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PART II

Statutory Notifications (S. R. O.)

GOVERNMENT OF PAKISTAN

MINISTRY OF FOREIGN AFFAIRS

NOTIFICATION

Islamabad, the 11th May, 2016

S. R. O. 442(I)/2016.—In exercise of the powers conferred by section 3(a) of the Export control on goods, Technologies, Material and equipment related to Nuclear and Biological weapons and their Delivery Systems Act, 2004 (Act No. V of 2004) the Federal Government is Pleased to notify the following "Policy Guidelines on Strategic Export Controls".

POLICY GUIDELINES ON STRATEGIC EXPORT CONTROLS

(To be read in conjunction with Export Control on Goods, Technologies, Material and Equipment related to Nuclear and Biological Weapons and their Delivery Systems Act - 2004)

Introduction:

The Islamic Republic of Pakistan is committed to promote peace and security, and fulfill its international obligations as a responsible nuclear state.

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Pakistan is committed to non-proliferation of nuclear, chemical and biological weapons and their means of delivery. Sharing the goals of non-proliferation, it is prepared to work with other nuclear powers on an equal footing to advance these goals. As a state with advanced nuclear technology, Pakistan is also prepared to promote the peaceful uses of nuclear technology under relevant IAEA framework.

Pakistan is a party to major international arms control, disarmament and non-proliferation instruments including Partial Test Ban Treaty (PTBT), Biological and Toxin Weapons Convention (BTWC), Chemical Weapons Convention (CWC), Convention on The Physical Protection of Nuclear Material and Nuclear Facilities (CPPNMF), Nuclear Safety Convention, IAEA Code of Conduct on Safety and Security of Radioactive Sources, and participates in the IAEA Incident and Trafficking Database (ITDB). Pakistan is strongly committed to the objectives of non-proliferation, and as a party to the CWC, has promulgated the CWC Implementation Ordinance-2000 and CWC Implementation Rules-2010.

Non-Proliferation Principles:

The transfer (including export, re-export, transit, and transshipment) of sensitive/dual-use goods and technologies will only be authorized upon satisfaction/assurance that the transfer would not contribute to designing, development, production, stockpiling, maintenance or use of nuclear, chemical or biological weapons/devices and their delivery systems and that the transfer would not be diverted, in any way, to acts of terrorism.

Strategic Exports Management System:

In pursuance of its strong commitment to non-proliferation, Pakistan has instituted a comprehensive legislative, regulatory and implementation system covering transfer of sensitive/dual use goods and technologies and ensuring their safety and security at various stages. Export Control on Goods, Technologies, Material and Equipment related to Nuclear and Biological Weapons and their Delivery Systems Act-2004 has been promulgated, lists of goods and technologies subject to regulatory controls were published in 2005 and subsequently reviewed/revised. Strategic Export Control Division (SECDIV), was set up as part of the Ministry of Foreign Affairs, to act as licensing and enforcement coordinating authority.

Control lists are periodically reviewed/revised by a standing Joint Working Group (JWG), which is an inter-ministerial body, taking into consideration the technological developments and changes/modifications introduced by international export control regimes.

Guidelines for Export:

The objective of these guidelines is to prevent the risks of proliferation to state and non-state actors and prevent terrorism involving nuclear and biological weapons and their delivery means, through an effective regulatory

system on transfer of sensitive and dual use goods and technologies. To this end, the transfer of items that could be used for designing, developing, producing, stockpiling, maintenance or use of nuclear and biological weapons and their delivery systems shall be governed by the following guidelines:—

- a. Category-0 items of control lists including technology or services, as given in the control lists, shall not be transferred except with government to government level agreement and recipient state's assurance explicitly excluding their use that could result into any nuclear weapon/explosive device.
- b. Complete rocket systems and complete Unmanned Aerial Vehicle systems capable of delivering at least a 500 kg payload to a range of at least 300 km as per control lists including their complete sub-systems and technologies will not be transferred except with government to government level agreement. Particular restraint will be exercised in the consideration of transfers of such systems regardless of their purpose, and there will be a strong presumption to deny such transfers. The transfer of production facilities is prohibited until further notice.
- c. The export of control lists items and certain non-listed items (catch all controls) shall be authorized only upon explicit end-user assurance duly endorsed by the recipient state's relevant authorities that the items will be used for peaceful purposes only.
- d. The transfer may be permitted if Government of Pakistan (GoP)/SECDIV is satisfied that the intended transaction would not contribute to the designing, developing or producing a nuclear or biological weapon/device and its delivery systems, or be diverted to acts of terrorism.
- e. **Special Controls on Transfer of Enrichment/Reprocessing Facilities, Equipment and Technologies:**
 - i. In case of an enrichment/reprocessing facility, equipment, or technology, a legally binding undertaking from the recipient state that neither the transferred facility, nor any facility incorporating such equipment or based on such technology, will be modified or operated for Weapons of Mass Destruction (WMD) related activity nor to produce, in case of enrichment, greater than 20% enriched uranium.
 - ii. End-user assurance by the recipient on effective implementation of requisite IAEA safeguards to ensure the use of facilities, equipment or technologies for peaceful purposes.

