

# Export Licensing of Military and Dual-Use Goods in Ireland

A report commissioned by the Interdepartmental Group on  
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By  
Fitzpatrick Associates, Economic Consultants, and  
Stockholm International Peace Research Institute.

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# Executive Summary

## 1. Introduction

This report presents the results of a review of Ireland's export licensing system for military and dual-use goods. The Review has been carried out for Forfás on behalf of the Department of Enterprise, Trade and Employment (DETE). It was undertaken by Fitzpatrick Associates, Economic Consultants with the Stockholm International Peace Research Institute (SIPRI).

The purpose, as set out in the Terms of Reference, was to review the licensing of military and dual-military/civilian-use goods for international sale from Ireland, with a view to "recommending to Government how best Ireland can modernise and strengthen its export licensing controls so as to ensure full compliance with its international obligations".

The Review involved:

- ▶ consultations in Ireland with interested parties, including a publicly-advertised consultation process;
- ▶ examination of background material on international export licensing systems;
- ▶ a review of the export licensing systems of four case-study countries.

The Review was guided by an Inter-departmental Group. Chaired by Forfás, this also included representatives of the Departments of Enterprise Trade and Employment, Foreign Affairs (DFA), Defence, and Justice Equality and Law Reform, together with The Revenue Commissioners. The review findings, conclusions and recommendations remain the responsibility of the consultants.

## 2. Background to The Review

In the modern global economy, controls on international trade are rare, and controls by countries on their own exports are rarer still. One prominent exception is the area of military and dual-use goods:

- ▶ military goods refer to conventional, nuclear, chemical and biological weapons and weapon systems, together with components used in the manufacture of these;
- ▶ dual-use goods refer to products which have both civilian and specific military applications, e.g. high performance ICT technologies and equipment. Controlled dual-use goods do not include everyday off-the-shelf products also used in a military context.

International controls on trade in military and dual-use equipment date back to the cold war when the western allies developed an extensive arrangement, known as COCOM<sup>1</sup>, which effectively embargoed the transfer of a wide spectrum of goods and technologies to the Soviet Block and its allies. Since the 1990s, the preoccupation has shifted to preventing proliferation of nuclear, chemical and biological weapons, to the protection of human rights and the prevention of terrorism.

Aspects of the system, principally in the nuclear, chemical and biological area, are based on legally binding international treaties, while control of conventional weapons relies more on international co-operation agreements which leave considerable scope for case-by-case decision-making on the part of participant countries. The range of participant countries has also expanded, in particular to many former Warsaw Pact countries. Post-September 11th a new impetus has also been given to the role of the system in the prevention of terrorism.

Within the European Union, military trade remains a national competence governed by national legislation. This reflects the fact that, dating back to the Treaty of Rome, national defence and

<sup>1</sup> Co-ordinating Council on Multilateral Export Control

security policy has been exempt from the wider external and internal market provisions. Moves to harmonise Member States' practice in this area, including an agreed Code of Conduct regarding export controls, is in place. Wider defence and security policy at EU level is, of course, evolving. However, EU Member States still control their own exports of military goods, even exports to each other.

Within the Union the position of dual-use goods is quite different. These are governed by the provisions of the internal market since the majority of such goods tend to be sold for civilian use. Trade in dual-use goods therefore involves a common EU export licensing regime embodied in an EU regulation<sup>2</sup>, with essentially free movement of most dual-use goods within the EU and common controls on exports outside the EU. The EU system currently applies to all Member States, including the new accession countries from 1st May 2004.

### 3. The Irish Export Licensing System

In legal terms, the Irish system reflects the distinction at EU level between military and dual-use goods:

- ▶ control of military exports from Ireland is based exclusively on national export control legislation, updated from time to time through issuing of export Regulations;
- ▶ control of dual-use goods is based on the EU regulation, transposed into Irish law via Ministerial Order.

In each case, and in common with international practice, there is an extensive and closely defined list of "controlled" goods, the export of which is regulated. These lists reflect those that have been agreed in international treaties and other arrangements, and at EU level. An exporter may therefore require a licence to sell these goods abroad, depending on the goods and the destinations involved. In summary, in Ireland an export licence is required for:

- ▶ export of controlled military goods irrespective of their destination, including exports to other EU Member States;
- ▶ exports of dual-use goods outside the EU and other major developed countries (in the case of some highly sensitive dual-use equipment an export licence is also required irrespective of destination);
- ▶ exports that may be subject to the EU "catch-all" clause<sup>3</sup>.

The licensing system is administered by the Export Licensing Unit of the Department of Enterprise, Trade and Employment. The Department of Foreign Affairs is consulted on all military licence applications and on some sensitive dual-use licence applications.

Licences issued may be of two broad kinds. Individual licences are normally issued for 12 months for exporting goods to a specific consignee. "Global" licences, which are valid for six months, can be issued for dual-use goods for a number of destinations from a specific exporter.

A "National General Authorisation" may also apply to all exports of dual-use items to specific destinations (although none are currently in force). In addition, the EU has created "Community General Export Authorisations" under which any EU exporter may export certain dual-use items to ten exempt countries without the need to apply for an individual or global national licence.

In 2003, the Department of Enterprise, Trade and Employment issued 84 military licences valued at about €35 mn, 911 individual dual-use licences with a value of €1.1 bn, and some 37 global dual-

<sup>2</sup> EU Council Regulation No. 1334/2000 of 22 June 2000, setting up a Community regime for the control of exports of dual-use items and technology.

<sup>3</sup> This latter clause, a feature of the EU dual-use regulations, refers to non-listed dual-use items which may be subject to control if the exporter is aware or has been advised by Department of Enterprise, Trade and Employment that these may be intended, in their entirety or in part, for use in connection with weapons of mass destruction, or the production of missiles capable of delivering such weapons, or as parts or components of military goods illegally exported, or if the purchasing country or country of final destination is subject to an arms embargo and the goods may be intended for a military end-use. In this case exporters are obliged to notify the licensing authority which will then decide whether or not a licence is required



use licences with a value of €1.2 bn. Caution should be exercised in interpreting these figures. Firstly, they can vary year on year, depending on level of activity within individual companies. Secondly, values represent the nominal value of licences, not necessarily the value of actual exports that take place. Thirdly, exporters of dual-use items require a licence whether the intended end-user is a military or, as is more commonly the case, a civilian end-user. In 2003, of the total nominal value of all dual-use licence, about €600,000 involved stated military end-users or end-uses.

There are no published official statistics on Irish exports of military goods, and differing international classification systems prevent published trade statistics being a good source. It can be estimated that actual exports of controlled military products and components are currently €10-€20 mn annually.

Typically in any year, about five Irish companies apply for military export licences, reflecting the small number of Irish-based companies involved in the manufacture of military components. There is no manufacturing of finished military products in Ireland. About 25 companies apply for dual-use licences. These are generally high-tech companies for whom the products in question are a small proportion of their overall activity in Ireland.

#### 4. Stakeholder Views on the Irish Licensing System

The Review involved a series of about 40 bilateral consultations with individual organisations in Ireland including user-companies, representative organisations, state agencies and others. It also involved an open public consultation process, including newspaper advertisements placed by Forfás inviting submissions. Some 14 organisations responded to this invitation.

In the case of industry, key outcomes from the consultation process were:

- ▶ only a very small minority of companies have any involvement in, or knowledge of, the topic, and interest in the licensing system outside these companies is minimal;
- ▶ companies using the system are broadly happy with it, while having many specific suggestions for improvement;
- ▶ specific areas that companies identify for improvement are more advance information on developments and changes in the system, greater clarity as to what is controlled and what destinations and end-users are problematic, and the need for electronic application and licence processing.

Companies also emphasise the need to minimise the bureaucratic requirements, and that in any improvements to the system there is a need to balance restrictions against the possibility of making Ireland an unattractive location for certain types of highly mobile activity in the ICT sector.

As with industry, interest in the area among non-governmental organisations is limited. This is probably particularly so in the case of a review focusing on procedures and practices rather than on policy. Interested NGOs are critical of what they perceive as an absence of transparency regarding decision-making processes and the outcomes of these in terms of detailed information on actual exports, gaps in what is covered by the system in areas such as brokering, licensed production overseas and service exports, as well as a perceived absence of genuine end-use monitoring and checking.

## 5. Comparative International Practice

The Review involved a review of literature and information on export licensing systems in a range of countries, together with more detailed examination of procedures and practices in four case study countries. The latter included three EU countries – UK, Austria and Sweden – together with the US. The sample represented a range of countries in terms of size, defence and industry policy, levels of involvement in military and dual-use goods trade, and similarity or difference with the Irish legislative and administrative system. The US also has specific relevance as a system with which US high technology companies in Ireland are familiar, and to which they are frequently subject.

International practice, in particular the case studies, highlighted a number of key factors:

- ▶ while international military and dual-use goods controls operate within broadly common frameworks, detailed operation at individual country level is distinct and reflects national preoccupations, industry base, and legal and administrative systems;
- ▶ no countries regard their own export licensing systems as constituting undisputed best practice. There is a widespread process of ongoing change and review, reflecting both changing international requirements and circumstances and a shared desire for better systems at national level;
- ▶ there is a trend towards increased transparency, and away from the more traditionally “secret” approach. This involves transparency in terms of objectives, criteria and reporting;
- ▶ there is also a move away from a focus on detailed policing of exports on an item-by-item basis, and towards one of dialogue and co-operation between licensing authorities and compliant companies, and of developing and monitoring compliance procedures rather than individual export shipments;
- ▶ the emphasis in enforcement is towards preventive action and pre-shipment controls, rather than ex-post monitoring and checking – especially physical checking;
- ▶ there is also an increased aim in national systems of targeting resources on likely problematic exporters, destinations and end-users based on risk-assessment, and away from routine monitoring of companies with an already strong track record of compliance.

Many of the problems that other countries face are similar to those causing difficulties in Ireland. These include controlling exports of intangible technology, operationalising of the EU’s catch-all clause, enforcement with regard to companies who may not be applying for licences, and closer co-operation between licensing and customs authorities.

## 6. Strengths and Weaknesses of the Irish System

In common with its counterparts in other countries, the Irish system for licensing military and dual-use goods has both strengths and weaknesses. While a review of this nature may inevitably highlight the latter, we also acknowledge the former here. Also, a key finding of the international case studies is that national systems differ in their practical implementation mechanisms, that each national system has pluses and minuses, and that “best practice” is not to be found in any one source.

Strengths of Ireland’s system are:

- ▶ the system is relatively accessible, and the DETE Export Licensing Unit is open to dialogue with interested parties including existing and prospective exporters and other interest groups;
- ▶ personnel involved are knowledgeable and are perceived as well informed on the complex administrative demands of their task;
- ▶ the level of information available on the DETE website is relatively detailed and informative;
- ▶ the Irish administrative structure is relatively simple – with a single licensing body in the form of DETE and an advisory element in the Department of Foreign Affairs – as against more complex systems in many other countries (e.g. separate licensing authorities for military and dual-use goods);
- ▶ the speed of response is generally reasonably rapid;
- ▶ a flexible rather than overly standardised approach, with DETE willing to tailor operational requirements to companies’ specific circumstances.

The system also has areas needing improvement, with many of these shared by other countries. Specific aspects are:

- ▶ absence of dedicated primary national legislation governing the military licensing system;
- ▶ a number of recognised gaps in terms of what is controlled under the legislation;
- ▶ scope for a more proactive approach, especially regarding provision of advance information and advice;
- ▶ scope for greater involvement, on an advisory and consultative basis to DETE, of the range of relevant state resources outside the DETE itself;
- ▶ strengthening of the relationship between DETE and Customs to ensure that the most effective controls possible are being applied;
- ▶ more pro-active wider enforcement, especially regarding possible exporters who are not applying for licences;
- ▶ rotation of DETE and DFA staff, with a need for greater retention of corporate memory and expertise;
- ▶ increased and more structured access in the process to appropriate specialist technical and other expertise;
- ▶ increased transparency with regard to the decision-making process and criteria.

