



Export Group for Aerospace, Defence & Dual-Use



15th EGADD ANNUAL MAIN MEETING 2018

Wednesday 26 September



Export Group for Aerospace, Defence & Dual-Use



WELCOME & INTRODUCTION

Spencer Chilvers,
Rolls Royce



Export Group for Aerospace, Defence & Dual-Use



Chris Barrell

ECJU



Department for
International Trade

An Overview of UK Export Control September 2018

Chris Barrell
Deputy Head, Export Control Joint Unit



Export Control Joint Unit (ECJU)

Comprises staff from:

- Department for International Trade (DIT)
- Foreign and Commonwealth Office (FCO)
- Ministry of Defence (MOD)

109 ECJU staff process around 15,500 military, nuclear, dual-use and all 'trade' licence applications each year.

MOD team also handle circa 2,700 "Form 680" applications per year

ECO is the Government's regulatory body for military and dual use exports



Licensing Performance

- For Standard Individual Export Licence Applications we are completing around 83% of applications within the 20 day target;
- For Open Individual Export Licences we are completing around 70% in 60 days;
- Long outstanding case - for SIELs against the 99% in 60 working day target the performance is currently sitting at around 96%;
- No useful data yet on Control List Classification Service.



Current Challenges

- These are wide-ranging: Geo-political, economic, globalisation, regulatory, Brexit, as well as close scrutiny from the public, Parliament and the media;
- The range of topics affecting export control are not new, but, the topology of the landscape is ever changing;
- Though, just in case, let's not forget Brexit!!
- New policy for 'illicit activity'. The Government may take into account the risk that the proposed legitimate activity will directly or indirectly facilitate other activities that violate UK export control or sanctions legislation. In doing so, the Government will consider, inter alia, the conduct of the licence applicant.



Brexit

- The UK will be leaving the EU on the 29th of March 2019. The UK and EU have reached an agreement on the terms of a time-limited implementation period;
- In the likely scenario where we reach a deal with the EU, common rules will remain in place until the end of the period meaning businesses will be able to trade on the same terms until the end of 2020;
- In August, we released a 'technical notice' outlining what changes would occur to the export control framework following a 'no deal' exit from the EU in March 2019;
- The main change that would happen on exit day is that licences would be required to export controlled items to the EU that currently move licence-free within the EU.



Brexit

- To minimise the impact that this will have on exporters, we would put in place an Open General Export Licence covering exports of dual-use items to all EU Member States;
- The other change is that licences granted by EU Member States will no longer be valid for export from the UK, and licences granted by the UK will no longer be valid for export from the EU;
- This means that companies exporting from the UK will need to acquire a UK licence to export from here and vice versa.



Recast of EU Dual-Use Regulation

- The Bulgarian Presidency negotiations have progressed faster than we had expected, which we welcome;
- There are some issues which many member states still consider contentious. These are likely dominate discussions during the Austrian presidency and include:
 - ❖ an autonomous EU control list for certain dual-use items,
 - ❖ a human rights end use control,
 - ❖ The scope of proposed new EU General Export Authorisations
- Given it is entirely possible that the overall negotiations on this proposal won't conclude until after we leave the UK, it is in our interest to continue to negotiate and influence the eventual outcome as much as possible while we can.



Scrutiny and Transparency

- We have one of the most transparent systems of export control. We produce quarterly statistics, as well as an annual report;
- The Committees on Arms Export Controls was reformed earlier this year. This is a cross party Parliamentary committee that scrutinises the Government's export licensing system. It is currently undertaking a review of the 2017 Annual Report;
- In many respects, the range of topics affecting export control are not new, but, the topology of the landscape is ever changing.



