

United States. Since that time, the number of MTCR partners has increased to a total of thirty-four countries, all of which have equal standing within the Regime.

The MTCR was initiated partly in response to the increasing proliferation of weapons of mass destruction (WMD), i.e., nuclear, chemical and biological weapons. The risk of proliferation of WMD is well recognized as a threat to international peace and security, including by the UN Security Council in its Summit Meeting Declaration of January 31, 1992. While concern has traditionally focussed on state proliferators, after the tragic events of 11 September 2001, it became evident that more also has to be done to decrease the risk of WMD delivery systems falling into the hands of terrorist groups and individuals. One way to counter this threat is to maintain vigilance over the transfer of missile equipment, material, and related technologies usable for systems capable of delivering WMD.

The MTCR rests on adherence to common export policy guidelines (the MTCR Guidelines) applied to an integral common list of controlled items (the MTCR Equipment, Software and Technology Annex). All MTCR decisions are taken by consensus, and MTCR partners regularly exchange information about relevant national export licensing issues.

National export licensing measures on these technologies make the task of countries seeking to achieve capability to acquire and produce unmanned means of WMD delivery much more difficult. As a result, many countries, including all MTCR partners, have chosen voluntarily to introduce export licensing measures on rocket and other unmanned air vehicle delivery systems or related equipment, material and technology.³

SETTLEMENT OF DISPUTES

United States Initiates Suspension of Argentina's Trade Benefits Because of Nonpayment of U.S. Companies' Arbitration Awards

In the aftermath of its 2001 economic crisis, Argentina adopted measures that significantly impaired the value of investments by many U.S. and other foreign investors. The result has been over forty arbitration claims against Argentina at the International Centre for the Settlement of Investment Disputes (ICSID) and in other fora. Arbitral tribunals have found Argentina liable for breach of its legal obligations in many of these cases and have awarded damages totaling many hundreds of millions of dollars. Argentina has not paid any of these awards, contending that the award holders must seek enforcement in Argentina's courts.

In March 2012, following Argentina's sustained failure to pay ICSID awards totaling approximately \$300 million in favor of two U.S. companies, Azurix¹ and CMS Gas,² President Barack Obama drew on statutory authority under the Trade Act of 1974 to initiate suspension of Argentina's eligibility for U.S. trade benefits under the Generalized System of Preferences (GSP). His action became effective sixty days after publication in the *Federal Register*. An excerpt from the president's proclamation to suspend Argentina's eligibility for GSP follows:

1. Section 502(b)(2)(E) of the Trade Act of 1974, as amended (the "1974 Act") (19 U.S.C. 2462(b)(2)(E)), provides that the President shall not designate any country a beneficiary developing country under the Generalized System of Preferences (GSP) if such country

³ At <http://www.mtcrl.info/english>.

¹ Azurix Corp. v. Argentine Republic, ICSID Case No. ARB/01/12, Award (July 14, 2006).

² CMS Gas Transmission Co. v. Argentina, ICSID Case No. ARB/01/8, Award (May 12, 2005).

fails to act in good faith in recognizing as binding or in enforcing arbitral awards in favor of United States citizens or a corporation, partnership, or association that is 50 percent or more beneficially owned by United States citizens, which have been made by arbitrators appointed for each case or by permanent arbitral bodies to which the parties involved have submitted their dispute. Section 502(d)(2) (19 U.S.C. 2462(d)(2)) provides that, after complying with the requirements of section 502(f)(2) (19 U.S.C. 2462(f)(2)), the President shall withdraw or suspend the designation of any country as a beneficiary developing country if, after such designation, the President determines that as the result of changed circumstances such country would be barred from designation as a beneficiary developing country under section 502(b)(2). Section 502(f)(2) requires the President to notify the Congress and the country concerned at least 60 days before terminating the country's designation as a beneficiary developing country for purposes of the GSP.

2. Having considered the factors set forth in section 502(b)(2)(E) of the 1974 Act, I have determined pursuant to section 502(d) that it is appropriate to suspend Argentina's designation as a GSP beneficiary developing country because it has not acted in good faith in enforcing arbitral awards in favor of United States citizens or a corporation, partnership, or association that is 50 percent or more beneficially owned by United States citizens, and I will so notify the Congress. In order to reflect the suspension of Argentina's status as a beneficiary developing country under the GSP, I have determined that it is appropriate to modify general note 4(a) of the Harmonized Tariff Schedule of the United States (HTS).

....

