

# The Spanish control system on foreign trade in defence material Law 53/2007

IX Conference on Exports  
Controls

Cavtat (Croatia), 20-22 October 2008

## Basic Spanish legislation

- Organic Law 12/1995 of 12 December on the Repression of Smuggling. This Law defines as a criminal offence, inter alia, the unauthorised export of defence or dual use items or the export with an authorisation obtained by fraudulent means (Art 2.1.j)
- Law 53/2007 of 28 December, controls foreign trade of defence material and dual use items
- Royal Decree 1782/2004 of 30 July, approves the control Regulation on the foreign trade of defence material, other material and dual use items and technologies
- Ministerial Order ITC/822/2008, of 19 February 2008, updates Royal Decree 1782/2004 control lists
- Council Regulation (EC) N° 1334/2000 of 22 June 2000, sets up a Community regime for the control of exports of dual use items and technology, and subsequent updates
- Exports of defence materials and other material banned:
  - \* Shackles (for feet) and chains (for waist) (December 2001)
  - \* Cluster ammunitions (July 2008)

## Law 53/2007 (Origins)

- NGO (IANSA, Intermón-Oxfam, Amnesty International, Saferworld), result of “Control Arms” campaigning (2003)
  - Parliamentary agreement on 13 December 2005:
    1. Transparent assessment of applications with periodic controls
    2. Strict application and scrupulous interpretation of the EU Code of Conduct criteria
    3. Minimum information and breakdown of export statistics of DM and DU goods
    4. Submission of statistics every 6 months (authorised and undertaken exports) and annual testimony of the Secretary of State for Tourism and Trade before Congress
- Support international initiatives (Arms Trade Treaty)
- Deadline: 1 year

## Law 53/2007 (Main changes I)

- o Spanish legislation with range of Act
- o Updates the legislation on transfers of defence material and dual use items according to the commitments undertaken by Spain at the international control and non proliferation fora
- o Supports the Arms Trade Treaty, the introduction of restrictions or prohibition on cluster munitions, the strict application of the EU Code of Conduct and OSCE criteria on SALW

## Law 53/2007 (Main changes II)

- Extends the controls to all hunting and sport firearms, their parts and ammunition (Resolution 55/225 UN, Protocol on illicit trade in firearms)
- Includes information on means of transport, transit countries and financing (financing only for brokering activities)
- Controls licensed production agreements

## Law 53/2007 (Main changes III)

- Parliamentary scrutiny: the Government is committed to the submission of detailed statistics before Congress every 6 months and the testimony of the Secretary of State for Trade on an annual basis. Final report includes recommendations
- Spanish statistics: Enhanced transparency (end-use, nature of end user, technical assistance)

### Other options:

- \* Data broken down into product category – recipient country
- \* Denials (recipient country)
- \* More detailed data on SALW
- \* Data on leasing operations, donations, second hand equipment
- \* Data on cooperation programmes on defence material

## Royal Decree on procedures and processing (I)

- Updates the composition of the JIMDDU<sup>1</sup>
- Sets provisions for registration, revocation and suspension in the REOCE<sup>2</sup>
- Establishes a licence of components for the intracommunity transfers of subsystems, components and spare parts (LoI)
- Updates of annexes (control lists)
- Authorises definitive export (sale or donation) of equipment accompanying the Spanish Armed Forces or law enforcement officials in humanitarian or peacekeeping operations

(1) The Inter-Ministerial Regulatory Board on Foreign Trade in Defence and Dual Use Items

(2) Special Register of Foreign Trade Operators in Defence and Dual Use Items.

## Royal Decree on procedures and processing (II)

- Deletes from the “other material” list those products already controlled in the EU Regulation on goods which could be used for capital punishment and torture (restraining equipment)
- Extends the control to all hunting and sport firearms (UN Protocol on illicit trade in firearms): IL y GL
- Includes a list of exemptions by JIMDDU (end use guarantees and report):
  - \* cooperative programmes
  - \* contracts with the Ministry of Defence
  - \* military fuels
  - \* temporary export (repairs, return of goods, trade fairs and exhibitions, evaluation, hunting, sport shooting)

## Defence Material and Other Material under control

### DEFENCE MATERIAL

- EXPORT:

#### LIST OF DEFENCE MATERIAL

- \* 22 articles of the Wassenaar Arrangement Munitions List
- \* Products and technologies from the MTCR
- \* *catch-all* clause

“OTHER MATERIAL” (PSM and firearms)

- IMPORT:

#### LIST OF ARMS OF WAR

- \* 12 articles (articles 1\*, 2, 3, 4, 5, 6, 7\*, 9, 10, 11, 19 of the LDM) and firearms