New Digital Platform - LITE

- Unfortunately, LITE has been delayed, but, we now have the first phase to demonstrate.
- There will be five phases for LITE:
 - The initial tool will assess military goods only. It will also assess some basic software and technology. It will also help you find the relevant Open General Licence. It will also issue with a no licence required letter, if your goods are not controlled – though, you'll have to check out the end-user;
 - A final tool that will assess both military and dual-use goods, as well as software and technology. Again, it will also help you find the relevant Open General Licence and produce a no licence required letter, if your goods are not controlled. This should be complete by the end of this year
 - The tool, plus an ability to apply for a licence. There will be dashboards for both exporters and ECJU to track progress of cases and provide a case history. This should be available in the first part of 2019



New Digital Platform - LITE

- We will add on trade licences, technical assistance, F680s etc. This will mean that all our licences will be electronic
- Finally, any changes that are necessary from the earlier phases, plus some more sophisticated interrogation to allow us to be smarter when carrying our compliance checks, producing the annual report etc.
- One of the main things I want to do is to move away from the various licence types, so that you, as exporters, can just tell us the business you want to do and we give you the appropriate licence
- We also intend to generate a 'database' of items and end-users/consignees for each company, so that you can easily apply for licences for repeat business. As you use each of our services, this information should be added to your LITE account (e.g. whether or not an item is controlled, whether or not there are concerns with end-users).



New Digital Platform - LITE

- Now a demonstration of the initial phase that will assess items against the military list, provide a dashboard of OGEL registrations and allow you to register for an OGEL. It will also provide an NLR letter if your items are not controlled.
- Over to Adam Cook



Export Group for Aerospace, Defence & Dual-Use



Aaron Dunne

HMRC



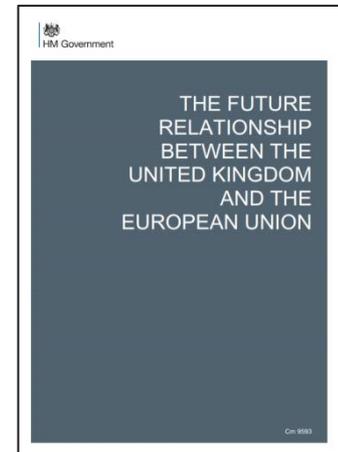
HM Revenue
& Customs

EU Exit and Customs

Aaron Dunne
Stakeholder Engagement and Analysis
EU Exit Customs Policy Team

White Paper – 12 July

- Government determined to build a **new relationship** that works for both the UK and the EU
- UK and the EU should focus on ensuring continued **frictionless access** at the border to each other's markets for goods.
- The Government's vision is for an **economic partnership** that includes:
 - **Common rulebook** for goods including agri-food
 - **Participation** [...] in those EU agencies
- The phased introduction of a new **Facilitated Customs Arrangement**. In combination with **no tariffs** on any goods.
- **Binding provisions** that guarantee an open and fair trading environment



Facilitated Customs Arrangement (FCA)

- A core element of the UK's proposal is the UK and EU working together on the phased introduction of a new **Facilitated Customs Arrangement**, avoiding customs checks and controls between us



- This would **remove the need for customs processes** between the UK and the EU, including customs declarations, routine requirements for rules of origin, and entry and exit summary declarations



Tariffs

This would mean:

- a) Where a good reaches the UK border, and the destination can be **robustly demonstrated by a trusted trader**, it will pay the UK tariff if it is destined for the UK and the EU tariff if it is destined for the EU.

- b) Where a good reaches the UK border and the destination **cannot be robustly demonstrated**, it will pay the **higher** of the UK or EU tariff. Where the goods destination is later identified to be a lower tariff jurisdiction, it would be eligible for a repayment from the UK government equal to the difference between the two tariffs.



Areas for discussion

The UK recognises that [...] the EU would need to be confident that goods cannot enter its territory without the correct tariff and trade policy being applied. The UK therefore proposes a range of **areas for discussion** with the EU:

- 1) a mechanism for the **remittance** of relevant tariff revenue
- 2) a new **trusted trader scheme** to allow firms to pay the correct tariff at the UK border
- 3) The UK and the EU should agree the **circumstances in which repayments can be granted**
- 4) UK would maintain a **common rulebook** [...] including the UCC and rules related to safety and security
- 5) There will need to be **appropriate mechanisms** for the UK to implement new rules related to customs with the EU



Additional facilitations

The UK will [also seek] to:

1. Accede to the **common transit convention**
2. Agree **mutual recognition** of Authorised Economic Operators (AEOs)
3. Introduce a **range of simplifications**, including implementing self-assessment over time to allow traders to calculate their own customs duties and aggregate their customs declarations
4. Speed up **authorisations processes**, for example through increased automation and better use of data
5. Make existing **simplified procedures easier** for traders to access



'No deal' preparations

- It remains the Government's firm view that it is in the best interests of both sides to find a **good and sustainable future relationship**, which this proposal should make possible.
- But it is responsible to continue preparations for a **range of possible outcomes**, including for a 'no deal' scenario.
- Given the short period remaining before the necessary conclusion of negotiations this autumn, the Government has agreed that preparations should be **stepped up**.



