



# **EGADD Annual Main Meeting 2021**

**Wednesday 29 September**

**This webinar will commence at 11:00 (BST)**

# Housekeeping

- Please keep microphones on mute and videos off for the duration of the webinar and to ensure the line is clear. Please don't be offended if we mute your line, it's just to make sure we have the best audio possible
- Questions to be posted using the Slido app
- Short 2 question survey at the end of webinar via Slido
- This webinar will be run under the Chatham House Rules
- This webinar will be recorded, except for the Q&A sessions



Open your smart phone camera and hover over the QR code

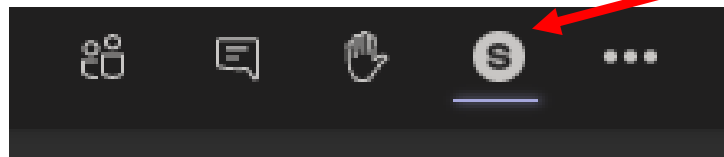
OR

Go to [www.slido.com](http://www.slido.com) and enter event code

832 046

OR

Click on S at the top right of your Teams page





# Welcome and Opening Comments

## **Spencer Chilvers**

Head of Export Control Policy at Rolls-Royce

Chairman of EGADD

Email: [Spencer.Chilvers@Rolls-Royce.com](mailto:Spencer.Chilvers@Rolls-Royce.com)

# Chairman's Report 2021

# Committee Structure



## Executive Committee

There were 6 seats available on the Executive Committee this year. We received six applications for the six seats. There was therefore no need to have a formal election to the Executive Committee.

- **\*Ed Peartree**, BAE Systems
- **\*Terry Irvine**, GKN Aerospace Services
- **\*Warren Bayliss**, Rolls-Royce
- **Antony Pritchard**, Marshall Aerospace & Defence
- **Marita Ryman**, Raytheon
- **David Abbott**, Reaction Engines

# Committee Structure



## Sub-Committees

Customs, Policy and Compliance Sub-Committee

US Export Controls Sub-Committee

Awareness Outreach Activities Sub-Committee

Training Sub-Committee

NGO Liaison Working Group

Environmental, Social and Governance (ESG)

Defence Companies Working Group

[Brexit Sub-Committee]

[Export of Technology Guidance Working Group]

# Training Sub-Committee



Chaired by Artur Browne - this met in April and July.

Has discussed, in conjunction with ECJU, it's plans for training events for 2021 and 2022.

Examined whether there were any gaps in ECJU's training portfolio, and whether EGADD could organise training activities to compliment those provided by ECJU.

# Awareness Outreach Activities Sub-Committee



Chaired by Claire Harrison (ECJU) – this met in November and June.

Has discussed:-

revamp of the ECJU's website and its plans to replace previous training offerings with virtual ones e.g., webinars and podcasts;

Guidance material on academia and transfers of technology.



# Other Committees



Export of Technology Guidance Working Group (*not met*) New ECJU guidance issued, which was considered to be very helpful and provided clarity on the storage of information.

US Export Controls Sub-Committee (*not met*), however it did work on a formal response to a DDTTC consultation on updating the ITAR definition of “regular employee”. Response submitted on 7 July.

## Brexit Sub-Committee

Chaired by Richard Tauwhare. It met on 30<sup>th</sup> November, and 24<sup>th</sup> March. Has now fulfilled its purpose and disbanded

# Other Committees



Customs, Policy and Compliance Sub-Committee When there are enough issues to warrant another meeting this will be organised. A new Chair will need to be elected before that could take place.

NGO Liaison Working Group very broad and wide-ranging meeting on 21 April. This discussed:-

- The Arms Trade Treaty (ATT)
- Brexit – how is it working so far?
- Questions arising from the latest iteration of Transparency International's Defence Corruption Index.
- Open licences – reporting/transparency
- Possible implications for UK defence exports arising from the new US Administration

# Other Committees



Environmental, Social and Governance (ESG)

Defence Companies Working Group

Made up of members of the Steering Committee of the Business Ethics Network, the Sustainability Working Group and EGADD.

# Other Events



- The US Export Control Compliance Workshops, jointly organised by EGADD and Squire Patton Boggs, took place in Stratford-upon-Avon from Monday 20 to Wednesday 22 September. This years event was also organised in partnership with BAE Systems.
- The EGADD Exec held its biennial meeting with the Japanese Center for Information on Security Trade Controls (CISTEC) on 27 November 2020. Have worked with them on framing responses to draft Chinese export control legislation.
- Some Members of the Executive Committee also participate in the Brussels based ASD Export Control Committee.

# Questions for Open Forum Discussion



- What would you like to see EGADD doing over the next year?
- Are there topics for webinars that we could usefully organise?



Department for  
International Trade

# Export Controls and LITE

Shainila Pradhan  
Director - Export Control, DIT



## Export Control Joint Unit – Mission Statement:

A large, faint, grey silhouette of a pair of scales of justice is centered in the background. The scales have a central vertical pillar, a horizontal beam at the top, and two pans hanging from the beam by thin wires. The text of the mission statement is overlaid on this graphic.

“To promote global  
security through strategic  
export **controls**,  
**facilitating** responsible  
exports”



## Export Control – SIELs

|            | 20 working<br>days | %         | 60 working<br>days | %         | Median<br>time | Issued | Refused /<br>rejected |
|------------|--------------------|-----------|--------------------|-----------|----------------|--------|-----------------------|
| 2016       | 14,608             | 82        | 17,611             | 99        | 13 days        | 13,734 | 354                   |
| 2017       | 14,796             | 83        | 17,458             | 98        | 11 days        | 13,332 | 327                   |
| 2018       | 13,746             | 83        | 15,960             | 95        | 11 days        | 12,942 | 226                   |
| 2019       | 12,219             | 77        | 15,045             | 95        | 12 days        | 12,088 | 223                   |
| 2020       | 9,813              | 62        | 13,393             | 85        | 14 days        | 11,974 | 267                   |
| q1<br>2021 |                    | <b>75</b> |                    | <b>92</b> | <b>11 days</b> |        |                       |





## Export Controls – OIELs

|            | 20 working<br>days | %         | 60 working<br>days | %         | Median<br>time | Issued | Refused /<br>rejected |
|------------|--------------------|-----------|--------------------|-----------|----------------|--------|-----------------------|
| 2016       | 149                | 30        | 273                | 54        | 55 days        | 334    | 39                    |
| 2017       | 124                | 24        | 297                | 57        | 55 days        | 405    | 45                    |
| 2018       | 124                | 30        | 256                | 63        | 49 days        | 292    | 32                    |
| 2019       | 111                | 28        | 233                | 59        | 51 days        | 280    | 25                    |
| 2020       | 115                | 24        | 241                | 50        | 61 days        | 353    | 38                    |
| Q1<br>2021 |                    | <b>21</b> |                    | <b>51</b> | <b>57 days</b> |        |                       |



# Export Controls - Core Business

- ECJU is comprised of approximately 110+ officials from DIT, FCDO and MOD.
- Based in Old Admiralty Building near Whitehall
- An expert and best in class export control regime
- Balance between prosperity and national security
- Case by case consideration against Eight Consolidated Criteria
- Robust decision making against the consolidated criteria;
- Transparency and accountability



# Priorities and challenges

- Performance of the licensing system
- Transformation
- Geopolitics
- Recruitment and retention



