

The Seventh International Export Control Conference - Overview

Jointly hosted by the governments of the United States and Sweden, the Seventh Annual International Export Control Conference was held from September 20-22, 2005 in Stockholm at the Karlbergs Slott Swedish Military Academy. Part of the U.S. Department of State's Export Control and Related Border Security Program (EXBS), the conference brought together over 150 officials from 43 countries. Policymakers, customs and licensing officials and representatives of nongovernmental and multilateral organizations, and export-control regimes discussed recent export control initiatives and ways to strengthen nonproliferation efforts globally.

This year's keynote speeches were given by Jonas Bjelfvenstam, State Secretary, Swedish Ministry of Industry, Employment and Communications, and by Stephen V. Noble, Deputy Chief of Mission, United States Embassy Stockholm. The Swedish address focused on the complicated task of developing and maintaining strict and effective national export controls to prevent proliferation of weapons of mass destruction. The U.S. keynote stressed the importance of a layered defense against proliferation from global systems to national nonproliferation measures.

The conference was organized into plenary sessions with presentations of interest to all officials, and smaller break-out groups for more in-depth discussions in the three areas of Policy, Licensing and Enforcement. The overarching theme of the conference was implementation of U.N. Security Council Resolution 1540, highlighted in the plenary presentation by U.N. 1540 Committee expert Dr. Richard Cupitt. Other Plenary presentations included updates on the multilateral export control regimes, government and non-governmental organization analyses of the proliferation threat, European Union and World Customs Organization updates, a review of the British Conventional Arms Treaty proposal, and an NGO presentation on corruption related to export controls. Officials from Hong Kong, the United States, and Germany shared their experiences in the areas of export controls' relevance to economic growth, the U.S. Megaports program, and the challenges presented by brokering, catch-all and intangible transfers of technology.

Break-out sessions provided a chance for officials to examine the larger export control issues from the perspective of their individual specializations, and to hear presentations of particular interest to each group. The Policy Break-out Group considered reports on the United Kingdom's perspective on UNSCR 1540, UK export control exercises and NGO export control activities. The Licensing Group listened to presentations on end-use and end-user screening, the U.S. Department of Defense's role in export controls, and Swedish perspectives on product classification, outreach to industry, and industry internal compliance. The Enforcement Group considered presentations on the Swedish Customs Stairway, Targeting and risk management through a national targeting center, increasing cooperation between policymakers, licensing authorities and enforcement agencies, and using technical experts to assist in enforcement.

Receptions for the delegates, hosted by Sweden's Inspectorate of Strategic Products and the United States Embassy, provided informal venues for export control officials to meet their international colleagues.

The Keynote Speeches

In the Swedish keynote address, State Secretary Jonas Bjelfvenstam noted the vast and complicated task before states in maintaining strict and effective national export control systems and in promoting effective interaction between national export control authorities and with industry, as well as the overall importance of national export controls in preventing the proliferation of weapons of mass destruction. International treaties, strengthening national laws, catch-all controls, outreach efforts and transit and transshipment, brokering and intangible transfers of technology are issues high on the international agenda that should be given our full attention, according to Mr. Bjelfvenstam. The State Secretary underscored the obligation that United Nations Security Council Resolution 1540 placed on all U.N. member states to establish and maintain effective export controls, suggesting that the conference would provide an opportunity to take stock of implementation work both in the 1540 Committee and member states, and to focus participants' discussions on further implementation measures.

The United States' address described the sustained commitments and actions of countries around the world to prevent WMD proliferation as a "layered defense" against the global weapons of mass destruction threat. The layers consist of the multilateral treaties and conventions that prohibit the

proliferation of nuclear, chemical, or biological weapons, the multilateral export control regimes, programs to eliminate WMD-related facilities and materials and redirect WMD-producing scientific communities to civilian arenas, and finally, mechanisms -- such as the Proliferation Security Initiative -- to respond to actions of proliferators and enforcement efforts to prevent the transfer of items of proliferation concern. Mr. Noble described U.N. Security Council Resolution 1540 as an important step in closing the gap between the global consensus about the treat of WMD proliferation and the concrete action necessary to combat it on the ground, including the need to enact effective national legislation. Noting that some countries may need assistance in formulating their reports and implementing changes, Mr. Noble urged all of the conference participants to redouble advocacy efforts in support of Resolution 1540 implementation.

