



Defence Export Controls Bulletin



Issue Two, Spring 2006

The new **Defence and Strategic Goods List (DSGL)** is coming soon. It will be published on our website www.defence.gov.au/strategy/dtcc shortly.

Inside this issue

- 2 Proliferation Security Initiative
- 3 Comply with Your Permit and Licence Conditions
- 4 ITAR Seminar 2006
- 6 Codes of Conduct for Scientists
- 7 Types of Permits/Licences
- 8 Contact List



INTRODUCTION

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

Since our last edition DTCC has been integral to a number of initiatives and changes within the Australian export controls system. DTCC along with the Department of Industry, Tourism and Resources ran a series of International Traffic in Arms Regulations (ITAR) seminars (see story page 4) aimed at assisting industry with the intricacies of U.S. export control system.

These seminars proved to be very successful with a number of industry representatives praising the initiative. As a result DTCC has identified the need for further ITAR training and are in the process of developing a training program – if you would like to register your interest please

phone 1800 66 10 66 or send me an e-mail at dtcc@defence.gov.au.

DTCC is in the process of reviewing national export controls with a view to strengthening the legal framework and developing worlds best practice standards in export controls.

We have also experienced a number of staff changes, John Paterson has retired and we would like to welcome Karen Bell, Jenny Campbell, Louanne Holmbach-Piggott, Vicki Berkhout and John Ellis to the section.

Remember DTCC is not here to impede trade but to maintain Australia's strategic and security issues and to ensure our international obligations are met; we welcome inquiries from industry and are always willing to assist.

Editor



PROLIFERATION SECURITY INITIATIVE

One of the greatest threats to Australian and international security is the spread of Weapons of Mass Destruction (WMD).

Growing access to information globally, significant advances in technology and the diversification and liberalisation of international trade have made it easier for WMD to be developed by those who are prepared to operate outside the norms of the international community.

DTCC plays an important role in harnessing this trade by controlling the export of defence and dual use goods, including military equipment, nuclear materials, chemicals and toxins, electronics, software, and technology, as listed in the Defence and Strategic Goods List (DSGL).

The genesis of the DSGL is the international export control regimes of which Australia is a member. These regimes include the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies, the Australia Group on chemical and biological weapons materials, the Nuclear Suppliers' Group and the Missile Technology Control Regime. These multilateral regimes have a common objective in seeking to control the proliferation of WMD and their delivery systems as well as the transfer of conventional weapons and dual-use technologies with destabilising implications, through the coordination of national export control policies.

But these arrangements can be hard to enforce. States and non-state actors are using increasingly sophisticated and aggressive measures to circumvent the controls put in place by the international community. Should the export control safety net be circumvented, nations must be willing to work together to ensure that necessary action is taken. This is the essence of the Proliferation Security Initiative (PSI).

The PSI is an informal arrangement designed to stop the illicit transfer of WMD and related materials.

The PSI responds to the urgent need to stop WMD-related transfers between states or non-state actors of proliferation concern. Such transfers breach international non-proliferation norms. Since its launch in May 2003, the PSI has rapidly built up its operational strength and momentum, garnering the support of more than 70 countries – including Australia.

Countries can participate in the PSI in a variety of ways, by participating in operations; by participating in PSI exercises; or by stating their support for the PSI Statement of Interdiction Principles.

The Statement of Interdiction Principles sets out the core objectives and methods of the Initiative, and commits participants to work together as necessary, and to act to prevent the illicit trade in WMD and WMD-related material, consistent with each nation's domestic law and relevant international law.

The PSI complements and reinforces other national and international non-proliferation efforts. The PSI is not designed to replace existing arms control and non-proliferation mechanisms; instead the PSI builds upon them by providing an operational mechanism which facilitates action when proliferators try to exploit the deficiencies of the current system. UN Secretary General Kofi Annan has acknowledged this role for the PSI, noting that it 'fills a gap in our defences'.

By providing a mechanism for enforcement agencies to respond, the PSI provides an important safety net for our first line of defence – a strong and effective export control system.



