

EU Export Controls and Trade Sanctions

Export Control Coordinators Organization

Annual Meeting, May 23, 2006

Alison Stafford Powell

Baker & McKenzie LLP, Washington DC

Alison.Stafford.Powell@bakernet.com

EU Trade Restrictions

- EU Export Controls
- EU Trade Sanctions
- Penalties and Enforcement
- Anti-terrorism Controls
- Trends/Developments

EU Export Control Regime

- Dual-use items regulated at EU level
 - Member States responsible for licensing and enforcement
 - EU Regulation 1334/2000, as amended
<http://www.dti.gov.uk/export.control/legislation/ecreg.htm>
- Military items regulated at Member State level (some EU coordination)

Comparison to US Export Control Regime

- Fewer unilateral controls
- No reexport controls (and no willingness to enforce US reexport rules)
- No deemed export rule
- No denial of export privileges
- No “General Prohibition Ten” – dealing in illegally exported items
- Differences in classification interpretation
- All controlled items require license for export from the Community to any country (no Country Chart)
- Very few items also require a license for intra-Community transfer
- Penalties higher e.g., in UK; greater enforcement in US
- Statute of limitations (e.g., 20 years in UK vs. 5 years in US)

Controlled Exports

- Physical shipments, including hand-carry of goods and technology
- Transmission of software or technology by electronic media, fax, and in some cases telephone (if reading contents of document or describing contents so as to achieve substantially the same result)
- Generally does not apply to items simply passing through EU (in-transit rules)

EU Control List

- Control List (common to each Member State with some limited national additions):
 - Annex 1: Require a license for export from the Community
 - Annex IV: Require a license for export from the Community AND for intra-Community transfer
 - <http://www.dti.gov.uk/files/file26940.pdf>

Annex I Items

- Require authorization for export from the Community
- May require authorization for export to other MS if final destination is known to be outside the EU and no processing/working is to be performed in the MS to which items are exported

Annex IV Items

- Require authorization for export to any country, including other MS
- Documents must clearly state items are subject to control if exported from Community

WMD Catch-all Control

- Items not listed in Annex 1 may also require a license if:
 - They are or may be intended for use in chemical, biological, nuclear weapons or missiles capable of delivery of such weapons
 - Purchasing country or country of destination is under military embargo
 - Items are or may be intended for use in military items included in national military lists
- Where exporter is “aware” or “is informed”. Exporters must notify national authorities if they are aware of such intended use.

Military End-Use Control

- EU Regulation does not strictly apply to military goods, but exports of dual-use items not listed on Annex 1 require a license where:
 - Destined for “military end-use”
 - In countries under arms embargo (EU, OSCE, UN), includes:
 - Armenia, Azerbaijan, Bosnia & Herzegovina, Burma, Burundi, Cote d’Ivoire, Congo, Iraq, Liberia, Rwanda, Sierre Leone, Sudan, Somalia, Tanzania, Uganda, Zimbabwe, Uzbekistan
- Where exporter is “aware” or “is informed”
- See 2003 Wassenaar Statement of Understanding on Control of Non-Listed Dual-Use Items
- UK does not implement this against China

Licensing

- Member States (not EU) issue export licenses (other than CGEA)
- Member States responsible for enforcement, prosecution and penalties

Community General Export Authorization (“CGEA”)

- ‘Administered at EU level’
- Covers all items in Annex 1 (some exceptions)
- Valid throughout Community (EU25)
- For exports to: Australia, Canada, Japan, New Zealand, Norway, Switzerland and US

CGEA Limitations

- Cannot be used if:
 - Items are or may be intended for use in chemical, biological, nuclear weapons or missiles for delivery of such weapons
 - Items intended for military end-use in country subject to EU, OSCE, UN arms embargo
 - Items are to be exported to customs free zone or free warehouse
 - Items are in Annex IV (sensitive items)

CGEA Requirements

- No need to apply
- Member States can impose registration and/or reporting requirements
- Member States can require additional information on exported items covered by CGEA

National Licenses

- For exports of all other items:
 - License by Member State where exporter is established
 - License valid throughout Community
 - Issue of license may be subject to requirements and conditions (e.g. end-user statement)
 - Individual, global or general

Record-Keeping

- Keep detailed register or record for at least 3 years from end of calendar year in which exports took place
- Contrast with US export controls: 5 years (recent cases)