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States of America, including but not limited to title V and section 604 of the 1974 Act, section 203(o) of the CAFTA-DR Implementation Act, and section 301 of title 3, United States Code, do proclaim that:

(1) The designation of Argentina as a beneficiary developing country under the GSP is suspended on the date that is 60 days after the date this proclamation is published in the *Federal Register*.³

The president's memorandum to Congress reporting his action follows:

TO THE CONGRESS OF THE UNITED STATES:

In accordance with section 502(f)(2) of the Trade Act of 1974, as amended (the "1974 Act") (19 U.S.C. 2462(f)(2)), I am providing notification of my intent to suspend designation of Argentina as a beneficiary developing country under the Generalized System of Preferences (GSP) program. Section 502(b)(2)(E) of the 1974 Act (19 U.S.C. 2462(b)(2)(E)) provides that the President shall not designate any country a beneficiary developing country under the GSP if such country fails to act in good faith in enforcing arbitral awards in favor of U.S. owned companies. Section 502(d)(2) of the 1974 Act (19 U.S.C. 2462(d)(2)) provides that, after complying with the requirements of section 502(f)(2) of the 1974 Act (19 U.S.C. 2462(f)(2)), the President shall withdraw or suspend the designation of any country as a beneficiary developing country if, after such designation, the President determines that as the result of changed circumstances such country

³ White House Press Release, Presidential Proclamation—To Modify Duty-Free Treatment Under the Generalized System of Preferences and for Other Purposes (Mar. 26, 2012), at <http://www.whitehouse.gov/the-press-office/2012/03/26/presidential-proclamation-modify-duty-free-treatment-under-generalized-s>.

would be barred from designation as a beneficiary developing country under section 502(b)(2) of the 1974 Act.

Pursuant to section 502(d) of the 1974 Act, having considered the factors set forth in section 502(b)(2)(E), I have determined that it is appropriate to suspend Argentina's designation as a beneficiary country under the GSP program because it has not acted in good faith in enforcing arbitral awards in favor of U.S. owned companies.⁴

BRIEF NOTES

United States Transfers Alleged Pirates to Seychelles for Trial

In March 2012, the United States transferred fifteen suspected Somali pirates previously held on a succession of U.S. Navy vessels to the Republic of Seychelles for trial.¹ The USS *Kidd* captured the suspects and freed thirteen Iranian hostages in January 2012 when its crew members boarded an Iranian dhow being used as a mother ship for pirate attacks.² The defendants will be tried in a special antipiracy court created with financial assistance from the United Nations; according to undated information on the website of the UN Office on Drugs and Crime, "Seychelles, despite its tiny size, has undertaken 31 prosecutions and already convicted 22 suspects."³

The U.S. Department of State issued a statement applauding the decision of the Republic of Seychelles to prosecute the accused and its other actions to combat piracy.

We welcome today's decision by the Republic of Seychelles to accept 15 suspected pirates for prosecution in connection with an alleged attack on a merchant ship and the abduction of 13 Iranian fishermen rescued by the U.S. Navy on January 5. Today, these individuals join more than 1,060 other suspected pirates facing justice in more than 20 countries.

We appreciate Seychelles' regional leadership on counter-piracy, as seen in their willingness to prosecute and incarcerate Somali pirates, as well as their plans to host a regional intelligence coordination center to support future piracy prosecutions. The successful resolution of this incident marks a positive step forward for building a strong and unified international response against piracy originating from Somalia and for promoting freedom of navigation worldwide.⁴

International Arms Dealer Viktor Bout Convicted, Sentenced to Twenty-Five Years

In April 2012, following his November 2011 conviction by a jury in U.S. federal court for conspiring to kill U.S. nationals and other serious offenses, international arms dealer Viktor Bout was sentenced to twenty-five years in prison.⁵ Bout insisted that he was innocent

⁴ White House Press Release, Presidential Memoranda—Trade Act of 1974 Argentina (Mar. 26, 2012), at <http://www.whitehouse.gov/the-press-office/2012/03/26/presidential-memoranda-trade-act-1974-argentina>.

¹ C. J. Chivers, *Somali Suspects in Hijacking of Iranian Ship Face Piracy Trial in Seychelles*, N.Y. TIMES, Mar. 7, 2012, at A9.

² Craig Whitlock & Jason Ukman, *U.S. Rescues Iranian Ship from Pirates*, WASH. POST, Jan. 7, 2012, at A1.

³ United Nations Office on Drugs and Crime, UNODC and Piracy, available at <http://www.unodc.org/unodc/en/piracy/index.html?ref=menuaside>.

⁴ U.S. Dep't of State Press Release No. 2012/341, Republic of Seychelles Prosecution of Suspected Pirates (Mar. 6, 2012), at <http://www.state.gov/t/pa/prs/ps/2012/03/185289.htm>.

⁵ John R. Crook, *Contemporary Practice of the United States*, 105 AJIL 122, 149 (2011).