COMPLY WITH YOUR PERMIT AND LICENCE CONDITIONS

As an exporter, a key aspect of securing your business is making sure that you comply with your permit and licence conditions. DTCC wants to help industry strengthen ties and facilitate trade with overseas buyers and suppliers but we must also have a keen eye on Australia's commitments to international regimes.

The legislative frame-work may be complicated and not always conducive to delivering goods fast, but is in place to ensure that our commitments to international treaties are upheld. When exporting controlled goods or technologies our staff will work hard to ensure that your export does not contravene legislation. So when a permit or licence is issued it may contain conditions that require some form of reporting, assurances or undertakings.



The conditions on your permit are put in place for good reason and to allow you to comply with legislation. Conditions also help you to navigate potential pitfalls that may be involved with the export of controlled goods or technologies.

Where an exporter does not comply with the conditions on the permit there can be severe penalties which may involve criminal prosecution resulting in a fine of up to \$11,000 per contravention. There are other adverse outcomes for a business caught not complying with a condition and they may include:

- adverse or critical media attention;
- a tarnished business reputation; and
- resultant business losses.

DTCC Compliance staff check for exports made under a permit or licence and look for controlled goods leaving Australia without authorisation. The Compliance section are a committed crew of skilled compliance officers dedicated to ensuring that industry participants:

- are made aware of the rules for exporting controlled goods or technologies;
- are given the opportunity to comply with those rules;
- are monitored for their compliance with the rules; and
- who choose not to comply, are appropriately sanctioned.

The "rules", in most cases, refer to the conditions on your permits or licences. The "sanction" will mean that DTCC considers all of the facts and circumstances surrounding an alleged breach of a permit condition and develop an appropriate response. Where possible and depending on the circumstances (that may range from a mistake to a deliberate act), options for an appropriate response will be made, in consultation with you.

If you accidentally contravene a condition of your permit, advise DTCC immediately, by phoning 1800 661 066 or email dtcc@defence.gov.au.



ITAR SEMINAR 2006

During the period 28 February to 10 March 2006, Defence Trade Control and Compliance (DTCC), in conjunction with the Department of Industry, Tourism and Resources held a series of International Traffic in Arms Regulations seminars aimed at raising awareness and assisting industry in understanding U.S. export control requirements.

There were a number of different speakers, discussing a range of issues, DTCC's Director, Jurgen Zacny provided an overview of the Australian Export Controls system and gave an insight into the proposed strengthening of Australia's export control system, which includes a review of legislation and new outreach initiatives.

Ms Nancy Meyer, a senior licensing official from the U.S. Department of State, Directorate of Defense Trade Controls, provided an in-depth overview of the U.S. export licensing system. Nancy's presentation raised a number of issues, but the most often repeated questions were in regard to dual citizenship and sub-licensing; with confusion over dual citizenship by far the most recurring theme of the seminars. Although Nancy was unable to give a definitive definition, she did provide some personal insight, advising 'a dual citizen is someone that would be entitled to protection from another country'. However, Australian law, particularly the anti-discrimination legislation prohibits employers asking nationality questions. Ms Gillian Marks, General Counsel DMO, advised that due to the complexity of the issue, it is recommended that industry contact her office for advice (contact details provided on page 5). Nancy also advised that the Department of State has a response team that can assist with any queries (contact details provided on page 5).



Mr Jurgen Zacny, Defence Trade Control and Compliance

Mr Greg Creeser, President of the Society for International Affairs (SIA) gave a very informative presentation entitled 'US Export Controls and How They Apply to You'. This in-depth presentation provided an excellent general overview of the intricacies of the ITAR.



ITAR Panel Mr Jurgen Zacny, Ms Beth Johnson, Mr Andrew Garth and Ms Nancy Meyer

Ms Debi Davis, Vice President, International Trade from Goodrich Corporation and Ms Beth Johnson, Director, Export Management, Electronic Systems Sector, Northrop Grumman Corporation gave 'Industry Best Practices and Tips' presentations. A common theme in these presentations was the need for Australian industry to keep communication channels open with their U.S. counterparts. Ask questions and make sure that agreements meet 'your' needs, be aware – read the regulations, be organised and plan ahead!

