

TRANSIT AND TRANSHIPMENT OF DUAL USE GOODS: AN EU PERSPECTIVE

Introduction

The events of 9/11 focused the attention of the international community on the need to prevent non-State actors acquiring, developing or using nuclear, chemical and biological weapons. Accordingly, in 2004 the UN Security Council adopted UNSCR 1540 calling on States inter alia to develop effective national export and trans-shipment controls over such items and related materials.

EU Response

The EU Action Plan and Strategy against the proliferation of WMD were adopted by the European Council before UNSCR 1540, in June and December 2003 respectively. They required the putting in place of concrete measures in the field of export control, ranging from a strengthening of controls to penal sanctions for offences.

In addition a peer review by MS of the implementation of the Dual Use Regulation revealed areas where improvements were needed.

Finally a controversial appraisal of the impact of possible changes to the regulation, carried out by external consultants, brought to light the most important concerns of industry in this regard.

As a result of this preliminary work the Commission published a proposal for the revision of the Dual Use Regulation (EU) 1334/2000. It has three main objectives:

- 1) improvement of the security situation inside the enlarged EU as a result of more effective export controls;
- 2) clearer and more industry friendly regulation in order to promote international competitiveness;
- 3) a reduction in the administrative burden on EU exporters, combined with a more consistent application of the Regulation throughout the EU, thus facilitating trade within the EU internal market.

Transit

Transit of dual use goods is currently excluded from the Regulation. However, UNSCR 1540 requires appropriate and effective controls on transit, obliging the EU to introduce controls on the transit of dual use goods.

The proposed new Regulation therefore defines "Transit" as *"a transport of dual-use items entering and passing through the customs territory of the European Community with a destination outside the European Community"*. It is noteworthy that "transshipment" is not mentioned at all in the proposal, being regarded as a subspecies of transit and therefore captured by the definition of transit.

According to the current result of discussions on transit controls, transit items would be governed by Art. 3(c), which would read:

"The transit of non community dual use items listed in Annex I can be prohibited by the competent authorities of the Member States if the items are or may be intended in their entirety or in part for uses referred to in Article 4 paragraph 1. (i.e., *"the items in question are or may be intended, in their entirety or in part, for use in connection with the development, production, handling, operation, maintenance, storage, detection, identification or dissemination of chemical, biological or nuclear weapons or other nuclear explosive devices or the development, production, maintenance or storage of missiles capable of delivering such weapons."*). When deciding on such a prohibition the competent authorities of Member States shall take into account their obligations and commitments they have agreed to as parties to international treaties or as members of international non-proliferation regimes."

I would emphasise that these amendments to the Regulation have not been adopted, and that the current Regulation does not cover transit and therefore transshipment, although individual Member States may enforce their own regulations in this regard.

EU outreach activities

I have detailed how the EU proposes to treat transit and transshipment with respect to its own territory. However, the EU is also actively promoting best practice in third countries. Within the EU Strategy against the proliferation of Weapons of Mass Destruction, the EU identified the need to set up a programme that offers partners technical assistance and co-operation in the field of export control. The German Federal Office of Economics and Export Control (BAFA) was mandated by the European Commission to implement the EU Pilot Projects 2005 and 2006 as well as the EU –Russia Co-operation

Project. Financed by the European Commission, the projects draw on the know how of a pool of experts from a number of EU Member States. To date, partner countries of the EU-Outreach projects encompass:

The Russian Federation, Albania, Bosnia and Herzegovina, Croatia, FYROM, Serbia, Montenegro, China, Ukraine, UAE, Morocco.

I would emphasise that assistance is offered on a generic basis encompassing the following five pillars:

- Legal
- Licensing
- Customs
- Outreach to industry
- Interagency co-operation / judicial sector

and that the mix of assistance is decided by the partner country.

A further five countries have been selected for assistance in 2008:

Malaysia, Turkey, Georgia, Moldova and Tunisia.

Finally, I would note that the Commission is considering options for the next planning period starting in 2009, but that our broad intentions are to build on the outreach work to date, with a view to consolidating activities in particular regions, with a view to establishing regional centres of excellence for future activity, thereby setting the work on a more sustainable basis.

Council Joint Action in support of UNSCR 1540

The Commission is also implementing a so-called Joint Action decided by the Council of Ministers in 2006 to strengthen the effectiveness of UNSCR through awareness raising and capacity building actions in third countries. This action expires in June and a successor action is expected to be agreed shortly.

Conclusion

As you have heard, the EU is endeavouring to apply measures to control transit and thus transshipment across its territory, measures which will be effective without imposing excessive burdens on its industry. We are also assisting third countries to improve their standards of regulation and enforcement. I look forward to further discussion on these matters.

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