

Ensuring more effective implementation of export controls: government outreach and industry compliance

This briefing summarises the discussions held as part of a workshop under the project ‘Tackling the illicit transfer and diversion of strategic goods and technologies: issues and priorities for more effective implementation of international controls and increased cooperation’. The workshop took place on 24 October 2017 in Vienna, Austria.

Introduction

The first workshop held under a UK Foreign and Commonwealth Office-funded project that focuses on tackling the illicit transfer and diversion of strategic goods and technologies was held in Vienna on 24 October 2017. The workshop was attended by over 30 participants, including government experts from 13 countries¹, industry representatives, international organisations and think tanks.

The proceedings

The meeting was divided into five sessions focusing on different aspects of export control compliance.

Session 1 addressed the **challenges of ensuring compliance with arms and dual-use transfer controls**. It was noted that the growth of trade and commerce in China – in both state-owned and private enterprise – meant that there has been a significant increase in the volume of exports that must be scrutinised and monitored. However, participants argued that governments cannot be expected to examine every consignment; instead, they should monitor voluntary compliance of companies with export control laws. Customs was also seen as playing an important role in ensuring export control compliance, with risk analysis playing a key role in their effectiveness. Sanctions were also seen as an effective method of deterring export violations but participants pointed out that these must be proportionate. Other challenges identified in the discussion included difficulties in controlling intangible technology transfer, differences in commodity classification between jurisdictions and the lack of a common approach to the issue of ‘catch-all’ controls.

Session 2 looked at some of the **challenges facing industry in complying with arms and dual-use transfer controls**. Participants noted that in order to be compliant, industry had to understand the importance of export controls and of establishing corporate structures and clear responsibilities. Accidental non-compliance by industry is more common than deliberate export control evasion. While attendees acknowledged that multinational corporations have more resources at their disposal, they noted that they must also deal with different export control regulations in multiple jurisdictions. Some small and medium-sized enterprises (SMEs) do not understand that their goods are controlled for export and therefore lack effective export control internal compliance programmes (ICPs). This is further complicated by the personnel and resourcing requirements of ICPs. Nevertheless larger companies were considered to have an important role to play in educating smaller firms in the supply chain. It was noted that in 2007 China issued guidelines² for all enterprises stipulating that they should: observe the law; comply with export controls; ensure maintenance of records; register with the Ministry of Commerce (MOFCOM); and establish adequate ICP. Where companies are not compliant, they may be prevented from using a General Licence for exports.

¹ The workshop was attended by representatives from Austria, China, Germany, Malaysia, New Zealand, Russia, Pakistan, the Philippines, South Korea, Sweden, Switzerland, the United Kingdom and the United States of America.

² The Ministry of Commerce of China announced guidance on the establishment of ICPs within companies trading in dual-use items and technologies in 2007 (No.69/2007). The announcement is available in Chinese: <http://www.mofcom.gov.cn/aarticle/b/c/200709/20070905071676.html>.

Session 3 addressed the **role of government-industry outreach programmes**. Speakers noted that outreach helps deter, prevent, detect and prosecute violations of export controls. They said that all relevant actors should be targeted in government outreach efforts – including manufacturers, commercial enterprises, academia, research institutes, exporters and couriers – with programmes designed according to the nature of their activities. Outreach to new actors is seen as particularly important given that they may be inadvertently non-compliant. Government outreach can also serve a useful information-gathering purpose where exporters are able to raise concerns about potentially dubious end-users and shortcomings of their ICPs. The need for specific types of training in niche areas – such as encryption technologies – was also highlighted as was the potential for the use of big data analytics to classify companies, diversion and other risks that exist within the supply chain.

Session 4 spoke to the **role of industry internal compliance programmes**. In this session industry representatives shared their experiences of establishing and running an ICP. They stressed that, as the first line of defence against illicit traffickers and proliferators, industry had a clear responsibility to establish effective ICPs. They also emphasised the importance of consulting internationally on best standards for internal compliance so that they could put in place the most effective procedures. Participants agreed that there was also a need for regular compliance trainings, with companies also taking responsibility for ensuring that partners in the supply chain are also fully compliant with relevant export control regulations.