Our subsequent recommendations are designed to address these areas.

## 7. Conclusions and Recommendations

The area of licensing of military and dual-use goods is an important, complex and evolving one at EU and international level. The task, set out in the Terms of Reference, of ensuring that Ireland can modernise and strengthen its export licensing controls so as to ensure full compliance with its international obligations is a challenging one for the authorities involved. No one country represents clear and undisputed “best practice” and, in common with Ireland, other countries’ systems also have strengths and weaknesses.

In modernising and developing the system, Ireland in common with other countries must balance two competing interests, namely:

- ▶ the economic or “trade” interest of minimising administrative costs, reducing unnecessary regulatory burdens on legitimate exporters, and ensuring that Ireland does not unnecessarily reduce its attractiveness to international mobile investment, particularly in the area of high technology dual-use goods and services;
- ▶ the “control” interest in terms of minimising the danger that any military or dual-use good produced in Ireland would find its way to internationally undesirable uses, meeting international legally binding and political commitments, and generally protecting and enhancing Ireland’s good name and reputation.

A balanced approach is thus required. On the one hand it must meet EU and other international obligations in full and not in any sense hide behind arguments that Ireland is small or that it produces only military components and not finished products. Equally, the approach must ensure that Ireland does not so tighten up procedures that it makes the country relatively unattractive for mobile activity in legitimate industries, especially production and export of controlled dual-use goods.

Against this background, we make a series of recommendations designed to modernise and strengthen the Irish export licensing system. The main features of these proposals are:

### 1. In legislative terms:

- ▶ introduction of new dedicated primary arms control legislation which will bring Ireland into line with international practice, and strengthen the legal base for establishing and enforcing the necessary controls in Ireland;
- ▶ in this context, filling agreed gaps in the Irish system, including meeting existing EU commitments in relation to the control of arms brokering;

## **2. in structural terms, that:**

- ▶ responsibility for the export licensing function remain in the Department of Enterprise, Trade and Employment;
- ▶ the respective roles in the system of DETE and other organisations, most notably the Department of Foreign Affairs and Customs, be set out in an agreed procedures manual;
- ▶ the information and enforcement role of Customs be enhanced, including improved information exchange between it and the Department of Enterprise, Trade and Employment;
- ▶ technical, legal and other relevant resources from various parts of the state system, including the Defence Forces and other agencies, be utilised when required and be augmented by resources from elsewhere as necessary;
- ▶ these resources should be brought together in the form of a new Technical Advisory Panel to DETE;

## **3. in licensing process terms, that:**

- ▶ information on the need to apply for an export licence, i.e. who should apply, how to apply, and the penalties for not applying, should be made available more proactively through the general media specialist publications, industrial development agencies, trade representative bodies, professional organisations and others;
- ▶ an electronic web-based application system should be introduced;
- ▶ there be a published users' charter governing the system;

## **4. in the area of enforcement,**

- ▶ there is a need for greater preventive enforcement through provision of information to all potentially relevant exporters about the requirements of an export licence, especially in the case of dual-use goods;
- ▶ Customs should continue with enforcement of licence requirements on behalf of the Department and should ensure that this activity receives the required level of priority;
- ▶ a system of agreed in-company compliance procedures and annual auditing of company compliance should be introduced, with an incentive to adopt this in the form of more streamlined licensing treatment for proven compliant exporters;
- ▶ DETE and Customs should adopt a practice of identifying and checking on companies who might be expected to require export licences, but who may not be applying;
- ▶ the penalties for breaches of export licensing regulations should be updated;

## **5. in the area of reporting and transparency:**

- ▶ DETE should prepare and publish an annual report on licensing and exporting dual-use products (building on the annual report already prepared in relation to military products as part of the EU Code of Conduct);
- ▶ the annual report should be laid before the Oireachtas;
- ▶ the report should include data on the aggregate value of annual military exports.

More detailed recommendations are contained in Chapter 6 of this report.

# Members of the Inter-departmental Group (IDG)

Forfás (Chair)	Seamus Bannon
Forfás (Secretary)	Dearbhalla Baviera
Department of Enterprise, Trade and Employment	Michael Greene Celyna Coughlan
Department of Foreign Affairs	Paul Barnwell Sarah McGrath Therese Healy
Department of Defence	John Hanney
Department of Justice, Equality and Law Reform	Brendan Callaghan Barry O'Connor
Revenue Commissioners	Joe Ryan

## List of Acronyms Used

AECA	Arms Export Control Act (US)
AG	Australia Group
APM	Anti-personnel Mines Convention
BIS	Bureau of Industry and Security (US)
BTW	Biological and Toxin Weapons Convention
CCW	Certain Conventional Weapons (Convention)
CGEA	Community General Export Authorisation
COCOM	Co-ordinating Committee for Multilateral Export Control
CW	Chemical Weapons
CWC	Chemical Weapons Convention
DDTC	Directorate of Defence Controls (US)
DETE	Department of Enterprise, Trade and Employment
DFA	Department of Foreign Affairs
DJELR	Department of Justice, Equality and Law Reform
DoD	Department of Defence (US)
DTI	Department of Trade and Industry (UK)
DTIB	Defence Technology and Industrial Base

EAA	Export Administration Act (US)
FAA	Foreign Assistance Act (US)
FCO	Foreign and Commonwealth Office (UK)
HCOC	Hague Code of Conduct Against Ballistic Missile Production
IAEA	International Atomic Energy Agency
IANSAs	International Action Network on Small Arms
IDG	Inter-departmental Group
ISP	Inspectorate for Strategic Products (Sweden)
ITAR	International Traffic in Arms Regulations (US)
MoD	Ministry of Defence (UK)
MSP	Military Security and Policy equipment
MTCR	Missile Technology Control Regime
NATO	North Atlantic Treaty Organisation
NBC	Nuclear Biological and Chemical (weapons)
NGA	National General Authorisation
NGO	Non-governmental organisation
NPT	Non-proliferation Treaty
NSG	Nuclear Suppliers Group
OEM	Original Equipment Manufacturer
SIPRI	Stockholm International Peace Research Institute
WMD	Weapons of Mass Destruction
UN	United Nations
WA	Wassenaar Arrangement
WTO	World Trade Organisation
ZC	Zangger Committee

# 1

# Introduction and Background

## 1.1 Background

Government controls on exports of goods and services are unusual, in Ireland and in other countries. One of the principal exceptions is military and dual-use goods. Others include certain toxic chemicals and works of art.

As the name implies, “military goods” refer to goods which have exclusively military uses, while “dual-use” goods refer to goods which have general uses but also have specific military purposes or involve military-standard specifications. Export controls relate to both final products and components, and also to technical services associated with the controlled goods.

In Ireland, exports of military goods are governed by general national export control legislation. Dual-use goods are controlled under an EU regulation, reflecting a common approach across EU member states in the context of the single market.

The specific products subject to an export licence are specified in control lists agreed as part of international treaties and conventions. The EU dual-use control list is agreed at Community level.

The export control system means that all exports of military goods from Ireland to all destinations, including other EU Member States, require an export licence. In the case of dual-use goods, an export licence is generally required for exports outside the EU, and some countries are also excluded from this requirement for some controlled dual-use products (under the Community General Export Authorisation).

Ireland’s export licensing system is operated by the Export Licensing Unit of the Department of Enterprise, Trade and Employment, in consultation with the Department of Foreign Affairs.

This is the report of a review of this export control system and of whether and how it could be improved. It follows from an earlier Scoping Report published in June 2003.<sup>4</sup> The review was commissioned by Forfás<sup>5</sup> at the request of the Department of Enterprise, Trade and Employment and the present report was prepared by consultants on contract to Forfás, namely Fitzpatrick Associates, Economic Consultants, Dublin, in conjunction with the Stockholm International Peace Research Institute (SIPRI)<sup>6</sup>. The review was guided by an Inter-departmental Group (IDG), membership of which is shown at the beginning of this report. This provided assistance and guidance to the consultants, but the report’s findings, conclusions and recommendations remain the responsibility of the consultants.

<sup>4</sup> *Fitzpatrick Associates, Export Licensing of Military and Dual-use Goods, June 2003*  
[www.entemp.ie/publications.htm](http://www.entemp.ie/publications.htm).

<sup>5</sup> *Forfás is the national board responsible for providing policy advice to government on enterprise, trade, science, technology and innovation in Ireland. Legal responsibility for the promotion and development of these sectors is vested by the State, through the Department of Trade, Enterprise and Employment, in Forfás. The board fulfils its mandate either directly or by delegating responsibility to Enterprise Ireland, IDA Ireland, the National Accreditation Board (NAB), and Science Foundation Ireland (SFI) with which it has a close working relationship.*

<sup>6</sup> *For details see [www.fitzpatrick-associates.com](http://www.fitzpatrick-associates.com) and [www.sipri.se](http://www.sipri.se)*

## 1.2 Terms of Reference and Scope

### 1.2.1 Terms of Reference

The overall objective, as stated in the Terms of Reference, was to carry out a review of the licensing of military and dual-military/civilian-use goods for international sale with a view “to recommending to Government how best Ireland can modernise and strengthen its export licensing controls so as to ensure full compliance with its international obligations”.

The specific objectives of the review were four-fold:

- ▶ firstly, to consult with government departments, end-users, international organisations and specialised institutes—both nationally and internationally—which are involved in the licensing of military and dual-use goods, and with interested parties, with a view to determining the most appropriate export licensing system to be put in place in Ireland;
- ▶ secondly, to prepare background material for a public consultation process in order to allow members of the public to make submissions/contributions on the optimal method of licensing military and dual-use goods;
- ▶ thirdly, to study international best practice with regard to export licensing control systems in other countries;
- ▶ finally to submit a report to Forfás outlining the results of both set of consultations and the review of international best practice with regard to export licensing systems for military and dual-use goods.

The Terms of Reference specified a series of more detailed requirements under the first three topics above. These are set out in Figure 1.1, which is taken directly from the Terms of Reference.