# ECJU Transformation Programme

Define the vision and purpose of ECJU

Identify the organisational values

Develop and implement a new Target Operating Model

Ensuring we are mindful of our customers

Tools and capabilities

Effective Compliance regime

New Digital Platform



# ECJU Transformation Programme:

## LITE Project – Licensing for International Trade & Enterprise

### **LITE will...**

- Replace the existing online application and licensing platform, SPIRE
- Be a more resilient, configurable system
- Give greater automation
- Better access to data
- Have a streamlined user interface
- Improve inter-operability with other systems and processes across DIT and beyond

### **Progress**

- Entered Private Beta in May 2021
- Planned phasing in 7 Cohorts
- Cohort 2 go live is planned before end-21
- Dedicated team in place which involves digital, policy, operational and project management experts



# THANK YOU

Shainila Pradhan, Director Export Control

[Shainila.Pradhan@trade.gov.uk](mailto:Shainila.Pradhan@trade.gov.uk)

+44 300 068 8367

For enquiries about licensing please contact

[exportcontrol.help@trade.gov.uk](mailto:exportcontrol.help@trade.gov.uk)

+44 207 215 4594 – Telephone Helpline



# Department for International Trade

## An Introduction to UK Export Controls

Export Control Joint Unit

**Dean Gallacher**

Head of UK & EU Policy, ECJU, DIT

Email: [dean.gallacher@trade.gov.uk](mailto:dean.gallacher@trade.gov.uk)



## Why do we have export controls?

The purpose of export controls is to promote global security and facilitate responsible exports. The Government controls a range of military and dual-use exports, depending on the nature and destination of exports, because of:

- Concerns about internal repression, regional instability or other human rights violations.
- Concerns about the development of weapons of mass destruction.
- Foreign policy and international treaty commitments including those resulting from the imposition of EU or United Nations trade sanctions or arms embargoes.
- National and collective security of the UK and its allies.

Most of these controls implement international obligations and commitments.





## How in practice are exports made subject to control?

A product needs an export licence if it is included on:

- The UK Military List or national control list;
- Lists of controlled items derived from the international export control regimes, which are:
  - The Nuclear Suppliers Group;
  - The Missile Technology Control Regime;
  - The Australia Group; and
  - The Wassenaar Arrangement
- The “Torture Regulation”;
- The list of goods covered by the Export of Radioactive Sources (Control) Order 2006.

To make it easier for UK exporters we publish a consolidated list on GOV.UK

Non listed items may still require a licence where there are concerns about its use in weapons of mass destruction or if its intended for a military end-use in an embargoed destination.



# Departments involved in export control

## Licence Assessment

- Department for International Trade
- Foreign Commonwealth and Development Office
- Ministry of Defence
- National Cyber Security Centre.
- Department for Business, Energy and Industrial Strategy.

## Licence Enforcement

- HM Revenue and Customs
- Border Force
- Crown Prosecution Service



## How are licensing decisions made?

- The licensing system is administered by the Export Control Joint Unit (ECJU) hosted by DIT. ECJU brings together operational and policy expertise from DIT, FCDO and MOD. The Department for International Trade (DIT) has overall responsibility for the export licensing process.
- Exporters submit their licence applications through the online SPIRE system. DIT makes initial checks before circulating the application to OGDs for specialist advice.
- Each application is assessed against the Consolidated EU and National Arms Export Licensing Criteria. OGDs advise on the Criteria falling within their policy areas. The principal advisory Departments and their areas of interest are:
  - FCDO – human rights issues, conflict and security in the recipient country or region, and whether the export would be consistent with our international obligations.
  - MOD – whether the export would impact on national security. They also give technical advice on how the goods might be diverted or misused.
- Although OGDs make recommendations based on the Consolidated Criteria, the final decision to issue or refuse a licence rests with DIT. Each decision to refuse a licence may be appealed.
- Licensing decisions can be, and have been, subject to judicial review proceedings.



# Consolidated EU and National Arms Export Licensing Criteria

**Criterion 1.** Respect for the UK's international obligations and commitments, in particular sanctions adopted by the UN Security Council, agreements on non-proliferation and other subjects, as well as other international obligations. **FCDO**

**Criterion 2.** The respect for human rights and fundamental freedoms in the country of final destination as well as respect by that country for international humanitarian law. **FCDO**

**Criterion 3.** The internal situation in the country of final destination, as a function of the existence of tensions or armed conflicts. **FCDO**

**Criterion 4.** Preservation of regional peace, security and stability. **FCDO**

**Criterion 5.** The national security of the UK and territories whose external relations are the UK's responsibility, as well as that of friendly and allied countries. **MOD**

**Criterion 6.** The behaviour of the buyer country with regard to the international community, as regards in particular to its attitude to terrorism, the nature of its alliances and respect for international law. **FCDO**

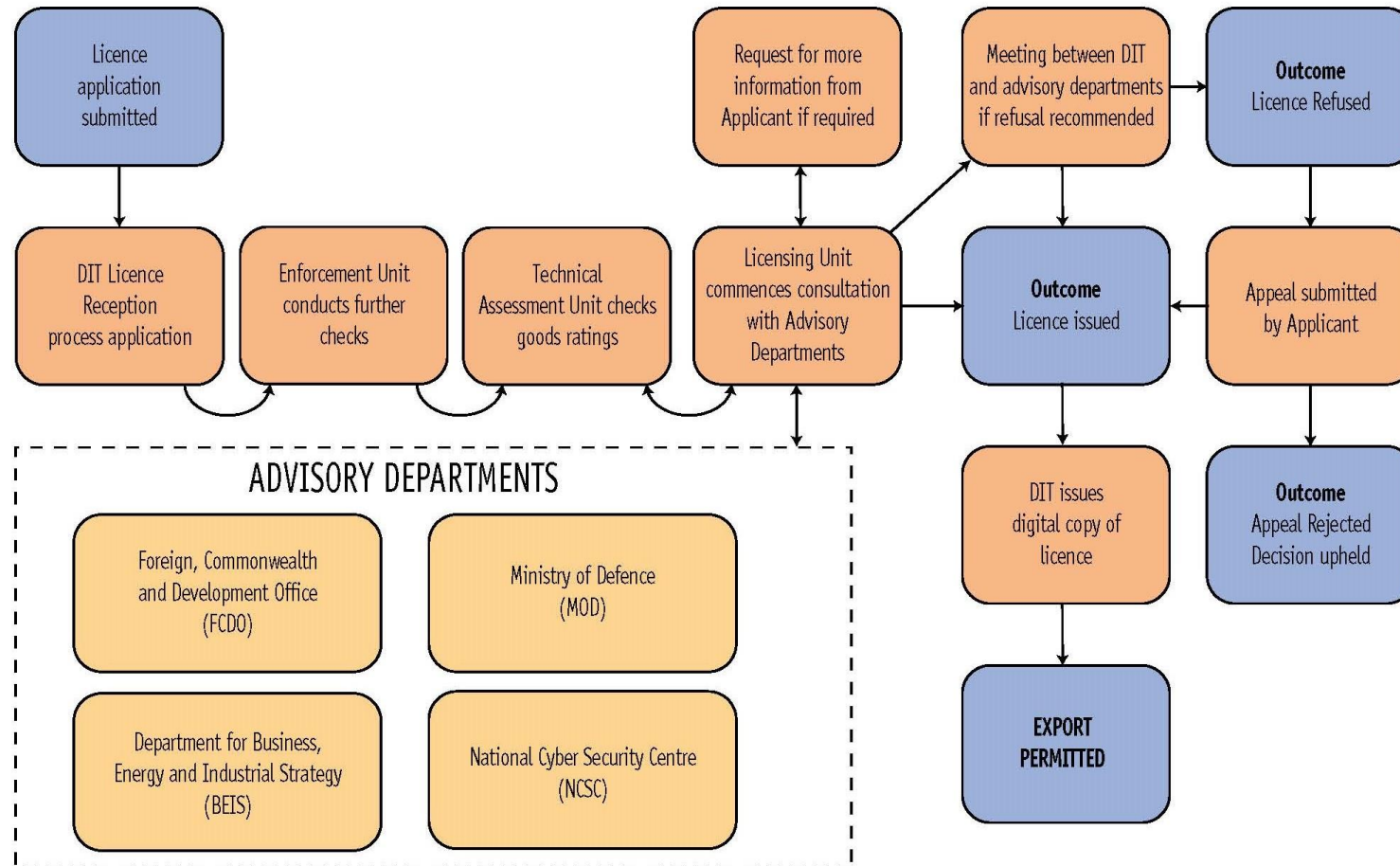
**Criterion 7.** The existence of a risk that the items will be diverted within the buyer country or re-exported under undesirable conditions. **FCDO and MOD**