Session 5 involved a concluding discussion on **elements for effective government outreach and industry compliance**, during which the following points were raised:

- **Resources** will be required on both sides – government and industry. On the government side these are needed in order to establish an efficient and workable licensing system and effective enforcement systems, audits of industry compliance and outreach to industry on export control issues. On the industry side investment is required in establishing export control compliance systems, in training, and in ensuring there is sufficient capacity to meet export control obligations. Crucially, a culture of compliance is required; where errors are made, these need to be acknowledged and learnt from.
- **Risk assessment** is usually associated with government export licensing but it also needs to be done by industry, as they are the first line of defence against diversion and illicit trafficking. If industry can identify and report suspicious activity, this would save time and resources for all.
- **Sanctions** – There need to be consequences when export controls are violated, but there also needs to be a distinction between deliberate and unintentional non-compliance. There must be a combination of criminal sanctions for serious violations and administrative charges for lesser infractions, pending reform and establishment of effective procedures and safeguards.
- **Challenges** for export controls and ICPs include:
 - Intangible technology transfers – including difficulties in controlling transfer by telephone, email and the internet. Cloud forms of technology storage can also be problematic when the server is hosted overseas. There are also different approaches – for example, to intangible technology transfers in the context of universities and other educational establishments.
 - Classification issues for industry who have difficulties in understanding control lists. This can be particularly problematic for industry located in states that are not members of proliferation control regimes.
 - Catch-all – there are many different concepts in this area – for some it means an entire export control system; for others it covers types of goods or exports to particular end-users; for some it is about preventing exports that could be used as weapons of mass destruction; for others it also includes exports to military end-users in embargoed destinations. A common international approach in this area would be welcomed.
- **Information exchange and cooperation** will be required to address all of these challenges. It is particularly important to share information with states that lie outside the proliferation control regimes but which are trying to follow the rules.
- Given the **wide variety of types of actors** that have the potential to be involved in the transfer of proliferation-sensitive goods and technologies – including manufacturers, brokers, shipping agents and universities – tailored outreach programmes are needed to ensure that each sector is aware of its transfer control obligations. In addition, ICP programmes should be appropriate to the nature, scale and frequency of an entity's involvement in the export or transfer of proliferation-sensitive

goods and technologies. In terms of industry outreach and ICP programmes, there is not one size that will fit all.

Next steps

All participants recognised the value of sharing international experience on government outreach and industry compliance as an important way of ensuring more effective implementation of export controls. Saferworld and its project partners will continue to promote deeper levels of information exchange and cooperation on strategic trade control and compliance issues among major producers of proliferation-sensitive goods and technologies. This includes actions to:

- follow-up on the specific issues highlighted during this event;
- take a practical, case study-driven approach to reveal the detailed implementation challenges to effective government outreach and industry compliance programmes and how they are being addressed in order to develop common understandings and approaches; and
- sustain the momentum achieved with the expert working group model of delivery, and find opportunities to bring into the discussion a wider range of relevant actors, in particular from relevant SMEs.

About Saferworld

Saferworld is an independent international organisation working to prevent violent conflict and build safer lives. With programmes in Africa, Asia, Europe and the Middle East and North Africa, we work with people affected by conflict to improve their safety and sense of security, and conduct wider research and analysis. We use this evidence and learning to improve local, national and international policies and practices that can help build lasting peace. We believe that everyone should be able to lead peaceful, fulfilling lives, free from insecurity and violent conflict.

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About Center for Policy Research, University at Albany, State University of New York (SUNY)

Center for Policy Research (CPR) was formally established in September 1987. Research conducted under the auspices of CPR addresses policy-relevant topics in the fields of international affairs, political science, public administration and public policy. CPR serves multidisciplinary and cross-departmental needs at the Rockefeller College of Public Affairs & Policy and promotes the goal of increasing the University at Albany's level of sponsored research activity. CPR supports fundamental research, applied research and outreach activities. CPR's Project on International Security, Commerce, and Economic Statecraft (PISCES), provides those forms of support in the area of strategic trade controls and nonproliferation.

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About Chinese Academy of International Trade and Economic Cooperation (CAITEC)

CAITEC is an interdisciplinary and multifunctional institution of social science research and a consultative body directly under the Ministry of Commerce (MOFCOM) of China, which undertakes research, information consultancy, publishing, education and training. CAITEC conducts research on the world economy and international trade, economic cooperation, regional economies, country-level economies, domestic trade and market development. It also conducts important research relating to export controls. It is one of the first national high-end think-tanks in China and in recent years has played an essential role in academic research, expert team building, personnel training and international communication.