- iii. There is strong presumption of denial in case of enrichment and reprocessing technologies until further notice/amendment in Policy Guidelines on Strategic Export Controls.
- f. Technology transfer (tangible and intangible) will be subject to the same conditions of transfer as of the items. "Technology" required for the development, production or use of goods under control remains under control even when applicable to non-listed goods. Controls do not apply to that "technology" which is the minimum necessary for the installation, operation, maintenance (checking) and repair of those goods which are not controlled or whose export has been authorized. Exceptions may include:-
- i. Any document or information that is in the public domain or is related to basic scientific research and other peaceful applications of such technology including that related to its application for protective purposes; and
 - ii. Any application for the grant of a patent or any other form of protection for inventions or for the registration of a design in each case under the law of the Islamic Republic of Pakistan or any other country or under any treaty or international conventions to which Pakistan is a party or any document necessary to enable any such application to be filed, made or pursued.
- g. **Physical Protection:** Goods, technologies and facilities of their use must have adequate physical protection arrangement to the satisfaction of GoP and be in accordance with the relevant international and IAEA instruments.
- h. **IAEA Safeguards:** IAEA safeguards shall apply to all relevant material or equipment requiring safeguards and as mutually agreed by the supplier and recipient. Where necessary, the recipient state should bring into force an agreement with IAEA requiring application of safeguards, before the transfer takes place. If agreement between supplier and recipient state is terminated, the recipient will bring into force an agreement with the IAEA based on existing IAEA model safeguards agreements requiring the application of safeguards on all Category-0 items or related technology transferred by the supplier or processed, or produced or used in connection with such transfers. If the IAEA decides that application of IAEA safeguards is no longer possible, supplier and recipient should elaborate appropriate verification measures. If the recipient does not accept these measures, it should allow at the request of the supplier the restitution of transferred and derived Category-0 items.

i. Prohibition on Diversion and Re-export/Re-transfer:

- i. Diversion of controlled goods and technologies to unauthorized uses would not be permitted. If it is determined that the recipient has knowingly diverted goods subject to license conditions, GoP may deny further export or the privilege of exporting products into Pakistan, to that recipient, in addition to other corrective measures provided for in the supplier-recipient agreement.
- ii. Re-export/re-transfer shall be subject to the same terms/conditions as that of export and would require GoP's approval.
- iii. An assurance by the recipient state/entity that it has effective national export controls/compliance system as per international standards and that it would not re-export/re-transfer goods and technologies to others without the prior consent/agreement of GoP.
- iv. An assurance will also be provided by the recipient state/entity that the transferred goods would not be used, replicated or modified for any nuclear explosive activity or unsafeguarded nuclear fuel cycle activity or for WMD related activities, nor will their replicas or derivatives be re-transferred/diverted.

j. Catch All Controls:

- i. The exporter is under legal obligation to notify to the competent authority if the exporter is aware or suspects that the goods or technology are intended, in their entirety or in part, in connection with nuclear or biological weapons or missiles capable of delivering such weapons.
- ii. An authorization is also required from GoP for the transfer of non-listed items where the exporter is informed by the competent authority or the exporter is aware that the items in question may be intended, in their entirety or in part, for use in connection with nuclear or biological weapons or their delivery systems.

Factors for Examining an Export Application:

Export of control lists commodities and those falling under catch-all controls shall be permitted under a license issued by SECDIV. Each application shall be scrutinized according to SECDIV rules on licensing, policies and procedures. The following factors, *inter-alia* shall be taken into consideration while examining an export license application:—

- a. Is the recipient state a party to relevant international instruments on non-proliferation?

- b. Non-proliferation commitments, policies and measures of the recipient state including implementation of relevant United Nation Security Council Resolutions (UNSCRs).
- c. Appropriateness of the intended transfer/export for the stated end-use and end-user.
- d. Credentials of importing country/end-user. For example suspicions on engagement in a clandestine WMD programme or illegal procurement activities. Is there a risk of diversion?
- e. Compliance history of IAEA safeguards agreements and other relevant international obligations of the recipient state in case of nuclear exports.
- f. Assurance by the recipient/end-user to facilitate such pre/post-shipment verification inspections as required by SECDIV/supplier.

Documents required with Export License Application:

In addition to documents mentioned in Export Control Licensing and Enforcement Rules-2009 (SRO 450 (1)/2009), the following documents shall be presented to SECDIV along-with the export application:-

- i. End-Use and End-User Certificate duly endorsed by competent authority of the recipient state. The end-user must also specify the end-use location.
- ii. An undertaking that the goods and technologies will be used by the stated end-user, for the stated end-use and, will not be used for WMD related activity.
- iii. An undertaking that neither the goods nor technologies will be diverted, replicated or modified nor their replica or derivative shall be re-exported/re-transferred without the consent of GoP.

Within the above policy guidelines, export/transfer of strategic/dual use goods may be authorized pursuant to a license, and determination of each export decision on a case by case basis, through inter-agency consultations and End-User Certification requirement, among others.

The GoP/SECDIV reserves the right to lay down additional conditions for export as deemed appropriate.

[F. No. 2(5)/2016-SECDIV(P).]

ZAFAR ALI,
Director General SECDIV.