



Defence Export Controls Bulletin



Issue One, January 2006

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INTRODUCTION

Hello and welcome to Defence Trade Control and Compliance's inaugural Defence Export Controls bulletin.

Defence Trade Control and Compliance (DTCC) is a section within the Department of Defence that administers the regulation of defence and dual-use goods exports on behalf of the Government of Australia.

Our aim is to ensure that Australian exporters do not export any goods, services or technologies that may be inconsistent with Australia's national interests and international obligations.

We plan on producing a minimum of two bulletins per year, but there may be more depending on the material available and any activities of interest. We would welcome input from exporters recounting their experiences.

DTCC is available to answer any questions or queries that may arise from information contained in this bulletin. Please feel free to phone 1800 66 10 66 and select option 3 or e-mail dtcc@defence.gov.au.

Editor



DEFENCE EXPORT CONTROLS

Export controls are an increasingly important responsibility of government. International concern has grown regarding the proliferation of weapons of mass destruction and conventional weapons, as well as the interest that terrorists groups have shown in these items. Last year the United Nations Security Council passed a binding resolution which among other things reminded states of their obligations to be responsible exporters.

Although, Australia is geographically remote from many of the chronic areas of instability and proliferation concern that we read about on an almost daily basis, we are not immune from the attentions of proliferation networks.

Our economy is part of a global trading system and our security is directly assisted when we ensure that proliferation is not allowed to become a concern in our region and that even inadvertent assistance to terrorist groups is minimised.

The Australian Government takes its responsibilities of international citizenship seriously. Australia belongs to the major international arms control and counter-proliferation treaties and arrangements. Most other comparable countries, which are also our competitors in economic terms, belong to the same regimes.

Australia strongly supports continuing efforts to increase adherence to export control standards as widely as possible.

Defence has the responsibility, under the Customs Act and Weapons of Mass Destruction Act, for administering Australia's export controls. DTCC processes about 4,000 applications from exporters each year. DTCC works very closely with other Government agencies to ensure that the Australian Government's responsibilities are upheld. Consistent with the Government's concern in this area, DTCC has been reviewing the functions and performance of the export control system to ensure that it remains at best practice standards.

As a regulator, we look forward to more contact with exporters in the coming year to ensure that you understand our requirements and we understand your concerns and issues.

Ultimately our success depends on the exporters understanding their responsibilities.

We look forward to effective cooperation with you over the next year.

Jurgen Zacny
Director-DTCC



STRENGTHENING EXPORT CONTROLS

In response to the escalating terrorist threat the Prime Minister has asked the Minister for Defence to strengthen export controls. DTCC, the agency responsible for the administration of export controls on defence and dual use goods, has responded with a three pronged approach.

Firstly, a benchmarking study has been commissioned to compare Australia's export control system with that of other like minded countries.

The benchmarking study will provide Defence with a comparative analysis of resources, licensing processes and legislative controls, which will be used as a strategic planning tool for strengthening the short and medium-term administration of Australian export controls.

Secondly, a legislative review of the current export control legislation has been undertaken. The current legislation does not allow for controlling the intangible transfer of technology (unless associated with a weapon of mass destruction program). The intangible transfer of technology is particularly relevant to tertiary education institutions as many Australian universities and tertiary institutions are expanding rapidly and becoming players in the large international arena of advanced research and development, with campuses throughout the world. This increases the

likelihood of countries and individuals of concern gaining access to sensitive Australian technology and expertise. Not only is the intangible transfer of WMD-related technology through research, training and conferences a concern, but many universities and tertiary institutions are conducting cutting-edge research, which could potentially be exploited for use in WMD programs.

Furthermore, more resources are being sought to enable DTCC to investigate exporter compliance and undertake analysis of export records. Other areas of legislative review include arms brokering controls and a catch-all provision for conventional dual use goods that are not currently included in the Defence and Strategic Goods List. The penalty regime associated with export controls will also be examined.

Finally, DTCC has committed to strengthening the Export Control Outreach Program to increase the awareness of all exporters. A communication strategy is being implemented to commence in early 2006. The communication strategy will include a media release to mainstream media and industry peak bodies. In addition, a number of new publications have been written, our inaugural bulletin has been introduced and a new export control training program will be developed and delivered in conjunction with the University of Canberra.

An extensive outreach schedule has also been developed and will continue over the coming months. If any industry, university or government department would like a face-to-face visit or attend our training program please contact 1800 66 10 66.