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Annex A. Agenda

Ensuring more effective implementation of export controls: Government outreach and industry compliance

A workshop under the project 'Tackling the illicit transfer and diversion of strategic goods and technologies: issues and priorities for more effective implementation of international controls and increased cooperation', with support of the UK Foreign and Commonwealth Office

Saferworld, Berggasse 7, 1st Floor, 1090, Vienna
Tuesday 24 October 2017

Agenda

09:15-09:30 Welcome and Introductions

- **Bernardo Mariani**, Head, China Programme, Saferworld
- **Dr Cheng Hui**, Deputy Director, Institute of Trade and Investment Security, Chinese Academy of International Trade and Economic Cooperation (CAITEC)
- **Jay Nash**, Research Fellow, Center for Policy Research (CPR), University of Albany, State University of New York (SUNY)

09:30-10:45 Session I: Challenges in ensuring compliance with arms and dual-use transfer controls

Questions for consideration will include:

- How is it possible to ensure enforcement of controls over a large geographical area?
- What may be the role of provincial/regional authorities in export control enforcement?
- How is it possible to monitor export control compliance among a large number of small and medium-sized enterprises (SMEs)?

Moderator: **Ian Freeman**, Political Attaché, UK Permanent Mission to the United Nations

Speakers:

- **Dr Guo Xiaobing**, Deputy Director, Institute of Arms Control and Security Studies, China Institutes of Contemporary International Relations (CICIR)
- **Esther Trapp-Harlow**, Deputy Head, Division 224 - Cooperation with investigating and monitoring authorities, Federal Office for Economic Affairs and Export Control, Germany

10:45-11:15 Coffee break

11:15–12:30 Session II: Challenges facing industry in complying with arms and dual-use transfer controls

Questions for consideration will include:

- How can small and medium-sized enterprises (SMEs) and new businesses ensure they are compliant with national controls?
- What are the challenges facing large multi-national enterprises?
- How do the challenges facing large multi-national enterprises and SMEs differ?

Moderator: Jay Nash, SUNY

Speakers:

- **Dr Patrick Edgar Holzer**, Head, Dual-use Export Policy Division, State Secretariat for Economic Affairs (SECO), Federal Department of Economic Affairs, Education and Research (EAER), Switzerland
- **Dr Han Lu**, Research Associate, Institute of Trade and Investment Security, CAITEC
- **Michael Bell**, Export Controls Consultant

12:30–13:45 Lunch

13:45–15:00 Session III: The role of government-industry outreach programmes

Questions for consideration will include:

- How are suitable programmes designed and implemented in relation to i) military and dual-use industry; ii) controlling transfers of tangible and intangible products; and iii) those providing ancillary services (such as brokering and transportation)?
- What are the desired outcomes of such outreach programmes?
- Are different approaches necessary for addressing WMD and conventional arms proliferation risks?
- Should companies that participate in outreach programmes be treated differently from companies that do not?

Moderator: Bernardo Mariani, Saferworld

Speakers:

- **Muhammad Nadeem Ahmad**, Assistant Director, Licensing, Strategic Export Control Division (SECDIV), Ministry of Foreign Affairs, Pakistan
- **Kelly Gardner**, Senior Policy Advisor, Bureau of Industry and Security, U.S. Department of Commerce, and **Donald Pearce**, Senior Special Agent – Operations, Office of Export Enforcement - National Security Programs Division Desk, U.S. Department of Commerce
- **Se-Hee Ryu**, Senior Researcher, Korea Strategic Trade Institute (KOSTI)
- **Leonid Kozlov**, Second Secretary, Permanent Mission of the Russian Federation to the International Organizations in Vienna

15:00-15:30 Coffee break

15:30-16:45 Session IV: The role of industry internal compliance programmes

Questions for consideration will include:

- How does industry begin to design and implement an appropriate internal compliance programme (ICP)?
- What are the key components of an effective ICP?
- Where does the balance lie between industry self-regulation and government compliance monitoring?

Moderator: Elizabeth Kirkham, Senior Adviser, Arms Unit, Saferworld

Speakers:

- **Li Laiquan**, Deputy General Manager, ICP Office, Poly Technologies, Inc
- **Peter Cheah Hee Keong**, Senior Principal Assistant Director, Strategic Trade Secretariat Division, Ministry of International Trade and Industry, Malaysia
- **Kevin J. Cuddy**, Senior Manager, International Trade Compliance, GE Global Operations - Legal

16:45–17:15 Session V: Elements for effective government outreach and industry compliance

Participants will be invited to reflect upon the discussions from the earlier sessions and to begin the process of mapping out the different components of an effective outreach and compliance framework, as a first step in the development of a draft toolkit outlining different advocacy/communication strategies to promote industry awareness and compliance.

