GERMAN EXPERIENCE WITH THE CATCH-ALL CLAUSE

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Purpose of the catch-all system and how it works

1. The catch-all system is an important element of the German export control system. It complements the controls on items listed in the Ausfuhrliste (German export list) very efficiently. But the term “catch-all”, introduced internationally, should not be interpreted as all-inclusive control, but as higher-quality control on sensitive end-use. In other words; it aims for better quality rather than more quantity.

2. One has to bear in mind the following catch-all criteria:

   A. The scope of application of catch-all provisions is limited to non-listed items.

   B. The second criterion requires that the items in question at least may be intended for use in connection with the development, production, handling, operation, maintenance, storage or dissemination of biological weapons. Germany requires export items to be technically fit for the purpose and a statement about the use to which the consignee intends to put the export items. The way in which Germany applies this law, catch-all applications are not precluded by the availability of any specific item in third countries. But without any specific technical and functional relationship between the item concerned and the above mentioned purposes there is no need for applying for an authorisation.

   C. As a third criterion an additional mechanism is necessary to trigger the need for obtaining an authorisation. In contrast to listed goods, non-listed items are not automatically subject to authorisation, unless the competent authorities inform the exporter that a licence is mandatory. This is a case-by-case procedure.
3. Notifying exporters about the need to apply for an export authorisation is necessary if an export item is suspected for a sensitive use. After such notification a company can no longer proceed with the proposed export transaction without previous authorisation.

4. At the same time, the catch-all system makes it mandatory for exporters to inform the competent authority whenever they have information about export items being put to some sensitive use. Such knowledge is to be given a close interpretation meaning exclusively substantiated knowledge. However, this does not mean that the exporters are required to make investigations themselves, but they may not ignore pertinent knowledge that may be available to them. In most cases, it is in fact the information to be provided by exporters on a mandatory basis that enables the competent authority to trigger the authorisation requirement. Such information may also come from intelligence services or third parties.

Advantages and merits of the catch-all system

5. Catch-all control has enormously sharpened the awareness of German exporters for sensitive and, thus, undesirable uses of German exports. So, the system can now be considered as a generally preventive mechanism.

6. The catch-all system takes special account to dual-use goods stipulating that the acceptability of an export transaction crucially depends on the final use to which the export item will ultimately be put.

7. The catch-all system has been of great help in avoiding unlimited and burdensome control lists. To that extent, the catch-all approach is indispensable. Free trade can only be maintained between states with a high level of export control policy and practices, or to other destinations where the goods to be transferred are definitely for civil projects. The catch-all approach allows more targeted and better monitored controls thereby raising the level of efficiency of the whole system.

Administrative outlays affecting industry and control authorities

Burden on industry

8. The internal control procedure of exporting companies requires, according to the catch-all system, a thorough examination of specific recipients and end-uses. This requirement does not result in any unacceptable burden on the export trade. Companies with serious export policies have themselves a commercial interest in knowing their customers and the uses to which the items they sell are ultimately put. Where a proposed transaction turns out to be especially sensitive, they act according to the principle of “no business regardless of price”. This is a matter of common sense rather than a special sacrifice.

9. The overall objective of the catch-all system is not only to control non-listed items for sensitive end-use, but also to prevent companies in getting inadvertently involved in illegal activities.
Burden on control authorities

10. Control authorities seeking to operate an efficient catch-all system are required to maintain a comprehensive data basis about critical buyers and users. They should set-up an early warning system also for the companies enabling them to define suspected procurement practices for obtaining sensitive items and to increase precautions by means of internal export controls. Besides, authorities should inform industry about any specific legal and procedural situation as well as about typical sensitive transactions. In other words, there should be information programmes for the industry. Apart from this, close co-operation with intelligence services and customs authorities is indispensable.