

EXPORT, RE-EXPORT, TRANSIT AND TRANSSHIPMENT CONTROLS IN CYPRUS

Introduction

The proliferation of weapons of mass destruction and the spread of missiles capable of carrying such weapons pose, critical security risks to the international community. Risks that all countries must combat together.

The non-proliferation policy of the Government of Cyprus is based on four pillars:

- Pillar no. 1 is a strong political commitment to aggressively address the need to prevent the proliferation of weapons of mass destruction.
- Pillar no. 2 is a law/regulating development and an updating following up emerging needs.
- Pillar no. 3 is proper enforcement-infrastructure-allocations or resources to address the issue including export control and other related crimes. You all know that illegal diversion results in terrorist activities, proceeds of illicit drug trafficking are used to finance such activities and money laundering offences are also related.

Therefore proper enforcement should and must address those crimes as well if we wish to be effective and successful.

- Pillar no. 4 is international cooperation. We promote and seek effective international cooperation for timely sharing of information. We strongly believe that effective implementation requires collective action and practical international cooperation.

The Republic of Cyprus, sharing the above concerns, is eager and committed to foster these objectives within its capabilities.

Ministries and Agencies responsible for export control

In Cyprus the following Ministries and Agencies are responsible for export control:

- (i) The Ministry of Foreign Affairs (MFA)
The MFA is entrusted with the formulation of export control policy and the international relations on the issue
- (ii) The Ministry of Commerce, Industry and Tourism (MCIT)
The MCIT is entrusted with the export control licensing. The MCIT receives and scrutinizes applications for license for export of controlled items including goods in transit or transshipment.
- (iii) The Law Office of the Republic is entrusted with the drafting of legal instruments and the institution of any criminal proceedings including those related to export-import control violations.
- (iv) The Cyprus Department of Customs & Excise (CDC&E).
The CDC&E of the Ministry of Finance is responsible for export control and assures proper enforcement.

It is a common view of the above agencies that efficient co-ordination between them is essential if such controls are to be implemented and enforced effectively. In particular there is close cooperation between the MCIT, the licensing authority, and the CDC&E, the enforcement agency, which is a prerequisite for ensuring an effective export control system.

The Role of the Cyprus Department of Customs & Excise

The strategic mission of the Cyprus Department of Customs and Excise (CDC&E) apart from the revenue collection is to protect society and provide a safe environment. Therefore, the strategic mission includes the enforcement of transnational crime involving the cross-border movement of goods and passengers, the contribution of the Department to the economic and social well being of Cypriot citizens, the efficient collection of accurate information about trade and the monitoring of compliance with regulations and international trade agreements.

The CDC&E is uniquely positioned to provide important and a wide range services to a host of other Government departments due to its physical presence at the points of entry and exit in/out of the Republic of Cyprus. Consequently, the CDC&E is responsible for the protection of society and environment through the enforcement of various prohibitions and restrictions derived from national legislation and international conventions, ratified by the House of Representatives of the Republic of Cyprus.

The combating of illicit trafficking of nuclear material and other radioactive substances is among the top priorities of the CDC&E in the field of law enforcement. The CDC&E shares the opinion that the proliferation of weapons of mass destruction poses a threat to international peace, security and stability and has manifested on various occasions its concern and commitment for non-proliferation.

Bearing in mind the possible proliferation via transit countries like Cyprus, the CDC&E has a major and important role to play in intercepting illicit movements (diversion) of any kind of goods and materials that can be used in weapons of mass destruction.

Legal Framework

I. General

An effective legal framework and implementation of regulations is an essential first step towards establishing government authority to help prevent proliferation.

The legal framework of Cyprus for export control is composed of:

- various international conventions ratified by the House of Representatives of the Republic of Cyprus,
- various national laws and regulations providing for prohibitions and restrictions on the importation and exportation of various goods,
- licensing procedures,
- enforcement powers and penalties, and
- international cooperation.

For the purpose of its non-proliferation policy the Republic of Cyprus has taken the following steps:

- It became in 1965 a member of the International Atomic Energy Agency (IAEA) (Approval Law No. 21/1965)
- Cyprus was among the original signatories of the Treaty of the Non-Proliferation on Nuclear Weapons (NPT) on 1st July 1968 (Approval Law No. 8/1970).
- In pursuance to paragraph 1 of article III of the above Treaty, an Agreement was signed between the Republic of Cyprus and the International Atomic Energy Agency for the Application of Safeguards in connection with the NPT Treaty on 26 June 1972 (Approval Law No. 3/1973).

