

EXPLANATORY STATEMENT

Defense Trade Cooperation Munitions List 2017

The Defense Trade Cooperation Munitions List (DTCML) is the document formulated and published under section 36(1) of the *Defence Trade Controls Act 2012* (the Act) by the Minister for Defence. The purpose of the DTCML is to identify goods that are eligible for movement under the Defense Trade Cooperation Treaty (the Treaty) referred to in the Act.

The Treaty creates a framework for trade between Australia and the United States of America (the US) in certain defence articles, technologies and services without the need for individual US or Australian export permits. The Treaty is intended to enhance interoperability and increase collaboration between Australian and US defence industries. It is also expected to improve delivery times, sustainment and provide Australian industry better access to technical data to tender for US contracts.

The identification of goods eligible for trade under the Treaty informs Australian Community members, including those approved under section 27 of the Defence Trade Controls Act 2012, of what articles they can supply without applying for an export permit. The DTCML also supports the main Treaty offence provisions in the Act which relate to the supply of articles outside of the Treaty framework.

The DTCML is comprised of two parts, which must be read together. Part 1 contains a list of goods that are on the United States Munitions Lists (USML) in the *International Traffic in Arms Regulations (ITAR)*.¹ Future amendments may incorporate goods and technology listed in the Defence and Strategic Goods List (DSGL) that are not otherwise covered under USML categories. Goods listed in Part 1 are eligible for trade under the Treaty provided that they are not also listed on Part 2 of the DTCML. Part 2 contains a list of technologies that are exempt from the scope of the Treaty. Part 2 is based on the bilaterally agreed and managed Exempted Technologies List.² Exempted technologies are technologies that are considered sensitive and remain subject to the existing export controls.

The DTCML is being updated to ensure that it maintains currency with the USML. The amendments incorporated into the DTCML 2017 are particularly extensive due to the significant amendments that were made to the USML in 2015 as part of the US President's Export Control Reform (ECR) initiative.

The ECR initiative reformed many aspects of the US export control regime with its aim being to better protect national security and to strengthen its ability to counter threats such as the proliferation of weapons of mass destruction. The ECR was also intended to reduce unnecessary restrictions on less sensitive items and streamline the USML. Accordingly, several categories in the USML have been revised, and these changes are reflected in the DTCML 2017.

¹ The USML is available on the United States Department of State website, available at <http://pmdtc.state.gov/regulations_laws/itar_official.html>.

² The Exempted Technologies List will be available on the Defence website <<http://www.defence.gov.au/ustradetreaty>>.

This instrument incorporates all updates from the USML up to and including April 2016.

The Office of Best Practice Regulation (OBPR) has been consulted in the making of this instrument and has agreed that a Regulatory Impact Statement is not required on the basis that the DTCML is required under the Act and subject to limited discretion to amend.

Consultation

The DTCML will be amended and remade from time to time to ensure it continues to accurately reflect the contents of the USML upon which it is based. Given that the 2017 DTCML only includes those amendments which have been made to the USML, Australian companies have not been consulted on these amendments. However, it is anticipated that amendments which fall outside of changes to the USML will be made in the future, as feedback is received from Australian companies who are increasing the number of transactions made under the Treaty framework. Any proposed amendments of this nature will be consulted with all relevant stakeholders.

Commencement and Exemption Provisions

The DTCML instrument commences the day after registration on the Federal Register of Legislation.

The DTCML is a legislative instrument under the *Legislation Act 2003* (the Legislation Act) and is not subject to disallowance as provided by section 44(2) of the Legislation Act.

The DTCML instrument is not subject to sunseting as provided by regulation 11 item 1 of the *Legislation (Exemptions and Other Matters) Regulation 2015*.

Statement of Compatibility with Human Rights

A statement of compatibility with human rights has been prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* and is set out at Attachment 1.

OVERVIEW OF THE DTCML 2017

Part 1 of the DTCML includes the goods that are on the USML. As many Australian companies are familiar with the USML, the categories and layout used in the USML to identify goods has been retained as closely as possible. The categories are as follows:

- Category I – Firearms, Close Assault Weapons And Combat Shotguns
- Category II – Guns and Armament
- Category III – Ammunition/Ordnance
- Category IV – Launch Vehicles, Guided Missiles, Ballistic Missiles, Rockets, Torpedoes, Bombs and Mines
- Category V – Explosives and Energetic Materials, Propellants, Incendiary Agents and Their Constituents
- Category VI – Surface Vessels of War and Special Naval Equipment
- Category VII – Ground Vehicles
- Category VIII – Aircraft and Related Articles
- Category IX – Military Training Equipment and Training
- Category X – Personal Protective Equipment
- Category XI – Military Electronics
- Category XII – Fire Control, Range Finder, Optical and Guidance and Control Equipment
- Category XIII – Materials and Miscellaneous Articles
- Category XIV – Toxicological Agents, Including Chemical Agents, Biological Agents, and Associated Equipment
- Category XV – Spacecraft Systems and Associated Equipment
- Category XVI – Nuclear Weapons Related Articles
- Category XVII – Classified Articles, Technical Data and Defence Services Not Otherwise Enumerated
- Category XVIII – Directed Energy Weapons
- Category XIX – Gas Turbine Engines and Associated Equipment
- Category XX – Submersible Vessels and Related Articles
- Articles listed in the Missile Technology Control Regime

Australia and the US have agreed to cooperate in providing Australian Community confirmation on eligibility of a particular good, technology or service.

Part 2 is based on the bilaterally agreed Exempted Technologies List. This List includes categories of goods or technologies that are not eligible for trade under the Treaty. These articles remain subject to the existing export controls in both Australia and the US.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Defense Trade Cooperation Munitions List 2017

This Legislative Instrument made under section 36(1) of the *Defence Trade Controls Act 2012* is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Determination

Section 36(1) of the *Defence Trade Controls Act 2012* (the Act) requires the Minister for Defence to make the Defense Trade Cooperation Munitions List (the DTCML). The purpose of the DTCML is to identify goods that are eligible for movement under the Defense Trade Cooperation Treaty (the Treaty) referred to in the Act.

The DTCML comprises of two parts, which must be read together. Part 1 contains a list of goods that are on the United States Munitions Lists (USML) in the *International Traffic in Arms Regulations* (ITAR).³ Goods listed in Part 1 are eligible for trade under the Treaty provided that they are not also listed on Part 2 of the DTCML. Part 2 contains a list of technologies that are exempt from the scope of the Treaty. Part 2 is based on the bilaterally agreed and managed Exempted Technologies List.⁴

The DTCML is updated and remade from time to time to ensure that it remains consistent with the USML. This instrument incorporates extensive amendments that were made to the USML in 2015 as part of the United States of America President's Export Control Reform (ECR) initiative.

Human rights implications

This Legislative Instrument does not engage any of the applicable rights or freedoms.

Conclusion

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

Ms Tina Mathewson, Assistant Secretary - Defence Export Controls

³ The USML is available on the United States Department of State website, available at <http://pmdrtc.state.gov/regulations_laws/itar_official.html> .

⁴ The Exempted Technologies List will be available on the Defence website <<http://www.defence.gov.au/ustradetreaty>>.