**Criterion 8.** The compatibility of the transfer with the technical and economic capacity of the recipient country, taking into account the desirability that states should achieve their legitimate needs of security and defence with the least diversion for armaments of human and economic resources. **FCDO**



# The licence assessment process

Standard Individual Export Licence (SIEL) Process





## What types of licence are there?

- The Standard Individual Export Licence (SIEL) is the most commonly used licence, accounting for around 90 per cent of licences, and is normally valid for two years. A SIEL requires specific items as listed on the licence, Specific quantities and values of each item and a specific consignee and/or end-user.
- Exporters may also apply for an Open Individual Export Licence (OIEL). An OIEL is a more tailored and flexible licence to support more complex business activities than those generally covered by SIELs. Specific quantities do not need to be provided therefore OIELs do not have values associated with them. They are valid for up to five years.
- “Off the shelf” or pre-published Open General Export Licences (OGELs) are available for military or dual-use goods of a “less sensitive” nature being exported to a range of destinations. Exporters sign up without going through an application process. The licences may be used immediately as long as exporters can meet the terms and conditions. OGELs remain in force until revoked or amended.
- We also control overseas trade in military goods (i.e. trafficking and brokering) where the transaction or deal is brokered in the UK or by a UK citizen overseas and trade licences are available for this activity. Transshipment licences cover controlled exports from one country to another via the UK.



## What are our public performance targets for deciding on applications?

- The primary target for SIELs is to process at least 70 per cent of applications within 20 working days with a secondary target to process 99 per cent of applications within 60 working days.
- ECJU considered around 16670 licence applications in 2020.
- 11974 Standard Individual Export Licences (SIELs) were granted in 2020, representing exports valued at around £23.5bn.
- Top destinations by number of SIELs granted (2020) were China, USA, India and South Korea.
- In 2020 we refused 268 SIEL applications (2.2% of the total).
- Owing to the bespoke nature of Open Individual Export Licences, there are no public performance targets for them. We do however aim to complete an OIEL application in 60 working days. 353 (OIELs) were granted in 2020.



## What happens after a licence is issued.

- Once goods have been exported from the UK, we no longer have any control over them, which is why we rely on a process of rigorous checks before a licence is issued.
- All licences are kept under careful and continual review as standard. We are able to suspend, refuse or revoke licences as circumstances require. We can and do respond quickly and flexibly to changing or fluid international situations.
- We have processes in place to quickly consider where there has been a change in circumstances in a country. That process may look at certain licences that are still in force to determine whether they remain consistent with the Consolidated Criteria. If they are not, they would be suspended or revoked.
- For example we recently took action to revoke licences for Afghanistan.





## How transparent are export controls?

- We publish comprehensive information on licences issued or refused quarterly and annually as Official Statistics . We also publish an annual report covering a wide range of policy issues related to export controls.
- Export licensing decisions are sometimes seen as controversial or contentious and are subject to close scrutiny by Parliament, NGOs, campaign groups and the media. The main interests are human rights and armed conflict. DIT receives a high volume of Freedom of Information requests and PQs on these subjects.
- Parliamentary scrutiny is carried out through the Committees on Arms Export Controls (CAEC), chaired by Mark Garnier MP.



## Post Brexit Update

- At 11pm on 31 December 2020 EU export control legislation ([Dual-Use](#), [Torture](#) and [Firearms](#) Regulations) was retained in UK law and applied in GB. This legislation is known as “retained” EU law, e.g. the “retained Dual-Use Regulation”, etc.
- New UK General Export Authorisations came into force – automatic registration
- Dual-Use exports from GB – register for EU Dual-Use OGEL.
- The EU export control Regulations and Directives that will continue to apply in NI after the end of transition are: [Council Regulation \(EC\) No 428/2009](#), [Regulation \(EU\) No 258/2012](#), [Regulation \(EU\) 2019/125](#), [Council Directive 91/477/EEC](#) and [Directive 2009/43/EC](#).



## Recast of the Dual-Use Regulation

- Regulation EU 2021/821 came into force on 9 September 2021.
- Only applies in NI as a consequence of the Protocol on Ireland/Northern Ireland.

### Includes

- New catch-all controls
  - Cyber-surveillance items
  - National control lists
- Two new EUGEAs
  - Intra group export of software and technology – must have an Internal Compliance Programme in place
  - Encryption
- New controls on technical assistance including on Military End Use
- More information exchange and transparency
- Reference changes in line with the Lisbon Treaty



## The Arms Trade Treaty (ATT)

- The Arms Trade Treaty (ATT) entered into force in December 2014. It seeks to establish the highest possible common international standards for regulating the global trade in conventional arms. There are 110 States Parties
- Transparency and the sharing of information is an important part of the Treaty. We are working with partners to find ways to encourage States Parties to submit complete and timely reports.
- Tackling the illicit diversion of arms has been a focus of the outgoing ATT Presidency. A forum for the confidential exchange of information between States Parties on cases of diversion was created last year.
- The UK encourages a focus on robust forward looking risk assessment as a key tool to preventing diversion. Other partners favour more ambitious measures such as physical post shipment verification processes. The debate will continue over the coming years with States Parties to work together in finding solutions to this ongoing issue.



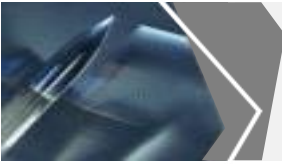
**The French/German agreement  
on  
export controls**

*September 2021*

**Richard Finck**  
Head of International Trade Compliance Office

Email: [richard.finck@mbda-systems.com](mailto:richard.finck@mbda-systems.com)

**MBDA**  
MISSILE SYSTEMS



# AGENDA



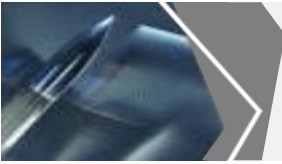
1. Overall objective of the Agreement
2. Timeline and RETEX
3. Content of the Agreement
4. Implementation status & procedures
  - In Germany
  - In France



# AGENDA



1. Overall objective of the Agreement
2. Timeline and RETEX
3. Content of the Agreement
4. Implementation status & procedures
  - In Germany
  - In France



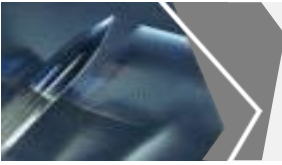
## **Overall objective of the Agreement**

### **Key reasons for this agreement**

- **Reinforce FR/GE industrial and political cooperation** wrt to defence programmes, notably in the context of MGCS\* and FCAS\*.
- **Align and secure export policies** for common programmes.
- Strengthen both countries' **Defence Industrial & Technological Bases (DITB)**.
- Being able to address **export challenges** in a context of **different national foreign policies**.
- **Reduce export control administrative burden and complexity** in both countries for joint programmes, industrial partnerships and supplying activities.