These actions are planned to raise the performance of Australia's export control system to achieve and perhaps exceed the best practice standard of like minded countries. Australia has always enjoyed a good reputation as a responsible and trusted exporter – now we would like to excel in this regard and to set the new standard.



CHEMICAL EXPORT REGULATION IN AUSTRALIA

Australian Safeguards and Non-Proliferation Office Department of Foreign Affairs and Trade

Chemical weapons (CW) have been used a number of times in the modern era to devastating effect including in World War I and in the 1980s Iraq-Iran war. In addition to the military threat, there is increasing concern about possible terrorist use. As a result, international regulatory regimes have emerged to address the issue of chemical weapons (CW) proliferation. The most important of these are the Chemical Weapons Convention (CWC) and the Australia Group (AG).

The objective of the CWC is to eliminate CW worldwide in a verifiable way. It requires CW stockpiles to be destroyed and dual-use chemical activities to be regulated, reported and information verified, including related exports and imports. The AG is primarily an export control regime which complements the provisions of the CWC, by requiring controls on additional dual-use chemicals, CW-relevant equipment and technologies, as well as a range of biological goods. Australia is a leading advocate of these regimes and our obligations are enshrined in Australian legislation, in particular the Customs (Prohibited Exports) Regulations 1958. The DTCC Section of the Department of Defence is responsible for issuing permits for dual-use chemicals and other controlled goods, as specified in the Defence and Strategic Goods List (DSGL).

Although 90 or so specific compounds or chemical classes are regulated for export, less than 20 are commonly traded. Chemicals controlled in this way include agents that can be used in chemical warfare, such as sarin and sulphur mustard, as well as their precursor chemicals and even earlier chemicals in the CW agent synthesis chain. Organophosphorus and some inorganic phosphorus compounds may be regulated as nerve agent precursors, and other common controlled chemicals include thiodiglycol, thionyl chloride, triethanolamine and several cyanides and fluorides. There are no quantity thresholds below which the export of these do not require a permit, but concentration thresholds may apply. A full listing of the controlled chemicals, including export permit conditions and

comprehensive identification information, is provided in the International Chemical Trade Control (ICTC) CD at www.dfat.gov.au/cwco (also includes imports), and at the DTCC website www.defence.gov.au/strategy/dtcc.



The export of chemicals is subject to various means of monitoring in addition to the initial issue of permits and regulation through the Customs system. To begin with, all regulated chemicals have corresponding unique or semi-unique Australian Harmonised Export Commodity Classification (AHECC) codes which exporters are required to use, unless overruled by a product code for certain mixtures, for instance engine coolants. These codes are also provided in the ICTC CD. Also as part of their permit conditions, exporters must report the total relevant trade to DTCC on a twice yearly basis. Finally,

Customs export data is re-examined on a regular basis and all domestic information is compared with data provided by international agencies and our chemical trading partners to ensure accurate control and tracking.

Although no additional chemicals are likely to be added to the CWC control lists, it is possible that some may be added to the AG lists, as agreed during the annual AG Plenary meeting and then reflected in AG participants' national regulations. These additions are subject to risk-benefit analysis taking into account effects on industry and other factors. A more likely source of new regulated chemicals may be that associated with the introduction of new counter-terrorism (CT) related controls. The timeframe and outcomes of this CT work is still uncertain but will have input by peak industry bodies.



COUNTER-PROLIFERATION AND EXPORT CONTROLS

Counter Proliferation and Arms Control Section Department of Defence

One of the greatest challenges currently occupying the international community is halting the proliferation of WMD. Export controls are one of the first lines of defence in addressing these challenges. Export controls identify and prevent access to dual use technology by would-be proliferators. Countries with well developed and mature export controls have reason to be proud of their non-proliferation credentials. Australia has an excellent non-proliferation record and in conjunction with our partners and allies we continue to strengthen the international and national barriers to the supply and acquisition of proliferation-sensitive technologies.

There is a growing acceptance of the need for export controls but many countries are either still in the process of developing these controls, or are actively seeking to undermine them. Determined proliferators can and do move their illicit trade activity to those states which have less-effective procedures, and there are many countries with sophisticated manufacturing and trade capabilities but without comprehensive export controls for proliferators to choose from.

Even if every country had stringent export controls, this would not preclude the requirement for a suite of additional measures recognising the very real and complex proliferation activity that threatens global security. The United Nations (UN) has played an important galvanising role in global efforts to combat international proliferation. UN Security Council Resolution 1540 creates sweeping obligations on member countries to create legislation and machinery to deal with proliferation. It focuses on practical actions, including export controls and security arrangements for chemical, biological and nuclear weapons-related materials, equipment and technology.

