

Licensing and Customs: Compliance and Consultations

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Key Points

- Governments are concerned to secure their borders and protect their international supply chains against terrorist attack and illicit trade in WMD. In recognising and responding to these concerns, Governments need to balance adherence to security requirements with the need to facilitate international trade.
- Many important developments in the international trade arena in recent years have been based on the desire to strengthen security procedures while at the same time simplifying and facilitating improvements to licensing and customs procedures.
- Outreach, training, consultation, evaluation and international cooperation all form important elements of a comprehensive strategy to raise awareness and strengthen compliance with border and transshipment security measures.
- Licensing and customs officials need to have a sense of mission and awareness of their role. They need the right tools to do their job including training, accessible information, sufficient legal powers and appropriate equipment.
- Inter-agency cooperation must be effective. The legal and regulatory framework needs to be updated continually to reflect technological change and address new and emerging challenges and loopholes.

1. A Whole-Of-Government Approach

The Australian Government is a strong and active supporter of efforts to prevent the proliferation of WMD through compliance with arms control treaties and the pursuit of measures to strengthen them. Australia is a member of all export control regimes and is committed to ensuring that Australian exports comply with international obligations and national security and strategic policy objectives. As well as being permanent chair of the Australia Group, Australia will chair the Missile Technology Control Regime in 2008-09. The Department of Foreign Affairs and Trade, Department of Defence and the Australian Customs Service work together to ensure that Australia is not engaging in activities that may contribute to proliferation. Each agency has the following responsibilities in achieving this objective:

Department of Foreign Affairs and Trade: coordinating Australia's participation in arms control treaties and non-proliferation regimes, including through close cooperation with like-minded countries, to enhance global and regional security, as

well as ensuring sanctions enforcement and conducting domestic activities to counter WMD proliferation, such as visa screening and domestic material security controls.

Department of Defence: controlling the export or support of goods, services or technologies that may contribute to a foreign military program, including WMD, and working to ensure that exporters are compliant with export controls.

Australian Customs Service: managing the security and integrity of Australia's borders by working closely with other government and international agencies to detect and deter unlawful movement of goods and people across the border.

Over recent years, Australia has strengthened its border security and export controls, including through enhancing the legal and regulatory framework to address new and emerging challenges and loopholes, as well as through increasing the resources provided to implement new measures and promote compliance. This has included greater provision for training, staff resources, risk analysis technology and detection equipment, and outreach to industry.

The inter-agency process promotes fast access to actionable information and close coordination to ensure compliance. The overall aim is for agencies and officials to have a sense of mission, the motivation, skills and tools to carry out that mission, and awareness of their particular roles, in order to deliver consistently on achieving trade security objectives while facilitating legitimate trade.

2. Licensing

Australia's export control system extends to items applicable for use in a military program, including WMD, or that may be used to further the ambitions of terrorist groups. Export controls are applicable to defence and dual-use goods (the latter are commercial items with a legitimate civil application that can also be adapted for use in a military program). Dual-use goods include parts, components and related materials, equipment and technologies related to the following types of goods:

- nuclear materials
- materials, chemicals, micro-organisms and toxins
- materials processing
- electronics
- computers
- telecommunications and information security
- sensors and avionics
- marine, and
- aerospace and propulsion.

The Defence Export Control Office (DECO) within the Department of Defence administers Australia's export control laws for defence and dual-use goods and technologies. The Minister for Defence has delegated certain powers to officials in the Department of Defence to issue export permits and licenses, but retains the permission to deny or revoke export permission. To be effective, DECO needs to consult extensively with industry to build awareness about export control legal obligations. DECO also needs to liaise with other government agencies to assess

export applications and to undertake enforcement action. Information on relevant legislation and regulations is on www.defence.gov.au/strategy/deco/.

There is a strong connection between DECO's export licensing function and Customs which administers the movement of goods across Australia's borders under relevant Customs legislation, and therefore allows for lawful and enforceable action to ensure compliance with export controls.

Transit and transshipment compliance is achieved through close cooperation between DECO and Customs. Under Australian law, all controlled goods that transit or are transshipped via Australia must have the necessary export approvals. There is also a requirement for export approval for third party transfers. Controls apply to third party transfers whereby some goods sourced from other countries or manufactured in Australia under license cannot be transferred or exported to third parties without the approval of the country of origin or compliance with other conditions that the original supplying country imposed on Australia at the time of acquisition.

Compliance management to ensure adherence to export controls requires effective cooperation between government and industry. The government's role is to develop policies and regulations to better implement and enforce export controls and to foster an environment that supports compliance. The role of industry, both at the individual company level and with the assistance of peak industry bodies, is to build awareness and to develop compliance systems to ensure adherence to export controls.