\*MGCS – Main Ground Combat System / FCAS – Future Combat Air System

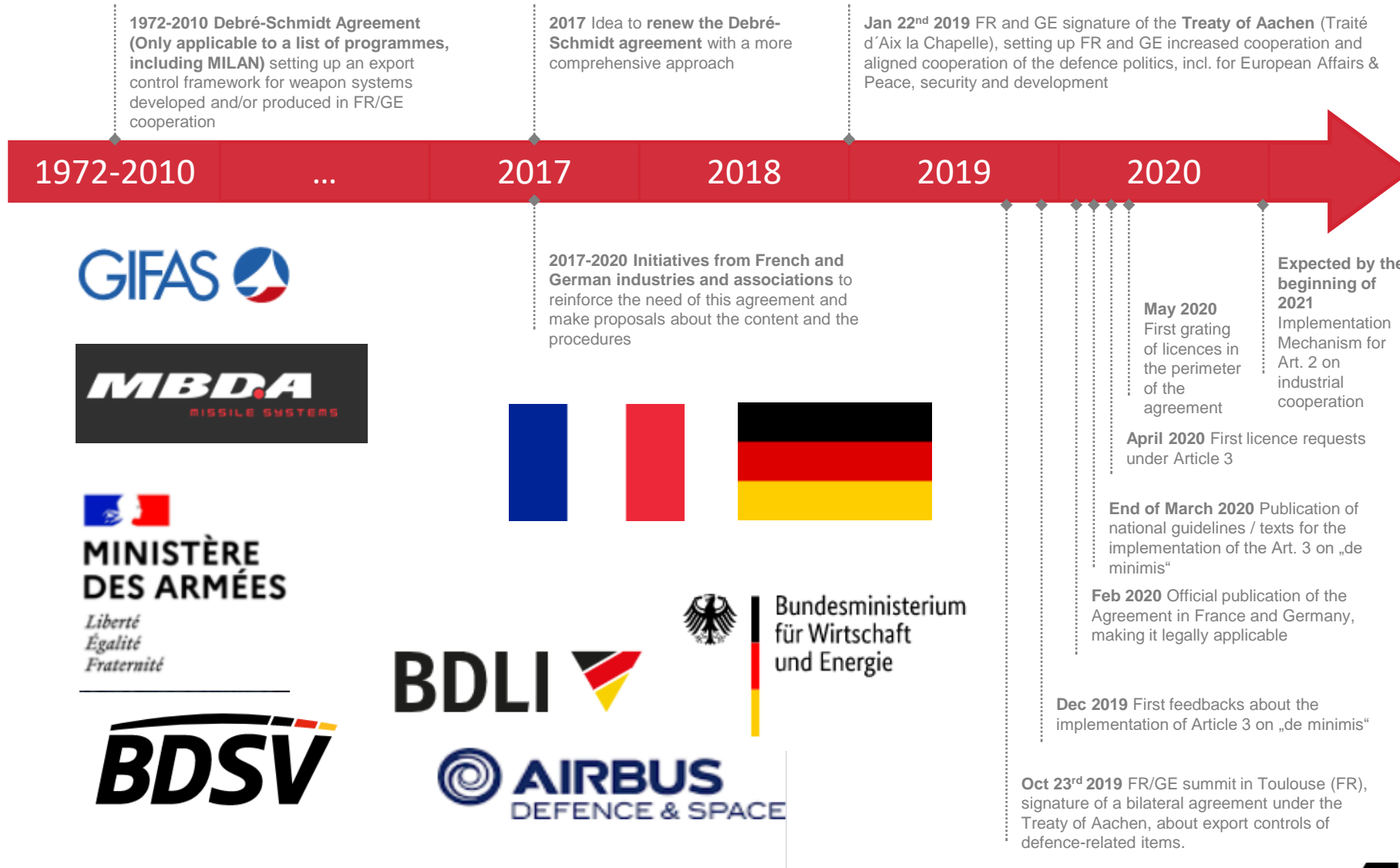


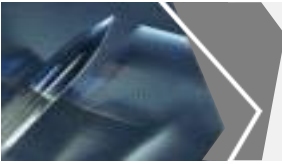


# AGENDA



1. Overall objective of the Agreement
2. **Timeline and RETEX**
3. Content of the Agreement
4. Implementation status & procedures
  - In Germany
  - In France





- **Regular discussions and meetings within several “circles” :**
  - In each country : industry associations (with relevant companies able to promote the topic at high level)
  - FR / GE industry associations (GIFAS/CIDEF and BDSV/BDLI)
  - In Each country : industry associations / Administration
  - FR / GE Administrations
- **Several papers issued by industry associations and companies with proposals regarding :**
  - Principles given to stakeholders at all level of the Administrations and at political level
  - Perimeters and procedures (for the deployment) for the Administration team in charge of the negotiation
- **During negotiation and deployment phases :**
  - Regular meetings with Administration and other industry associations
  - Try to identify risks and blocking issues
  - Propose and work closely with both Administrations to propose comprises.



# AGENDA

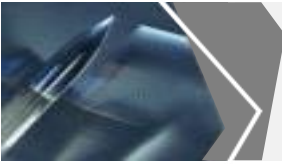


1. Overall objective of the Agreement
2. Timeline and RETEX
- 3. Content of the Agreement**
4. Implementation status & procedures
  - In Germany
  - In France



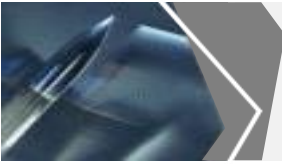
### Content of the Agreement : 5 articles + 2 annexes

- **Article 1:** Export control aspects of **Intergovernmental programmes** and their subsystems
- **Article 2:** Export control aspects for defence products originating from **industrial cooperations**
- **Article 3:** “**De minimis**” **principle** for export control of all other defence products between France and Germany
  - **Annex 1:** **Methods & explications** concerning the article 3 “de minimis” principle
  - **Annex 2:** list of **products excluded** from the benefit of the article 3 on “de minimis”
- **Article 4:** Setting up of a **permanent consulting FR/GE committee**
- **Article 5:** Entry into force & other **final provisions**



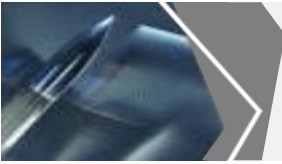
### Article 1 – Intergovernmental cooperations

- **Scope: intergovernmental programmes** (i.e. where an intergovernmental agreement has been signed between FR and GE) and their subsystems:
  - covers intergovernmental programmes and notably MGCS + FCAS
  - Subsystems are included and possible reuse in another programme
- **Conditions: Mutual information** between FR and GE of export prospects and associated consultations, including on potential restrictive conditions for considered export prospects
- **Consequences:** FR and GE commit not to oppose to the other country's wish to export to a third party, **unless this export may threatens its "direct interests" or "national security"**.
  - Should a country decide to oppose the export decision it must do it **at the latest 2 months after being informed**
  - If so, FR & GE will open **high level consultations** to find an appropriate solution (incl. alternative solutions, e.g. subsystems or components) in the frame of the **Permanent consulting FR/GE committee (Article 4)**.