The Plenary

Plenary sessions were chaired by Paul van Son, Office Director of the U.S. Department of State's Office of Export Control Cooperation, and Richard Ekwall, Director of the Swedish Foreign Ministry's Department for Strategic Export Controls.

A review of the work of the United Nations 1540 Committee by U.N. 1540 Committee expert Richard Cupitt set the stage for discussions throughout the conference. The objective of UNSCR 1540 is to deter and prevent non-state actors from developing, acquiring, trafficking or using WMD and their means of delivery. Dr. Cupitt reported that while the 1540 process had gotten off to a slow start, it is progressing, with over 120 countries having submitted their reports. Noting the difficulty some states had in knowing how to respond to the U.N. questionnaire, the committee is developing a matrix of information for states to supply in their responses. The committee plans to complete assessments by April 2006, but recognizing that the work of the U.N. in this area is long-term in nature, there is a move to extend the committee's mandate.

Presenters from the European Union and Commission gave reports on the non-proliferation activities in their organizations. The Council representative said that the EU's WMD strategy is a significant new development that advances the same goals and UNSCR 1540 and in much the same way. Stressing cooperation as the means of solving the proliferation problem, the EU has embarked on internal EU revisions of

export control processes through peer review and intra-EU dialogue, and is actively engaged in outreach to trading partners outside the EU to meet new EU requirements for export control compliance.

Conference participant heard presentations on recent activities in the Wassenaar Arrangement, Australia Group, Missile Technology Control Regime, and Nuclear Suppliers Group. Highlighting nonproliferation activities by individual countries, presenters from Hong Kong, the United States, and Germany gave sessions related to the benefits of export controls on trade and economic growth, the nuclear threat, the continuing challenge presented by brokering, catch-all and intangible transfers, and the U.S. Megaports Program to aid detection of illicit cargo. A representative from the World Customs organization described WCO activities to support export control goals.

The United Kingdom's Permanent Representative to the Conference on Disarmament described the major initiative to negotiate an Arms Trade Treaty under the purview of the United Nations. Citing growing support for establishing treaty of common standards for conventional weapons trade, the speaker said that the uncontrolled transfers of conventional weapons represent a major threat to international security.

Continuing a tradition in the International Export Control Conferences, representatives of non-governmental organizations presented their perspectives on the proliferation threat and ways to enhance international cooperation. The Stockholm Institute for Peace Research speaker described a proliferation threat environment that is changing from a small number of states developing systems or knowledge of weapons of mass destruction, to increased non-state actor's interest in acquiring WMD materials for improvised devices. The implications of this threat are that industry must play a more central role in non-proliferation and that governments must increase their efforts to work with industry and supply regulations sensitive to industry need. Transparency International and the University of Georgia's Center for International Trade and Security discussed the issue of corruption and its impact on instituting effective export controls. TI and UGA-CITS described their work to identify and provide constructive, practical solutions to widespread corruption problems.

The Plenary session concluded with reports from the Break-out groups on their discussion perspectives and suggestions to enhance export control cooperation individually, regionally, and internationally.

Policy Break-out Group

Policy group discussions revolved around the umbrella theme of UNSCR 1540. The group concluded that the key motivators behind the desire to implement export controls are trade facilitation, security, and their contribution to nonproliferation efforts. The Policy break-out group also addressed the issue of assistance provided for in the resolution, concluding that the 1540 Committee is at a very early stage in its development, with many outstanding questions regarding what assistance is available, desirable, or would be most useful over the long term.

The group suggested that it might be helpful for the 1540 Committee to not only distribute questionnaires on export control measures taken but also on what type of assistance is needed. In particular, this could help get at the problem of states who may not know what type of assistance they need or can request. The group also agreed that it is important that any assistance keep in mind long-term needs and that the Committee could play an important role in matching technical assistance offers with requests for assistance, recognizing that the demand for aid could well outstrip the available supply. Lastly, the group noted that export controls comprise only one part of 1540 obligations and suggested that there may be a need for priority setting among different nonproliferation activities, although the group did not make any suggestions in this regard.