Technical Notices – 23 August

- These notices will set out information to allow businesses and citizens to understand what they would need to do in a ‘no deal’ scenario, so they can make **informed plans and preparations**.
- A scenario in which the UK leaves the EU without agreement (a ‘no deal’ scenario) remains **unlikely** given the mutual interests of the UK and the EU in securing a negotiated outcome.
- HMRC Technical Notices:
 - Trading with the EU if there's no Brexit deal (**Customs**)
 - VAT for businesses if there's no Brexit deal (**VAT**)
 - Classifying your goods in the UK Trade Tariff if there’s no Brexit deal (**Tariffs**)



Customs – preparation (1)

- Businesses should consider how a ‘no deal’ scenario could affect them, and may want to begin taking steps to **mitigate against such a risk**, however unlikely.
- In summary, **actions** businesses can take now to prepare include the following:
 - understand what the likely changes to customs and excise procedures will be to their businesses in light of this technical notice
 - take account of the volume of their trade with the EU and any potential supply chain impacts such as engaging with the other businesses in the supply chain to ensure that the necessary planning is taking place at all levels



Customs – preparations (2)

- businesses should consider the impact on their **role** in supply chains with EU partners. [...]
- if necessary, put steps in place to renegotiate **commercial** terms to reflect any changes in customs and excise procedures, and any new tariffs that may apply to UK-EU trade, and familiarise themselves with the key processes of importing and exporting outside of the EU
- consider how they will submit customs **declarations** for EU trade in a ‘no deal’ scenario, including whether they should engage the services of a customs broker, freight forwarder or logistics provider to help, or alternatively secure the appropriate software and authorisations



Customs - impacts

For businesses trading with the EU, the impacts would include:

- businesses having to apply the same customs and excise rules to goods moving between the UK and the EU as currently apply in cases where goods move between the UK and a country outside of the EU [...]
- the EU applying customs and excise rules to goods it receives from the UK, in the same way it does for goods it receives from outside of the EU. [...]
- for movements of excise goods, the Excise Movement Control System (EMCS) would no longer be used to control suspended movements between the EU and the UK. However, EMCS would continue to be used to control the movement of duty suspended excise goods within the UK, including movements to and from UK ports, airports and the Channel tunnel. [...]



Thank you

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Stakeholder Engagement and Analysis
Customs EU Exit Policy Team

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Export Group for Aerospace, Defence & Dual-Use



Andrew Horton

ECJU



Department for
International Trade



Department for
International Trade

Update Multilateral Export Control Regimes



Scope:

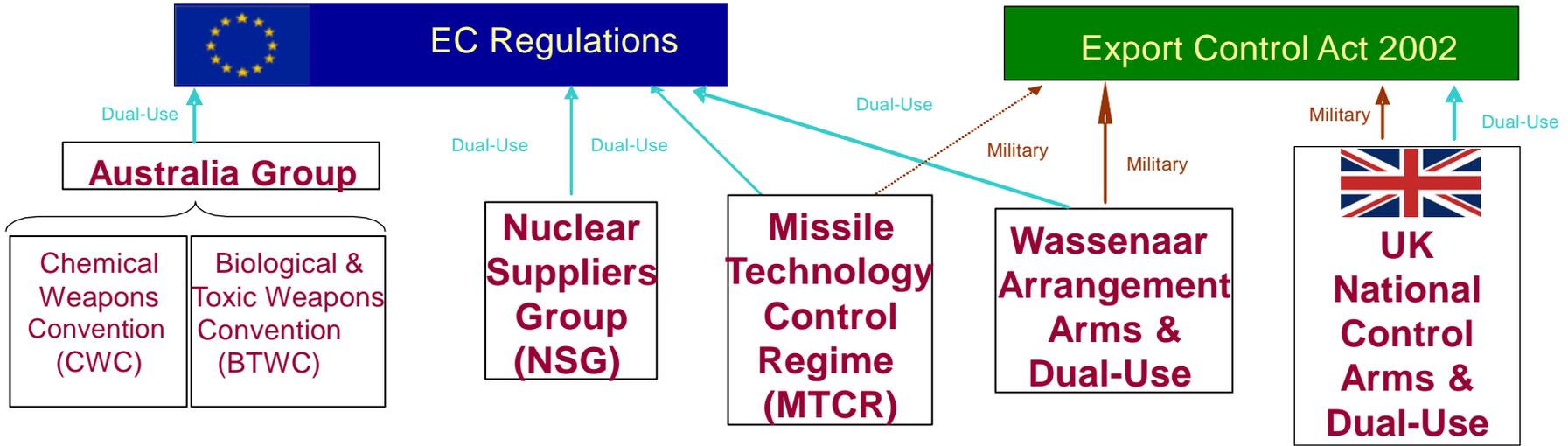
- Introduction Multilateral Export Control Regimes and the UK Consolidated Export Control List
- Specific Changes to the Control List Items
 - Wassenaar Arrangement (WA)
 - Australia Group (AG)
 - Nuclear Suppliers Group (NSG)
 - Missile Technology Control Regime (MTCR)
- Other Regime Issues



UK Strategic Export Controls

- Single List – the UK Consolidated Strategic Export Control List: Lists all controlled goods (equipment & materials), software and technologies
- Based on the lists from the international export control regimes (MECRs)
 - UK Military List (Wassenaar Arrangement's Munitions List)
 - EU Dual-Use Lists (IECRs' Dual-Use Lists)
 - EU & UK National Controls (UK Specific Concerns)

Where the Controls Come From:



Other Factors



UK Defence Interests and
Foreign Policy



EU Legislation
UN, OSCE and EU
Sanctions



IAEA Code of Conduct
and UN SC Resolutions

Wassenaar Arrangement (WA)

- Category 1 - No Change
- Category 2 - Changes to 2.B.6.b. Linear Displacement and Positioning Feedback Units for Machine Tools
- Category 3 – Changes to 3.A.1.a.2. to Technical Note on Non-volatile memories
- Category 3 - Changes to 3.A.1.a.5 control text in reference to “sample rate”
- Category 3 - Changes to 3.A.1.a.14 Technical Note
- Category 3 - Changes to 3.A.1.e. Primary cells
- Category 3 – New control 3.A.1.i. on analogue electro-optic modulators
- Category 3 – Changes to 3.A.2.h. Technical Note to Analogue to Digital Converters

Wassenaar Arrangement (WA)

- Category 3 - New control on High Resistivity Materials under 3.C.5.
- Category 4 - Limited decontrol on Intrusion Software under 4.D.4.
- Category 4 - Limited decontrol on Intrusion Software Technology under 4.E.1.
- Category 5 Part 1 - New decontrol on certain civil mobile and WLAN phased array antennas
- Category 5 Part 2 - No Change
- Category 6 - New entry for focal plane array read-out integrated circuits under 6.A.2.f.
- Category 6 - New control text for 6.A.4.f. on Dynamic wavefront measuring equipment
- Category 7, 8 and 9 - No Change



Wassenaar Arrangement (WA)

- ML1.d. – List of controlled accessories designed for arms under ML1.a, ML1.b. or ML1.c.
- ML8.a.42. - New Control on EDNA explosive
- ML8.c.10.b. - Removal from control on JP-4 and JP-8 aircraft fuels
- ML8.e.21. - New controls on TMETN energetic material
- ML8.f.5. - New control o copper beta-resorcyate energetic material additive
- ML9.b.1. - Removal parameters to ensure all specially designed submarine engines are controlled
- ML17.I. – Change in text to include reference to ISO intermodal containers and demountable vehicle bodies

More Information – <https://www.wassenaar.org/control-lists/>



Australia Group (AG)

- New chemical precursor – N,N Diisopropylaminethanethiol Hydrochloride (41480-75-5)
- New entry for nucleic acid assemblers or synthesizers that can be used to generate pathogens or toxins without the need to acquire controlled genetic elements and organisms.
- Nucleic acid assemblers and synthesizers, which are partly or entirely automated, and designed to generate continuous nucleic acids greater than 1.5 kilobases in length with error rates less than 5% in a single run.