## Article 2 – Industrial cooperations

- **Scope:** Weapon systems developed in FR or GE integrating defence-related products originating from the other country, as part of the strengthening of FR/GE DITB (“**industrial cooperation**”)
  - **Deployment in progress notably to clarify** what constitutes an “industrial cooperation” but at least, it means industrial activities in the 2 countries (deployment planned beginning of 2021)
  - Industry associations suggested intra-group transfers, long-term industrial partnerships and non-COTS to be considered “industrial cooperations” for current and future cooperations.
- **Conditions:** The equipment must be **integrated in the other country** as part of the strengthening of the FR/GE DITB.
- **Consequences:** In case a country (either FR or GE) wishes to **oppose an export** to a third country, it must notify it as soon as possible.
  - FR / GE can only oppose such export if it is **contrary to its “direct interests” or its “national security”**
  - Should FR/GE decide to oppose the export decision it must do it **at the latest 2 months after having received a licence request**
  - If so, FR & GE will open **high level consultations** to find an appropriate solution in the frame of the **Permanent consulting FR/GE committee (Article 4)**.

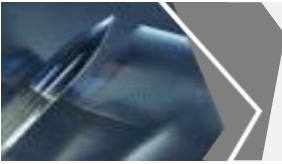


### Article 3 – De minimis principle

- **Scope:** Weapon systems developed by a FR or GE manufacturer and is not eligible to article 1 or 2 may allow from the “de minimis” principle → under some conditions, integrated components are **systematically allowed for export when they represent less than 20% of the overall weapon system.**
- **Conditions:** The “de minimis” is only applicable under some conditions:
  - The components must be **integrated or send as spares** of a weapon system to be exported either from France or from Germany
  - The **purchase value of all aggregated components** coming from the other country (i.e. FR or GE) must be **less than 20% of the selling price of the weapon system**
- **Consequences:**
  - If the necessary conditions are met, both FR and GE agreed to allow the transfer of items for integration in a weapon systems **within a 45 days delay.**
  - FR / GE can only oppose such export if it is **contrary to its “direct interests” or its “national security”**
  - In case of blocking, the **Permanent Committee** set up under art. 4 shall resolve the matter.

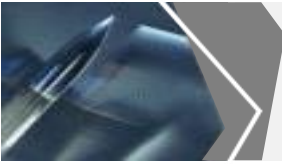
→ The governing principles for “de minimis” applications are detailed in the Agreement’s Annexes 1 and 2





**Annex 1 – Additional aspects to be taken into account for the “de minimis” principle**

- **All military items are eligible** to “de minimis”, except the ones specifically excluded in **Annex 2**
- An **integration certificate** may be requested before transferring components / sub-systems between FR and GE.
- **Maintenance activities, spare parts, repair and training activities** are not taken into account when determining the 20% “de minimis” threshold
- Maintenance activities, spare parts, repair and training activities **must be allowed when the weapon system’s initial export was granted in accordance with Article 3**
- It is the **final exporter’s responsibility** to determine that its final product will incorporate less than 20% of controlled items from the other country and to communicate this information to :
  - its national export control authorities
  - Its suppliers
- The export control authority of the final exporter is in charge of authorizing the final export, including for the integrated components (including by **verifying the 20% threshold**).
- Both FR and GE export control authorities may request its counterparts to confirm the statement given by a final exporter (most likely using its **national audit prerogative**)



## Article 3 – Annex 2

### Products excluded from the benefit of the “de minimis” principle

#### Annexe 2 à l'article 3 Produits exclus de l'application du principe « de minimis »

##### CL1 Armes à canon lisse d'un calibre inférieur à 20 mm, autres armes et armes automatiques d'un calibre inférieur ou égal à 12,7 mm (calibre 0,50 pouce) :

1. mitrailleuses ;
2. pistolets-mitrailleurs ;
3. fusils entièrement automatiques spécialement conçus pour un usage militaire.

##### CL2 Armes à canon lisse d'un calibre égal ou supérieur à 20 mm, autres armes ou armements d'un calibre supérieur à 12,7 mm (calibre 0,50 pouce) :

4. canons ;
5. obusiers ;
6. pièces d'artillerie ;
7. mortiers ;
8. armes antichars ;
9. lanceurs de projectiles létaux ;
10. fusils ;
11. canons sans recul ;
12. armes à canon lisse.

##### CL3 Munitions et produits énumérés ci-dessous :

13. munitions destinées aux armes visées aux points CL1 et CL2 ;
14. charges propulsives indépendantes et projectiles destinés aux armes visées aux points 5, 6 ou 7 ;
15. fusées indépendantes destinées aux armes visées aux points 5, 6, 7 ou 11.

##### CL4 Bombes, torpilles, roquettes, missiles, autres dispositifs et charges explosifs et produits cités ci-dessous :

16. bombes ;
17. torpilles ;
18. grenades ;
19. roquettes ;
20. mines ;
21. missiles ;
22. charges sous-marines ;
23. charges, dispositifs et kits de démolition spécialement conçus pour un usage militaire ;
24. fusées destinées aux armes visées aux points 16 à 20, 22 ou 23 ;
25. têtes explosives, autodirecteurs destinés aux armes visées aux points 17 ou 19 ;
26. systèmes de propulsion destinés aux armes visées aux points 16 ou 19 ;

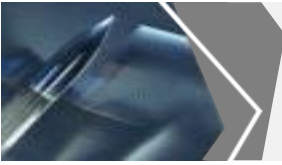
27. fusées, autodirecteurs, têtes explosives et systèmes de propulsion destinés aux missiles permettant un ciblage au sol.

##### CL5 Produits énumérés ci-dessous, pour intégration dans des chars de combat :

28. châssis spécialement conçu pour char de combat ;
29. tourelles spécialement conçues pour char de combat.

##### CL6 Produits énumérés ci-dessous pour intégration dans des avions militaires avec équipage :

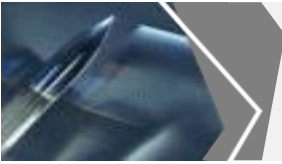
30. moteurs de propulsion pour avions ;
31. cellules complètes pour avions de combat.



# AGENDA



1. Overall objective of the Agreement
2. Timeline and RETEX
3. Content of the Agreement
4. **Implementation status & procedures**
  - **In Germany**
  - **In France**



## German mechanism for Article 3 implementation

General Licence No. 28 (AGG28) - Main characteristics

- **Duration:** 1 year (March 2020 – March 2021)
- **Scope: all military goods**, except **KWKG** items (war material) and items excluded by the French-German treaty (**Annex 2**). This includes spare parts and repair activities, including as a separate shipment.
- **Conditions/restrictions:**
  - The items must be either
    - **integrated in France** or
    - **re-exported from France**
      - As **spare parts** of a final system exported after Oct 23<sup>rd</sup>, 2019 (i.e. the weapon system in which the items are integrated) or
      - for **repair** or **maintenance** of such final system
    - for **exchange of goods** delivered to FR (nature and number equal to the original delivery)
    - In any case, the “integrator” needs to fill an **integration certificate**.
  - The overall percentage of German military components in the final system exported must be less than **20% of the selling price**.
- The export may be refused for several reasons:
  - **national security**
  - The export contradicts the **direct interests of Germany**, including embargoes and compliance with article 4 of EU regulation 428/2009 (non proliferations + embargoed countries).
  - if BAFA is **denied access** to the premises of the exporting company,
  - if the company **does not guarantee its compliance** with the relevant export control regulations.