- Since 1973, Cyprus has been a party to the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and their Destruction (Approval Law No. 56/1973).
- Cyprus signed on the 13.1.1993 the Convention on the Prohibition on the Development, Production, Stockpiling and use of Chemical Weapons and on their Destruction.
- Cyprus in April of 1996 participated in New York to the 1995 Review and Extension Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons and supported the decision of the indefinite extension of the NPT Treaty.
- Cyprus was among the original signatories of the Comprehensive Nuclear – Test – Ban–Treaty adopted by the General Assembly of the United Nations on 10 September 1996.
- Furthermore, Cyprus has ratified the Convention on the Physical Protection of Nuclear Material (Approval Law No. 3(III)/98) and the Convention on Nuclear Safety (Approval Law No. 20(III)/98).
- Cyprus signed in 1999 the Additional Protocol to the Agreement with the IAEA for the Application of Safeguards in connection with the NPT Treaty.
- Other commitments undertaken by the Republic of Cyprus in the field of arms control, disarmament and non-proliferation since 1960 are the following:
 - Cyprus filed a declaration of succession to the 1925 Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases and of Bacteriological Methods of Warfare.
 - It is a signatory to the 1963 Treaty Banning Nuclear Weapon Tests in Atmosphere, in Outer Space and Underwater (Approval Law No. 13/1965).
 - On 11 February 1971, Cyprus signed the Treaty on the Prohibition of the Emplacement of Nuclear Weapons and other Weapons of Mass Destruction on the Seabed and the Ocean Floor and in the Subsoil thereof (Approval Law No.63/1971).
 - On 1 August 1975, Cyprus signed the concluding Document of the Conference on Security and Cooperation in Europe known as the Helsinki Final Act.
 - Cyprus co-sponsored the United Nations General Assembly Resolution No. 46/36L, as well as the subsequent ones regarding the establishment and functioning of the United Nations Register of Conventional Arms.

The various national laws provide penalties for the violations of existing prohibitions and restrictions. The penalties vary from fines to imprisonment of up to 10 years depending on the gravity of the offence and the goods in question.

In cases where the specific law does not provide any penalty there is a “catch-all” provision, provided by the Customs and Excise Law for which a maximum penalty of 2 years imprisonment or three times the value of the goods or both is provided.

II. Licensing

The regulations of exports in the Republic of Cyprus are governed by the Defense (Exportation of Goods) Regulations of 1993. These Regulations empower the Minister of Commerce, Industry and Tourism to issue an order prohibiting or regulating the exportation, re-exportation or transit of goods, in cases where this is deemed necessary for compliance with the commercial obligations of Cyprus or for the purpose of maintaining or restoring peace and security in any part of the world. Such an order may also provide that a license is required for the exportation of goods set out in the order. If goods are subjected to an export license, their exportation is prohibited unless the license is produced to the appropriate Customs officer. The above-mentioned Minister issued the Defense (Regulations and Exportation of Goods) (Amendment and Amendment 2) Orders of 2000, which are applied to all exports, re-exports and transit goods. As a result, Cyprus fully complies with the export control lists of the NSG and AG. Moreover, in 2002 the same Minister

issued the Defense (Arms Export Control) Order of 26th July 2002 for the compliance of the Republic of Cyprus to the EU Code of Conduct on Arms Export and to the Council Declaration of 13 June 2000, issued on the occasion of the adoption of the common list of Military equipment covered by the European Union code of conduct of arms export, as well as the Defense (Export Control of Dual Use Items and Technology) Order of 2002, for the implementation of the Council Regulation (EC) 1334/2000 of 22 June 2000, setting up a Community regime for the control of exports of dual-use items and technology as amended by the Council Regulation (EC) No.2432/2001 of 20 November 2001 and Council Regulation (EC) No.880/2002 of 27 May 2002.

III. Enforcement

The control and checks on the exportation of goods falling within the Schedules of the above orders is the responsibility of the CDC&E. Customs officers are empowered by Customs legislation to check whether goods to be exported are subjected to an export license and in the affirmative, by checking the relevant export license, to ascertain that it corresponds with the goods that are about to be exported.

The legal basis for enforcing the import and export control is the Customs and Excise Law No.82 of 1967.

According to the provisions of section 39(b) of the above law, as amended by Law No. 77(I)/1998, "Where,.... any goods, substances or materials including nuclear materials or substances are imported, landed, unloaded or in the course of transit contrary to any prohibition or restriction for the time being in force with respect thereto under or by virtue of any enactment or convention which binds the Republic of Cyprus.... those goods shall be liable to forfeiture". Section 40 provides for offenders a fine not exceeding three times the value of the goods or one thousand five hundred pounds, whichever is the greater, or to imprisonment for a term not exceeding two years, or to both.

