

# **Investigation and prosecution of export control violations: trends and challenges**

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*9th International Export Control Conference*

*Cavtat, Croatia, 20-22 October 2008*



## UNSCR 1540 obliges MS to ...

... establish, develop, review and maintain appropriate effective national export and trans-shipment controls over such items [nuclear, chemical, or biological weapons and their means of delivery], including appropriate laws and regulations to control export, transit, transshipment and re-export and controls on providing funds and services related to such export and trans-shipment such as financing, and transporting that would contribute to proliferation, as well as establishing end-user controls; and **establishing and enforcing appropriate criminal or civil penalties for violations of such export control laws and regulations** and to establish effective national control lists



# Legal options

- Additional obligations for EU Member States: dissuasive, proportionate and effective sanctions
- Examples of administrative sanctions:
  - financial penalties, revocation of export licences, loss of right to privileges (e.g. to simplified procedures), arguably also loss of property rights through confiscation.
- Examples of criminal sanctions:
  - fines, imprisonment and suspended sentences.



# National approaches

- Effectiveness: what level is a deterrent for individuals and companies?
  - Financial penalties
  - Loss of right to privileges
  - Loss of property rights
  - Prison term
  - Suspended sentence

-->Prevention is key

AND: has to fit the national legal tradition and system



# Personal Responsibility of the Individual - legal options

Subject to punishment is anyone **acting** on one's own initiative

Subject to punishment is anyone who **organises** an illegal transport and orders the staff to carry it out.

Subject to punishment is anyone who knows about or tacitly approves infringements in his area of responsibility, but **does not intervene**.

Subject to punishment is anyone who is accountable for the violation because of a **breach of his duty of care**



# Prosecution challenges include...

- ❖ Insufficient dedication of resources to detection
  - Insufficient legal basis
  - Insufficient cooperation (interagency, interagency, international)
  - Lack of awareness, training and/or institutional memory
  - Collecting evidence: in other countries, intelligence ...
  - Often need to prove intent/ end-use
  - Policy



## ... more challenges

- Conflicting interests of prosecution and intelligence services
- Primary goal of prevention
- Increased blurring of lines between export control, financial sanctions (incl. proliferation financing) and anti-terrorist legislation
- Expanding complexity of export control



# **Expanding the concept of export control - enforcement implications**

- ❖ Term 'export control' - accurate reflection of reality? (trade control, transfer control...):
  - What items are governments seeking to control? (dual-use items incl. technology/ITT, software, technical assistance)
  - to whom and for what purpose? (catch-all/end-use controls, deemed exports, ...)
  - What types of activities (which actors in the supply chain (producers, shippers/transport agents, traders, brokers, freight forwarders, financiers)
  - Particularity of EU



# Lessons learnt - legislation

- Need for comprehensive, clear legislation accessible to all actors in the exporting chain and to enforcement actors
  - include lists of controlled items and a catch-all instrument
- Adopt laws specifically for export control-related offences
- Consider possible liability for all actors in the exporting chain
- Cover intent, negligence and attempted violations
- Penalties that are both an effective deterrent and proportionate to the offence
- Provide enforcement actors with adequate and clear legal powers (trade audits, confiscation, search, communication surveillance; powers in special economic zones; interception
  - incl. preventive seizures)
- **REGULAR REVISION OF LAWS**



# Build capacity

- Provide adequate resources that reflect the needs of the export control system and the gravity of the potential proliferation consequences.
- Equip customs officers with the training, information and incentive they need to identify suspicious activity and consignments
- Conduct awareness raising and information activities with all enforcement actors and prosecutors (importance of export controls, the relevant international, EU and national legislation, and the structure of the enforcement system)



# **Increase awareness+knowledge**

- Concentrate expertise related to export controls on dual-use goods (within the prosecution service, customs service, investigators, licensing authority etc.)
  - avoid duplication, contradictions, disputes
  - Maintain institutional memory (through records, internal recruitment, sharing of expertise)
- Systematically build and maintain the knowledge base (institutional memory, training, sharing of experience and learning between agencies, countries and export control regimes)



## 3 C's

Establish and strengthen structures, agreements and modalities for international cooperation (intelligence and detection, investigations, extradition, interceptions)

Establish structures, agreements and modalities for coordination, cooperation and communication between national enforcement actors

- Share information between enforcement agencies including—to the extent possible—intelligence services (electronic info. sharing, databases)



# Effective enforcement system

- Codify and enforce a clear division of competences and responsibilities between actors involved in detecting, investigating and prosecuting export control offences
- Regularly review the enforcement **system** (adjust to legal, political, technological changes and procurement patterns, gaps identified etc.)
- Requires ability and willingness to recognize and address weaknesses in the system (breakdown in communication, corruption...)



# Prevention is key

- Conduct outreach with exporting industries and others in the exporting chain, alerting them to correct procedures and licensing requirements as well as the relevant legislation and potential sanctions
- Industry a key partner in non-proliferation



**THANK YOU**

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