



THE 13TH INTERNATIONAL
EXPORT CONTROL CONFERENCE
May 7-9, 2012 • Portorož, Slovenia

Towards a Trade Control Model: The EU Approach

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Portorož

May 9th, 2012



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How International Export Control Regimes Are Implemented by the European Union: From Reactive to Proactive



Until 1994, the EU was essentially responsive to International Export Control Regimes

- 1957** Elaboration and ratification of the **Euratom Treaty** in order to open access to third States' nuclear materials and technology
Implementation of a Safeguards system and Government-to-Government Assurances
- 1968** NPT ratification by EU Member States and negotiation of EU **exemption** from IAEA **safeguards**
Partial recognition and, to some extent, duplication of safeguards (Euratom and IAEA)

Until 1994, the EU was essentially responsive to International Export Control Regimes

- 1978** Emergence of specific export control regimes: **NSG, MTCR, Australia Group**, and mutation of COCOM into **Wassenaar Arrangement**
Broad participation of EU Member States

**Until 1994, the EU
was essentially responsive to
International Export Control Regimes**

EU Member States' declarations in different export control regimes exempting the EU common market from the "export" guidelines principles

Otherwise, Member States would violate the single-market rule embodied in the EU treaties

**Until 1994, the EU
was essentially responsive to
International Export Control Regimes**

As a Member of the European Community, the Government of ..., so far as trade within the Community is concerned, will implement these documents in the light of their commitments under the Treaties of Rome where necessary.

Until 1994, the EU was essentially responsive to International Export Control Regimes

1994 First step towards the substitution of Member States national export control regime by an **EU export control regime**

Adoption of a Regulation defining the essential elements and of a Joint Action listing the controlled items

When the EU started to be proactive

2003 EU WMD Strategy adopted by the European Council

2008 New lines for action in combating the proliferation of WMD and their delivery systems

WMD nonproliferation becomes **one of the major concerns** of the EU external policy

When the EU started to be proactive

Implemented through:

- **Nonproliferation clause** in cooperation agreement with third countries
- Adoption of **restrictive measures** against third countries (essentially implementation of UNSCR)

When the EU started to be proactive

- Proposals tabled in different **International Export Control Regimes** enhancing the efficiency of their guidelines, in particular, catch-all controls
- Setting up of **outreach** programs on export control measures

When the EU started to be proactive

- Transforming the EU Export Control Regime into the **EU Trade Control Regime**
- **Enlargement**
- **GAERC** recommendations 2004

When the EU started to be proactive

2008 Adoption of Regulation 428/2009: Revision the EU trade control regime in order to meet UNSCR 1540 commitments

Could such reform be considered as
a model of trade control regime?

Regulation 428/2009: A model of trade control regime?

Trade control regime model:

- Authorisation system
- Verification system
- Sanctions

Due to the **division** of **competencies** between the EU and Member States, the EU Regulation could not encompass the last two elements

Regulation 428/2009: A model of trade control regime?

EU Trade Control Regime:

- Results from the compilation of EU and Member States' provisions
- Legally binding regional trade control regime to be implemented by Member States

Cannot be referred to as a model, but contains a number of provisions which might be considered as the **elements of a model**

Regulation 428/2009: A model of trade control regime?

Definition of common understanding of a trade control regime components:

- **Dual-use items:** Attempt to consolidate the definitions used by different trade control regimes
- **Single list of controlled items:** Compiles in a coherent system the lists of five trade control regimes

Regulation 428/2009: A model of trade control regime?

- **Catch-all mechanism:** “has been informed,” “knows,” “is aware”
- **Controlled operations :** Export, transit, brokering, transfer
- Harmonization of **documents:** Model for Individual or Global Export Authorisation, End-User Certificate
- Control of exports of **technical assistance**

Regulation 428/2009: A model of trade control regime?

- Harmonization of **categories** of authorisations: Individual, Global, National General, EU General Export Authorisation (EUGEA)
- Definition of common **conditions** and **criteria** to be considered when assessing license application
- Establishment of **information exchange** procedure and of **no-undercut** mechanism

Reforming
the EU Trade Control Regime:
The Green Paper on the
dual-use export control system
of the European Union

Main issues

Extending the scope of authorisations

- New EUGEA, phasing out NGA, license exception, reviewing the control lists

Common risk assessment and review procedures

- Identification of potential difficulties stemming from differences in implementation of DUR by Member States
- Level playing field for EU exporters
- Harmonisation of criteria
- Improvement of denial mechanism

Main issues

Intra-EU controls and single-market compatibility

- Post-shipment verification system
- EU end-user certification
- Notification system
- Revision of Annex IV

Main issues

Catch-all controls and EU enhanced security

- Assessment of existing catch-all clauses, potential improvement
- Compulsory catch-all notifications
- EU-wide catch-all clauses

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Main issues

Transit and brokering controls

- Extending the scope

Information exchange

- Extending the scope, the content, the level of constraint

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An EU trade control model ?

- Still under **discussion**
- Regime would be **EU-tailored** and could not be copied and implemented by another **group of States:**
Potential reference to Mercosur, African Union ...
- **Network** of national licensing authorities operating under common rules

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