

The London Conference

The Sixth International Export Control Conference was held in London from November 8th through the 10th, 2004. Jointly hosted by the governments of the United States and the United Kingdom, the conference brought together over 150 policymakers, non-governmental and multilateral organization representatives, and licensing and customs officials to discuss current issues and initiatives to curb the proliferation of weapons of mass destruction and conventional arms.

Keynote speakers were Susan Burk, Acting Assistant Secretary, US Department of State Nonproliferation Bureau, and Baroness Symons, Minister of State, UK Foreign and Commercial Office. The conference plenary provided proliferation threat briefings, updates on international efforts to combat the spread of WMD, briefings on developments in multilateral export control regimes, the role of cyber crime investigators, supply chain security, and ethics and corruption challenges to export controls. Highlighting the role of non-governmental organizations in the effort to control proliferation, a panel of NGO representatives gave overviews of their organizations and activities.

During the second day of the conference, delegates divided into breakout groups on export control policy, licensing and enforcement for in-depth discussion of each aspect of export control system formation and implementation. A final plenary session listened to summaries and recommendations from the discussion groups and highlighted future challenges.

The Keynote Speeches

US Non Proliferation Bureau Assistant Secretary Burk outlined the proliferation threats from terrorists, terrorist organizations, and countries such as North Korea and Libya, and described recent dramatic positive developments in addressing proliferation threats. Among the positive developments cited were the G-8 Global Partnership Against the Spread of Weapons and Materials of Mass Destruction, the Proliferation Security Initiative (PSI), and UN Security Council Resolution 1540 passed in April 2004. Ms. Burk noted that under UNSCR 1540 -- for the first time ever-- countries around the world are required to put in place the legal and regulatory infrastructure to prevent the export of weapons of mass

destruction and related materials and technology, and to safely account for and control any materials that they may possess.

UK Minister of State, Baroness Symons, said that working for a world safer from global terrorism and weapons of mass destruction is at the top of the list of the United Kingdom's foreign policy objectives, and described the effective application of domestic controls and law enforcement as the first line of defense in the fight against proliferation. Stressing the importance of working bilaterally and multilaterally to assist others in strengthening export control regimes and upgrading enforcement capabilities, Baroness Symons emphasized the importance of UNSCR 1540 in requiring UN member states to implement effective measures and cooperate with others to prevent WMD proliferation. While aware of the potential death toll of chemical, biological, and nuclear weapons, the Baroness urged delegates not to forget the death and suffering which results from the misuse of small arms and conventional weapons, noting especially the risk of Man-Portable Air Defense Systems (MANPADS). She called for greater joint action to build policies and strong controls on the export, import and transshipment of small arms and light weapons.

BREAK-OUT GROUPS: ENFORCEMENT, LICENSING, POLICY

ENFORCEMENT BREAK-OUT GROUP

Some 35 enforcement officials from countries' customs, border guard and police discussed relevant issues relating to the enforcement of export controls. The group's main conclusions for each session follow.

Building an Enforcement Strategy: The initial presentation defined an enforcement strategy as "a written document with a shared and common understanding by all interested parties" and discussed its main component parts. The group recognized that:

- The development of an Enforcement Strategy would vary from country to country depending on the nature of the traffic and risk assessment.
- There would need to be a continual assessment of the balance between trade facilitation systems and enforcement activity.
- The identification of dual use goods in particular and other strategic commodities continues to be a major challenge for enforcement authorities.

- Customs/Border Administrations should continue to develop their own awareness and training programs for strategic export controls.
- Border Management will continue to develop in the context of an overall control and enforcement Strategy.

Risk Management Process: Risk Analysis has been a working method in a number of developed Customs Administrations for many years. Attention is now turning towards developing an effective Risk Management Process so that the challenges posed by export controls are addressed efficiently and in a timely manner. The Group understood and agreed the Risk Management Continuum includes: a) Collecting Data, b) Analyzing Data, c) Identifying Targets, d) Examining Cargo, and e) Documenting results and providing feedback to the risk system.