1. Arms with a calibre of 12,7 mm or less and smooth-bore weapons (calibre of 20 mm or less)
2. Weapons or armament (calibre greater than 12,7 mm.) and Smooth-bore weapons (calibre of 20 mm. or more)
3. Ammunition and components
4. Bombs, torpedoes, rockets, missiles,
5. Fire control systems
6. Military ground vehicles
7. Chemical or biological toxic agents, radioactive materials
8. Energetic materials (propellants and explosives)
9. Vessels of war
10. Military aircrafts
11. Electronic equipment
12. Kinetic energy weapon systems
13. Armoured equipment and constructions
14. Equipment for military training and simulators
15. Imaging or countermeasure equipment
16. Forgings and castings products
17. Miscellaneous equipment, and materials
18. Production equipment
19. Directed Energy Weapon systems (DEW)
20. Cryogenic and superconductive equipment
21. “Software”
22. Technology

## Licences

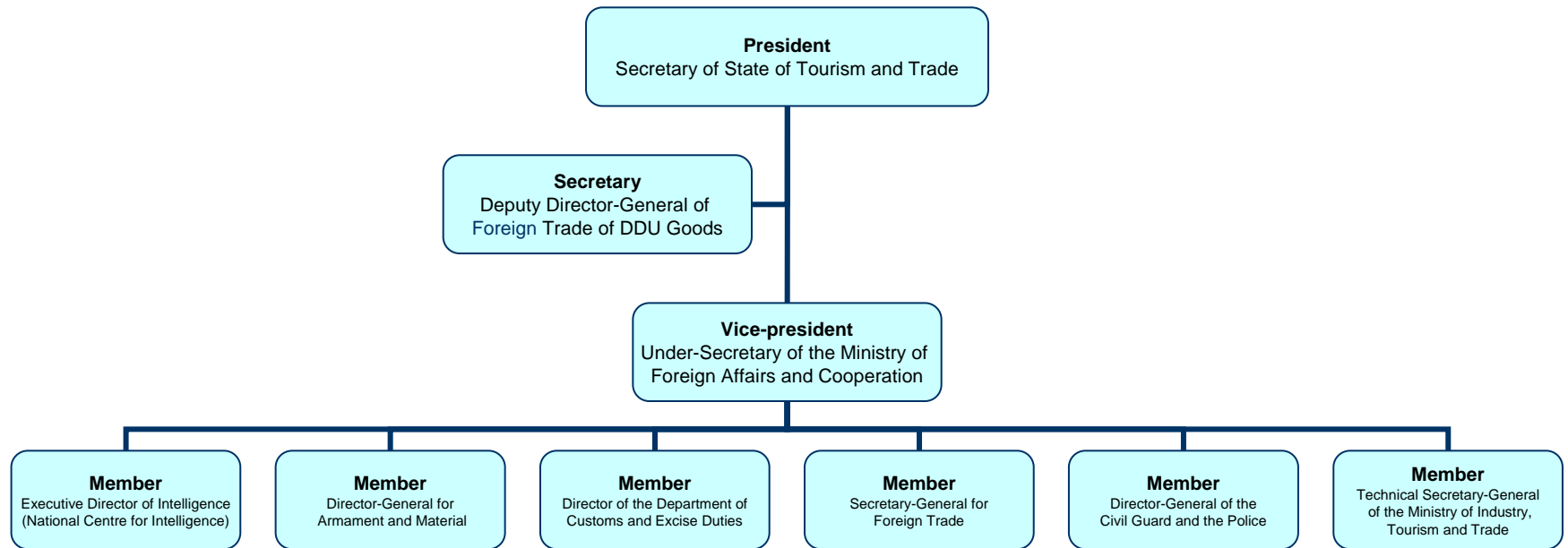
- ❑ Individual Licence (shipments to a specified consignee and country, validity term of 6 months)
- ❑ Global Licence (multiple shipments to several consignees and countries, validity term of 3 years)
- ❑ Preliminary Agreement (implies the consent, in principle, to future exports; an individual licence is needed for these exports, validity term of 3 years)
- ❑ Global Project Licence (multiple shipments to several consignees and countries, cooperation programmes like Lol, validity term of 5 years)

## End use documents

- ❑ International Import Certificate (former COCOM countries)
- ❑ End Use Certificate (issued by the authorities of the importer country)
- ❑ End User Undertaking (issued by the consignee)
- ❑ Entrance Verification Certificate (customs)

Only original documents are accepted. End Use Certificate documents must be validated at the Spanish Embassy in the country of destination

# Inter-Ministerial Regulatory Board on Foreign Trade in Defence and Dual-Use Items (JIMDDU)



## Penalty regime

### Suspension or revocation

- ❑ An export authorisation can be suspended or revoked (article 8 of Law 53/2007)

### Penalties and sanctions

- ❑ According to Organic Law 12/1995 of 12 December on the Repression of Smuggling, the unauthorised export of defence or dual use items can result in a prison sentence or a fine of three to four times the value of the goods involved in the transactions

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