Mr Andrew Garth, Assistant Program Manager JSF, GKN Aerospace Engineering Services, Melbourne gave an excellent presentation entitled 'ITAR Compliance – GKNAES' Australian Perspective'. Andrew emphasised the need for advanced planning to ensure time-frames are realistic. He also suggested establishing a dialogue from day one and request drafts as early as possible. Andrew is happy to answer questions and assist wherever possible (contact details provided below).

SIA hold regular training seminars in the U.S. (contact details provided below) and DTCC is in the process of developing an ITAR training program (contact DTCC for more information).

Presentations are available at

http://www.industry.gov.au/itar_seminar/



Ms Beth Johnson, Northrop Grumman Corporation



Mr Andrew Garth, GKN Aerospace Engineering Services

Contacts

U.S. State Department

Directorate of Defense Trade Controls Response Team

Web: http://pmdtc.org/itar_index.htm,

E-mail: DDTCResponseTeam@state.gov

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Society for International Affairs

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CODES OF CONDUCT FOR SCIENTISTS

One of the greatest contemporary security concerns facing the international community relates to the possibility of the acquisition of WMD by terrorist groups. In response to this concern, a number of initiatives are being pursued to reduce this possibility, including measures to reduce the likelihood that scientists (or traders in scientific dual-use materials, equipment and technology) may inadvertently assist a terrorist group in its attempts to acquire a WMD-capability.

One such initiative is the development, promulgation and adoption of Codes of Conduct for scientists. Key objectives of such codes of conduct are:

- To increase the awareness of the relevant scientific communities and traders of the dual-use nature of much of the nuclear, biological and chemical materials, equipment and technology ('know-how'), and the potential for mis-use of such items for the production of WMD;
- To ensure that all scientists and traders dealing with these types of equipment are aware of Australia's international obligations under various treaties (NPT, BWC and CWC), as well as UN Security Council Resolution 1540, not to transfer any such dual-use items to a terrorist group; and
- To ensure full awareness of, and compliance with, all Australian domestic legislation relevant to these items, including export controls.

For example, with respect to the biological sciences, the Fifth Biological Weapons Convention (BWC) Review Conference held in Geneva in November 2002 agreed to a three-year program of work which would consider various topics designed to strengthen the BWC. For 2005, it was agreed that State parties would discuss, and promote common understanding and effective action on the content, promulgation, and adoption of codes of conduct for scientists.

The BWC meeting in 2005 considered several issues related to Codes of Conduct, including:

- The types and content of Codes of Conduct,
- The role of Codes of Conduct in assisting the scientific community in supporting the objectives of the BWC, and
- Various outreach and awareness-raising activities among biologists and the broader scientific community to ensure that Codes of Conduct are effective.

With respect to what information should be contained within codes of conduct, suggestions ranged from a focus on:

- Ethical considerations, including scientific responsibility when working on certain research projects that may lead to discoveries that could make BW more effective (sometimes referred to as a Code of Ethics); to
- Full awareness by the scientific community of national laws related to biological activities and full compliance with all such laws (sometimes referred to as a Code of Practice).

During this meeting, Australia suggested that it may be useful to think of Codes of Conduct as occurring in a number of layers, including: (i) a universal code; (ii) codes developed by scientific societies; and (iii) codes developed by workplaces (or institutional codes). These are discussed in more detail below.

A Universal Code containing Guiding Principles – a short aspirational code, containing general principles and referring to ethical norms, could be the basis of a universal code. Implementation of this would effectively be a 'top-down' approach.

Codes developed by Scientific Societies (either national or international societies) – there could be new codes developed by societies, or elements could be added to their existing codes, to include the general principles, as well as awareness of the BWC and the obligations under the BWC, awareness of the dual-use nature of biological sciences, and a commitment not to undertake any activities prohibited by the BWC.

Institutional or Workplace Codes – more detailed codes applicable to a particular workplace. The code could either be a new code, or elements added to an existing workplace code. These elements would include: full awareness by the scientific community of national laws related to biological activities, and full compliance with all such laws; as well as a focus on ethical considerations, including scientific responsibility when working on certain research projects that may lead to discoveries that could make BW more effective.