## *French mechanism for Article 3 implementation*

- In France, the administration decided to use **individual export licences** that will benefit from a “**fast-track**” **procedure**, but with a case-by-case assessment (within 45 days of the request).
  
- In order for the operation to be eligible to this fast-track procedure, the French exporter will need to:
  - Guarantee that the items to be exported are not excluded from the benefit of the Article 3, i.e. **not highly-sensitive** items;
  - Certify that the **first recipient is located in Germany** and that the items will be integrated in Germany in a weapon system;
  - Provide the **overall percentage** of French military items in the German final system (0-20%), as well as **the names** of the German integrator and exporter
  - Provide the **classification** of the German final system (ML category)
  - Provide **the final end-user** of the German final system integrating French items
  
- This fast-track procedure is valid with **no expiration date**.

# The recast dual use Regulation-

**WHAT HAS CHANGED AND WHAT DOES THAT MEAN?**

**OLIVIER DORGANS (PARIS) AND ROSS DENTON  
(LONDON)  
ASHURST**

**EMAIL: [ROSS.DENTON@ASHURST.COM](mailto:ROSS.DENTON@ASHURST.COM)**

# Introductory comments

- Significant change from 428/2009 to new Recast Regulation 2021/821 (“Recast Regulation”)
- Recast Regulation has been the subject of a number of political battles between Parliament and the Member States, and to a lesser extent, the EU and civil society
- Clear that the UK would not agree to a number of measures in the Recast regulation and so progress was slowed down until Brexit;
- Lots of new concepts, not all of them clear
- The Recast Regulation adds to the “pick and mix” conclusion: MS can choose to deal with issues in different ways

# Introductory comments

- The EU now has a revised and updated Recast Regulation which is substantively different from the UK system
- The UK continues to apply the “old” Regulation 428/2009 (as amended) under Export Control Order 2008 (as amended)
- The Withdrawal Agreement and NIP applies certain EU laws “to and in the United Kingdom in respect of Northern Ireland”. Regulation 428 was one of those laws and ECJU has confirmed that Recast Regulation does apply to NI, and “Any applications for the export of dual-use items submitted to ECJU from 9 September from Northern Ireland will need to comply with this regulation.”
  - ECJU applying Recast Regulation.....



## Introductory comments –practical thoughts

- Need to bear in mind 2\3 distinct bodies of law
  - UK to third countries
  - EU to third countries
  - NI to third countries (because ECJU process, not EU)
- How to manage gap (which will only get wider)?

# Cyber surveillance (1)

- Defined as “dual-use items specially designed to enable the covert surveillance of natural persons by monitoring, extracting, collecting or analysing data from information and telecommunication systems” (A2(20))
- Control is a “catch-all” type control (A5)
- An EU-only Category 10 dropped, in favour of looser catch all
- Licence required for CS items not listed in Annex I if exporter informed that items are or may be intended for use “in connection with internal repression and/or the commission of serious violations of human rights and international humanitarian law”
- Neither “internal repression” or “serious violations” further defined

## Cyber surveillance (2)

- If exporter independently aware of use based on its “due diligence findings”, must report (A5(2))
- MS can require adopt national system requiring licence where “exporter has grounds for suspecting that those items are or may be intended, in their entirety or in part, for any of the uses referred to” in A5(1) (A5(3))
- MS imposing any licence obligation on an exporter shall inform MS and Commission. Other MS receiving notification shall give “due consideration”

# Cyber surveillance – practical thoughts

- New EU category of controls – need to understand whether you offer these items
  - Note “specially designed” like ML, will ML guidance be helpful?
  - How to cope with “internal repression” and “serious violations”?
- If so, need to investigate end-use for all sales. Cannot argue did not do due diligence.
- If decide no relevant end-use, record reason why, and keep indefinitely
- If decide relevant use, expectation must be low that you can get authorisation, and so at the very least this needs to be reflected in all contracts for supply

# Human rights and prevention of terrorism

- MS may prohibit or impose licensing on items not in Annex I on basis of preventing acts of terrorism (adding to old A8) (A9(1))
- If one MS controls items on basis of prevention of terrorism, or human rights, and if the exporter in another MS has been informed of that end use, export from that third MS will require licence;
- MS must share denials or authorization with other MS, who shall give due consideration to this

# Human rights and prevention of terrorism –practical thoughts

- No definition of “prevention of terrorism” or “terrorism” – may be divergences of views based on political alignment
- Open up lines of communication to local authorities to see what expectations are? Do nothing and wait until pinged?
- Not required to decide for yourself, so no DD or reporting obligation

# Brokering, and licences for it

- Residency or establishment dropped from definition of “broker”
  - “any natural or legal person or any partnership that provides brokering services from the customs territory of the Union into the territory of a third country” (A2(8))
- Brokering now covers “non-EU” entities providing brokering from the EU, and so licensing authority has been extended to cover this. A13(1) second sentence states:  
*“Where the broker .....is not resident or established on the customs territory of the Union, authorisations for the provision of brokering services .....shall be granted by the competent authority of the Member State from where the brokering services will be provided.”*

# Technical assistance, and provider

- New definition, in part derived from sanctions legislation – technical assistance was always seen as a way of delivering technology – still true?
  - *“any technical support related to repairs, development, manufacture, assembly, testing, maintenance, or any other technical service, and may take forms such as instruction, advice, training, transmission of working knowledge or skills or consulting services, including by electronic means as well as by telephone or any other verbal forms of assistance”*



# Technical assistance, and provider

- Provider:
  - “(a) any natural or legal person or any partnership that provides technical assistance from the customs territory of the Union into the territory of a third country (“export”);
  - (b) any natural or legal person or any partnership resident or established in a Member State that provides technical assistance within the territory of a third country (domestic provision outside the EU, no export); or
  - (c) any natural or legal person or any partnership resident or established in a Member State that provides technical assistance to a resident of a third country temporarily present in the customs territory of the Union (deemed export?)”

# Technical assistance, and provider

- Provision of technical assistance now subject to licensing where provider told that dual-use items are or may be used for A4(1) end use (WMD or military, but not cyber-, terrorism or human rights) (A8(2))
- As with brokering, technical assistance can be provided from within the EU by entities not resident in the EU, and so licences granted by MS where technical assistance is provided from
- Where provider is aware of relevant end-use, need to report. (A8(2))
- Exemptions
  - To or to residents of “friendly” countries
  - In public domain or basic scientific research
  - In course of official duties
  - Armed forces
  - MTCR exceptions in Annex IV
  - “minimum necessary”
- MS can extend to non-dual use, and can impose on basis of “grounds for suspecting”

# Technical assistance –practical thoughts

- Useful to have a definition of TA – syncs up to a certain extent with sanctions legislation
- Might be helpful to have guidance on certain terms e.g. “*any other technical service*” and “*consulting services*”
- Complexity of new TA rules is unwelcome:
  - End-use plus
  - Jurisdiction plus
  - Exemptions
- To a certain extent TA controls can be directly linked to items subject to T&B controls, i.e., WMD and military

# New Global Authorizations

- UGEA 007 – “Intra-group export of software and technology” and UGEA 008 – Encryption
- 007 – allows movement to 17 countries of all “technology” and “software” except for some items in Cats 4 and 5 from EU based parent to non-EU based subsidiary or sister company
- Conditions apply, including
  - Guarantees re use
  - Use of an ICP
  - Authorization and notification of use 30 days in advance
  - Record-keeping