DECO employs a graduated approach to ensure compliance with export licensing and control regulations. This ranges from engagement with industry through outreach and education including newsletters, e-mail blasts, articles and training seminars. This engagement with industry and the international trading community aims to maximise voluntary compliance. Compliance is monitored including through conducting audits and evaluations of transactions. Risk management tools are used to ensure minimum but still effective regulation. As necessary, administrative sanctions and other means of law enforcement are employed and penalties can be imposed as appropriate.

3. Customs

Australian Customs consults widely with stakeholders and undertakes training and international cooperation in order to strengthen the security of the Australian border and the security of the international supply chain. Another objective is to improve the enforcement of customs or customs-related laws including through intelligence and information for law-enforcement purposes, such as in relation to chemical precursors.

Customs uses various means to consult with and educate the trading community. The Customs National Consultative Committee (CNCC) is a forum chaired by the CEO of Customs to communicate policies, practices and procedures relevant to the trading community, and works in partnership to resolve difficulties. The Committee meets quarterly and includes representatives from: the Australian Air Transport Association, Shipping Australia, Australian Federation of International Forwarders, Customs Brokers and Forwarders Council of Australia, Institute of Chartered Accountants in Australia, Law Council of Australia, Australian Chamber of Commerce and Industry,

Australian Exporters and Importers Association and Stevedores. CNCC meeting minutes are published on www.customs.gov.au.

Customs has developed the *FrontLine* and *HotLine* programs to increase awareness and compliance within the freight industry and the wider public. *FrontLine* involves Customs and industry working together in a cooperative program that draws on the knowledge and expertise of industry participants to help prevent illegal activities. *FrontLine* participants receive training and recognition from Customs. *HotLine* encourages members of the public to report suspicious activities to Customs, and draws on local knowledge of people about their community and environment.

Customs is working with stakeholders to develop a future strategy. The consultation paper, '*A Proposal for Enhanced Trade Solutions 2015*', outlines the current trading environment and explores global drivers that are expected to influence international trade. It also proposes solutions to border management challenges to the year 2015 and outlines, subject to government endorsement, an implementation strategy.

Under the draft 2015 vision, Australia will have 'a report once, use many times single window' and an international trade regulatory environment that will be integrated and seamless while improving risk assessment and management. Shipments will carry a Unique Consignment Reference (UCR) to enable real-time monitoring. Information 'attached' to the UCR will be used by regulatory authorities as required. Customs will manage the border via a real time entity-based risk assessment capability. An integrated electronic supply chain using unique identifiers and radio frequency identification (RFID) location-aware technology will focus on data reuse and enable supply chain participants to add new information to an existing picture, which will build as events occur and the goods move. The information stream will be secure, reliable and enable risk assessment and management. Businesses that are accredited by Customs will have a lower compliance and reporting burden and accreditation will be recognised by participating overseas governments. Shipments will be less likely to be held for examination with reporting requirements kept to a minimum.

To help Customs officials identify items and that are of WMD proliferation concern, Customs delivers commodity identification training (CIT) to relevant officials. CIT training is held over one day and provides facts about the types of goods subject to strategic export controls, their identifying features and relevant trends in Australian exports. The CIT course covers an introduction to proliferation, chemical weapons, biological agents, nuclear and radiological items and delivery systems. The focus is on identifying goods of concern rather than applicable legislation.

An integral part of Customs international cooperation is maintaining close links with other customs administrations through bilateral discussions and participating in the World Customs Organization (WCO), Asia-Pacific Economic Cooperation (APEC) and the Oceania Customs Organisation (OCO). Offices in Bangkok, Beijing, Brussels, Jakarta, Tokyo and Washington support Customs broad interests in trade, security and law-enforcement matters. Customs assists with capacity-building in some South Pacific countries (Papua New Guinea, the Solomon Islands and Tonga) to help reform and modernise their customs services. In the Sulu-Celebes Sea area, Customs is helping to develop regional partnerships to enhance border management. In the Asia-Pacific region, Customs contributes to institutional strengthening through

the Customs International Executive Management Program, whereby senior officials from regional administrations are provided academic and practical approaches to a range of issues including risk management and the use of intelligence.

4. Conclusion

Export controls need to be implemented in an efficient and effective manner so as not to unduly affect trade. To maximise compliance, controls are best developed in close consultation with industry and there needs to be active engagement with and outreach to industry to raise awareness and ensure compliance. Enforcement agencies need to be resourced adequately, have clearly defined roles, and cooperate closely.

Preventing WMD proliferation is not easy. It requires significant political resolve and commitment to implement and enforce controls that cover exports and transshipments. The alternative to this approach – WMD proliferation that is increasingly widespread – is not a palatable option and needs to be avoided at all costs.