



Implementing Export Control Lists

The European Union Experience

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Components of a National Export Control System:



- Comprehensive Legal and Regulatory Framework
- National Control List
- “Catch-All” Provisions
- Transparent Licensing Processes and Procedures
- Interagency License Review
- End-Use/End-User Verification
- Administrative and Criminal Enforcement
- Penalties
- Industry-Government Relations
- International Cooperation and Nonproliferation Regime Adherence



Looking closer at a licensing system

- Some Key Features of an Effective and Efficient Export Licensing System
 - Comprehensive Legal Foundation
 - **Control Lists Aligned with International Examples**
 - Transparent Procedures
 - Robust System for Technical and Policy Review
 - Access to Tools to Evaluate of Stated End-Use and End-Users
 - Ability to Respond to Changing Circumstances
 - Exporter Community Participation
 - International Collaboration and Information Exchange



Control Lists

- List of items that a country has determined require special export controls in the interest of national security or foreign policy
 - *Military items*
 - *Dual-use items*
 - *Software and Technology*
- Objective:
 - To control only those items that actually need to be controlled
 - *minimize effect on commerce in non-strategic goods*
- Discrepancy of control list numbers compared to the Harmonized Tariff Code
- Sources for Items on National Control List
 - *Multilateral Export Control Regimes*
 - *Wassenaar Arrangement (arms and conventional dual-use)*
 - *Nuclear Suppliers Group*
 - *Missile Technology Control Regime*
 - *Australia Group (chemical & biological items)*
 - *Unilateral Controls: National security and foreign policy concerns unique to each country*
 - *Advice from private sector on developments in each industry*

Control List



- **Military List**

- Goods pecially designed, developed, configured, or modified for a military application
- Includes entire product as well as specifically designed parts, accessories, and components
- Services, technology, and software related to these goods
- These items continue to be controlled as military items even when used in purely civilian applications

- **Dual-Use List**

- Goods designed for civilian use that may also have military applications
 - Civil aircraft
 - Alloys of various metals
 - Acoustic object detection and location systems
 - Biological centrifugal separators
- Specifically listed technology and software



Technology

- **Specific technical information necessary for a product's**
 - Development
 - Production
 - Use
- **Technology transfer may be in the form of**
 - **Technical data**
 - Information necessary for activities such as design, development, production, manufacture, assembly, operation, repair, testing, maintenance or modification of controlled items
 - Examples: blueprints, drawings, plans, photographs, diagrams, models, engineering designs and specifications, or manuals.
 - Hard copy (tangible) or electronic transmission (intangible).
 - **Technical services or technical assistance**
 - Examples: instruction, skills, training, working knowledge, or consulting services.
 - Does not require that anything be in writing
- **Technology transfer facilitates independent capability to produce unlimited WMDs**
- **Technology in the “public domain” is usually excluded from licensing restrictions**

“Catch-All” Controls



- **Called “catch-all controls” as they define controls on equipment, software or technology not specified in any control list**
- **The controls are focused on:**
 - *End-User*
 - *End-Use*
- **How does the trader “know”?**
 - **They are “informed” by government**
 - **They are “aware” based on the circumstances**

The European Union



- **The Coal and Steel Community 1951 (Treaty of Paris) brought together the six initial EU members in Western Europe (BeNeLux, France, West Germany and Italy)**
- **Work and development within the Union is carried out through treaties; Rome (1958); Maastricht (1992); Amsterdam (1999); and Nice (2003).**
- **The Treaty of Rome tied the Coal and Steel Community together with the European Economic Community and Euratom**
- **The Treaty of Maastricht established the European Union from the three European Communities. It also opened up for the Monetary Union (in force 1999)**
- **The European Constitution and the Lisbon Treaty**
- **Current cooperation within the EU rests on three pillars – areas of interest**



Three Pillars and the EU

- **First pillar**
 - *The Community pillar*
 - *Deals with economic, social and environmental concerns.*
 - *Provides directly binding Community laws and regulations*
- **Second pillar**
 - *The “Common Foreign and Security Policy” (CFSP) pillar*
 - *Deals with foreign policy and military concerns*
 - *Decisions taken under this pillar do not have the direct legal impact as under the first pillar*
- **Third Pillar**
 - *The “Police and Judicial Cooperation in Criminal Matters” pillar*
 - *Fighting crime is the main priority*

European Union Export Control system



- **Export Control of Arms**
 - **EU Code of Conduct on Arms Exports (1998)**
 - Adopted 1998.
 - Negotiations ongoing regarding a more formally binding legal provision
 - Reporting requirements, User guide and “toolbox”
 - **EU Common List of Military Equipment** – identical to the WA Munitions List
 - **EU Common Position on Arms Brokering**
 - **Pillar 2**
- **Export Control of Dual-Use Products**
 - **EC Regulation No 1334/2000 of 22 June 2000 setting up a Community regime for the control of dual-use items and technology,**
 - **Council Joint Action 2000/401/CFSP 22 June 2000 concerning the control of technical assistance related to certain military end-uses**
 - **Pillar 1 and 2**