Moderator: Bernardo Mariani, Saferworld

17:15–17:30 Concluding remarks

- **Bernardo Mariani**, Saferworld
- **Dr Cheng Hui**, CAITEC
- **Jay Nash**, SUNY

Annex B, List of participants

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List of participants

1. **Muhammad Nadeem AHMAD**, Assistant Director, Licensing, Strategic Export Control Division (SECDIV), Ministry of Foreign Affairs, Pakistan
2. **Michael BELL**, Export Controls Consultant
3. **Peter CHEAH Hee Keong**, Senior Principal Assistant Director, Strategic Trade Secretariat Division, Ministry of International Trade and Industry, Malaysia
4. **Dr CHENG Hui**, Deputy Director, Institute of Trade and Investment Security, Chinese Academy of International Trade and Economic Cooperation (CAITEC)
5. **Kevin J. CUDDY**, Senior Manager, International Trade Compliance, GE Global Operations – Legal
6. **Diman DIMOV**, Crime Prevention and Criminal Justice Officer, Global Firearms Programme, Organized Crime and Illicit Trafficking Branch, Division for Treaty Affairs, United Nations Office on Drugs and Crime (UNODC)
7. **Andrew C. DORAU**, Regional Program Manager, Office of Export Control Cooperation (HST 3317), Bureau of International Security and Nonproliferation, U.S. Department of State
8. **Ian FREEMAN**, Political Attaché, UK Permanent Mission to the United Nations
9. **Kelly GARDNER**, Senior Policy Advisor, Bureau of Industry and Security, U.S. Department of Commerce
10. **Simret GOITOM**, Senior Legal Adviser, Inspectorate of Strategic Products, Sweden
11. **Dr GUO Xiaobing**, Deputy Director, Institute of Arms Control and Security Studies, China Institutes of Contemporary International Relations (CICIR)
12. **Dr HAN Lu**, Research Associate, Institute of Trade and Investment Security, CAITEC
13. **Dr Patrick Edgar HOLZER**, Head, Dual-use Export Policy Division, State Secretariat for Economic Affairs (SECO), Federal Department of Economic Affairs, Education and Research (EAER), Switzerland
14. **Elizabeth KIRKHAM**, Senior Adviser, Arms Unit, Saferworld
15. **Leonid KOZLOV**, Second Secretary, Permanent Mission of the Russian Federation to the International Organizations in Vienna
16. **Martin KRÜGER**, Deputy Director, Department of Disarmament, Arms Control and Non-proliferation, Federal Ministry for Europe, Integration and Foreign Affairs, Austria
17. **Paul LAKIN**, Head, Conventional Arms Policy Team, Counter Proliferation & Arms Control Centre
18. **LI Laiquan**, Deputy General Manager, ICP Office, Poly Technologies, Inc

19. **LI Zhiqiang**, Second Secretary, Permanent Mission of China to the United Nations and other International Organizations in Vienna
20. **LU Difan**, Attaché, Permanent Mission of China to the United Nations and other International Organizations in Vienna
21. **Bernardo MARIANI**, Head, China Programme, Saferworld
22. **Armando Q. MERCADO Jr.**, Chief Trade Industry Development Specialist, Import Policy and Monitoring Division, Bureau of Import Services, Department of Trade and Industry of the Philippines
23. **Jay NASH**, Research Fellow, Center for Policy Research (CPR), University of Albany, State University of New York (SUNY)
24. **Peter NOBLE**, Adviser, Conterproliferation & Export Controls, International Security & Disarmament Division, Foreign Affairs & Trade, New Zealand
25. **Tom OSTROWSKI**, Political Specialist, Mission to International Organizations in Vienna, U.S. Department of State
26. **Mag (FH) Catherina RIEDER**, Director, Public Relations and Communication, Huawei Technologies Austria GmbH
27. **Se-Hee RYU**, Senior Researcher, Korea Strategic Trade Institute (KOSTI)
28. **TANG Xiaomin**, Project Officer, China Programme, Saferworld
29. **Esther TRAPP-HARLOW**, Deputy Head, Division 224 - Cooperation with investigating and monitoring authorities, Federal Office for Economic Affairs and Export Control, Germany
30. **Dr WU Ning**, Associate Researcher, Institute of Trade and Investment Security, CAITEC
31. **Sergei ZAMYATIN**, Senior Officer, Wassenaar Arrangement Secretariat