Australia Group (AG)

- Prefabricated repair assemblies and their specially designed components, that:
 - i. are designed for mechanical attachment to glass-lined storage tanks, containers or receivers that meet the parameters above; and,
 - ii. have metallic surfaces that come in direct contact with the chemical(s) being processed which are made from tantalum or tantalum alloys.

More Information -

<https://australiagroup.net/en/whatsnew.html>



Nuclear Suppliers Group (NSG)

- Last Update was November 2016 as NSG annex updates on a three year cycle
- IAEA INFCIRC/254/Rev.13/Part 1 Trigger List Items
- IAEA INFCIRC/254/Rev.10/Part 2a (Corrected) January 2018 required to correct editorial errors

More Information -

<http://www.nuclearsuppliersgroup.org/en/guidelines>

Missile Technology Control Regime (MTCR)

- Latest Update 22 March 2018
- Changes to MTCR Annex Items:
 - 3.A.2. - Change to Technical Note *'combined cycle' engine is the engine that employs.....*
 - 3.A.7. - Minor editorial change;
 - 4.C.3. - Addition of Hydroxylammonium nitrate (HAN);
 - 9.B.2.a. - Minor editorial change; and
 - 12.A.3. - Minor editorial change.

Missile Technology Control Regime (MTCR)

- Previous Update 17 October 2018
- Changes to MTCR Annex Items:
 - The agreed changes following Items:
 - Technical Note to 3.A.2, 3.B.3., 4.B.3.a., 4.B.3.b.,
 - Technical Note to 4.C., 6.C.9.a., 9.A.8.b., 9.B.2.c., 9.B.2.d., 9.B.2.e.,
 - Note to 10.A., 10.E.1., 11.A.3. and Acronyms.
 - Deletion of text affects Item 9.A.8.a.

More Information - <http://mtcr.info/mtcr-annex/>



Other Regime Key Issues

- MTCR - US Proposal to allow for recategorization of lower-risk UAVs from MTCR Category-I to Category-II
- NSG - Machine tools control text still not updated and brought into line with WA control parameter
- NSG - India application for membership continues to be discussed



Further Information

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ECJU & CPACC
Head of UK Technical Delegations to the
Missile Technology Control Regime (MTCR)
& Nuclear Suppliers Group (NSG)

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Export Group for Aerospace, Defence & Dual-Use



MORNING REFRESHMENT BREAK

Wednesday 26 September

1145 – 1205



Export Group for Aerospace, Defence & Dual-Use



Richard Tauwhare

Dechert LLP



China: Proposed Export Control Law

EGADD Annual Meeting 2018

26 September 2018

Richard Tauwhare

Dechert
LLP

Context



- § China wants to leapfrog US/West to establish a technological lead and dominate the global market
- § ‘**Made in China 2025**’ Plan: to transform China into a leader in hi-tech industries, moving from low to high value manufacturing
 - subsidies for local industry
 - acquires foreign companies
 - imposes technology transfer requirements on foreign investors and traders
 - quotas to gain 70% self-sufficiency in core components and basic materials by 2025

Context: Related Issues



- § **US and EU Arms Embargoes on China**
- § **Foreign Investment controls:** in US (CFIUS) and EU - tougher scrutiny of foreign take-overs, mainly targeted at China
- § **US 'Section 301' tariffs** – intended to address China's unfair trade practices and protect US technology - now cover a wide range of goods.
- § **US 'Section 232' tariffs** on steel and aluminium: global, with exclusions
- § **US National Defence Authorisation Act:** prohibits US government use of certain goods/services of Huawei and ZTE, and of certain other Chinese telecoms goods/services
- § **US Export Control Act:** includes identifying emerging technologies to be subject potentially to US unilateral export controls
- § **US Sanctions:** focus on Iran and Russia but recent hints that China could also be targeted e.g. for cyber espionage, hacking, election interference