# New Global Authorizations

- 008 – limited items under Cat 5, Part 2. Must be published or commercial items, not specially designed for governments, and crypto cannot easily be changed by user.
- Can go to most countries, except UGEA 001, and those under sanctions or an embargo
- Conditions apply, including
  - Provision of data about items
  - Authorization and notification of use 10 days in advance

# Internal compliance programmes (“ICPs”)

- The Recast regulation upgrades the ICP definition, and introduces an ICP as a threshold requirement for certain UGEAs
- No overall push to make ICPs an important part of export control compliance
  - MS will take different views as how they view ICPs during enforcement, e.g. do you have to have them for licences after a breach?
  - It is clear that an ICP will be a mitigating factor in investigations, but no MS currently gives formal credit for ICP during an investigation

# Information exchange

- Various new obligations on MS to consult and exchange, but most significant is “Enforcement Coordination Mechanism” in A25(2):

*“Member States and the Commission shall exchange relevant information, where available, including on the application, nature and effect of the measures, taken under paragraph 1, on enforcement of best practices and unauthorised exports of dual-use items and/or infringements of this Regulation and/or relevant national legislation.*

*Under the Enforcement Coordination Mechanism, the Member States and the Commission shall also exchange information on best practices of national enforcement authorities regarding risk-based audits, the detection and prosecution of unauthorised exports of dual-use items and/or possible other infringements of this Regulation and/or relevant national legislation.”*

## Information exchange – practical thoughts

- MS and Commission will exchange a significant amount of information around enforcement techniques, but not necessarily on individual cases. However, they don't need to exchange details for investigations to be stimulated by other MS – can be a “water cooler” discussion
  - Be consistent in discussions and filings, and in arguments made around enforcement
- Will exchange of “best practice” lead to a consistent approach to voluntary disclosures, which are, frankly, a mess? Disclosures are the best way to “stimulate” enforcement



# The recast dual use Regulation-

**WHAT HAS CHANGED AND WHAT DOES THAT MEAN?**

**OLIVIER DORGANS (PARIS) AND ROSS DENTON  
(LONDON)  
ASHURST**

These materials are for training purposes only and are not intended to be a comprehensive review of all developments in the law and practice, or to cover all aspects of those referred to. Please take legal advice before applying anything contained in these materials to specific issues or transactions. For more information please contact the presenters or your usual contact.

[docId]

© Ashurst 2016

ashurst



# Baker McKenzie.



## The EU's Rules of Origin and Preference

Presentation to EGADD Annual Main Meeting | Wednesday 29 September





# Speakers



**Jennifer Revis**  
Partner | London  
+44 20 7919 1381  
jenny.revis  
@bakermckenzie.com



**Alexandra Alberti**  
Associate | London  
+44 20 7919 1075  
alexandra.alberti  
@bakermckenzie.com

# What is 'Origin'?

- Origin is the **economic nationality** of a product, distinct from country of shipment
- Determined by applying the '**Rules of Origin**' ("ROO")
- One of three key pillars to determining liability to customs import duty
- Customs law distinguishes between "**preferential**" and "**non-preferential**" origin
- EU has the largest trade network globally, with 45 trade agreements covering 77 partner countries
- These provide for **preferential import tariffs** (zero/reduced) that are either reciprocal or non-reciprocal
- To be eligible, products **must fulfil the relevant ROO and meet other criteria**
- These are **specific to each trade agreement** so vital to check the agreement

## Rules of Origin





# EU Trade Arrangements

## Reciprocal trade preferences (bilateral or pluri/multilateral agreements)



**Imports into EU:** Importers can bring originating goods into EU at a reduced or nil rate of customs duty



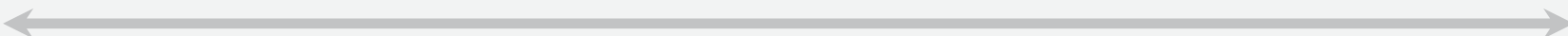
**Exports from EU:** Products qualifying for preferential EU origin benefit from same rates when imported into preferential countries

Third  
country/  
countries

## Non-reciprocal (e.g., the EU's Generalised System of Preferences)



**Imports into EU:** Importers can bring originating goods into EU at a reduced or nil import duty rate



**Exports from EU:** No duty benefit on import into third country

Third  
country/  
countries

# Determining Origin

- Determine **tariff classification** of finished product from the perspective of the country of import
- Determine **destination** of product and whether a **trade agreement** exists (and whether tariff preferences are **reciprocal/non-reciprocal**)
- Determine **applicable ROO** for finished product
- Check whether finished product meets the **origin rule**\*
  - If not 'wholly obtained' in exporting country, determine whether product meets the **product-specific ROO** in order to be 'originating'
- Check processing goes beyond "**minimal operations**"
- Check **preference documentation requirements** are met
- Check "**transportation**" rule is met

\*Note, FTAs will generally have a general rule for a Chapter and then a list of exceptions identified by the pre-fix "ex". Where "ex" is used it does not mean that all products of that tariff heading are caught – you need to look at the description column

# Examples of Product-Specific ROO



## Change of tariff classification

The production process results in a change of tariff classification from that of the non-originating materials used in production to that of the final product



## Value-added rule

The value of all non-originating materials used in production cannot exceed a certain percentage of the ex-works price of the final product



## Specific processing

The finished product qualifies due to specific working / processing activities having been carried out

## Chapter 88 Aircraft, spacecraft, and parts thereof

88.01-  
88.05

CTH; or MaxNOM 50% (EXW)

"MaxNOM" means the maximum value of non-originating materials expressed as a percentage and shall be calculated according to the following formula:

$$\text{MaxNOM (\%)} = \frac{\text{VNM}}{\text{EXW}} \times 100$$

"VNM" means the value of the non-originating materials used in the production of the product which is its customs value at the time of importation including freight, insurance if appropriate, packing and all other costs incurred in transporting the materials to the importation port in the Party where the producer of the product is located; where the value of the non-originating materials is not known and cannot be ascertained, the first ascertainable price paid for the non-originating materials in the Union or in the United Kingdom is used; the value of the non-originating materials used in the production of the product may be calculated on the basis of the weighted average value formula or other inventory valuation method under accounting principles which are generally accepted in the Party.

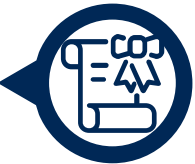


# Points to Note

"Materials" = non-originating materials (NOM) (i.e., non-EU/partner country materials)



All materials are NOM unless evidence confirms otherwise (e.g., supplier's declaration – check supplier's credibility), EUR1 etc.



Value of NOM = customs value (includes freight and insurance in addition to price)



All non-material costs are originating (e.g., labour, overheads, profit)



Consider whether tolerance rule can be used

- A small amount of non-originating materials can be used in production process up to a certain percentage (10% or 15%) of the ex works value of final product

(b) "EXW" or "ex-works price" means:

- (i) the price of the product paid or payable to the producer in whose undertaking the last working or processing is carried out, provided that the price includes the value of all the materials used and all other costs incurred in the production of the product, minus any internal taxes which are, or may be, repaid when the product obtained is exported; or
- (ii) if there is no price paid or payable or if the actual price paid does not reflect all costs related to the production of the product which are actually incurred in the production of the product, the value of all the materials used and all other costs incurred in the production of the product in the exporting Party:
  - (A) including selling, general and administrative expenses, as well as profit, that can reasonably be allocated to the product; and
  - (B) excluding the cost of freight, insurance, all other costs incurred in transporting the product and any internal taxes of the exporting Party which are, or may be, repaid when the product obtained is exported.
- (iii) For the purposes of point (i), where the last production has been contracted to a producer, the term 'producer' in point (i) refers to the person who has employed the subcontractor.