Penalties

- Member State responsibility - “effective, proportionate and dissuasive” penalties
- Criminal and civil penalties
- No denial of export privileges
- UK Example:
 - Unlimited fines (£1000 for record-keeping violations)
 - Imprisonment up to 10 years (previously 7) (2 years for minor offenses)
 - Forfeiture
 - Revocation of licenses

Enforcement Approach

- No formal voluntary disclosure mechanism
- Most enforcement to date on military side
- Less transparency
- Increased cooperation between Member States and third country enforcement agencies (e.g., US)
- Expect greater scrutiny (particularly viz. catch-alls) e.g., Multicore (UK)

EU Trade Sanctions

- Generally Multilateral
- Targeted against individuals and entities associated with specific regimes rather than countries
- Follow a common format
- National licensing and enforcement

EU Trade Sanctions – Jurisdictional Scope

- Within the EU
- Aircraft or other vessels under jurisdiction of an EU Member State
- Nationals of Member States, wherever located
- Any legal person, group or entity which is incorporated or constituted under the law of a Member State
- Any legal person, group or entity doing business within the Community

EU Sanctions – Typical Measures

- Preferred types of sanctions at EU level:
 - freeze of funds and economic resources
 - prohibition to make funds and economic resources available
 - prohibition to sell arms and related material
 - prohibition to provide financing and/or technical advice or assistance
 - prohibition on granting credit or purchasing shares
 - visa/travel ban
- No complete prohibition to trade with sanctioned country (exception: arms and related material, and certain equipment)

EU/UK trade sanctions against third countries and groups

Country	Freeze of funds and economic resources	Ban on making funds or resources available	Ban on grant of credit or purchase of shares
Burma / Myanmar	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
DR Congo	<input type="checkbox"/>	<input type="checkbox"/>	
Iraq	<input type="checkbox"/>	<input type="checkbox"/>	
Ivory Coast	<input type="checkbox"/>	<input type="checkbox"/>	
Lebanon	<input type="checkbox"/>	<input type="checkbox"/>	
Liberia	<input type="checkbox"/>	<input type="checkbox"/>	
Serbia & Montenegro	<input type="checkbox"/>	<input type="checkbox"/>	
Sudan	<input type="checkbox"/>	<input type="checkbox"/>	
Syria	<input type="checkbox"/>	<input type="checkbox"/>	
Zimbabwe	<input type="checkbox"/>	<input type="checkbox"/>	
Al-Qaida/Taliban	<input type="checkbox"/>	<input type="checkbox"/>	
Global Terrorist Financing	<input type="checkbox"/>	<input type="checkbox"/>	
ICTY	<input type="checkbox"/>	<input type="checkbox"/>	

EU Anti-Terrorism Controls

- EU list of restricted terrorist persons and organizations:
http://europa.eu.int/comm/external_relations/cfsp/sanctions/list/consol-list.htm
- National controls:
 - Bank of England:
<http://www.bankofengland.co.uk/publications/financialsanctions/index.htm>
- Restrictions on provision of financial services, funds, etc.

Export Controls: What Lies Ahead?

- Peer review of EU25 completed in May 2005 (WMD Action Plan)
- Possible proposals for reform:
 - Minimizing divergences
 - Adding controls on transit and transshipment
 - Better guidance on recognizing dual-use items (“self-help tools”)
 - Exchange information on denials, consider creation of database to exchange sensitive information
 - Agree best practices for enforcement of controls
 - Improve transparency to facilitate harmonization of implementation of catch-all
 - Best practices on intangible transfers of technology
- Increased sensitivity to WMD and anti-terrorism concerns
- Bear in mind enforcement collaboration → coordinate voluntary disclosures

Sanctions: What Lies Ahead?

- Syria – UN Resolution 1636
- Iran – Informal Iranian embargo of UK and South Korea
- Belarus
- No plans regarding Palestinian Authority

Sources

- EU Sanctions Website:
http://ec.europa.eu.comm/external_relations/cfsp/sanctions/index.htm
- EU Financial Sanctions Consolidated List:
http://ec.europa.eu.comm/external_relations/cfsp/sanctions/list/consol-list.htm
- UK Department of Trade and Industry, Export Control Organization:
<http://www.dti.gov.uk/europeandtrade/strategic-export-control/index.html>
- Bank of England Consolidated List of Persons Subject to Financial Sanctions:
<http://www.bankofengland.co.uk/publications/financialsanctions/index.htm>
- BAFA Export Control Website (Germany):
http://www.bafa.de/1/en/tasks/01_control.htm

Questions?

Email: Alison.Stafford.Powell@bakernet.com

Tel: (202) 452-7053