

Main Building Blocks of National
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Overview: what should this legislation contain?

- Basic principle: exports of certain goods are illegal without a licence
- There are criminal sanctions and financial penalties for those who do not comply
- The requirement for a licence is enforced by Customs officers
- A Government body provides licences according to certain criteria
- Brokering arms also requires a licence

Why control strategic exports?

(1)

- To prevent the spread of Weapons of Mass Destruction
- To prevent weapons falling into the hands of terrorists and criminals
- To ensure that arms exports do not cause or prolong wars in other countries
- To comply with UN and other international obligations

Why control strategic exports?

(2)

- To avoid contributing to human rights abuses
- To avoid undermining regional stability
- To protect our own armed forces overseas, and those of our allies
- To prevent diversion of arms to undesirable states or individuals

The law should say which exports require a licence (1)

- Any goods on the military list (for example, the Wassenaar list)
- Any dual-use goods (for example, the EU dual-use list)
- Any other goods which the exporter considers might be used in a Weapons of Mass Destruction program

The law should say which exports require a licence (2)

- It includes exports from state-owned companies and private companies - both should be controlled
- It covers a wide range of goods - not just weapons.
- Important: we need to communicate clearly to exporters what these goods are - they can help to enforce the law

The law should also:

- Require exporters to keep records of their activities
- Oblige publication of a report on arms exports
- Have separate provisions for imports and exports, as the issues in controlling imports and exports are different.

What about the criteria for when exports will be allowed?

- They do not have to be in a law. But these criteria should be published, and should have the same force as a law.
- They should apply to all exports.
- All countries that wish to join the European Union should use criteria similar to the EU Code of Conduct.

Should there be a register of all companies exporting military goods?

- It is not a substitute for controlling individual transactions
- You can't say companies are "always good" or "always bad"
- Most companies have some reasonable licence applications and some unreasonable ones

More sophisticated controls

- Controls on “intangible technology transfer”, i.e. by fax, email, telephone
- Controls on the “export” of technical assistance

What information should exporters provide in a licence application?

- Details of the exporter, the importer and the consignee
- Details of the equipment
- Final destination, and the route of the goods
- Details of any arms brokers involved in arranging the export
- An end-user certificate (vital)

Checking end-user certificates (EUCs)

- Look at it sceptically: there are many examples of forged documents
- Consider whether the country fits the equipment - does Equatorial Guinea have a need for Tornado aircraft parts?
- Is the person who signed the EUC still the Defence Minister or Chief of Police? We have had cases of dead Ministers signing EUCs!
- Could the goods be going to another country?

What do you need to decide on an export licence application?

- Knowledge of the country where the goods are to be used
 - any conflicts in the country or in the region
 - internal repression situation
 - awareness of any UN or other sanctions
- Knowledge of what the goods can be used for
- Awareness that someone might divert the goods to an undesirable state or to terrorists

There should also be a law on arms brokering

- Brokering is arranging deals between buyers and sellers of arms
- Not the same as exports - applies to exports from other countries
- EU Common Position to be adopted on 24 June:
 - requires all EU countries to have a brokering law
 - says that as a minimum this should cover all brokering activities on your own territory
 - requires a licence before a company or person brokers a deal

In summary, an export control law should:

- Make the export of certain goods without a licence illegal
- Say clearly what these goods are
- Set out severe penalties for not complying with this law
- State how licence requests will be assessed
- **But laws without effective enforcement are useless!**

We can give advice on (1):

- Creating the right legislation
- Telling exporters what they need to do to comply with the law
- What Customs officers need to do to apply the law properly
- How to use publicly available information to decide on licence applications

We can give advice on (2):

- The range of skills an export licensing system needs
- How to apply the criteria in the EU Code of Conduct
- When an End-User certificate might be false in a particular case
- When the proposed route of an export is suspicious

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