# Cumulation

- Allows originating products of Country A to be further processed, or added to products originating, in Country B as if they had originated in Country B
- However, the processing must be deemed 'sufficient'
- Bilateral, diagonal (e.g., with pan-Euro-Med zone), regional (e.g., EU GSP) and full
- Cumulation can only be applied between countries:
  - with FTAs that provide for cumulation
  - for diagonal, whose FTAs have identical ROO
- All EU FTAs allow for bilateral cumulation
- The EU-UK TCA allows for bilateral only



# Insufficient Production



Preserving operations such as drying, freezing, keeping in brine and other similar operations where sole purpose is to ensure that products remain in good condition during transport and storage



Breaking-up or assembly of packages



Washing, cleaning; removal of dust, oxide, oil, paint or other coverings



Affixing or printing marks, labels, logos and other like distinguishing signs on products or their packaging



Simple painting and polishing operations



Sharpening, simple grinding or simple cutting



Sifting, screening, sorting, classifying, grading, matching including the making-up of sets of articles



Simple placing in bottles, cans, flasks, bags, cases, boxes, fixing on cards or boards and all other simple packaging operations



Simple assembly of parts of articles to constitute a complete article or disassembly of products into parts

# Other Points to Consider

1

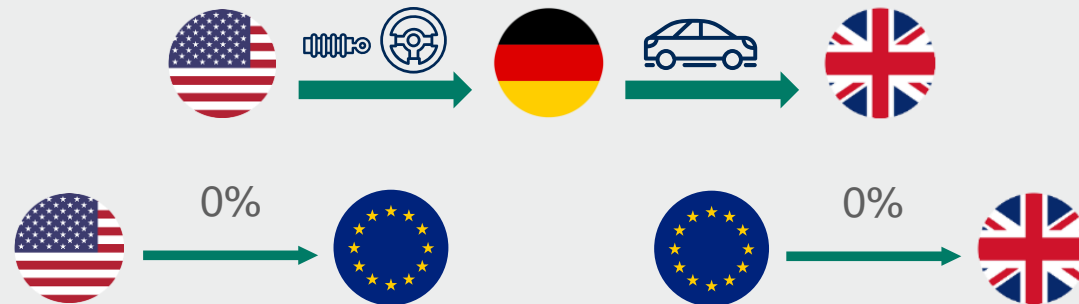
Verify that the **non-alteration rule** has been complied with

- Originating products must be transported between the EU and the partner country without further processing in a third country – except, provided that under customs supervision:
  - in order to keep in good condition, exhibition, storage and splitting up of consignments
  - adding or affixing marks, labels, seals or any other documentation for import compliance

2

Check whether **duty drawback** is permitted (i.e., combine IPR and trade preferences)

- Exporter will commit an offence if issues a preference certificate where IPR goods used to import the materials and the FTA disallows duty drawback



# Claiming Preferential Origin



Burden of proof is on importer to take reasonable steps to ensure goods qualify and certificate is genuine



Need a valid proof of origin and evidence that products qualify for preference

- Certificate of Origin - EUR.1/EUR-MED, ATR (Turkey)
- Invoice declaration (i.e., statement of origin on invoice, potentially from an Approved Exporter)
- For EU-UK TCA: Statement on Origin or Importer's Knowledge



Claim made via customs import declaration



May be possible to make a provisional claim and present certificate retrospectively



Retrospective claims are possible within a certain timeframe (e.g., 3 years)



# Takeaways

## Think Strategically About Trade



What are your supply chains and could you benefit from an FTA?



Looking back, could any retrospective claims still be made?



Could you consider new suppliers to take advantage of FTA preferential rates?



Do you mitigate your liability through contractual protection?



Are FTAs a consideration when establishing new operations?

# Human Rights

## Environmental, Social and Governance

### **Spencer Chilvers**

Head of Export Control Policy at Rolls-Royce  
Chairman of EGADD

Email: [Spencer.Chilvers@Rolls-Royce.com](mailto:Spencer.Chilvers@Rolls-Royce.com)



# Human Rights – General Scope



- Companies can impact or infringe upon human rights across a broad spectrum
- This includes individuals and groups in their direct work force; those in their wider value chain, including supply chain, communities around their operations, and, **the end users of, or those who may be impacted by the use of, their products and services.**



# Human Rights – General Scope



- The United Nations Guiding Principles on Business and Human Rights and the Organization for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises place a duty on companies to avoid infringing the human rights of others and to address adverse human rights impacts with which they become involved.
- If a company has contributed or may contribute to an impact, it is expected to prevent or mitigate its own contribution to the impact and use or increase its leverage with other parties to prevent or mitigate it. They should also contribute to remediating the harm if the impact has occurred, to the extent of their contribution.

# Human Rights – General Scope



- If they have not caused or contributed to an impact, but may have their operations, products or services linked to an impact through a business relationship, they should be expected to use or increase their leverage with other parties, including suppliers, to seek to prevent or mitigate the impact. If an impact has occurred, they have no responsibility to provide remedy but may choose to do so.
- Neither the UN Guiding Principles on Business and Human Rights or the OECD Guidelines state which goods and services are covered. It is nevertheless clear that much of their scope would apply no matter what the goods and services were. There are however grey areas.

# Sanctions, Embargoes and Export Controls



The UK, EU and US have all introduced global human rights (and corruption) sanctions regimes.

A number of country specific sanctions and arms embargoes cite human rights concerns as a reason for imposition.

Consideration of strategic export control license applications includes assessment of human rights concerns.

# Legal Uncertainty



The UN Guiding Principles on Business and Human Rights and the OECD Guidelines are silent on how they interact with other international instruments and domestic legal instruments that stem from a state's international obligations and commitments. In our case human rights issues associated with the export or supply of goods and services covered by sanctions, embargoes and strategic export controls.

# Legal Challenge



In 2019, a group of NGOs filed a Communication calling for an investigation by the International Criminal Court, into whether high ranking officials (of both defence companies and national governments) could bear criminal responsibility for supplying arms used in the Yemen conflict.

NGO's have also mounted legal challenges in a number of states about exports to those involved in the conflict in Yemen.

## Environmental, Social and Governance (ESG)



- Integrating ESG matters helps reconcile economic growth, social progress and environmental protection when managing business risks. It implies that board members and directors consider the risks the activities of the company represent for the environment and society at large. Businesses are encouraged to frame decisions in terms of their environmental (including climate, biodiversity), **social, human and economic impact.**
- The integration of ESG criteria into the financial and insurance markets is rapidly advancing. Often this debate places those companies supplying products and services to the military and security services alongside unlawful business practices such as child labour or ethically questionable sectors like tobacco or gambling.

# Environmental, Social and Governance (ESG)



- There are numerous issues that one can consider from an ESG perspective when analysing the aerospace and defence industry:
- Bribery and Corruption
- Product Quality and Safety
- Energy Use and GHG emissions
- Supply Chain
- Human Capital
- Sustainable Products and Services
- **Corporate Governance**



# What NGOs want to see in terms of further development of the ATT, as well as other “up and coming” issues from their viewpoint

**Roy Isbister** - Saferworld

**Ollie Sprague** - Amnesty International

Email:

[risbister@saferworld.org.uk](mailto:risbister@saferworld.org.uk)

[oliver.sprague@amnesty.org.uk](mailto:oliver.sprague@amnesty.org.uk)