We would see these various codes as complementary and mutually reinforcing, and may be most effective as a package. In our view, the various scientific institutions and workplaces are much more likely to accept, and take seriously, a Code of Practice related to BWC issues if they fully understand the reasons for the Code and if they have a sense of ownership of the Code. To win the 'hearts and minds' of the relevant scientific communities, the best approach may be for the BWC States Parties to develop a set of elements or themes which the scientific institutes / workplaces can then craft into appropriate language to add to their existing codes. Implementation of this would effectively be through a 'bottom-up' approach. Such a code could become a formal part of a workplace agreement.

It was considered that 'No one size fits all'. Rather, participants considered that the best approach may be a range of regional, national, societal and workplace codes. It was also considered that it would be useful as a first step to review existing codes of conduct, as it may be better to further develop existing codes rather than create new codes.

Australia has subsequently prepared a draft Workplace Code. An essential element of this code is the 'Awareness of national legislation and associated regulations related to Australia's obligations under the BWC'. This national legislation includes the export control legislation under the *Customs Act 1901*, which enforces border controls and manages the security and integrity of Australia's borders to detect and deter the unlawful movement of goods and people across the border. The *Customs (Prohibited Exports) Regulation 13E* and the associated Defence and Strategic Goods List (DSGL) includes lists of biological agents, toxins,

and dual-use biological equipment that require an export license. The export of items not listed in the DGS (including intangible technology) may still be controlled by the 'catch-all' provisions of Australia's *Weapons of Mass Destruction (Prevention of Proliferation) Act 1995*.

Codes of Conduct for scientists involved with dual-use nuclear and chemical items and technology are being developed in cooperation with the International Atomic Energy Agency (IAEA) and Organisation for the Prohibition of Chemical Weapons (OPCW) respectively.

For additional information on Codes of Conduct for scientists, and a copy of the draft workplace code developed by Australia, contact DTCC or Dr Bob Mathews, Head, NBC Arms Control, Defence Science and Technology Organisation (DSTO), at robert.mathews@dsto.defence.gov.au

UPDATE / MESSAGES

- Half day Export Control training programs will be presented in the following state capitals:

Brisbane	5 Sep 2006
Sydney	18 Oct 2006
Adelaide	7 Nov 2006
Perth	30 Nov 2006
Canberra	5 Dec 2006
- Export applications for guns, ammunition, explosives etc should enclose either a copy of import permit from the country of import or some other documentation viz copy of the gun dealer's licence of the consignee. Due to the dangerous nature of these goods, we prefer visibility of these imports at the government level, in the country of import.
- Please remember - to check all permit conditions, as it is essential to comply with these requirements as non-compliance is a breach of the law.
- Time delays for applications can be avoided by providing full technical specifications at the time of lodgement, for any queries please contact 02 6266 3157 or email dtcc@defence.gov.au
- Christmas Shutdown 22 Dec 2006 – 3 Jan 2007 inclusive.



Our 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

Enables the exported defence related goods to overseas owners for repair (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(s) (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 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 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

Contributors

Thank you to the following contributors to this edition of the DTCC Bulletin: Kent Prior, Peter Giffard, Bob Mathews
Editorial staff reserve the right to reject, edit or rearrange any item submitted for the reasons of clarity and space. While editorial staff are not responsible for the accuracy of the information submitted, every reasonable effort will be made to verify information.

Send your ideas for articles to: dtcc@defence.gov.au. The deadline for contributions to the next edition of the DTCC Bulletin is 5 January 2007.

CONTACTS

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www.defence.gov.au/strategy/dtcc
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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



OUR RANGE OF INFORMATION BROCHURES



Weapons of Mass Destruction



Australian Controls for the Export of Firearms



Australian Export Controls for Defence and Dual Use Goods



Exporters Responsibilities



Tertiary and Research Institutions Export Controls



Detecting Attempted Procurement



Australian Controls on the Export of Defence and Dual Use Goods



Previous Issues of the Defence Export Controls Bulletin

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