of the cases may have benefitted from an informal practice of supplying spare parts to maintain previously-exported equipment or supplying equipment needed to test such equipment.

- \$8,000 worth of cryptographic (encryption) equipment for automatic teller machines.<sup>3</sup> This export fell squarely under the denial rule. The Commerce Department approved the case on July 24, 1990 without consulting either the Defense or State Departments. If diverted from its stated use, encryption equipment can be used to encode military messages, enhancing a country's military command and control capability. It is unclear from the Commerce records how great the military potential of this equipment was, but it should have been referred to the Defense and State Departments to assess the strategic risk-

- Roughly \$270,000 worth of electronic measuring equipment, in four cases received from June 1989 to November 1989 and approved from July 1989 to April 1990.<sup>4</sup> This equipment can be used to test and develop microwave circuits for missile guidance radars and microwave communications. All four cases fell under the denial rule, but two were for equipment needed to test and maintain U.S.- equipment already exported.

- Roughly \$130,000 worth of oscilloscopes, in a case received on January 11, 1988 and approved on June 21, 1988.<sup>5</sup> The end use was stated as "general technical services and support-" Oscilloscopes can be used to develop missile guidance systems and to process the rapid data from nuclear weapon tests. It is unclear from the Commerce records whether this export was made under a contract entered into before October 22, 1987.

- Roughly \$1.7 million worth of compasses, gyroscopes and accelerometers, in two cases received and approved in July and September, 1988.<sup>6</sup> These items are designated by U.S. law as especially sensitive for missile proliferation because they are used in missile guidance systems. This export fell under the denial rule, but may have been approved because it was to stay in the possession of the licensee, a Western oil company, during the time the licensee was providing services to Iran-

- Roughly \$74 million worth of aircraft parts for Iranian Airlines in three cases. The first two cases were for repair contracts.<sup>7</sup> The exporters were using U.S. parts to repair Iranian Air's Boeing 747s in Europe. The cases fell squarely within the denial rule but were approved to keep the planes flying safely. The third case, valued at \$47

million, was for parts destined to be built into aircraft being manufactured for Iran in the **Netherlands**.<sup>8</sup> This **case** benefitted from an exception to the denial rule under which the rule does not apply if the U.S. parts amount to **less** than 20% of the value of a foreign-produced item.<sup>9</sup>

More than 300 of the 372 approvals to Iran were for computers. Computers are not on the denial list, but **especially** powerful computers are on the "Nuclear Referral List," a list of items that U.S. law has designated as **especially sensitive** for nuclear weapon proliferation. Items on this list can only be exported if they meet certain criteria. One of the most important criteria is the importing country's "non-proliferation credentials." This is determined by factors such as whether the country has an agreement for nuclear **cooperation** with the United States (Iran does), whether it is generally cooperative on non-proliferation matters (Iran is not), whether it has all of its nuclear **activities** under **international** inspection (Iran does not), what U.S. intelligence data show about the country's activities in the nuclear field (Iran has had a secret nuclear weapon research effort for some time), and whether the country is a member of the Nuclear ~~can~~ Non-Proliferation Treaty (Iran is a member, but so is Iraq).

When these factors are weighed, **especially** in light of Iran's support for terrorism, it is difficult to see how the balance could have tipped in favor of **approval**. It is clear that a large number of American computers would help **advance** Iranian technical competence and the Iranian economy. The export records do not indicate how powerful the computers were.

On July 27, 1990, the Commerce Department approved a \$3.9<sup>11</sup> million computer **sale** to the Iranian Ministry of the Interior. This giant export, sold by the Bull company, was claimed to be for "accounting and payroll applications," and to "perform a national census project." These claims, however, will be of small comfort to those targeted by the Ministry's secret police, who will undoubtedly be one of the main users of the computers. This American export will directly bolster the power of the **current repressive regime**.

## Syria

Syria, like Iran, has repeatedly provided support for acts of international terrorism. From December 1986 to October 1990, U.S. law provided that all items subject to U.S. **national security controls** would "generally be denied" for export to Syria-" The only exceptions were a contract sanctity rule, under which the denial rule would not apply to exports contracted before December 16, 1986, or if the exports were going to be

built into foreign-produced goods containing less than 20% U.S. content by value.