#### Figure 1.1: *Detailed Requirements of the Terms of Reference*

*Discussions with government departments, agencies, international organisations, specialised agencies, end-users and interested parties*

*“The objective of this stage of the research process will be to collect information on both the Irish system of export licensing of military and dual-use goods and the systems used in other countries, including those in countries of a similar size and political structure to Ireland.*

*The data collection process will address the adequacy of current arrangements and the extent to which existing controls comply with international requirements.*

*The consultant will be required to hold interviews with a wide range of informants both in Ireland and internationally. It is likely that the following sources of information will be consulted:*

- ▶ *exporting companies in the sector;*
- ▶ *government departments and agencies;*
- ▶ *end-users and relevant trade representative organisations;*
- ▶ *international organisations such as the EU, UN, OCSE, Wassenaar Secretariat;*
- ▶ *specialist military/dual-use goods institutes; and*
- ▶ *relevant non-governmental organisations.*

*The range of issues to be discussed with the informants are wide-ranging and are likely to include, but not necessarily be limited to, the following:*

- ▶ *overview of Irish export licensing control system;*
- ▶ *administration and data processing systems;*
- ▶ *adequacy of existing system;*
- ▶ *gaps in current arrangements including access to technical and legal expertise;*



- ▶ *review of current international military and dual-use goods exporting obligations;*
- ▶ *end-users' perceptions of current controls; and*
- ▶ *views of relevant NGOs.*

*The consultant will also undertake a brief review of the literature in respect of export licensing systems used internationally.*

### **Public Consultation Process**

*The consultant will be required to assist in a public consultation process and in particular will be required to prepare material for inclusion in the public consultation process to which members of the public will be invited to make comments/submissions on export control arrangements.*

*The consultant's responsibility will be to prepare and structure the data for the web site. The hosting and design of the web site will be the responsibility of Forfás. The data for the web site will primarily arise from the consultations and the review of the literature undertaken in stage one of the research process and should be structured to ensure that they can be easily accessed by the general public.*

*The consultant will be required to answer queries from the general public and should have access to technical and legal expertise in order to do so. The consultant will also be responsible for preparing a synthesis report on the submissions made by interested parties to the consultation web site.*

*The consultant will prepare a report for submission to the Project Monitoring Group (see Section 5 below) on the outputs of the public consultation process.*

### **International best practice**

*The consultant will prepare a report outlining the export licensing systems used in four countries with a view to identifying best practice that could be replicated in the Irish context.*

*The review of international practice will focus on the following subject areas:*

- ▶ *analysis of policy governing exports of military and dual-use goods;*
- ▶ *overview of legal and administrative framework governing exports of military and dual-use goods;*
- ▶ *review of licensing application, processing and appeal procedures;*
- ▶ *profile of military and dual-goods sectors;*
- ▶ *synopsis of views of end-users;*
- ▶ *identification of features in export control licensing systems that could address weaknesses in the Irish system.*

*Source: Terms of Reference*

### 1.2.2 Key Parameters

The review deals with a potentially wide-ranging topic. It has therefore been important to retain a focus on its core objectives and parameters. A number of such key parameters follow from the Terms of Reference, and were agreed with the Inter-departmental Group:

- ▶ that it has focused on the licensing system for military and dual-use goods. Other goods actually or potentially subject to control were therefore outside the scope of the review;
- ▶ the main focus of the review has been on the procedures and practices rather than on the policy per se, particularly overall policy towards production of, and trade in, military and dual-use goods in Ireland;
- ▶ it does not deal with a variety of other aspects of the commercial relationship between Irish enterprise and the military and defence sectors, including areas such as R&D and inward investment policy;
- ▶ it considers both the current and the possible future role of organisations that may be involved in the export licensing system.

It should also be noted that, while the nature of the topic under review necessitates comments or aspects of legislation governing export licensing in Ireland and elsewhere, these comments do not constitute a formal legal opinion on the meaning or implications of any legal provisions and provision of such legal opinion would be outside the professional competence of the authors of the review.

## 1.3 Work Programme

The work programme on which the review is based involved five principal components:

- ▶ examination of international practice in export licensing regimes in other countries. This included case studies of a number of individual countries (US, UK, Austria and Sweden), and information on a wider range of other relevant countries;
- ▶ consultations in Ireland, including both an advertised public consultation process and bilateral consultations with a variety of other stakeholders and users of the licensing system;
- ▶ examination of relevant literature and data drawn from a variety of sources;
- ▶ a series of meetings with the Inter-departmental Group at key points in the process;
- ▶ preparation of the Final Report.

Aspects of the work programme are described further in relevant sections of the report.

## 1.4 Report Structure

Following the present introductory chapter, the remaining Chapters of the report are as follows:

- ▶ Chapter 2 presents the overall context of the review in terms of international arms control arrangements and developments in this area, international trends in military expenditure and trade, and an overview of Irish production and exports of military and dual-use goods;
- ▶ Chapter 3 describes and reviews the operation of the Irish export licensing system in terms of its main parameters and provisions, the procedures and practices followed, and the level of annual activity;
- ▶ Chapter 4 summarises aspects of the export licensing system across the four case study countries – US, UK, Austria and Sweden. Chapter 4 presents the international material on a thematic basis. More detailed descriptions of the individual countries are provided in Annex 2.
- ▶ Chapter 5 synthesises the views made in written submissions received as part of the public consultative process;
- ▶ Chapter 6 presents the report's conclusions and recommendations.

Three Annexes are attached. Annex 1 lists overseas organisations and individuals consulted. Annex 2 describes the export licensing regimes in the four case study countries. Annex 3 provides a list of URL addresses for basic documentation in relation to export controls in the case study countries.

# 2 Context of the Review

## 2.1 International Arms Control

### 2.1.1 Background

Providing defence of citizens is one of the most long-standing and basic duties of nation states. Establishment of military forces and supplying the equipment that they need therefore reflects this core responsibility of today's states to protect their citizens. However, states have also recognized that their security is not always enhanced by developing military capabilities to the maximum limit of their financial and technological ability or without reference to similar developments taking place in other countries. There is also widespread international acceptance that items (goods, equipment and technology, including technology in intangible forms) that can contribute to military capacities should not be exchanged and traded without restrictions.

As a result, states have for long come together in a range of different formal and informal settings to discuss both self-restraint measures and measures to restrain the military capacities of other states. Over time, a significant body of resulting arms control treaties has evolved. Some of these define "structural" measures, i.e. they establish ceilings on the numbers of specific types of arms that identified parties to the particular agreement may possess. Other treaties define "operational" measures, i.e. they specify what use can and cannot be made of arms. In some cases (where the ceiling for possession is set at zero or where it is agreed that there is no legitimate use for a specific weapon) the treaties require disarmament and a ban on export or transfer of equipment.

Where there is insufficient agreement among parties to develop measures that meet the legal requirement for specific definition of scope and action, agreements take the form of political commitments. Both Treaties and political commitments, which are all agreements among states, require measures to be taken at the national level if they are to achieve their objectives. Such national actions may be supported by international collective efforts. Some arms control treaties have created information and monitoring systems that help in verifying implementation. Some political commitments (notably the European Union Code of Conduct on Arms Exports) have been developed in a wider framework that increases collective confidence in national implementation.

States are seldom prepared to trust their security to international law alone and political, strategic and technological realities have always shaped arms control possibilities. Therefore, the degree of emphasis on using arms control as a security building measure, the number and type of new agreements negotiated, and the attention paid to implementation and enforcement has varied greatly at different times depending on the background conditions.

### 2.1.2 Main Structures of International Arms Control

This section briefly identifies the main international structures of arms control and export control existing today. Ireland participates in all of the global treaty regimes and international export control arrangements identified in this section.

The main arms control treaties of relevance to export control include the fairly comprehensive set of measures that have been developed related to nuclear, biological and chemical weapons<sup>7</sup>. Multilateral nuclear weapon-related treaties cover nuclear weapon non-proliferation and testing<sup>8</sup>.

<sup>7</sup> *This brief overview focuses only on those arms control issues considered to be of relevance to export control. For a more comprehensive discussion of other aspects of arms control see Goldblat, J., Arms Control: The New Guide to Negotiations and Agreements, Sage Publications, London 2002. and Anthony I. and Rotfeld A. D. eds. A Future Arms Control Agenda, Proceedings of Nobel Symposium 118, 1999, (Oxford University Press: Oxford 2001).*

<sup>8</sup> *The Treaty on the Non-proliferation of Nuclear Weapons (Non-Proliferation Treaty) was opened for signature in 1968 and entered into force in 1970. The Comprehensive Nuclear Test Ban Treaty (CTBT) was opened for signature in 1996 but has not entered into force. Through a number of other treaties nuclear weapon testing and deployment is prohibited in certain regions (Latin America, Africa, Antarctica and the South Pacific) and environments (in space, in the atmosphere and on the sea-bed).*

The 1972 Biological and Toxin Weapons Convention (BTWC) prohibits the development, production, stockpiling or acquisition by other means of biological agents or toxins that have no justification for peaceful purposes<sup>9</sup>. The Chemical Weapons Convention (CWC) prohibits the development, production, acquisition, stockpiling, transfer and use of chemical weapons<sup>10</sup>.

International humanitarian law also has an arms control element in that military operations must be carried out in a way that protects all civilians, their property and environment to the greatest extent possible (regardless of nationality or citizenship). Weapons that cannot meet the tests of discrimination and proportionality are illegal (and therefore banned). Relevant here is the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects (the CCW Convention) and its protocols as well as the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction (APM Convention).

There is no comparable global body of arms control treaty law covering either conventional weapons and military equipment (other than that covered in the 1980 CCW Convention and its protocols and the APM Convention), or missiles (other than those covered by bilateral US–Russian agreements on strategic and intermediate nuclear forces)<sup>11</sup>. The United Nations Security Council has passed resolutions containing restrictive measures, including arms embargoes, aimed at particular countries. At the UN states have also reached broad agreement on a political basis for restraint measures related to small arms and light weapons. However, these measures do not include structural limits.

While arms control treaties prohibit the export of nuclear, biological and chemical (NBC) weapons, they are not sufficient by themselves to achieve the objective of preventing the acquisition of such prohibited weapons. Participation in the treaties is not universal and in important cases the states that have not become parties are known to be pursuing weapons programmes. The amount of information available may also be insufficient to exclude the risk that weapon programmes are being carried out.

Crucial for trade is also the fact that, denied the possibility to acquire weapons directly, states may support weapon development programmes by importing other items (equipment and technology) not designed and developed exclusively for military purposes but that can nevertheless have military applications (dual-use equipment). Therefore to ensure compliance with arms control treaty obligations these dual-use items also need to be under control.

Apart from single-use and dual-use equipment, recent experience has demonstrated that countries seeking to acquire nuclear, biological and chemical weapons can also make use of purely civilian items for which no military purpose was envisaged during their design and development.

To ensure compliance with the existing arms control treaties, therefore, it is not sufficient to control items contained in lists of military and dual-use items. For treaty-related purposes it is also necessary to control purely civilian non-listed items.

As regards weapons whose possession and acquisition are not prohibited by arms control treaties, there is still a need for states to apply legal restrictions to comply with United Nations Security Council resolutions, to comply with obligations under international humanitarian law (i.e. to prevent arms from being used in an indiscriminate and disproportionate manner) and to respect political commitments entered into at a regional level (in the European Union and in the Organisation for Security and Cooperation in Europe).

<sup>9</sup> *The Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction was opened for signature in 1972 and entered into force in 1975.*

<sup>10</sup> *The Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction was opened for signature in 1993 and entered into force in 1997.*

<sup>11</sup> *On a regional basis in Europe the 1990 Conventional Arms Control in Europe (CFE) Treaty has established ceilings on the permitted numbers of treaty limited equipment (consisting of five categories of heavy weapons). The 1996 Agreement on Sub-Regional Arms Control (the Florence Agreement) has extended CFE-type measures to Bosnia, Croatia and Serbia and Montenegro. The 1999 Inter-American Convention on Transparency in Conventional Weapons Acquisitions has established a statutory reporting requirement for parties but does not set limits to the size of inventories.*

### **2.1.3 Main Structures of International Export Control**

In the absence of comprehensive international treaties, States have come together on a more informal basis in a number of different arrangements to discuss how to develop more effective national export control systems. This section lists the principal ones to which Ireland is a party, and which therefore must be reflected in the design and operation of the export licensing system. The membership of each of these regimes is summarised in Figure 2.1.

#### **The Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies (WA)**

The Wassenaar Arrangement began its operations in September 1996. It was based on a set of “Initial Elements” that were first discussed within the Coordinating Committee for Multilateral Export Control (COCOM) and that were agreed in 1995. The objectives of the WA are to promote transparency and to exchange information and views on transfers of an agreed range of items with a view to promoting responsible behaviour in exports.

The items subject to the agreed transparency and information exchange measures are contained in two lists: a Munitions List and a List of Dual-Use Goods and Technologies. Participating states are politically bound to maintain national controls on all of the items on these lists.

