PRACTICAL ASPECTS OF EXPORT LICENSING: AUSTRALIA'S EXPERIENCE

Prepared by Australia

1. Australian export licensing measures in relation to WMD-relevant dual-use items - including biological materials and equipment - are aimed at preventing the inadvertent supply of such items to WMD programs, while at the same time avoiding unnecessary hindrance to trade for peaceful purposes. Australia has been operating export control measures in relation to BW-relevant materials since the early 1990s. These measures actively work to combat the threat posed by the proliferation of BW, as well as serve to implement non-proliferation provisions under Article III of the BW.

Export Administration

2. The Department of Defence has responsibility for administering Australia's system export controls on defence and dual-use goods.

3. Australia's list of controlled items is known as the Defence and Strategic Goods List (DSGL). The dual-use biological control list, which forms part of the DSGL, has evolved and been extended over time taking account advances in technology and emerging proliferation concerns, including in relation to terrorism. Further information on the administration of Australia's export controls is available at http://www.defence.gov.au/dmo/DMO/export_controls.cfm.

Legislation, Implementation and Enforcement

4. The DSGL is enacted through Regulation 13E of the Customs (Prohibited Exports) Regulations 1958 and given legislative authority under the Customs Act 1901. In addition to Regulation 13E, Australia has also implemented a catch-all provision known as the Weapons of Mass Destruction (Prevention of Proliferation) Act 1995. The catch-all provision enables the enforcement of Australia's export controls for items and services that may be used for the development of a WMD program but which are not currently controlled under other relevant legislation.
5. The export from Australia of any item listed in the DSGL is prohibited, unless authorised by the Minister for Defence, or by a person authorised to sign on the Minister's behalf. Authority to refuse a permit, however, has not been delegated: any decision to reject an export application must be made by the Minister. Such decisions are very rare - over 99% of applications are routinely approved, with most export licences being issued within 72 hours of an application being received, using facsimile communication to ensure minimal delay.

6. The procedure for companies seeking to export any item listed in the DSGL is as follows:

- The company faxes an export application to the licensing authority, stating, among other things, the end-user and end use of the item/s being exported.

- Consultations are held with relevant government agencies to confirm, for example, that the stated end use is consistent with the item/s being sought.

- After it is determined that the export does not pose a proliferation risk, an export permit is issued and faxed to the company, with the original being sent through the mail. The export permit applies to a single export transaction of a specified item and quantity to a single consignee, and is valid for a specified period from the date of issue.

- For the legal export of the goods to occur, the exporter must lodge an export entry with the Australian Customs Service quoting the permit number issued by the licensing authority. The Australian Customs Service has the legal enforcement power, under the Australian Customs Act 1901, to detain and examine suspect shipments, to inspect documents pending further enquiries, and to seize goods which are being exported in contravention of national legislation. Where a violation is suspected, Customs also has the power to search persons and premises, to seize documents and goods, and, if and when required, to arrest suspects.

7. The Customs Act 1901 provides for significant penalties for persons who unlawfully attempt to export controlled goods without export approval from the relevant licensing authority. In addition to forfeiture of the goods and any conveyances used in the unlawful exportation, a person who exports, or attempts to export, any controlled item, without appropriate permission, is guilty of an offence.

8. Sanctions under the Customs Act 1901 are supplemented by other legislation. The Chemical Weapons (Prohibition) Act 1994 - which gives effect to Australia's obligations, responsibilities and rights as a State Party to the CWC - contains a maximum penalty of life imprisonment for breaches of the obligations in paragraphs 1 and 5 of Article I. Under the Weapons of Mass Destruction (Prevention of Proliferation) Act 1995, breaches, involving the supply of services or export of goods to assist WMD programs, are penalised by up to eight years' imprisonment. Prosecutions need to be specifically authorised by the Attorney-General.

Key Elements

9. Australia's experience has demonstrated that an effective export control system requires:

- A legal basis for the operation of the export control system, including enforcement provisions with adequate sanctions (penalties and fines) to deter non-compliance.
An effective awareness-raising program to ensure that all relevant industry sectors and exporters are aware of the licensing requirement, including publication of the control lists. One element should be to ensure that industry appreciates the reasons behind the imposition of export controls, namely, the important security considerations behind non-proliferation measures.

- Industry consultation is an important part of the Australian export control system and its effectiveness. Industry representatives in Australia have repeatedly indicated that they have every desire to avoid inadvertent sales to WMD programs. Accordingly, they have accepted the rationale for export control measures because they wish to ensure that their products are not used for such programs. (See paper “Australia’s Experience in Educating Industry and Research Institutes about Export Obligations”)

Judgements of export applications should be based upon a risk assessment of the likelihood of the transfer contributing to, or being diverted to, a WMD program. This should take into consideration, for example, end use and re-transfer assurances.

There should be adequate arrangements to ensure that the export control system is enforced. Sufficient legal powers should be available to the enforcement authorities to monitor effectively compliance with the prohibitions and restrictions on the movements of goods across borders. *Inter alia*, this should include the authority to conduct full investigations into suspected violations of export control laws.

Sufficient resources should also be provided to implement and enforce effective export licensing arrangements, but if procedures are streamlined resources required can be few.

10. In addition to the permit and licensing system and outreach activities, Australia has also investigated the development of unique harmonised classifications for controlled biological exports. These would be consistent with, and an extension of, the World Customs Organisation classifications.

11. If implemented such a system has the potential to identify and regulate such exports through Customs electronic export control systems. Although such a system is already being used in Australia for CWC Scheduled chemicals, including ricin and saxitoxin, it would be premature to do likewise for biological materials pending development work and a major education program for exporters.

**Conclusion**

12. Australia's export controls on dual-use items, like those in other spheres such as drugs or harmful goods, operate largely as monitoring arrangements on exports. They are not bans on the export of such items. Indeed, Australia has found that BW-relevant export control measures promote trade by providing exporters with the needed confidence that they are not contributing, unwittingly, to the spread of these weapons. Commercial firms and research institutes also recognise that it is in their interests to ensure that they are not unknowingly supplying materials for use in the manufacture of BW. For their part, Australia regulating agencies are conscious of the commercial implications of controls, and the need to avoid unnecessary harm to trading
partners. Procedures are swift and an export is denied only if there is real concern that the item will be diverted to a WMD program.