China's Cyber Security Law



- § In effect since June 2017, though many requirements have an 18-month implementation period.
- § Aims to safeguard Chinese cyberspace
- § Applies to network operators, critical information infrastructure operators and providers of network products and services, broadly defined
- § These must meet relevant standards for each sector. Many standards still under development
- § Requires sensitive personal data and data generated in China to be stored in China. Security assessment required before it can be transmitted overseas

Draft Export Control Law



- § current regime in China = regulations from 2007
- § June 2017, invited public comment on a draft Export Control Law covering dual use and military exports
- § Would be China's first comprehensive export control legislation
- § unclear whether any amendments will be made in the final version and when it will be adopted. **Could be 3-5 years? Or sooner – it is included as a high priority in the Legislative Plan issued by the 13th National People's Congress Standing Committee on September 7**
- § Potentially significant impact for companies with supply chains in China, particularly as it deviates from most international practices e.g. control lists, re-export and deemed export

Control Lists



- § Lists will be drawn up (possibly based on some existing lists but not necessarily from the Export Control Regimes) for:
 - 1) dual-use items
 - 2) military items
 - 3) nuclear items
 - 4) other goods, technologies, services and items (e.g. rare earths)
- § Other items may be temporarily controlled for up to two years based on, among other criteria, “technological development” and “competitiveness”
- § End-use controls on any item if the exporter knows or should know that the export may give rise to national security or terrorism concerns

End-User and End Use



- § “**Export**” is broadly defined as the “transfer of controlled items from the PRC to a foreign country or region,” including HK, Macao and Taiwan
- § Exporters may need to submit an **end-user undertaking-type** document issued by importer, foreign government or military authority authenticating the end-users and end use
- § May require **on-site verification** of an item’s end-user and end-use (not necessarily confined to only the most sensitive items)

Re-Exports



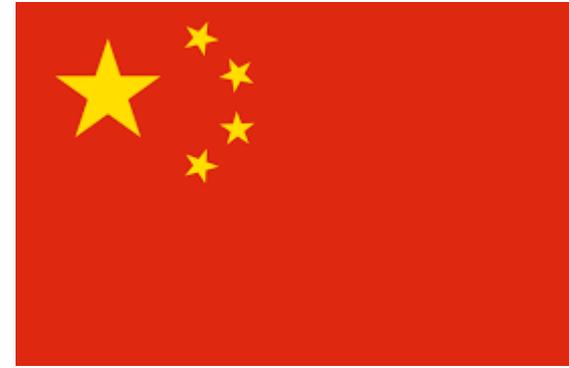
- § **extraterritorial application** covering re-exports of PRC-origin items or foreign-manufactured products that contain more than de minimis PRC-controlled content from a foreign country to a third country (the specific de minimis percentage is not specified)
- § **Not necessarily taking into account:**
 - only the most sensitive items
 - only where the importing country does not implement effective national export controls
 - whether an item required licensing for its export to China
 - disclosure of only non-sensitive product data

Deemed Exports



§ Regulates transfer of technology to non-Chinese citizens (or to residents of Taiwan, Hong Kong, or Macao) including the sharing of information between colleagues within a company

Blacklists



- § China may maintain blacklists of foreign importers and end-users and may prohibit the export of controlled items to them
- § if China is subject to any discriminatory export control measures by any country, it may adopt retaliatory measures
- § China may also adopt export controls on any items to safeguard security during wartime or international crises

Licensing Decisions



§ General Licences and Individual Licences

§ Seven criteria for licensing decisions:

- 1) national security and development interests (may be coordinated with requirements under the Cybersecurity Law)
- 2) international obligations and external commitments
- 3) degree of sensitivity of the item
- 4) market availability
- 5) end-user and end-use
- 6) internal compliance systems of the exporter
- 7) other circumstances prescribed by laws and regulations

§ Risks of uncertainty

Potential Impact



- § still in draft form and it remains to be seen if it will be revised, when it will be adopted, how it will be enforced and whether any exemptions will be introduced
- § Could be significant impact for companies with supply chains in China
- § Deviates from most international practices e.g. lists, re-export and deemed export
- § Needs adequate implementation/phase-in period

Thank you

For further information, visit our website at **[dechert.com](https://www.dechert.com)**.

Dechert practices as a limited liability partnership or limited liability company other than in Dublin and Hong Kong.