The Wassenaar Arrangement has not agreed on guidelines for sales or transfers of items on either the munitions list or dual-use goods and technologies. It has approved a non-binding paper that participating states may take into account when making licensing decisions.

#### **The Zangger Committee (ZC)**

Established in 1974, the Zangger Committee is an informal arrangement among nuclear supplier states about how to interpret their obligations under Article 3 of the NPT. The Zangger Committee agreed on a list of items that must not be exported unless the end-user is subject to full-scope International Atomic Energy Agency safeguards.

#### **The Nuclear Suppliers Group (NSG)**

The Nuclear Suppliers Group was established in 1978, prompted by the test of a nuclear explosive device by India in 1974. The NSG is an informal arrangement of nuclear supplier states that seek to prevent the acquisition of nuclear weapons by states other than those recognized as nuclear weapon states in the framework of the NPT.

The NSG has agreed a list of nuclear material, equipment and technology and a list of nuclear-related dual-use items that participating states are politically bound to control under national export control regulations. The Group has developed guidelines for nuclear transfers and for nuclear-related dual-use equipment, material and related technology that participating states apply in making national decisions about which exports to authorise.

#### **The Australia Group (AG)**

The Australia Group was established in 1985 following international concern about use of chemical weapons in the 1980–88 Iran–Iraq War. The participating states in this grouping initially cooperated to maintain and develop their national export controls in order to prevent the further spread of chemical exports that may be used for, or diverted to, chemical weapons programmes. The participating states now seek to prevent the intentional or inadvertent supply by their nationals of

materials or equipment to chemical or biological weapon programmes. The AG is currently also developing measures that seek to prevent the acquisition of chemical or biological weapons by non-state actors.

The AG has agreed a series of lists that define dual-use precursor chemicals, biological agents, chemical and biological equipment and related technology. The participating states are politically bound to ensure that these items are subject to national export controls. The AG has also agreed a set of guidelines that participating states must consider when assessing export licence applications.

### **The Missile Technology Control Regime (MTCR)**

The Missile Technology Control Regime is an informal, voluntary association of states that share the goal of non-proliferation of unmanned delivery systems for weapons of mass destruction. The MTCR was originally established in 1987 following international concern about extensive use of missiles in the 1980–88 Iran–Iraq War, including use against civilian populations. The initial main focus was on missiles with the inherent capability to deliver a 500 kilogramme payload to a range of 300 kilometres or more. Subsequently, this scope has expanded to include any missile able to deliver nuclear, biological or chemical weapons.

The MTCR has agreed an equipment and technology annex that defines unmanned air vehicles (including cruise and ballistic missiles) as well as associated items that the participating states are politically bound to place under national export controls.

The MTCR, too, has agreed a set of guidelines that participating states are bound to consider when assessing export licence applications.

**Figure 2.1:** *Membership of Multilateral Export Control Regimes, 2002*

Country	Zangger Committee	Nuclear Suppliers Group	Australia Group	Missile Technology Control Regime	Wassemer Arrangement
Argentina	X	X	X	X	X
Australia	X	X	X	X	X
Austria	X	X	X	X	X
Belarus	-	X	-	-	-
Belgium	X	X	X	X	X
Brazil	-	X	-	X	-
Bulgaria	X	X	X	-	X
Canada	X	X	X	X	X
China	X	-	-	-	-
Cyprus	-	X	X	-	-
Czech Republic	X	X	X	X	X
Denmark	X	X	X	X	X
Finland	X	X	X	X	X
France	X	X	X	X	X
Germany	X	X	X	X	X
Greece	X	X	X	X	X
Hungary	X	X	X	X	X
Iceland	-	-	X	X	-
Ireland	X	X	X	X	X
Italy	X	X	X	X	X
Japan	X	X	X	X	X
Kazakhstan	-	X	-	-	-
Korea (Rep.)	X	X	X	X	X
Latvia	-	X	-	-	-
Lithuania	-	-	-	-	-
Luxembourg	X	X	X	X	X
Netherlands	X	X	X	X	X
New Zealand	-	X	X	X	X
Norway	X	X	X	X	X
Poland	X	X	X	X	X
Portugal	X	X	X	X	X
Romania	X	X	X	-	X
Russia	X	X	-	X	X
Slovakia	X	X	X	-	X
Slovenia	X	X	-	-	-
South Africa	X	X	-	X	-
Spain	X	X	X	X	X
Sweden	X	X	X	X	X
Switzerland	X	X	X	X	X
Turkey	X	X	X	X	X
Ukraine	X	X	-	X	X
United Kingdom	X	X	X	X	X
USA	X	X	X	X	X
TOTAL	35	40	33	33	33

(See Section 2.1.2 for information on the export control regimes)

Source: *Sweden's Export Control Policy and Exports of Military Equipment in 2002*

**Figure 2.2:** Summary of Ireland's Main International Arms Control Commitments

### **Treaties**

- ▶ *The Treaty on the Non-proliferation of Nuclear Weapons (Non-Proliferation Treaty) opened for signature in 1968 and entered into force in 1970.*
- ▶ *The Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction was opened for signature in 1972 and entered into force in 1975.*
- ▶ *The Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be Deemed to be Excessively Injurious or to have Indiscriminate Effects (in particular Protocol II and Amended Protocol II) (CCW Convention) was opened for signature in 1981 and entered into force in 1983.*
- ▶ *The Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction was opened for signature in 1993 and entered into force in 1997.*
- ▶ *Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction (APM or "Ottawa" Convention), opened for signature in 1997 and entered into force in 1999.*

### **European Union Law**

- ▶ *Council Regulation (EC) No. 1334/2000 as amended of 22 June 2000 setting up a Community regime for the control of exports of dual-use items and technology.*
- ▶ *Council Common Position 2003/468/CFSP of 23rd June 2003 on the control of arms brokering.*

### **Political Commitments**

- ▶ *The Zangger Committee established in 1974.*
- ▶ *The Nuclear Suppliers Group (NSG), established in 1978.*
- ▶ *The Australia Group (AG), established in 1985.*
- ▶ *The Missile Technology Control Regime (MTCR), established in 1987.*
- ▶ *The Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-use Goods and Technologies (WA), established in 1996.*
- ▶ *European Union (EU), Code of Conduct on arms exports, adopted June 1998.*
- ▶ *Organisation on Security and Cooperation in Europe (OSCE) Criteria on Conventional Arms Transfers, adopted November 1993.*
- ▶ *Protocol Against Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components, UN General Assembly Resolution, June 2001.*
- ▶ *The Hague Code of Conduct Against Ballistic Missile Proliferation (HCOC), established in 2002.*

## **2.2**

### **Developments and Challenges in International Arms Control**

#### **2.2.1 Main Developments**

Since each of the arrangements described in Section 2.1 addresses a different class of technology or weaponry, it follows that each has its own specific character arising out of the different international legal and political frameworks that govern these, i.e. nuclear, biological, chemical weapons, missile delivery systems and conventional arms. Nevertheless, certain common tendencies within multilateral export control arrangements can be highlighted. These are highlighted against the background of a global system that involves essentially national export licensing decision-making.



Recently evident patterns across the export control arrangements appear to be:

- ▶ seeking a more harmonized interpretation of agreed guidelines;
- ▶ promoting more efficient, better harmonized and more timely information exchange (the procedures adopted currently differ across the regimes in regard to information about denials of export licences, the regularity and timeliness of reporting and the medium of reporting);
- ▶ focusing attention on countries of concern;
- ▶ conducting focused outreach to those non-participating states that might adopt the guidelines and control lists agreed in the arrangements in their national regulations;
- ▶ promoting greater transparency about the activities of the arrangements (including in particular promoting a better understanding among exporters);
- ▶ developing closer control measures to be applied to non-state end-users;
- ▶ expanding the number of countries using catch-all or end-use controls;
- ▶ strengthening the enforcement of export controls, with a particular emphasis on pre-shipment (i.e. preventive) actions rather than post-shipment end-use checking.

### 2.2.2 Political Developments

There are two main political developments currently affecting export control. The first is the further political development of the European Union. There is a common assessment that the proliferation of weapons of mass destruction are a major threat to the Member States and citizens of the EU. Effective action against the proliferation of WMD<sup>12</sup> has been identified as a central element of the EU Common Foreign and Security Policy, and the EU is trying to develop a more coherent set of measures as part of its Action Plan against the proliferation of WMD. Enlargement is also requiring the EU to address both internal dimensions (the effectiveness of national implementation of export controls) and external dimensions (the effectiveness of the EU participation in the international informal export control arrangements listed in Section 2.1 above).

The second development is the heavy emphasis that the United States continues to place on all aspects of combating and “rolling back” proliferation of WMD. The US has defined proliferation as a security threat of such seriousness that a string of new initiatives have been launched in both the fields of counter-proliferation and non-proliferation.

Taken together these developments are making non-proliferation (including its export control dimension) politically more salient and this high level political attention will in turn increase the demands on government to devote resources (human, technical and financial) to the issues and concerns arising.

Security issues that had a strong impact on the export control debate in the 1990s included the increased focus on localized (often internal) conflicts (often with an ethnic or tribal dimension) that had a devastating impact on civilian populations in parts of Southeast Europe and Africa. Implementation of important decisions intended to widen the scope of export controls, in an effort to address the political and humanitarian concerns arising from these conflicts, remain incomplete.

### 2.2.3 Security Developments

In the US, following the terrorist attacks on targets in New York and Washington on 11 September 2001, and the subsequent mailing of letters filled with anthrax spores to members of the US government, the role that export controls might play in combating terrorism has become a focus of attention.

<sup>12</sup> *Action Plan for the Implementation of the Basic Principles for an EU Strategy against Proliferation of Weapons of Mass Destruction, Council of the European Union, document 10354/1/03 Rev 1, 13 June 2003.*

In Europe, after the end of the Cold War the security environment changed radically as the threat from the East/West polarisation reduced dramatically. However, new security issues soon emerged, particularly relating to instability from the break-up of Yugoslavia - ultimately influencing the strengthening of the European Unions Common Foreign and Security Policy.

More recently, WMD proliferation-related crises have occurred in Iraq and in North Korea. The determined pursuit of long range ballistic missiles by a small group of states – highlighted in a series of missile test firings after 1998 – has begun to re-focus European attention on potential military security threats.

European armed forces have been deployed in peace missions in a range of locations around the world. Moreover, the EU is advancing development of its operational capabilities to carry out crisis management and humanitarian missions, both civilian and military in character, such as it undertook in 2003 in Bosnia Herzegovina and The Democratic Republic of the Congo.

#### **2.2.4 Technology Developments**

Over time it is becoming progressively harder to isolate a completely separate set of “military” goods and technologies that need to be controlled for strategic purposes. If the non-proliferation failures of the 1960s and 1970s eroded the separation between military and dual-use goods and technologies, the non-proliferation failures of the 1980s and 1990s have in turn eroded the separation between military and dual-use items on the one hand and civilian items on the other. This was highlighted most dramatically on September 11th which involved use of civilian airliners as weapons.

The evidence that terrorist groups are prepared to carry out attacks using such non-traditional means is beginning to attract wider attention to the need to control potentially dangerous items not previously considered weapons (such as radiological materials and toxic or hazardous chemicals), potentially further complicating the development and updating of control lists.

#### **2.2.5 Economic Developments**

Section 2.4 describes the current size of and trends in the international arms trade.

The end of the Cold War brought major reductions in demand for the types of military equipment that were developed and had been bought in large quantities earlier. This reduction in demand has stimulated a process of transformation among defence equipment suppliers. The supply-side of the military equipment market has been characterized by concentration, privatization and internationalization.