EU Code of Conduct on Arms Exports



- **Established in 1998 to further coordinate the arms export license procedures among the then fifteen EU Member States**
- **Consolidation of the major European defense industries spurred efforts to have a harmonized procedure for export control**
- **Initially considered as a tool for further information sharing the EU CoC has developed at record speed**
- **Between 2004-2005 the Code underwent a major revision**
- **Late 2007 EU Commission suggests simplified procedures for arms exports within the Community**
- **Tools developed to use in case an EU arms embargo is lifted**
- **Upgrading the EU CoC to a legally binding instrument – a decision on a common position taken but with no set date**
- **New EU outreach activities started in the spring 2008**

The EU Code of Conduct – Contents



- **The EU CoC currently consists of two parts:**
 - **Eight criteria that each will be considered in an arms export decision**
 - Addressing internal and external factors in the exporting EU Member State and the recipient state
 - **The EU Common List of Military Equipment**
 - Identical to the WA Munitions List
- **The EU CoC criteria are complemented by operative provisions**
- **The User's Guide gives further guidance on how the Member States can use the Code**

The EU Code of Conduct – 8 criteria



- **Criterion 1**
 - **Respect for the international commitments of the Member State**
- **Criterion 2**
 - **Respect for human rights in the country of final destination**
- **Criterion 3**
 - **Internal situation in the country of final destination – Armed Conflict**
- **Criterion 4**
 - **Preservation of regional peace, security and stability**
- **Criterion 5**
 - **National security of the Member State, extension to allies**
- **Criterion 6**
 - **Behavior of the buyer country; its attitude to terrorism; its alliances and respect for international law**
- **Criterion 7**
 - **Risk of diversion of unwanted re-export**
- **Criterion 8**
 - **Compatibility of the arms export with the technical and economic capacity of the recipient country, however in view of the country's legitimate right to defense.**



EC Regulation 1334/2000

- **The EC regulation 1334/2000 setting up a Community regime for the control of exports of dual-use items and technology**
 - **Pillar 1 and legally binding – Part of the Acquis Communautaire**
 - **Annex I the Control List 10 categories of products from 0-9**
 - **Annex II Community General Export Authorization # EU 001**
 - Australia, Canada, Japan, New Zealand, Norway, Switzerland, US
 - **Annex III Form for Dual-Use Export Control License**
 - **Annex IV List of items that have to be licensed within the EU**
 - ***National Implementation***
- **The Council Joint Action of 22 June 2000 concerning the control of technical assistance related to certain military end-users**
 - **Pillar 1 and legally binding – Part of the Acquis Communautaire**
 - ***National implementation***

EC Regulation 1334/2000 – Categories of Products and Technology



- **Category 0 – Nuclear Materials, Facilities, and Equipment**
- **Category 1 – Materials, Chemicals, “Microorganisms” & “Toxins”**
- **Category 2 – Materials Processing**
- **Category 3 – Electronics**
- **Category 4 – Computers**
- **Category 5 – Telecommunications and “Information Security”**
- **Category 6 – Sensors and Lasers**
- **Category 7 – Navigation and Avionics**
- **Category 8 – Marine**
- **Category 9 – Propulsion Systems, Space Vehicles and Related Equipment**



List changes in the EU

- **Results from all regime plenaries collected in December**
- **The list changes are transformed into one document**
- **The Commission (DG Trade) presents this document to the WPDU early in the year – first edition is in English**
- **Second edition is translated by the Council judicial translators to all official languages (Maltese and Luxembourgish exempted)**
- **Second translated edition is circulated and capitals give a clear signal**
- **The document is lifted to the EU Ministerial Council for approval**
- **The revised list is made public in the EU Official Journal after Council approval**
- **The new changes are made legally binding for all EU Member States through publication in the Official Journal**

Implementing the EU Code of Conduct on Arms Exports and the EC Regulation 1334/2000 on Dual-Use



- **Changes are made at the EU level**
- **Each EU Member State is bound by these decisions**
 - **Politically**
 - **Legally**
- **Implementation is executed at the national level**
- **How to implement the code and regulation is not specified. Secondary legislation is hence up to the Member State.**
 - **No general requirements for special ministries**
 - **No general requirements for specific legal instruments**

European export control systems are therefore not identical

What happens next?



Developments in the EU export control system



Revising the EC Regulation 1334/2000

- **UNSCR 1540 in 2004 and the EU WMD Strategy in 2003 brought on calls for revision**
- **Recall part of common renewal cycle**
- **First proposal for a recast of the regulation presented by Commission January 2007:**
 - **Dual-use brokering, transit, transshipment as well as new ways of updating, working with and maintaining the document**
- **Negotiations still ongoing - possible decision in fall 2008**
- **Waiting for the Lisbon treaty?**
- **Substantive outreach program**

Formalizing the EU Code of Conduct

- **Decision taken to formalize the code – but when?**
- **Will new procedures be put in place for intra-community arms exports?**



Thank you for your time and attention!

QUESTIONS?

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