Also, according to the provisions of section 49 of the same law "If any goods are -

- (a) exported or shipped as stores or
- (b) brought to any place in the Republic for the purpose of being exported or shipped as stores

and the exportation or shipment is or would be contrary to any prohibition or restriction for the time being in force with respect to those goods under or by virtue of any enactment, the goods shall be liable to forfeiture and the exporter or intending exporter of the goods and any agent of his concerned in the exportation or shipment or intended exportation or shipment shall each be guilty of an offence....". A fine not exceeding three times the value of the goods or one thousand and five hundred pounds, whichever is the greater or to imprisonment for not exceeding two years, or to both is provided in this section. An amendment bill of this section so as to include specifically nuclear materials or substances is expected to be approved by the Cyprus House of Representatives soon.

According to section 41 (1) (b) "Where any goods are to be shipped for exportation or as stores for use on a voyage or flight to a place outside the Republic, the exporter - shall give security to the satisfaction of the Director that the goods will be duly shipped or exported and discharged at the destination for which they are entered outwards within such time as the Director considers reasonable, or, in the case of goods for use as stores, will be duly so used, or that they will be otherwise accounted for to the satisfaction of the Director:

Provided that the Director may relax all or any of the requirements of this sub-section as he thinks fit in relation to any goods".

Section 58(3) of the same law provides that: " Any person concerned in the exportation of any goods which are subject to any such prohibition or restriction as aforesaid shall, if so required by the Director, satisfy the Director that those goods have not reached any destination other than that mentioned in the entry delivered in respect of the goods, and if he fails so to do he shall be

guilty of an offence and be liable to a fine not exceeding three times the value of the goods or five hundred pounds, whichever is the greater, unless he proves that he did not consent to or connive at the goods reaching any destination other than that mentioned as aforesaid and that he took all reasonable steps to secure that the ultimate destination of the goods was not other than that so mentioned”.

Effective powers to enforce import and export controls are an essential element of Cyprus export control system. The customs officers of the CDC&E are empowered by the national legislation with the following powers:

- To examine goods.
- To require any person or company concerned with the importation, exportation or shipment of goods to provide any information in relation to the goods and take copies thereof.
- To search persons, premises, customs controlled areas, vehicles, vessels or aircrafts, in accordance with the existing legislation.
- To take representative samples.
- To detain goods.
- To seize goods and documents.
- Right of access to documents (including electronic ones).
- To conduct audit control of business records.
- To detain and/or arrest any person(s) who is found committing or attempting to commit or being in any way concerned in the commission of offences relating to fraudulent evasion of duty or evasion of any prohibition or restriction.
- To institute legal proceedings for offences or to compound offences.
- To conduct proceedings before the appropriate court.
- To freeze and to seize assets of persons charged with knowingly acting contrary to the Prevention and Suppression of Money Laundering Activities Law of 1996 No.61(I)/96.
- To exchange and share information in customs matters with other customs administrations for law enforcement purposes.
- To conduct inquiries on behalf of other customs administrations under certain conditions.

Apart from the above-mentioned orders of the Minister of Commerce, Industry and Tourism, which is based on the Defence (Exportation of Goods) Regulations of 1993, and the Customs and Excise Law No. 82 of 1967, several national laws have specific provisions on the issue of combating illicit trafficking of nuclear material and other radioactive sources. The violations of these laws are considered as predicated offences according to the Prevention and Suppression of Money Laundering Activities Law 61(I) of 1996. Also the Crime Suppression (Controlled Delivery and other Special Provisions) Law 3(I) of 1995 was amended to include nuclear goods and materials for control delivery purpose.

Relations of Cyprus with Non - proliferation Bodies

- The Republic of Cyprus joined the Nuclear Suppliers Group on the 20.4.2000.
- The Republic of Cyprus is also a member to the Australian Group since October 2000.
- The Republic of Cyprus has accepted the principles of the Code of Contact Against Ballistic Missile Proliferation of Missile Technology Control Regime (MTCR) and taking into consideration of the official policy of the European Union is that all acceding to the EU countries should upon accession or soon after, become members of the MTCR, the political decision for Cyprus to join the above regime has already been taken.
- The Republic of Cyprus participates in the IAEA Data Base on Illicit Trafficking in Nuclear Materials and other Radioactive Sources and has been invited several times as a non-partner participant to various seminars and workshops organized by the Missile Technology Control Regime (MTCR).
- Since 1996 Cyprus has been participating in the work of the Conference on Disarmament as a non-member country.
- We fully apply and implement the UN resolutions imposing restrictions and embargoes.
- We fully apply and implement the list of countries subject to an EU embargo.
- We have further increased and strengthen the control procedures and measures both in the movement of passengers, goods and the means of transport.