Where demand has grown, it has often been for defence electronics, communication systems and information technology – equipment that increasingly depends on suppliers of dual-use or civilian technology – rather than purely military suppliers.

The market for dual-use products has also been characterized by an increased internationalization as producers seek to reduce their costs and bring their activities closer to their primary markets.

These changes have stimulated a number of developments in industry that have an impact on export controls. These changes include a growth in cross-border ownership, increased cooperation in international project teams, an increase in the flow of technology and knowledge across borders alongside the movement of goods, and a change in transaction types with increasing use of electronic communication and other intangible means of transfer.

## 2.2.6 Overall Challenges to Licensing Systems

The changes in acquisition strategy by countries seeking nuclear, chemical and biological weapons, the threat from groups planning terrorist acts, the internationalization of industry and the use of new Methods of transaction are all factors that have to be taken into account in assessing the effectiveness of existing export control systems.

The evidence that civilian items have contributed to military programmes is a challenge to control list based export controls (hence the introduction of catch-all controls). Changes in acquisition strategy by countries about which there are proliferation concerns require measures to ensure that the civilian industrial sectors - and in particular the chemical, biotechnology, bio-chemical and ICT sectors - do not inadvertently contribute to activities inconsistent with the norms established in the international treaties and agreements to which EU Member States are all parties.

States also need to put in place measures to ensure that they do not host front companies or other entities that form part of the procurement system of countries or groups carrying out illegal activities. Industry needs to have in place internal procedures to ensure that individuals operating within legitimate companies do not misuse resources.

The growth in cross-border electronic communication and the increase in the use of intangible means to transfer technology also challenge export licensing systems based on controls at the border, or physical exports generally.

## 2.2.7 Developments of Particular Relevance to Ireland

### Munitions and Conventional Arms

The United Nations continues to discuss issues related to conventional arms, including small arms and light weapons, and certain conventional weapons which are considered to have particularly injurious effects or which cannot not be used in a manner that is discriminate and proportionate in line with international humanitarian law).

The Organization for Security and Cooperation in Europe (OSCE) continues to discuss issues such as best practice in regard to export control as well as controls over the brokering of small arms and light weapons.

The European Union continues to develop its Code of Conduct on Conventional Arms Exports. The European Union has agreed a Common Position on arms brokering requiring Member States to introduce legislation in order to effectively control the activities of brokers. Of the EU Member States at present Belgium, Finland, France, Germany, Italy and Sweden have provisions in their export control laws and regulations considered to cover the activity of brokering. The United Kingdom is in the process of introducing secondary legislation that will cover brokering. Sweden is evaluating whether the existing provisions are satisfactory.

### Dual-use Items.

The European Union has established a "peer review" procedure to assess the effectiveness of the national measures with which Member States enforce the Council Regulation (EC) No. 1334/2000 (as amended) of 22 June 2000 setting up a Community regime for the control of exports of dual-use items and technology. Ireland will be reviewed and will participate in reviews of other Member States and accession countries under this process.<sup>13</sup>

The Regulation requires any export of dual-use items that is not carried out using a Community general export authorisation to be authorised by the competent authorities in Member States. Under the Regulation the Member States are obliged inter alia:

<sup>13</sup> *Action Plan for the Implementation of the Basic Principles for an EU Strategy against Proliferation of Weapons of Mass Destruction, Council of the European Union, document 10354/1/03 Rev 1, 13 June 2003.*

- ▶ to use general authorisation for specified items on the dual-use control list;
- ▶ to take into account a number of specific factors when making their assessments of applications for an export licence. The factors include: obligations and commitments they have accepted under international non-proliferation regimes and export control arrangements or by ratification of relevant international treaties; obligations under sanctions imposed by the EU, the OSCE or binding decisions of the UN Security Council; considerations covered by the EU Code of Conduct on arms exports; considerations about intended end-use and the risk of diversion;
- ▶ to follow consultation procedures with other Member States before granting an export authorisation in cases where an essentially identical transaction has been denied within the previous three years.

These and other international developments are taken into consideration when formulating our conclusions and recommendations in Chapter 6.

## 2.3 International Trade in Military Goods

### 2.3.1 International Trends in Military Expenditure

This section briefly reviews trends in the global military expenditure and trade.

Table 2.1 gives a breakdown of world military expenditure over the 10 years 1993-2002 in US\$, as estimated by SIPRI. This involves all expenditure, both on equipment and normal ongoing expenditure. Of its nature, it involves mainly public expenditure. There are no separate figures for “dual-use” as opposed to pure military goods.<sup>14</sup>

The level of world military expenditure is estimated at \$784 bn. This exceeds the 1993 level by 3%. The level of increase in military expenditure was significantly higher than this in several regions. In Africa, Latin America, East and South Asia, and the Middle East, military expenditure in 2002 was between 18% and 44% higher than the 1993 levels.

In Western Europe and North America the 2002 figure was 6% lower than the 1993 level, although the figure for North America has been growing since 2000.

In terms of shares of world military expenditure, the Americas account for 47% of expenditure in 2002, owing mainly to the high share of the USA. Europe accounts for almost 23%, with Asia and Oceania at 19%. Next comes the Middle East with 10%, while Africa accounts for 1% of world military expenditure in 2002.

<sup>14</sup> However, of the former only the share actually used for military purposes would be relevant and the part of this that involves components would be captured by the gross value of the final military equipment involved.

**Table 2.1:** *World and Regional Military Expenditure Estimates, 1993 – 2002 (US \$BN, at Constant 2000 Prices)*

Region	1993	1997	2000	2002	% Change 1993-2002
<b>Africa</b>	<b>7.4</b>	<b>7.1</b>	<b>8.8</b>	<b>[9.6]</b>	<b>30</b>
North	2.5	3	3.6	–	44
Sub-Saharan	5	4.1	5.2	–	4
<b>Americas</b>	<b>385</b>	<b>328</b>	<b>333</b>	<b>368</b>	<b>-4</b>
North	365	304	310	344	-6
Central	2.8	3.2	3.4	3.3	18
South	17.6	20.9	19.5	21.1	20
<b>Asia &amp; Oceania</b>	<b>120</b>	<b>128</b>	<b>134</b>	<b>147</b>	<b>23</b>
Central Asia	–	0.5	–	–	–
East Asia	99.8	107	111	[122]	22
South Asia	12	13.4	15.2	17.3	44
Oceania	7.7	7.4	7.3	7.4	-4
<b>Europe</b>	<b>196</b>	<b>177</b>	<b>180</b>	<b>181</b>	<b>-8</b>
CEE	25.6	19.6	18.9	21.4	-16
Western	171	157	161	160	-6
<b>Middle East</b>	<b>[53.5]</b>	<b>56.5</b>	<b>67.3</b>	<b>–</b>	<b>38</b>
<b>World</b>	<b>762</b>	<b>696</b>	<b>723</b>	<b>784</b>	<b>3</b>
% Change on previous year	–	0.7	3.9	5.8	–

Where possible SIPRI Military data include all current and capital expenditure on (a) armed forces, incl peacekeeping; (b) defence ministries and other govt agencies; (c) paramilitary forces; and (d) military space activities. Such expenditure should include military and civil personnel, operations and maintenance, procurement, military research and development and military aid. For further information on the definition see the source.

The world and regional totals are estimates, based on SIPRI data. When no estimates can be made, countries are excluded from the totals. This table excludes figures for Afghanistan, Angola, Benin, The Democratic Republic of the Congo, Eritrea, Honduras, Iraq, Liberia, Libya, Somalia and Yugoslavia (Serbia and Montenegro). Regional total are presented only when based on country data accounting for at least 90% of the regional total.

Figures in brackets; [ ] indicate estimates for that year

Source: SIPRI Yearbook 2003, *Armaments, Disarmament and International Security*

Table 2.1 does not show the EU separately, but “Western Europe” is similar. It accounts for about \$160 bn annually, or about 46% of the North American (mainly US) figure, and it is constant as against a rising US figure.

Table 2.2 lists the major individual military spender countries in 2002. The Table lists the top 15 countries, who together account for 81% of world military expenditure in 2002. The USA, with expenditure of \$335.7 bn, accounts for 43% of total expenditure.<sup>15</sup> The next largest share of expenditure, but far below the US, is by Japan (6%), followed by the UK (5%) and then France, China and Germany (around 4% each).

Table 2.2 also shows the comparable expenditure figure for Ireland. Ireland's figure of \$749 mn in 2002 represents .0001% of world military expenditure.

<sup>15</sup> International comparisons of national expenditures are sensitive to the choice of methodology for conversion of expenditure figures from national currencies to a common currency, in this case US dollars. This tends to understate the purchasing powers of developing and transition countries, and thus the actual difference between the countries may be somewhat narrower than as presented.

**Table 2.2:** *Top 15 Spending Military Expenditure Countries, 2002 (US \$BN, at Constant 2000 Prices)*

RANK	Country	Expenditure (US \$bn)		% of World Expenditure in 2002		% Change in Exp 1993 - 2002	Military Expenditure as % GDP (2001)
		1993	2002	1993	2002		
1	USA	354.8	335.7	43%		-5%	3.1%
2	Japan	43.8	46.7	6%		7%	1.0%
3	UK	41.6	36.0	5%		-13%	2.5%
4	France	37.2	33.6	4%		-10%	2.5%
5	China	14.2	31.1	4%		119%	2.3%
6	Germany	32.4	27.7	4%		-15%	1.5%
7	Saudi Arabia	13.9	21.6	3%		55%	11.3%
8	Italy	17.1	21.1	3%		23%	2.0%
9	Iran	6.2	17.5	2%		182%	4.8%
10	South Korea	11	13.5	2%		23%	2.8%
11	India	8.1	12.9	2%		59%	2.5%
12	Russia	16.4	11.4	1%		-30%	3.8%
13	Turkey	7.6	10.1	1%		33%	4.9%
14	Brazil	5.3	10	1%		89%	1.5%
15	Israel	7.2	9.8	1%		36%	7.7%
	<b>Total of 15</b>	<b>616.8</b>	<b>638.7</b>	<b>81%</b>		<b>4%</b>	<b>-</b>
	<b>World</b>	<b>762</b>	<b>784</b>	<b>100%</b>		<b>3%</b>	<b>2.4%</b>
	(Ireland)	(0.536)	(0.749)	(0.0001%)		(40%)	(0.7%)

Source: SIPRI Yearbook 2003, Armaments, Disarmament and International Security

Table 2.2 also highlights the percentage increase in military expenditure in each of the 15 countries listed by comparing the 2002 figure to the 1993 figure. Ten of the fifteen countries experienced growth in expenditure. The largest increases are in Iran and China where the 2002 figures are 182% and 119% of the 1993 figures, respectively. Five of the countries spent less on their military in 2002 than in 1993. (Ireland's figure of \$749 mn in 2002 is 40% higher than the 1993 figure).

Across countries, there are very wide disparities in the share of GDP devoted to military expenditure. Table 2.2 shows that in 2001, military expenditure accounted for 2.4% of GDP in the top 15 military spenders. Particular countries' expenditure accounted for a far higher percentage of their GDP. This is especially the case in the Middle East. For example the figure for Saudi Arabia and Israel is 11.3% and 7.7%, respectively. This is followed by Turkey and Iran at 4.9% and 4.8%.

Ireland's military expenditure in 2001 was 0.7% of GDP for that year – a lower percentage than any of the top 15 spending countries.

### 2.3.2 Exports and Imports of Conventional Weapons

Both production and exports of conventional weapons are highly concentrated among a small number of countries. Table 2.3 shows that the top 15 exporters of major conventional weapons between 1998 and 2002 account for 95% of total world exports.