There was recognition that in the modern international trading environment the majority of imports, exports and transits/transshipments cannot be physically examined. However the customs declaration can be subject to extensive computer profiling and release of goods from control will not be granted until the profiling activity has been completed. Such computer profiles should be based on sound risk analysis supported by high-quality intelligence.

Industry Outreach Programs: A number of countries shared their experiences regarding Outreach programs to industry. All agreed that direct contact with industry is an important component of an effective national strategy. There was consensus that a government export enforcement strategy must develop partnership arrangements with industry as a fundamental component, and that there will be no effective controls without industry cooperation.

International Cooperation: The group acknowledged that informal communication between enforcement agencies (internationally) regarding evidence collection was speedier in building a criminal case. The more formal mechanisms such as Letters Rogatoire and Mutual Legal Assistance Treaties could be pursued once a clear path to a building a successful criminal case was established.

It was recognized that in a number of countries police agencies are a primary enforcement authority for export controls. Police to police contact in an informal setting is essential to a good exchange of information.

Enforcement organizations should emphasize the value of sharing of information and the value of feedback.

Interagency Cooperation: There was consensus that:

- In the context of interagency cooperation, clear roles and responsibilities need to be defined for the agencies represented.
- Any mechanisms that governments put in place for effective cooperation need to be capable of delivering effective action and also action that is timely.
- There is an absolute need to avoid bureaucratic mechanisms that can overly complicate systems.
- Modern computerized networks, such as email, should be used to build interagency cooperation. It will not happen overnight, people need to make decisions to make it happen.
- Interagency cooperation can be improved and made more effective by having interagency officials seeing the controls being implemented on a day-to-day basis at the frontier. This gives policy and licensing officials who may be considering new export controls an awareness of the practical reality of how goods move across frontiers using the international supply chain.

Practice and Techniques to Combat Corruption: The Group acknowledged that compliance for companies has a cost. However the penalties for violations of export controls should come with a higher cost. There was consensus that companies should draw up their own internal compliance systems and senior directors and CEOs should take more personal responsibility in company compliance policy.

In the fight against corruption in enforcement authorities, an internal confidential hotline for honest employees can be used to report on colleagues that they suspect of corrupt activity. Enforcement organizations should have internal control procedures that include mechanisms such as double signature authority, frequent movement of internal people to new locations, and the filing of annual financial statements.

Enforcement organizations should have a policy to prosecute corrupt officers to the full extent of the law and seek maximum penalties in order to protect the integrity of the organization and to deter others who may be tempted into corrupt practices. Linked with this issue is that of the quality of export

control personnel and the levels of pay for inspectors and other enforcement officials.

Future Strategy: Work needs to continue in relation to enforcement of intangible transfer controls and having assurance mechanisms in place to prevent illegal transfers. Further consideration needs to be given to the extent that countries use post shipment verification procedures, but taking into account cost and available resources.

There was consensus that work needs to be done on training materials and having mechanisms to ensure that the available expertise from different countries can be released to provide such training, perhaps in the form of ‘Train the Trainer’ events. There should be further work done on how ‘open source information’ on proliferation can be used more effectively by enforcement authorities.

In relation to the International Export Control Regimes, further progress needs to be made on the possibility of wider dissemination of denial information. Further awareness and training materials need to be developed for recognition of dual use goods by frontier enforcement officials. Consideration could be given to provide greater feedback on Regional initiatives such the EU WMD Action Plan and the Bucharest based Project on ‘Illicit Small Arms Trafficking’ for enforcement officers.

Enforcement Conclusions: The topics discussed at the Enforcement Break-Out Group were relevant for present day enforcement of export controls. There is a continuing need for training and awareness, particularly in relation to dual use goods. Intangible Transfers of Technology still presents a different challenge for enforcement authorities and there is uncertainty as to how enforcement can be effectively discharged.