The group discussed the issue of small arms and light weapons (SALW) as well as man-portable advanced defense systems (MANPADs) and what regulatory overlaps might exist with regard to UNSCR 1540 and the U.N. Programme of Action. Participants discussed the Programme of Action review conference and observed the fact that the UN will take up the issue of arms brokering for the first time.

The group also raised questions about the functioning of multilateral export control regimes. In particular, whether the regimes are transparent enough, especially for those who unilaterally adhere to regime guidelines? There was a discussion on how to balance the interest in recruiting new members

with concerns over reduced effectiveness with a larger membership in consensus-based decision making bodies. Other related issues concerned how non-member states might influence decision making inside the regimes or indirectly via relations with regime members, and what outreach efforts the regimes plan to undertake.

The group heard from a UK Customs expert who outlined the service's recent operational export control exercises, which had exposed key challenges and practical solutions to address fast-changing proliferation issues. The exercises also highlighted procedural changes needed to meet the state's obligations under UNSCR 1540. Of particular interest to the group was the fact that the exercise required communications and coordination across a number of state agencies and how the lessons learned would include the need for enhanced information sharing up and down the lines of defense.

Other issues discussed by the policy group included issues raised in the plenary sessions, including the Proliferation Security Initiative (PSI), questions surrounding intangible technology transfers, the Megaports Program, and the work of NGOs.

With regard to the Proliferation Security Initiative, the policy group addressed questions of the PSI's core principles, how it works in practice, the fact that it is an activity rather than an organization and what this suggests with regard to nonproliferation-related organizational activities (e.g., monitoring and verification), and how it emphasizes states' need to respond quickly to challenges.

The policy group also discussed the issue of intangible technology transfers, noting that they apply to both munitions and dual-use but recognizing that the latter represents the greater challenge. Participants questioned how to define ITT transactions and how this would, in turn, impact legislative, regulatory, and enforcement activities. The group agreed that although most ITT is discovered post-hoc, there are important deterrents to this activity. Further issues stressed by the group included the need for proportionality and flexibility as well as balance in a nation's science and technology interests with its security concerns.

This led to a discussion of catch-all controls, which the group viewed as probably being the most difficult where applied in a dual-use context. The

group discussed how the catch-all mechanism comes into effect, including cases where prior knowledge or suspicion of illicit activity on the part of industry is handled and what happens along the process where these concerns arise, and what role customs plays in such cases

Following the plenary presentation on the U.S. Megaports initiative, the policy group explored questions surrounding costs as well as spin-off benefits arising from having Megaport program technologies and assets available. It was emphasized in the policy group that while the technology employed in this program is quite advanced, it also can be used by other countries to identify less sophisticated but equally dangerous nuclear materials.

The group explored issues with regard to the conventional arms treaty (CAT), recognizing that recent changes in the world environment have led to a greater sensitivity on the part of many to the effect that small arms proliferation is having on developing countries and their regional security. The group questioned the treaty's possible scope, the influence NGOs might have on the process, and its prospects for success. The CAT would not mimic the Ottawa process where NGOs took the lead in banning landmines, one reason being that the CAT does not seek to ban conventional arms trade. Rather, the CAT concept seeks a balance between trade and security interests, emphasizing the need for responsible arms sales. NGOs do have an important role to play, particularly as a constructive critic of government.

Finally, the policy group enjoyed presentations from several leading NGOs with particular expertise on export control matters. Representatives of the Monterey Institute for International Studies, the SIPRI, and Center for International Trade and Security outlined their export control-related activities, products, and resources.

Licensing Break-out Group

Following the underlying theme of the conference, the Licensing group discussed UNSCR 1540 in light of its implications for licensing officers. One third of the group indicated that they had been involved in writing their countries' reports, noting that licensing officers need to look at munitions and dual use, catch-all and end-user issues to effectively implement 1540. Initial difficulties in implementation and preparing country reports included

vagueness in reporting requirements and criteria. The new reporting matrix provides a helpful checklist of what to do and subsequent clarifications have helped. While supportive of the resolution, some participants questioned whether the fact that 70 countries have not submitted reports doesn't call into question the effectiveness of 1540.