The USA exported almost \$38 bn worth, which accounted for 41% of the world total. There is then a considerable drop to Russia, whose exports over the period accounted for 22% of the world total. France accounted for 9% of the exports, followed by Germany and the UK (5% each).

The EU thus contains three of the top five exporters of military goods – France, Germany and the UK. It has six of the top 15 (the above three plus Italy, Netherlands and Sweden – and is soon to be joined by a seventh, namely Slovakia). In 2002, the combined military exports of these six EU countries is equivalent to those of the US. The exports of military goods from the remaining ten countries ranged between 1% and 3% of the global total. The EU share of exports highlights the major interest of a number of Ireland's EU partners in international military sales<sup>16</sup>.

Post-cold-war, downsizing of arms production ended in the mid-1990s. Thereafter, the level of arms production in the major Western arms-producing countries – France, Germany, the UK and the USA – increased slightly but fell again towards the end of the decade.

In the second half of the 1990s the USA and the main arms-producing countries in Western Europe increased their arms exports to compensate for the continuing decline or stagnation on domestic demand. This trend was even stronger for Russia. British, French and US arms exports peaked in 1997, while German exports have been fluctuating. Russian arms production has been increasing since 1998, with the average annual rate of increase of 28% between 1998-2000.

**Table 2.3:** *Top 15 Exporters of Major Conventional Weapons, 1998-2002 (US \$MN, at Constant 1990 Prices)*

Rank	Country	1998	2002	1998-2002	% of World Exports in 2002	% of World Exports 1998-2002
1	USA	12,795	3,941	37,723	24%	41%
2	Russia	1,886	5,941	20,741	36%	22%
3	France	3,319	1,617	8,312	10%	9%
4	Germany	1,157	745	4,954	5%	5%
5	UK	1,041	719	4,811	4%	5%
6	Ukraine	,765	270	2,673	2%	3%
7	Italy	360	490	1,787	3%	2%
8	China	286	818	1,561	5%	2%
9	Netherlands	537	260	1,520	2%	2%
10	Belarus	75	–	1,142	0%	1%
11	Sweden	113	120	1,132	1%	1%
12	Israel	166	178	941	1%	1%
13	Canada	133	318	780	2%	1%
14	Slovakia	10	40	374	0%	<1%
15	Norway	2	203	372	1%	<1%
	<b>Subtotal</b>	<b>22,645</b>	<b>15,660</b>	<b>88,823</b>	<b>95%</b>	<b>96%</b>
	<b>World</b>	<b>23,176</b>	<b>16,492</b>	<b>92,544</b>	<b>100%</b>	<b>100%</b>

Source: SIPRI Yearbook 2003, Armaments, Disarmament and International Security

<sup>16</sup> The SIPRI yearbook ranks Ireland at 63 out of 65 suppliers of major conventional weapons between 1998 and 2002. No figures are produced, however.

### 2.3.3 Imports of Military Goods

Whereas Table 2.3 shows the exporters of major conventional weapons between 1998 and 2002, Table 2.4 shows the destination of these exports. The top 20 importing nations account for 71% of all imports over the period.

Unlike production and exports, no one country dominates in relation to the importation of conventional weapons. Table 2.4 shows that over the period China accounted for 10% of all imports. It was followed by Taiwan (7%), India, Turkey and Saudi Arabia (5% each). The remaining 15 countries listed each accounted for 1-4% of all world imports over the period. (Ireland's import of conventional weapons were valued by SIPRI at \$20 mn in 2002, or 0.001% of the world total.)

**Table 2.4:** *Top 20 Importers of Major Conventional Weapons, 1998-2002 (US \$MN at Constant 1990 PRICES)*

Rank	Country	1998	2002	1998-2002	% of World Imports 2002	% of World Imports 1998-2002
1	China	224	2,307	8,818	14%	10%
2	Taiwan	4,011	203	6,822	1%	7%
3	India	548	1,668	4,824	10%	5%
4	Turkey	1,763	721	4,688	4%	5%
5	Saudi Arabia	2,507	478	4,360	3%	5%
6	Greece	1,451	567	3,958	3%	4%
7	South Korea	964	229	3,445	1%	4%
8	Egypt	507	638	3,251	4%	4%
9	UK	379	575	3,116	3%	3%
10	Israel	1,295	226	3,033	1%	3%
11	Pakistan	590	1,278	2,992	8%	3%
12	Japan	1,206	154	2,799	1%	3%
13	UAE	749	452	2,092	3%	2%
14	Australia	99	614	2,044	4%	2%
15	Finland	555	24	1,898	0%	2%
16	Singapore	673	227	1,834	1%	2%
17	Algeria	103	464	1,784	3%	2%
18	Iran	287	298	1,440	2%	2%
19	Canada	19	359	1,309	2%	1%
20	Brazil	196	154	1,256	1%	1%
	<b>Sub-total of 20</b>	<b>18,126</b>	<b>11,636</b>	<b>65,763</b>	<b>71%</b>	<b>71%</b>
	<b>World</b>	<b>23,176</b>	<b>16,492</b>	<b>92,544</b>	<b>100%</b>	<b>100%</b>

Source: SIPRI Yearbook 2003, Armaments, Disarmament and International Security



### 2.3.4 Other Key Features of the Industry

Some of the main quantitative features of the international arms industry are captured in the data above. A number of more qualitative but distinct aspects also deserve description:

In terms of a market, key features are:

- ▶ the fact that the final customer for military and dual-use goods, directly in the case of finished products and indirectly in the case of components, is the public sector. The market is therefore very dependent on political and public decisions in all countries, be these driven by wider geo-political considerations or short-term exchequer considerations;
- ▶ related to this, by definition in each country there are relatively limited customers – generally in the form of either central government procurement bodies, defence ministries, or the different sectors of the armed forces in the case of the final product, while dual-use goods and components for military use are generally sold to those limited number of military equipment suppliers. Furthermore, as shown in the previous data, a fairly limited number of countries account for much of military expenditure. Since a number of these countries also have major domestic arms industries, and a preference for domestic supply where possible, the number of major customers who are operating on the “open market” are correspondingly lower and also much sought after;

In terms of production, features are:

- ▶ a relatively limited number of producers of final equipment, and this number has been falling with restructuring since the end of the cold war and the decline in the market. The US Department of Defence, for example, saw a sharp fall in the number of prime contractors in most categories of production between 1990 and 2000 due to closures, mergers and acquisitions, e.g. for fixed wing aircraft from 8 to 3, tactical missiles from 13 to 3, and surface ships from 8 to 3;<sup>17</sup>
- ▶ close links between the arms industry in major producer countries and other industries and activities such as R+D and aerospace. These links have been increasing, again as part of the post-cold war phenomenon, with fewer dedicated military producers and more dual-use producers. Examples here, again from the US, include companies such as Boeing which was the second largest producer of defence equipment in the US in 2000;
- ▶ the industry is frequently heavily subsidised or otherwise supported either directly or indirectly, and the major companies are still often seen as “national champions”, e.g. BAE Systems in the UK and SAAB and Ericsson in Sweden. This support can occur through such means as R+D, or provision of financial assistance to purchasers in the form of export credits.

In relation to trade, key features are:

- ▶ as reflected in the present project, exports of military and dual-use goods are subject to control through export licensing in the majority of developed countries and in many developing countries;
- ▶ aside from this, military products are generally exempt from the overall international trade liberalisation process occurring both globally through the WTO and regionally through free trade regimes such as the EU. In the EU, for example, Community competence relates only to dual-use products and trade in military goods is still a matter for individual Member States (exempt by Treaty of Rome), although there is now a politically-binding Code of Conduct regarding arms exports operating within the Community (see Chapter 3);
- ▶ trade in final military products, i.e. tanks, missiles, APCs, etc., is as a result not as highly globalised as many others. This is much less the case at the level of second and third tier suppliers who make components or equipment for the prime contractors, whether military or dual-use equipment. This segment is increasingly globalised with many purely military components being made in different parts of the globe and with electronics and computing software, which play an increasing role in defence systems, frequently made outside the core defence companies;

<sup>17</sup> USDA quoted in SIPRI Yearbook 2003, Table 11.4.

- ▶ aside from commitments to international treaties and agreements, arms-producing countries also generally see exports as having some national geo-political or strategic significance and as closely entwined with foreign policies and also with defence and industrial policies;
- ▶ traditionally, exports were frequently seen as “surplus” to production required for domestic use. However, this is now less so given the fall-off in home demand in the major producer countries. Nevertheless, the role of exports in sustaining domestic production for the benefit of an independent domestic defence policy is still a significant consideration in producer countries. In Sweden, for example, one of the explicitly stated criteria in guidelines for exports of military equipment is that “co-operation with foreign partners is considered necessary to meet Swedish armed forces” need for military equipment or know-how or is otherwise desirable for reasons for national security”;<sup>18</sup>
- ▶ governments are frequently involved directly in military transactions both on the purchasing side and on the supplier side, negotiations frequently take place on a government-to-government basis, transactions are frequently linked with financial assistance from the supplier country and purchasers and sellers may be public-sector bodies;
- ▶ few areas of international economic activity are so enmeshed in multiple and complex political economic and ethical issues.

Across many of these features major global changes are also occurring which have already been cited in Section 2.1 above.

## 2.4 Irish Production and Trade of Military and Dual-use Goods

### 2.4.1 National Context

It is already clear from Section 2.3 that, on a global or EU scale, Ireland is a very small player in terms of military expenditure, production and exports. Some further comparative statistics in Table 2.5 confirm this status.

This small role in relation to production and trade of military equipment reflects a number of inter-related factors: Ireland is a relatively small country in absolute terms; it has a traditional policy of military neutrality; and related to this latter policy Ireland has traditionally devoted a relatively small level of national resources to military spending.

<sup>18</sup> *Sweden's Export Control Policy and Exports of Military Equipment in 2002, Government Communication 2002/03:114, page 8.*

**Table 2.5:** Selected Defence Statistics, EU15, US and Canada

	Military Expenditure <sup>1</sup> (2002)		Export of Conventional Weapons 1998 -2002 <sup>2</sup>		Employment in arms production in 2001 (000s)	Armed Forces personnel 2000 (000s)
	(US \$mn at constant 2000 prices)	% GDP (2001)	(US \$mn at constant 1990 prices)	% world expenditure		
Austria	1,468	0.80%	174	0.20%	3	35
Belgium	3,020	1.30%	138	0.10%	6	41
Denmark	2,526	1.60%	27	0.03%	5	25
Finland	1,476	1.20%	48	0.10%	10	32
France	33,590	2.50%	8,312	9.00%	250	367
Germany	27,740	1.50%	4,954	5.40%	90	335
Greece	5,264	4.60%	20	0.02%	15	205
<b>Ireland</b>	<b>749</b>	<b>0.70%</b>	<b>&lt;0.5</b>	<b>&lt;0.00%</b>	<b>NA</b>	<b>11</b>
Italy	21,061	2.00%	1,787	1.90%	30	374
Luxembourg	169	0.80%	NA	NA	NA	1
Netherlands	6,204	1.60%	1,520	1.60%	10	52
Portugal	2,503	2.10%	NA	NA	5	66
Spain	7,079	1.20%	320	0.34%	25	134
Sweden	4,582	2.00%	1,132	1.20%	28	34
UK	36,035	2.50%	4,811	5.20%	240	219
<b>EU 15 <sup>4</sup></b>	<b>153,466</b>	<b>1.90%</b>	<b>23,243</b>	<b>25.00%</b>	<b>717</b>	<b>1,931</b>
USA	335,706	3.10%	37,723	40.80%	2320	1,482
Canada	8,174	1.20%	780	0.80%	25	59

*Notes* 1. Where possible SIPRI Military data include all current and capital expenditure on (a) armed forces, incl peacekeeping; (b) defence ministries and other govt agencies; (c) paramilitary forces; and (d) military space activities. Such expenditure should include military and civil personnel, operations and maintenance, procurement, military research and development and military aid. 2. SIPRI definition of Major conventional weapons includes Aircraft, Armoured Vehicles, Artillery, Radar Systems, Missiles and ships. Transfers of other military equipment are not included. The figures cover not only the sale of weapons, but other forms of weapon supply, including aid and gifts. 3. The figure for Germany refers to 1997, the latest available year. The total figure is the sum of the available information. 4. The Overall %GDP for the EU15 is an estimate derived from SIPRI Figures.