Forward-looking enforcement strategies should be supported. An enforcement strategy should set out how a country has developed its enforcement policy and implementation right down to resource allocation and the setting up of specialist teams to tackle identified risk. Evidence could also be called upon for countries to demonstrate successes in countering WMD proliferation.

LICENSING BREAK-OUT GROUP

The Licensing Group focused on topics before the licensing community, including End-Use/User controls, intangible technology transfers, catch-all controls, and contained a demonstration of an NGO-developed risk assessment tool and a case study of the license application process. Following are conclusions from licensing sessions:

End Use and End-User Screening: The presentation identified the key points to look out for when considering end-users and end uses. Particular focus was put on Red Flag indicators and the concept and practise of using these was explained. International Import Certificates were seen as a key component of checking on end use and end-users. The difficulties of identifying the exact end-users for transshipment and where freight forwarders were involved were reviewed.

Government and NGO Products to assist Licensing decisions: The presentation highlighted the US publicly available list for denials and contained an on-line demonstration of the Risk Report. Delegates appreciated the power of the Risk Report, but were concerned that it was expensive for them to acquire. The smaller countries noted that they rely on information exchange at regime meetings to update their sources of data.

Standardising Information on End-User Certificates: The presentation highlighted current UK practise on End-User Certificates. Discussants noted that End-User Certificates detailing exact end use and end-user were required by all delegates, some having this requirement in legislation. EUC formats and templates are generally available on websites of relevant government Export Control Offices

Outreach to Industry: This session consisted mainly of a presentation from a UK company on their experiences with the UK Export Control Organisation (ECO). Although there were many positives, areas for improvement noted in the presentation included: better information when changes are made, better-informed staff on help lines, and more industry consultation when changes are proposed.

Catch-All Controls: The presentation described the current EU Catch-All control and how it operates. In answer to the question 'had any prosecutions been made under the Catch-All?' the UK identified only one

case. The main deterrent was in making goods licensable so that governments could consider the application. The group accepted that governments need to work closely with industry to make the control effective.

Licensing of Intangible Transfers (Deemed Exports): The presentation covered the concepts of deemed exports and the Technology Control Plan. Discussion on the practical implementation of a licensing system for deemed exports and its enforcement revealed some concerns that this could lead to a licensing requirement for all university courses. Group members questioned why the US was one of the few countries to license deemed exports. In discussion it became clear that other countries have some similar controls, but that they are handled by internal security organisations, rather than export control licensing officials.

Product Classification using the Product Identification Tool: A short discussion of the uses of the tool that searches export control lists to identify potentially licensable goods by the Export Control Organisation (ECO) preceded a demonstration of the tool that has been developed for the UK government. The ECO said that they hoped to make it available to the UK industry in 2005. It was stated that EXBS (the U.S. Export Control and Related Border Security Assistance Program) has supported programs in Russia and Ukraine. The inclusion of pictures of goods was seen as a big benefit in helping non-technical staff identify controlled items.

Case Study: The morning session was taken up by a case study that followed the flow of a licence application under the UK Export licensing system from application to issue or denial. The UK system was used as the model and delegates asked to comment on how their systems differed. The session was broken into three sections, Initial Checking and Review, Circulation and Decision Making, and License Issue, Refusal, and Appeal.

Initial Checking and review. This covered the application from its initial reception to preparing it for circulation to other government departments. The issues raised for discussion included deployment of resources, staff training and organisational structure. The discussion highlighted a variation in goods classification where some authorities expect exporters to do it themselves while in others, government undertook this exercise. Typically smaller authorities had to rely on the exporter. Some Governments that registered exporters also required them to register their goods and their

classification. Nomination of an export compliance contact at senior level in companies was highlighted as necessary by almost all speakers.

