

# Brokering Controls

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# Brokering Controls – Global Initiatives

- Small Arms and Light Weapons
- Weapons of Mass Destruction

# Global Initiatives - Small Arms and Light Weapons 1

- UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects – States undertook to “develop adequate legislation or administrative procedures regulating the activities of those who engage in small arms and light weapons brokering and to develop, at the global level “common understandings of the basic issues and the scope of the problems...”

## Global Initiatives - Small Arms and Light Weapons 2

- “Report of the Group of Government Experts established pursuant to General Assembly Resolution 60/81 to consider further steps to enhance international cooperation in preventing, combating and eradicating illicit brokering in small arms and light weapons.” This report provided:-
  - (a) a detailed summary of the activities that constitute brokering together with a description of those closely associated with it;
  - (b) recommendations on national implementation and administrative procedures, international cooperation on sharing information, international assistance and capacity building and effective reporting.

## Global Initiatives - Small Arms and Light Weapons 3

- “Third Biennial Meeting of States to the Programme of Action (2008) acknowledged the importance of implementing the recommendations in the report of the Group of Government Experts.
- The Protocol against the Illicit Manufacturing of and Trafficking in Firearms adopted in 2001 called for states “to consider establishing a system for regulating the activities of those who engage in brokering.

# Global Initiatives – Weapons of Mass Destruction

- UNSCR 1540 Called on states to “detect, deter, prevent and combat, including through international co-operation when necessary, the illicit trafficking and brokering in” nuclear, chemical or biological weapons and their means of delivery.

# UK Brokering Controls - Enabling Legislation

- The Export Control Act 2002 introduced powers to make “trade controls”.
- There is a power within the Act to impose controls on the acquisition, disposal or movement of goods or on activities which facilitate such acquisition, disposal or movement.
- UK legislation does not refer to “trafficking or brokering” but instead talks about “trade controls”.
- The Act provides that powers may be exercised outside the UK (extra-territorial controls) where activities are conducted by a UK person or a person acting under the control of a UK person. Both companies and individuals are covered by the term “UK person”.

# Who is caught by controls?

The classic concept of a broker but also:-

- UK based national or multi-national manufacturing companies arranging trade between 3<sup>rd</sup> countries from the UK – often in items manufactured by them or for them overseas.
- Overseas companies exhibiting at trade fairs in the UK should they seek to pursue discussions on trade between 3<sup>rd</sup> countries during such events.

## The Trade in Controlled Goods (Embargoed Destinations) Order 2004

- Prohibits trade in all goods on the UK Military List from any overseas country to an embargoed destination.
- Prohibits anyone in the UK or a UK person anywhere, from supplying or delivering, agreeing to supply or deliver or doing any act calculated to promote the supply or delivery of controlled goods to any embargoed destination listed in the Schedule without a licence.
- The “act calculated to promote” provision means that provision of transport, finance, insurance etc are also licensable acts and therefore prohibited with out a licence.
- Destinations listed in the schedule are those subject to UN, EU, OSCE or national arms embargoes.

# The Trade in Goods (Control) Order 2003

- Prohibits anyone in the UK from transferring, acquiring or disposing of controlled goods from one third country to another without a licence.
- Also prohibits any person in return for a fee, commission or other consideration from doing any act or agreeing to do any act, without a licence, which would promote the arrangement or negotiation of a contract for the acquisition or disposal of controlled goods where the person knows, or has reason to believe, that the goods will be moved from one third country to another third country.
- Exempts those whose sole involvement is to provide transport, finance, insurance or general advertising or promotion services.

# Types of Licence Issued - 1

- Standard Individual Trade Control Export Licence (SITCL) – Specific to a named trader and covers involvement in the trading of a set quantity of specific goods between a specified overseas source and an overseas destination country with a specified consignor, consignee and end-user.
- In 2006 there were 79 SITCL applications, 8 of which were refused.

## Types of Licence Issued - 2

- Open Individual Trade Control Export Licence (OITCL) – Specific to a named trader and covers involvement in the trading of specific goods between specified overseas sources and overseas destinations countries and/or specified consignor(s), consignee(s), and end-users(s).
- These are concessionary forms of licence for those with a proven track record of trade or export licence applications.
- In 2006 there were 41 OITCL applications, 11 of which were refused.

## Types of Licence Issued - 3

- Open General Trade Control Licence (OGTCL) – this allows trade in most activities in respect of military and paramilitary equipment on the UK Military List moved to or from specified countries. Traders must register with the licensing authority before they can use the licence.

There are just over 350 registered users of the OGTCL.

# Export Control Compliance

- Those that possess OITCLs or are registered to use the OGTCL are subject to compliance visits and checks.

## Review of trade controls

- The Government undertook to review trade controls (and other measures introduced for the first time under the Export Control Act 2002) 3 years after implementation
- Review took the form of a public consultation. Views were sought on the impact and effectiveness of the controls and on a number of options for further change.
- A response to the consultation was published in July 2008.

## The following changes to brokering controls have been agreed

- Extraterritorial controls on SALW will be extended to all destinations.
- Consideration is being given to extending extraterritorial controls to other categories of weapons.
- UK transport providers, operating anywhere in the world, involved in the movement of SALW will be regulated.

## Controls on Weapons of Mass Destruction

- Anti-terrorism, Crime and Security Act 2001 includes provisions outlawing activities that would constitute brokering for nuclear, chemical or biological weapons.
- Re-cast of Council Regulation (EC) 1334/2000 on dual-use items will include a provision that a licence will be required if the broker has been informed by the competent authorities of the Member State where he is resident or established that the items in question are or may be intended in their entirety or in part for use in connection with the development, production, handling, operation, maintenance or storage, detection identification or dissemination of chemical, biological or nuclear weapons or other nuclear explosive devices or the development, production, maintenance or storage of missiles capable of delivering such weapons.