Source: SIPRI Database and Facts on International Relations and Security Trends Database

## 2.4.2 Irish Production and Trade

There are no official trade data on production or exports of military and dual-use goods in Ireland. This reflects principally the fact that military goods produced in or exported from Ireland involve components rather than finished goods, and so are classified under various headings in published trade statistics. In the case of dual-use goods, there is the additional complication that the regulated goods may or may not be used for military purposes.

In both cases, the classification codes governing controlled goods do not correspond to those used for customs or trade statistical purposes, and so information cannot be correlated, i.e. the classification (codes) used to record levels of actual exports in trade statistics do not correspond to those used for control purposes on military and dual-use lists. Therefore, levels of actual exports recorded in trade statistics cannot be readily cross-checked against or compared to the controlled lists headings. This is an international issue and not only an Irish one, since in each case Ireland is using standard EU and international classification systems.

SIPRI estimates of the value of major "transfers" of goods in and out of Ireland, and which are shown in Table 2.5. However, these again relate only to finished products and so are not comprehensive.

In the case of licence values, which are now published, these data relate to the value of the licence rather than to the actual exports. Since companies have reasons to err on the side of caution in applying for licences and may not subsequently use them, these figures are a reflection of intention rather than actual exports.

In terms of the value of military licences, this ranged between about €30 mn and €60 mn annually over the period 1999-2003. In the case of dual-use licences, these generally relate to goods valued at about €2-4 bn annually in recent years (see Section 3.8, Table 3.1). These figures relate to all licences, the vast majority of which involve civilian end-users or end-uses. In 2003 out of a total licence value for all dual-use goods of €2.3 bn, about €600,000 involved military end-uses or end-users. In both cases, data relate to the value of licences granted. As already stated, this may far exceed actual exports if for various reasons companies do not proceed with planned transactions.

In terms of the value of actual commercial military (as opposed to dual-use) exports, this can be estimated to be in the region of €10-20 mn annually in recent years. This excludes any shot-gun or Department of Defence transfers. Given the very limited local market, these figures will also equate to Irish production of controlled military goods and components.

In terms of numbers of firms producing or exporting military or dual-use goods, about five exporters apply for military licences in any one year. For dual-use exporters the figure is about 25. Again, the first figure reflects companies who are exporting military components from Ireland. The latter figure relates to all companies whose products are classified as dual-use.

In its 2001 report on "Ireland and the Arms Trade", Amnesty International estimated that there were over 70 companies engaged in arms and security-related activities in Ireland.<sup>19</sup> This was larger than earlier estimates by Afri.<sup>20</sup> This higher number reflects Amnesty's wider interest in the "military security and peace" (MSP) sector, including companies who manufacture surveillance/CC TV equipment, as well as inclusion of importers and distributors on the domestic market.

<sup>19</sup> Amnesty International Irish Section, *Ireland and The Arms Trade – Decoding the Deals*, Dublin, Amnesty International, 2001.

<sup>20</sup> Action for Ireland, *Ireland's Links with the Arms Trade and Military Industry*, 1996

In terms of the nature of companies involved in Ireland, our consultations suggest a number of features. In the case of military producers features are:

- ▶ these involve a mix of indigenous and overseas firms;
- ▶ they invariably make components and not finished products in Ireland;
- ▶ they generally make non-lethal components, i.e. items which do not directly themselves constitute weapons;
- ▶ the companies are relatively small, with the largest employing a few hundred persons;
- ▶ they generally make small volumes of specialised products to order from another manufacturer;
- ▶ they generally make non-military as well as military products using similar technologies;
- ▶ they generally involve research and design as well as (low volume) production, and their key competitive strength frequently lies in these design capabilities.

In relation to dual-use companies, key features are:

- ▶ there are more such companies, with typically about 25 annually applying for licences, but as already emphasised these cannot be assumed to be supplying military users;
- ▶ these are predominantly overseas, mainly US, companies, but also involve some small indigenous firms;
- ▶ they are mainly in the area of ICT and software;
- ▶ they involve a mix of companies in terms of size, from quite large to quite small.

### **2.4.3 Agents and Brokering**

As discussed further in Chapter 3, the question of arms brokering is currently topical internationally in the context of export licensing regimes. The general view here is that these should be monitored alongside exporters themselves. The UK has recently passed legislation in this regard, making the issue a more pressing one from an Irish perspective.

There is no direct information as to whether any international arms brokers currently operate from Ireland. The system is complicated by the fact that the term “brokering” is itself not a very clear one and is used in various ways.

The Department of Defence works with a number of Irish agents used by its contracts branch for the purchase of various supplies. These can relate to some small-scale military equipment such as ammunition and communications equipment. These are relatively small companies and generally have other activities in Ireland also, e.g. in the communications industry. These agents do not require a licence of any type since they generally would not take ownership of any military equipment either incoming or outgoing. While the Department of Defence is responsible for the acquisition of defensive equipment and other major equipment purchases for the Defence Forces, other equipment is acquired directly by the Defence Forces.

The Department of Justice, Equality and Law Reform licenses firearms dealers in Ireland. At present there are a total of about 400 registered firearms dealers. These are generally small shops, but there are some larger ones, mainly wholesalers. Some dealers also carry out repairs. There is no manufacturing of firearms in Ireland. If there were it would have to be registered on the Register of Firearms Dealers.

The list of registered dealers is not public. A small minority, probably about 12, of these dealers import small arms. The extent of export (or re-export) activity is low. Movement of firearms within the EU is regulated by the Department of Justice and outside the EU by the Department of Enterprise, Trade and Employment (see also Chapter 3, Section 3.5.1).

# 3 Ireland's Export Licensing System

## 3.1 Licensing of Ireland's Military and Dual-use Exports

### 3.1.1 Introduction

As stated in Chapter 1, one of the few areas where an export licensing system operates in Ireland is in regard to military goods and certain goods which may have dual military and civilian use. The former are licensed under exclusively domestic Irish legislation, while the latter are derived from a common EU system, transposed into Irish law via regulation. Both systems are operated by the Department of Enterprise, Trade and Employment – Export Licensing Unit.

As stated in the Department's Guidelines, the purpose of these export controls are three-fold:

- ▶ to prevent the export of dual-use items for the production, delivery etc of nuclear and other weapons of mass destruction;
- ▶ to prevent the export of military goods to countries whose behaviour is considered a threat to international or regional peace;
- ▶ to comply with restrictions imposed by the United Nations, European Union and OSCE on exports to particular countries in order to bring about a change in the behaviour of the government of those countries."

The latter typically involves countries who are seen as guilty of serious domestic human rights abuse, who support international terrorism, or who are seen as a threat to their neighbours. Many of these countries are subject to more broadly based embargos not being dealt with here, e.g. on air traffic, while some are specifically subject to specific embargos on arms exports.<sup>21</sup>

### 3.1.2 Broad Parameters of the System

The broad parameters of controls on military exports are similar in most industrialised countries and have their origins in the same international treaties and obligations (see Section 2.1 earlier). They focus on specific categories of listed products, where these are going, to whom they are going and, in the case of dual-use equipment, for what purpose they are going to be used. Controls are effected through the need to obtain an export licence.

The Irish system is outlined more fully in background documents, notably the Department of Enterprise, Trade and Employment's published Guide to Export Controls<sup>22</sup>, and on the relevant section of the Department's website.<sup>23</sup>

Essentially, an export licence is required for:

- ▶ export of listed military goods irrespective of their destination, including exports to other EU Member States;
- ▶ in the case of dual-use goods for export outside the EU and other major developed countries (except in the case of some highly sensitive dual-use equipment where an export licence is required irrespective of destination);
- ▶ some exports subject to the EU "catch-all" clause. This clause, a feature of the EU dual-use regulations, refers to non-listed dual-use items which may be subject to control if the exporter is aware or has been advised by Department of Enterprise, Trade and Employment that these may be intended, in their entirety or in part, for use in connection with weapons of mass destruction, or the production of missiles capable of delivering such weapons, or as parts or components of military goods illegally exported, or if the purchasing country or country of final destination is subject to an arms embargo and the goods may be intended for a military end-use. In this case exporters are obliged to notify the licensing authority which will then decide whether or not a licence is required.

<sup>21</sup> EU/UN or OSCE arms exports embargos currently apply to Afghanistan, Angola, Armenia, Azerbaijan, Bosnia-Herzegovina, Burma/Myanmar, China, Democratic Republic of the Congo, Iraq, Liberia, Libya, Ngorno-Karabakh, Rwanda, Sierra Leone, Somalia, Sudan, Yemen and Zimbabwe.

<sup>22</sup> Department of Enterprise, Trade and Employment, Guide to Export Controls, no date.

<sup>23</sup> See Department of Enterprise, Trade and Employment website, [www.entemp.ie/export](http://www.entemp.ie/export)

The system relies heavily on self-regulation, i.e. the onus is on the exporter to be aware that they require an export licence, and to apply for such a licence. DETE of course decides on whether to grant the licence.

### 3.1.3 Overall Policy Objectives

The immediate objectives of the export control system as set out by the Department of Enterprise, Trade and Employment are three-fold. As quoted in Section 1.1 above they are:

- ▶ preventing the export of items that could be used in nuclear and other weapons of mass destruction;
- ▶ preventing export of military goods to countries whose behaviour is a threat to international and regional peace;
- ▶ to comply with restrictions imposed by internationally-agreed trade embargos.

Overarching these is the desire to comply with Ireland's relevant international commitments under international treaties and regimes, and as an EU Member State (see Section 2.1 earlier).

### 3.1.4 Related National Policy Considerations

Underlying the specific policy objectives of the system, a number of wider policy considerations can also be identified as underlying Ireland's national approach to controlling military and dual-use exports.

These are:

- ▶ a long-standing commitment in Irish foreign policy to non-proliferation of weapons generally, and in particular non-proliferation of nuclear weapons, and corollary policy being the view that nations should generally have levels of armaments only as is required for their own defence;
- ▶ Ireland's traditional policy of military neutrality, and specifically non-membership of any military alliance, has also reinforced the above elements – although of course neutrality and both military strength and trade can go together (as in Sweden and Switzerland);
- ▶ reluctance on the part of the Irish industrial development agencies to grant-aid companies involved in the production of military equipment in Ireland. While there have been exceptions to this, they are relatively few;
- ▶ a desire, particularly in the context of the Northern Ireland troubles, to avoid commercial activities in Ireland which might make weaponry more easily available;
- ▶ Ireland's EU membership, and the existing and potential commitments and obligations this brings in relation to export controls and to wider EU Foreign, Security and Defence Policy.