Of the 129 cases approved to Syria, 91 were for computers, which are subject to national security controls. Thus, the vast majority of the cases approved for Syria fell under the denial rule. Of the 91 computer cases approved, only one was received by the Commerce Department before December 16, 1986 and only seven were received within the first half of 1987, making it unlikely that more than eight of the cases benefitted from the contract sanctity exception- A few of the exports were for upgrades to U.S. systems previously exported, but the great majority were for new applications, such as "personnel management" at the Syrian Ministry of Foreign Affairs. One computer, worth \$280,000, was approved for<sub>13</sub> automatic data processing of "criminal--personal files."

The Commerce Department also approved six exports to the Syrian Atomic Energy Commission. The first was for a \$7,960 computer supplied without an end-use statement.<sup>14</sup> The Commerce Department records declare that the end-use statement was "not available-" The case was received on February 26, 1987 and approved on June 23, 1989 so it is possible, but not likely, that the case benefitted from the contract sanctity exception. Otherwise, it fell under the denial rule because computers are controlled for national security reasons.

All six cases were destined for a nuclear end user, and therefore also had to satisfy the export criteria for items on the Nuclear Referral List.<sup>15</sup> These criteria, as explained above for Iran, would appear to indicate denial for an unstable, unfriendly country like Syria. Moreover, it is not the policy of the U.S. government to aid the nuclear programs of countries that support international terrorism- It is possible to explain two of the cases by the fact that they were for equipment to repair or maintain previously-exported U.S. equipment., but the other four have no such explanation.

### Conclusion

Despite the clear anti-terrorism policy of the United States, Iran and Syria still have been able to buy millions of dollars worth of strategically sensitive American products. Some of the sales benefitted from loopholes in the regulations, but many others benefitted from practices not contained in any regulation, or from a general tendency to ignore the rule that such sales should be denied.

The Commerce Department records do not reveal why individual sales were approved. It is impossible to know how many cases

**benefitted** from **the contract** sanctity or the 20% **U-S. content exceptions**. **However**, most of the sales **were** not **entitled to any** exemption under the regulations. The **licensing** officers simply used their own discretion to decide whether the anti-terrorism rule should be ignored or applied.

In light of this record, Congress should require the Commerce Department to explain why it approved the numerous cases clearly covered by the denial rule. For every approval to a country on the terrorism list, Congress should require a public statement, signed by a responsible official, showing why the license was granted.

Congress should also require the Commerce Department to provide a public record of all the export licenses approved to countries on the terrorism list. At present, Commerce refuses to discuss these licenses, or even reveal their existence, on the ground that they **contain proprietary information**. **The policy** of discouraging terrorism is clearly more important than any interest in proprietary information on the part of the exporters. A reputable company should not object to revealing the bare fact that it has made a sale. Pushing these licenses into the light of day would encourage the exporters to be honest, encourage the government to be careful, and allow the public and the Congress to find out whether American exports are undermining the U-S. policy against terrorism.

## Endnotes

1. Cases B291432, B295542, B295551, B295552, D022481, D025084, D028605, D053544, D056628, D075149, D080880, D107343, D114219, for ECCN No- 6598.
2. U.S- Export Administration Regulations, Section 785-4(d) (3) (ii) (B) .
3. Case D110579, for ECCN No. 1527-
4. Cases B382395, D017685, D066466 and D107343, for ECCN No. 1529-
- 5- Case B290272, for ECCN No- 1584.
6. Cases B341442 and B355156, for ECCN No. 1485-
7. Cases B376976 and D073802, for ECCN 1460 and 4460-
8. Case D084701, for ECCN No 1460-
9. U.S. Export Administration Regulations, Section 785.4(d) (3) (ii) (C) (2) .
10. U.S. Export Administration Regulations, Section 778.4.
11. Case D1004412, for ECCN No. 1565.
12. U-S. Export Administration Regulations, Section 785-4(d) (4) (i). This rule was changed in the 1990 version of the Regulations.
13. Case B304884, for ECCN No. 1565.
14. Case B203015, for ECCN No. 1565-
15. U-S- Export Administration Regulations, Section 778.4.