For Australia, UNSCR 1540 is a welcome step in reinvigorating the UN's quest to foster a global response to international proliferation. UNSCR 1540 obliges states to take national level action in terms of enactment and enforcement of legal and regulatory measures to close the gap between the global consensus against proliferation, and concrete actions to implement that consensus. By requiring action by all states, the resolution acknowledges that proliferators look for the path of least resistance—the unprotected border, the un-enforced regulation, the imperfect licensing system.

Under the resolution countries are obliged to provide information to the UN on their national capability to diminish the threat of WMD proliferation. Australia, along with 86 other

countries, provided a comprehensive report on its counter proliferation capability for the first 1540 Committee Report dated 8 December 2004.

Australia is committed to sharing the best available information on practices that work even when adapted to local circumstances. Australia hosted an Asia-Pacific Ministerial conference in November last year on nuclear safeguards and security and co-hosted with Indonesia the first regional workshop on the Biological Weapons Convention in February this year. These conferences and workshops are essential in coordinating our efforts to identify and control potentially sensitive technology; an unceasing challenge constantly being tested by countries willing to exploit loopholes in our export controls to conceal their proliferation efforts.

Australia has been directly involved in other innovative measures, such as the Proliferation Security Initiative (PSI), to close the gaps in our suite of counter-proliferation tools.

Under the Initiative, participating countries have agreed to take steps, either alone or with others, to impede the illicit transfer or transport of WMD, their delivery systems and related material. It addresses in a practical way the urgent need to capture WMD-related transfers between states of proliferation concern that are beyond the reach of export controls. Australia was the first country to host a PSI exercise and will host another exercise in April 2006. International action to counter proliferation continues to develop whether through UNSCR 1540, the PSI or the work of the export control regimes. All of these activities are ultimately focussed on the global goal of preventing the proliferation of WMD.



THE WHO, WHAT, WHY, HOW OF DEFENCE EXPORT CONTROLS

Within Australia, the legislative basis for export control is exercised through Customs (Prohibited Exports) Regulations, enabled by the Customs Act (1901). This legislation empowers the Australian Government to control the outbound movement of certain items identified in the Defence and Strategic Goods List (DSGL).

The DSGL is a consolidated listing of a wide range of defence and dual-use goods and technologies that have been developed through the various international non-proliferation and export control regimes, with further additions by Australia. The DSGL is regularly updated to ensure that it reflects advancements in technology. The legislation also includes enforcement provisions with adequate sanctions to deter non-compliance.

In addition, the Weapons of Mass Destruction (Prevention of Proliferation) Act 1995 (WMD Act) enables Australia to control the export of any goods, services and technologies, both tangible and intangible, that can assist a weapons of mass destruction program. This catch-all legislation is now part of export control arrangements in an increasing number of countries.

Who administers export controls? The Australian export control system for defence and dual-use goods and

technologies is administered by DTCC in the Department of Defence, through a comprehensive licensing system. All export applications are assessed on a case-by-case basis, taking into account the type of goods, receiver of the goods, the end use and the anticipated end user. Sensitive applications may be referred to an interdepartmental committee for consideration. This committee is known as the Standing Inter-Departmental Committee on Defence Exports (SIDCDE) and is represented by various Australian Government agencies who seek to ensure that the application is assessed from different perspectives, such as trade, foreign policy, industry, and defence.

What is controlled? Goods that are controlled include; defence and military goods; dual use goods (commercial items with a legitimate civil application that can also be adapted for use in a military program); goods, services and technologies (including the intangible transfer of technology) that may contribute to WMD program.

Why are goods controlled? Australia is signatory to a number of arms control treaties and has obligations to monitor exports to ensure that sensitive goods, services or technologies do not fall into the wrong hands and contribute to military or WMD programs.

All goods, services and technologies that may contribute to a WMD program need to be controlled and therefore may need to have an export permit or licence. If an exporter is unsure if any goods, services and technologies are controlled, please send an e-mail to DTCC (dtcc@defence.gov.au) or phone 1800 66 10 66.

When do exporters need a permit/licence? Exporters need a permit if their goods are controlled. If unsure please see our website www.defence.gov.au/strategy/dtcc or phone 1800 66 10 66. Exporters can apply for In-Principle permits which enable exporters to market defence and related goods to potential customers.