Infrastructure – Enforcement - Equipment and Training

As analysed above the CDC&E has a major role to play in enforcing the laws and regulations related to the importation and exportation of goods. The CDC&E is present at all points of entry/exit in/out/in transit of the Republic of Cyprus and is exercising its powers to control imports and exports.

It is well known that Customs Service is a multitask organisation and in risk assessment analysis the issue of proliferation is seriously taken on board and in the “National Risk Assessment Document” prepared by Cyprus Customs this issue is always addressed.

The staff is continuously upgrading their knowledge and skills by seminars and by circular letters giving detailed instructions as to how to handle cases of illegal arms trafficking.

Furthermore, the CDC&E in its effort to become more effective in its controls of movements of sensitive items has recently set up a special anti-smuggling team based in Limassol port with the following main objectives-

- The establishment of effective customs controls over cargo transiting the free port of Limassol to prevent its use for smuggling and terrorist activities.
- Anti-terrorist and anti-smuggling actions on all inbound and outbound cargo, vessels and passenger ships calling at Limassol port.
- The detection of materials (nuclear, chemical, biological) that can be used in the manufacture of weapons of mass destruction.

The CDC&E, in the field of control of the unlawful movement of nuclear materials and radioactive material sources, uses all over Cyprus a special X-ray van which contains the most advanced detection equipment available. In addition to the X-ray detector, which allows the users of the van to scan packages up to 33 inches wide, for contraband, the van also has a gamma radiation detector for sensing radioactive sources. This van is also designed as a mobile unit that can be shifted to different areas as required. Twelve Customs officers have been trained and the van has been in regular operation since June 1998.

Furthermore, two vehicle radiation monitor systems are placed at Limassol port and Larnaca airport. These monitors are comprised of two large upright pillar sensors that detect the presence of radioactive materials and are permanently mounted to allow truck and cargo container traffic to pass between them. Thirty seven customs officers have been trained and the systems have been in operation since August 1999. Also, seven stationary x-ray machines, four of which are of latest technology, are operated in all airports and ports.

In addition, eight hand-held monitors, which are the simplest form of vehicle Special Nuclear Material (SNM) Monitor, detect the exact location of radioactive emitting sources.

The CDC&E is also equipped with:

- 25 radiation pagers,
- 2 handheld PC-based ultrasonic pulse devises for the identification of liquids and their level, sound indication in case variation of their density,
- 2 material identification systems for screening of strategic material and
- 3 inspection kits CT30 contraband team consisting of three instruments each:
 - a. electronic measurement instrument,
 - b. fiber optic-type endoscopes,
 - c. buster contraband detector
- 4 portable analysers detectors for the detection of drugs and explosives.

The CDC&E believes that the exchange of information with other law enforcement agencies of other countries is vital to achieve positive enforcement results. The CDC&E has a direct access to the computerized system of the Cyprus Port Authority and scrutinizes shipping documents, in order to be able to exercise prevention measures on the one hand and on the other to be in a position to assist other agencies to identify potential risk areas. Other local information resources are the Customs Information System, customs entries and trade documents lodged to Customs, Inland Transportation Department's Motor Vehicle Registration System, VAT Registry, Importers Registry, Cyprus Police and other governmental authorities. Furthermore the CDC&E is connected with the WCO-RILO network and disseminates and exchanges information among other things and on the issue of illicit trafficking of nuclear material and other radioactive substances. It can also exploit vital information through the following information systems:

- C.E.N. System (WCO)
- BALKAN INFO SYSTEM
- MARINFO SYSTEM
- A.F.I.S.

The existing technical infrastructure of the Cyprus Medical Physics Department of the Ministry of Health is capable of identifying the type and activity of all radioactive sources. It can also identify nuclear material but it is not capable of determining its purity in chemical form.

Several Customs officers have attended seminars abroad on combating illicit trafficking of nuclear materials and radioactive sources, organised by MTCR, IAEA, WCO, INTERPOL and other organizations.

Conclusions

The non-proliferation principles guiding the Cyprus Government's policy are summarized as follows:

- to prevent the proliferation of nuclear weapons,
- to prevent the acquisition, development, protection, stockpiling and use of chemical and biological weapons,
- to upgrade comprehensive controls.

- to control the transfer of missiles capable of delivering weapons of mass destruction and their components and technology, as well as dual-use goods and technologies.
- to further develop an effective legal framework and implementing regulations.
- To update control list to cover international lists and national needs.
- To protect sensitive business information while increasing voluntary compliance.
- to co-operate with other States on a multilateral or bilateral basis in achieving the above objectives.