Circulation and decision-making. This covered obtaining advice from other government departments and dealing with conflicts in their advice. The escalation process was discussed and the criteria applied, using the EU Code of Conduct described. Concerns were expressed over how much information could be divulged in a refusal letter. While some governments are very conservative with information, others are more open about the reasons for refusal. Decision making in all countries required a consensus before a licence could be issued. Conversely, in most countries, a single refusal from one government department led to a refusal of the license. When a licence is refused, Customs are generally informed so that they can look out for the goods. This is used as a red flag for Customs in some countries.

Licence issue, refusal and appeal. This session consisted of a short presentation on the final stages of licence processing. Discussion highlighted a difference in approach where some countries see export as a right and some see it as a privilege. This reflects on the level of information given in a refusal letter. Some concerns were expressed that if a license is refused to a country for human rights reasons, that all licenses would be refused. Speakers confirmed that they would adopt a case-by-case approach and so this wouldn't necessarily happen. Revocation of licences also mentioned and a difference in approach where some countries consider compensation for the companies if this occurs.

Establishing a Professional Corps of Licensing Officers. The presentation discussed the possibility of establishing a professional qualification for licensing officers. Two questions were put to the delegates: Is such a qualification possible or desirable, and if so, who should award such a qualification? Poland already requires that companies have an Internal Compliance programme that specifies a person responsible for export control. That person has training from the export control authority. There was doubt that such a qualification could be international, as national practices varied greatly. The consensus was that it would only work if approached as a commercial venture that provided benefit to the companies. It was noted that such an arrangement changed government staff from being generalists to professional licensing officers, which they might not want.

POLICY BREAK-OUT GROUP

The Policy Break-Out Group discussed ways to employ export controls to enhance a country's strategic trading position, interaction with export control regimes, the evolution of the Proliferation Security Initiative, new challenges in secondary proliferation and new initiatives to meet these challenges.

Importance of Export Controls to Economic Growth & Security. The session considered that some nations perceive that export controls are a costly burden. The presentation and ensuing discussion raised and considered various reasons that export controls can be regarded as a strategic asset in global trade. The presenter argued that export controls have a dual-benefit, to prevent proliferation and facilitate trade. For example, with the passage of UNSC 1540, maintaining an effective export control system might emerge as a criterion of supply just as the Australia Group guidelines makes effective export controls in both recipient states and intermediate states a criterion of supply. It was pointed out that countries, especially those dependent on foreign suppliers for strategic goods, need the trust of their trading partners to assure supply, and export controls help to build that trust. Export controls broaden a nation's access to technology.

Working with Export Control Regimes. The group considered how to improve the effectiveness of the multilateral export control regimes, focusing on improving dialogue between member states and non-members. Regime members should enable open dialogue between regime and non-members, recognizing that dialogue is a two-way process with some nations approaching the regimes, proactively, and others being approached by the regimes to address specific concerns. There is a need to improve access to information, increase openness and transparency of regimes, and demystify them for outsiders.

UNSCR 1540 is an acknowledgement of the value of regimes, which may be seen as providing models for effective export control systems. Regimes should get involved in implementing 1540.

Secondary Proliferation Networks. The group noted that a new type of secondary proliferation is emerging. Brokers are taking a more prominent

role in transactions of technology and access to technical expertise. Brokers are now more actively seeking buyers for technology. Since brokers hold the technology, they can contract a company to carry out specific work. These companies may not be based in a country traditionally seen as being of proliferation concern, thus complicating their being caught by export controls.

A number of fora are looking at strengthening brokering controls. Export Controls have been traditionally viewed as being of national concern; now need to be viewed globally. UNSCR 1540 was considered a perfect starting point for harmonizing and implementing controls globally. The gathering of evidence and prosecution for extra-territorial offences presents difficulties. 1540 should help in encouraging countries to enforce effective controls.

Proliferation Security Initiative (PSI). Launched in May 2003 PSI is not a formal organization but an activity for interdiction on land, air or sea. Operationally focused it is designed to be fast acting and flexible. It has no members but is a voluntary coming together of like-minded countries. All countries are welcome to participate and determine for themselves how best able to contribute. No hierarchy of participating countries. An operational expert group exists to co-ordinate planning of interdiction exercises. The goal is to shut down proliferation networks – prevention as well as interdiction.