Evolving from the plenary presentation on the NGO perspective of the proliferation threat, there was discussion of the idea of a pan-country licensing system for those companies doing business across borders. The group recognized that work in the European Union is a start, but concluded that it is a complex area and politically difficult.

The end-use and end-user screening presentation by Federal Office of Economics and Export Control (BAFA) Germany officials suggested that controls must be flexible and the approach differentiated in order to succeed in getting industry cooperation.

The U.S. Department of Defense presentation on the advisory role of the military for munitions and dual use licensing included the observation that it is critical that ministries of defense devote some resources to be a part of the licensing process, whether as a referral agency or licensing body. Sweden described a more informal process where the Inspectorate for Strategic Products can use its Ministry of Defense, defense research establishments, universities, and other sources for collecting relevant data on applications. French participants noted they use a similar approach.

Regarding product classification and industry outreach, Swedish representatives described their system and ways to assist exporters to find out if a product is on a control list. Discussion followed on the difficulties involved in handling uncontrolled items and in classifying software and technology. Presenters focused on the difficulties in reaching out to medium and smaller companies that may not realize their goods can be used for military purposes and are not aware of their obligations. The means to raise this awareness include national cooperation and seminars. The media can be effectively used for outreach. It was noted that the amount of outreach a country does depends on personnel, number of licenses, etc. In the UK there is also a helpline – calls can be taken or users can send e-mail. This won't answer every question, but many people ask fairly basic questions, so a helpline system can lessen the load on individual licensing officers.

A Swedish industry representative talked to the group about his company's efforts to ensure compliance with export control regulations. A corporate code of ethics, awareness training for employees, a trade compliance unit, and continuous assessment are tools to ensure compliance.

Enforcement Break-out Group

The Enforcement group chose to explore a number of discussion questions as it examined the main themes and presentations of the export control conference. Designed to reveal information on each country's enforcement activities and approaches, questions included: What are the main products for control and major industrial facilities' controlled production? Are resources and training available to assist in doing the job? Are there common risk factors? Would import controls help? Does your country do outreach? What cooperation is there between licensing and law enforcement authorities?

A main observation from the enforcement perspective was that after September 11 and the introduction of the UNSC 1540, priorities for enforcement officials have expanded exponentially. Discussions concluded that it is difficult to prioritize activities, but necessary with scarce resources. Not surprisingly, the group felt that priorities should be in the area of enforcement and noted the importance of policymakers understanding the requirement for adequate resources for enforcement. Participants suggested creation of a one-stop-shop for technical expertise. With regard to resources, it was observed that export control enforcement does not generate revenue that import control does, although export control access to resources is vital to national security.

Swedish customs made a presentation on the Swedish Customs STAIRWAY, a flexible customs service to Swedish business community. Small companies are allowed to submit their applications on-line, which are then processed by the risk assessment system. Every company in Sweden is registered in the STAIRWAY system. The system offers accreditation and assigns different ratings (stairs, five in total) depending on the export control compliance record and performance of a particular business entity. An integral security component of the STAIRWAY is STAIRSEC, which offers comprehensive risk assessment to the companies and that, in turn, helps them identify vulnerabilities. Discussion of the presentation focused on security checking processes and outreach.

The U.S. Customs and Border Patrol presentation focused on the U.S.' National Targeting Center that integrates intelligence and other information on exports and imports and provides a tool for targeting and risk management by customs and border security officials. Other U.S. presentations were on the work of Commerce's enforcement field offices and the International Customs Enforcement role in export controls.

A presentation on providing technical expertise dealt with ways to assist enforcement officials with commodity identification. The group concluded that commodity identification training for front line export control enforcement officials and real-time access to technical expertise should be a top priority.

The group noted that in the next conference it would like reports on what countries are actually doing in the enforcement area in order to compare practices and share experiences.