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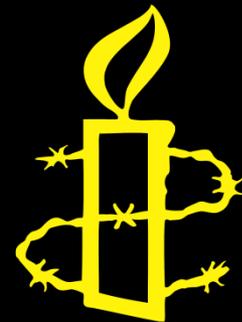


Export Group for Aerospace, Defence & Dual-Use



Oliver Feeley-Sprague

Amnesty International



UK Export Controls: NGO Perspectives

Oliver Feeley-Sprague:

Amnesty International



About Amnesty International:

- We are a global movement of over 7 million people. The UK is one of 50 national sections world wide.
- The first reference I can find to Amnesty's work on export controls dates from the late 1970s when an Amnesty group in Cambridge identified a local company involved in the supply of military communications equipment to Ide Amin's regime in Uganda.
- We work on export controls from the perspective of human rights protection. We work on these goods, because it's these types of equipment that pose specific risks to peoples welfare. 2/3rds of all serious violations of human rights worldwide reported by us involve the use of some sort of weapon.
- We are NOT against the trade or use of legitimate defense and security equipment.
- We accept the role that this equipment can play in promotion and protection of Human rights.
- We DO however believe this equipment should be subject to the strongest possible national, regional and international regulatory systems and will continue to work to strengthen, develop and enhance the human rights protections within those systems.



About our relationship with Industry

- Some facts that might surprise you!
- It was NGOs that started the process of working with Industry in the support and development of the Arms Trade Treaty – not the Government
- We were involved in 2 years joint work to develop the new framework of controls put in place in 2007. We agreed joint positions on the creation of Category A, B and C goods, including the enhanced controls in place for shipping and freight forwarding. We believe these are good and effective regulations.
- We spent at least 18 months working on a joint proposal to further enhance brokering controls, which the government, not us or industry decided to shelve!
- We spent many months working jointly with you and Government to agree proposals to improve transparency and reporting over Open Licences. It was the Government that shelved it's own plan in this area.



Areas of agreement:

- Joint recognition of the importance robust and transparent regulations on this sector.
- Wide agreement that certain categories of equipment, particularly small arms, light weapons and ammunition should be subject to special and extra levels of control.
- Support for effective global frameworks like the ATT are important, not only to create a high level playing field of responsible controls, but also to help prevent unacceptable levels of human suffering when those systems fail or unscrupulous exploit loopholes.
- We both have a shared concern over the impact of illicit and irresponsible arms trafficking and brokering.
- We agree that there certain categories of equipment should be banned – things like torture equipment, landmines and cluster bombs, including their promotion at trade fairs.



NGO issues moving forward:

- **Challenges** and opportunities of Brexit:
- How will the UK maintain an effective “multilateral” approach to export controls when we leave the EU.
- Will the UK mirror or diverge from EU controls moving forward, especially in the longer term
- What will our relationship with the EU be, in terms of cooperation and implementation of those systems.
- How and when will the UK introduce new legislation or controls to cover areas related to Dual-use goods or torture equipment. How we will be consulted in that process?



NGO issues continued:

- Strengthening brokering controls: Specifically action against brass plate or shell companies operating from UK jurisdiction.
- Pushing for a registration system for arms brokers that includes a vetting process to establish a fit and proper persons test.
- Push to re-introduce better transparency and reporting for open licences, particularly for Military list items.
- Push to restrict the use of Open General Export licences to signatories of the ATT.
- Press for a “presumption of denial” or enhanced restrictions to specific countries of concern



Export Group for Aerospace, Defence & Dual-Use



Stuart Stoter

UKEF



Export Group for Aerospace, Defence & Dual-Use



NETWORKING LUNCH

Wednesday 26 September

1315 – 1400



PARALLEL WORKSHOP SESSION 1

Wednesday 26 September
1400 – 1500



AFTERNOON REFRESHMENT BREAK

Wednesday 26 September

1450 – 1500



PARALLEL WORKSHOP SESSION 2

Wednesday 26 September
1515 – 1615



Export Group for Aerospace, Defence & Dual-Use



OPEN FORUM DISCUSSIONS

Wednesday 26 September

1615 – 1630



Export Group for Aerospace, Defence & Dual-Use



CLOSING REMARKS

Wednesday 26 September

1630 -1645