PSI actions are consistent with national and international law. PSI actions are not a military type exercise. Extra-territorial activity is consistent with international law. Negotiations are ongoing with the International Maritime Organization to incorporate PSI on a legal basis. Many countries want to see a legal basis incorporated before committing themselves.

When committing to PSI countries undertake to meet certain criterion amongst which are: to review national legal authorities, show willingness to sign boarding agreements, and share intelligence information. PSI is new and is still evolving as countries learn more about how best to co-operate. Confidence in sharing information with other countries is paramount if initiative to be a success.

New Multilateral Instruments: Combating WMD Proliferation.

Amongst the major challenges faced in reducing proliferation, focus was

placed on three policy issues, the need for assistance in formulating export control assistance, administrative assistance – such as sharing end-user information, and legitimization of the export control regimes.

In response to 1540, export control regimes are giving increasing importance to their outreach activities. An issue to be faced is how much financial assistance participating states will be willing to provide. Participants agreed that more than just legislation is required. The main challenges faced in developing new multilateral regimes include developing common understandings of who is subject to controls, jurisdiction, what is subject to control, etc.

It was suggested that we should capture the lessons learned in the small arms area and apply them to WMD, using the 1540 process to extend instruments internationally.

Arms Brokering Controls and New Multilateral Agreements. The initial presentation posed a definition of “brokering,” gave background on the issue going back to 1990s, reviewed various multilateral agreements or statements on the issue in the last two years, and considered commonalities across these agreements, and the challenges they pose.

If brokering controls are to gain acceptance internationally, an important consideration is that the agreements all address definitional issues and precisely clarify the subject of controls and jurisdiction. There is a need for information sharing if we are to promote common standards

The group also considered the main challenges for improving controls on brokering. One challenge is to agree on a comprehensive definition of what “brokering” is. The phrase “arranging the transfer” encompasses many: could be freight forwarders as well as airlines. Other challenges include “extraterritoriality” and jurisdiction, clarifying what is to be controlled and information sharing.

Strengthening Catch-All Controls. The presentation looked at catch-all language across the multilateral regimes and then focused on the experiences and changes in the U.S. system. Discussion focused on the benefits of catch-all as an opportunity for governments to communicate with industry.

The benefits of catch-all controls include significant benefits to enforcement (Customs officers). In implementing catch-all, governments should not emphasize the punitive aspect of catch-all, but should reiterate that it's a call to company responsibility. The group differed on the degree to which catch-all is product-oriented, i.e. type of product influences decision on licensing requirement.

Controls on Intangible Technology Transfers. The group was of the opinion that the scope of controls needs clarification, there should be a common understanding on control between partners, it must be clear what technology is subject to licensing. Other considerations were whether different measures to be applied to military and civilian items, when does ITT begin, and how to control in-country transfers.

The only practicable way is to take a flexible approach. "Self control" is an important element of export controls. Raising awareness within the academic world a priority and challenge. Have to actively engage to encourage adherence to controls and for individuals to act responsibly.

Addressing Corruption in Arms Exports. The presentation posed the question as to the relationship between the Defense Integrity Pact and industry code anti-corruption initiatives and export controls. The presenter laid out the defense acquisition process with its controls on the one hand, and the export licensing process with its export controls on the other, looking at both companies and agents/brokers.

Main points that emerged in the discussion were that: Companies and countries have strong interest in establishing common industry standards. In both cases, companies are motivated to put pressure on agents and brokers to perform due diligence to comply and avoid any sanctioning that would shut them out of the tendering process. Like export control, integrity initiatives would benefit from the existence of an internationally recognized regulatory body. This would improve the credibility of individual monitors and help broaden the initiatives' breadth. An overarching ministerial statement might be helpful as a catalyst.

REPORT ON THE SIXTH INTERNATIONAL EXPORT CONTROL
CONFERENCE

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