Who to contact:

Defence Trade Control and Compliance
Ph: 1800 66 10 66
Email: dtcc@defence.gov.au



UPDATE / MESSAGES

- New Training Program will commence early 2006. Half day Export Controls workshops available in Brisbane, Sydney, Melbourne, Canberra, Adelaide and Perth – please contact the DTCC Outreach Manager for further details 1800 66 10 66 and select option three
- International Traffic in Arms Regulations (ITARs) seminars delivered by US Department of State personnel. Brisbane, Sydney, Canberra, Melbourne and Adelaide - please contact the DTCC Outreach Manager on 1800 66 10 66 option three for queries
- DTCC's Export Control Outreach face-to-face visits available for companies new to exporting or those with a change of staff. All queries to the Outreach Manager 1800 66 10 66 and select option three
- Please note – End-user certificates on our website are for exporters only



Our New Telephone Number is
1800 66 10 66

TYPES OF PERMITS / LICENCES

MEA: Military Export Permit

Covers the export of a specified quantity of defence and related goods to named consignee(s).

MEL Military Export Licence

Covers the export of unspecified quantities of defence and related goods to named consignees.

MRO Military Return to Owner

To repair defence related goods to overseas owners (eg after repair or modification)

MTT Military Temporary Export Permit

Used for defence and related goods which will be returning to Australia (eg overseas demonstration trials).

MRM Military Return to Manufacturer

To return defence related goods to overseas manufacturer (eg. for repair or modification)

MIP Military in-principle Permit

Preliminary advice that approval may be granted. MIP allows exporters to market defence and related goods to potential customers. (This permit does not give actual export approval)

IEP Individual Export Permit

A single transaction export of a specified quantity of nuclear and dual-use goods to a single consignee.

ESS Export Service Supply Licence

Used for nominated dual-use goods in support of a maintenance program or service to specified companies.

MRR Maintenance Repair & Return Licence

To return or send dual-use goods for repair or after repairs overseas.

EDL Export Distribution Licence

The multiple shipment of an unspecified quantity of nuclear and Dual-use goods to a single or multiple consignees.

GEL General Export Licence

The export of a range of dual-use goods to unspecified Consignees in nominated countries.

AIP Approval-In-Principle Permit

As per MIP but for dual-use goods

CONTACTS

Defence Trade Control & Compliance

CP3-7-005
Campbell Park Offices
Campbell ACT
www.defence.gov.au/strategy/dtcc
Tel: 1800 66 10 66
Fax: (02) 6266 2997

Implementation of export controls on defence and dual-use goods

Australian Customs Service

Customs House
Constitution Ave
Canberra ACT
www.customs.gov.au
Tel: 1300 363 263 or (02) 6275 6666
Fax: (02) 8339 6714

Enforcement of import and export controls

Australian Safeguards & Non-proliferation Office

R.G. Casey Building
John McEwen Cres
Barton ACT
www.asno.dfat.gov.au/
Tel: (02) 6261 1111
Fax: (02) 6261 3111

Chemical Imports, chemical and nuclear activity

Attorney-General's Department

Robert Garran Offices
National Circuit
Barton ACT
www.ag.gov.au
Tel: (02) 6250 6666
Fax: (02) 6250 5900

Firearms under 50 calibre import

Department of Foreign Affairs & Trade

R.G. Casey Building
John McEwen Cres
Barton ACT
www.dfat.gov.au
Tel: (02) 6261 1111
Fax: (02) 6261 3111

International arms control and non-proliferation policy

HANDY WEBSITES

Argonne National Laboratory

www.anl.gov

Arms Control Association

www.armscontrol.org

Australian Bureau of Statistics

www.abs.gov.au

Australia Group

www.australiagroup.net

Austrade

www.myexportcoach.gov.au

Biological Weapons Convention

www.opbw.org

Bureau of Industry and Security

www.bis.doc.gov/index.htm

Chemical Weapons Convention

www.opcw.org

Commonwealth of Australia Law

www.comlaw.gov.au

Missile Technology Control Regime

www.mtcr.info/english/index.html

Nuclear Non Proliferation Treaty

www.dfat.gov.au/security/npt.html

Nuclear Suppliers Group

www.nuclearsuppliersgroup.org

US Export Administration Regulations

www.bxa.doc.gov

Wassenaar Arrangement

www.wassenaar.org

Zangger Committee

www.zanggercommittee.org/Zangger

OUR RANGE OF INFORMATION BROCHURES



Weapons of Mass Destruction



Detecting Attempted Procurement



Australian Controls for the Export of Firearms



Australian Export Controls for Defence and Dual Use Goods



Australian Controls on the Export of Defence and Dual Use Goods



Tertiary and Research Institutions Export Controls

Please contact DTCC on 1800 66 10 66 if you would like any of the above publications sent to you.