## 3.2 Legislation Governing Military and Dual-use Exports

### 3.2.1 Exports of Military Equipment

Military goods subject to export control are regulated under the Control of Exports Act, 1983. This is general legislation governing all export controls. Unlike most EU countries, the specific controls are introduced via regulations. Section 2(1) of the 1983 Act provides that the Minister "may, whenever and so often as he thinks fit, by order prohibit, subject to such exceptions, if any, as he may think proper, the exportation of goods<sup>24</sup> of any specified description, save under and in accordance with a licence." Section 2(2) provides that "[t]he Minister may, after consultation with the Minister for Foreign Affairs, by order prohibit, subject to such exceptions, if any, as he may think proper, the exportation of goods of any specified description of a specified destination, save under and in accordance with a licence." Section 2(3) provides that an order under section 2 "may make provision

<sup>24</sup> In the 1983 Act, the term "goods" does not include an agricultural product or a fishery product within the meaning, in each case, of section 1 of the Agricultural and Fishery Products (Regulation of Export) Act, 1947: see section 1 of the 1983 Act.

for such other matters as appear to the Minister necessary for securing the due operation and enforcement of the order." Section 2(4) provides that the Minister "may revoke or amend an order made under [section 2] including [section 2(4)]".

Section 3(4) of the 1983 Act provides that "every person who, for the purpose of obtaining for himself or for any other person a licence, makes any statement or representation which is, to his knowledge, false or misleading in any material respect shall be guilty of an offence."

The Control of Exports Order, 2000, was made by the Minister for Enterprise, Trade and Employment pursuant to section 2 of the 1983 Act. Article 3 of the 2000 Order provides that "subject to Article 4..., the exportation of any goods specified in the Schedule to this Order is hereby prohibited save under and in accordance with a licence." Article 4 of the 2000 Order provides that the Order shall not apply to the exportation: (a) of any goods by the Permanent Defence Forces, or the Garda Síochána for specified uses or purposes<sup>25</sup>; (b) to other Member States of the European Communities of specified goods<sup>26</sup>; (c) of specified privately owned goods<sup>27</sup> legally imported for a period of not more than 6 months by persons resident outside the European Communities and ammunition therefore which does not exceed the amount shown on the document authorising their importation; or (d) specified goods<sup>28</sup> which are held by residents on foot of firearm certificates and which are being exported outside the European Communities for use by their owners during a visit of not more than 6 months. The Schedule to the 2000 Order sets out a detailed list of goods which may not be exported without a licence, see Figure 2.2.

The list also includes a small number of items of security/paramilitary equipment that were made subject to control for domestic security reasons.

Military goods licensed for export from Ireland generally fall under a small number of the listed categories. To date this has included Fire Control Equipment, which includes weapon sights and control systems, and Small Arms including automatic weapons and accessories. Explosive detection devices under category 4, and ground vehicles have also been authorised for export. Section 3.8.2 below examines the statistics relating to the types of military good authorised for export from Ireland in 2002.

<sup>25</sup> Specifically:

- (i) for use by an international United Nations Force in the course of its duties as such;
- (ii) for the purpose of their being repaired, over-hauled, refitted, modified, tested or maintained, and returned to the State;
- (iii) for the purposes of their being at international military competitions, or
- (iv) for the purposes of the testing of munitions.

<sup>26</sup> Specifically:

- (i) rifles, carbines, shotguns and other smoothbore weapons and crossbows and component parts thereof;
- (ii) silencers, telescopic sights and component parts thereof, or
- (iii) ammunition for firearms specified in subparagraph (i).

<sup>27</sup> Specifically, rifles, carbines, shotguns and other smoothbore weapons and crossbows, legally imported for a period of not more than 6 months by persons resident outside the European Communities, and ammunition therefore not exceeding the amount shown on the document authorising their importation.

<sup>28</sup> Specifically, rifles, carbines, shotguns and other smoothbore weapons, crossbows and ammunition.



**Figure 3.1:** *Military Items Specified in the Schedule of Goods to the Control of Export (ORDER, 2000)*

The military items specified in the Schedule of Goods to the Control of Exports Order, 2000 are broken down into the following categories:

1. Small Arms
2. Large Calibre Armament or Weapons
3. Ammunition
4. Bombs, Torpedoes, Mines, Rockets and Missiles
5. Fire Control Equipment
6. Ground Vehicles
7. Chemical or Biological Toxic Agents
8. Military Explosives
9. Vessels of War
10. Military Aircraft
11. Electronic Equipment
12. High Velocity Kinetic Energy Weapon Systems
13. Armoured or Protective Equipment
14. Military Training Equipment
15. Imaging or Countermeasure Equipment
16. Forgings, Casting and Semi-Finished Products
17. Miscellaneous Equipment
18. Military Production Equipment
19. Directed Energy Weapon Systems
20. Cryogenic and "Superconductive" Equipment
21. Security and Para-Military Equipment
22. Software
23. Technology for the production of products referred to in this Schedule

*Source: Department of Enterprise Trade and Employment*

While there is no EU legislation governing military exports, there is a politically-binding EU Code of Conduct on military exports through which member states co-ordinate their policy and procedures in this regard. This includes, inter alia, exchange of information and common annual reporting arrangements to which we refer further later in this Chapter.

### **3.2.2 Exports of Dual-use Equipment**

Regulation of trade in dual-use equipment is a matter of EU regulation, and is governed by Council Regulation No. 1334/2000 (as amended) of 22nd June 2000. This is the legal instrument establishing a Community system for the control of exports of dual-use equipment and technology. It has been updated on a number of subsequent occasions. The purpose of these updates has generally been to bring the list of specified dual-use items up to date, in line with EU Member States' undertakings in the various international non-proliferation agreements.

Article 19 of the Regulation obliges Member States to “take appropriate measures to ensure proper enforcements of all provisions of (the) Regulation”. In Ireland, the EU Regulation is implemented by the European Communities (Control of Exports of Dual-use Items) Regulations, 2000.<sup>29</sup>

The overall implication of the existence of this regulation is that the list of dual-use items subject to control is now a matter for EU and not for Irish policy. Ireland has some flexibility with regard to how it implements the regulation, and decisions on whether to grant or refuse licence applications are at the discretion of the National Licensing Authority. However, the content of the regulation, and in particular the list of defined dual-use items, is a matter for EU common decisions as part of EU internal market and common external trade policy provisions.

**Figure 3.2: Main Listed Categories of Dual-Use Equipment**

Cat 0	Nuclear Materials, Facilities, and Equipment
Cat 1	Materials, Chemicals, Micro-organisms and Toxins
Cat 2	Materials Processing
Cat 3	Electronics
Cat 4	Computers
Cat 5	Telecommunications and Information Security
Cat 6	Sensors and Lasers
Cat 7	Navigation and Avionics
Cat 8	Marine
Cat 9	Propulsion Systems, Space Vehicles and Related Equipment

*Source: Department of Enterprise, Trade & Employment*

In the past, the majority of dual-use goods authorised for export from Ireland have come under a small number of the control categories. Telecommunications and Information Security products (category 5) account for a large number of the export authorisations. Goods under this category include cryptographic software and technology products. Electronics (category 3), which includes integrated circuits and electronic components, and Computer products (category 4), are also frequently authorised for export. Section 3.10.3 below gives more detail relating to the type of dual-use goods authorised for export from Ireland in 2002.

### 3.3 Other Relevant Legislation and Regulation

#### 3.3.1 The Firearms Act

Other related legislation is the Firearms Act 1925-2000 which falls under the responsibility of the Department of Justice, Equality and Law Reform. This legislation refers to the use of firearms or weapons by individuals rather than to military equipment. There are currently about 208,000 licensed firearms in Ireland. It does not cover firearms that are held by the Gardaí or the defence forces.

The practice in relation to implementation of the legislation has been to seek a balance between, on the one hand a firearms policy which seeks to limit the availability of particular classes of firearm for reasons of public safety and national security, and on the other hand endeavouring to meet the requirements of those who wish to participate in shooting competitions and events.

<sup>29</sup> S.I. No. 317 of 2000

Since 1972 the general approach has been that the use of all rifled firearms of a calibre exceeding .22 inches and all handguns should be curbed. It was the view of successive Ministers for Justice that public safety and security was best served by this approach as it was designed particularly to make it more difficult for pistols, revolvers and heavy calibre rifles to come into the hands of people who might misuse them, not least in the context of the then prevailing security situation. The policy has not been inflexible in that in 1993 the then Government authorised an increase in the calibre of firearms which might be licensed for deer culling and competitive target shooting from .22 to .27 inch.

The Department of Justice, Equality and Law Reform is currently undertaking an overall review of firearms legislation and policies. The review is intended to lead to proposals being brought to Government for new legislation in this area and as part of this the policies underlying existing restrictions will be examined.

Manufacturing and trading in weapons is also subject to licensing. In practice, this refers to the activities of firearms dealers. The legislation provides for the manufacture, sale, repair, test and proof of firearms and ammunition, provided that the person so doing is registered in the register of firearms dealers. The definition of a firearm in the legislation does not include chemical or nuclear weapons.

About 400 firearms dealers are registered by the Department of Justice, Equality and Law Reform in the Register of Firearms Dealers. Registered dealers are generally small shops. There are some larger ones, mainly wholesalers. Some firearms dealers also carry out repairs. The list of registered dealers is not public.

Weapons as defined in the firearms legislation are the subject of a removal order if they are being moved either within or outside the State (granted by the Garda authorities). If being exported to the EU, firearms are subject to the granting of a Transfer Document from the Department of Justice, Equality and Law Reform, in accordance with EU Directive 91/477/EC on the Control of the Acquisition and Possession of Weapons. Exports outside the EU are similarly the subject of an export order (from the Department of Enterprise, Trade and Employment).

The Control of Exports order exempts the Gardaí (and the defence forces) from the need for an export licence when sending equipment abroad for specific purposes. These are: use by a United Nations Force, repair and testing, use in competitions, or testing munitions.<sup>30</sup>

In common with other countries, it is likely that the Firearms Act will remain mainly an instrument for dealing with domestic security. Its potential as a basis for aspects of control of military and dual-use items, e.g. arms brokering, other than small-arms, seems limited.

### **3.3.2 Legislation Governing Explosives**

The regulation of explosives is dealt with under old legislation, i.e. the Explosives Act of 1875.

The Department of Justice, Equality and Law Reform reports that there are just a few companies involved in the production of explosives. This activity involves a comprehensive licensing procedure in accordance with the provisions of the Act.

In the case of exports, the system is comparable with that for military equipment. Exports within the EU require clearance from the Department of Justice, Equality and Law Reform and all transit countries, as recorded on a "recipient competent document" i.e. an end-user certificate.

In the case of exports outside the EU, this is dealt with by the Department of Enterprise, Trade and Employment, Export Licensing Section. However, exports of explosive items covered by the Control of Exports Order, 2000, require an export licence from the Department of Enterprise, Trade and Employment irrespective of destination.

<sup>30</sup> *The Control of Exports Order, 2000, Article 4(a)*

### 3.3.3 Other Legislation

Ireland also has specific legislation governing the production and export of certain nuclear and radioactive material, and of chemical and biological substances.<sup>31</sup> The responsible agencies are the Health and Safety Authority and the Radiological Protection Institute of Ireland, respectively. These systems involve annual reporting arrangements to the relevant international bodies.

There are very low levels of relevant activity in Ireland, and the relevant bodies carry out their work outside the framework of the export licensing system.

## 3.4 Operation of the Export Licensing System

### 3.4.1 The Need for an Export Licence

The practical outcome of the export licensing legislation summarised in Section 3.3 above is that Irish exporters need to be aware of whether their goods, whether finished products or components, are controlled under military or dual-use goods legislation. If so, they must apply for a licence when exporting the following categories of goods:

- ▶ all military goods, irrespective of their destination;
- ▶ highly sensitive dual-use items, irrespective of their destination. (These are listed in Annex IV of the Regulation);
- ▶ other controlled dual-use items to destinations outside the European Union and the following exempt non-EU countries: Australia, Canada, Czech Republic, Hungary, Japan, New Zealand, Norway, Poland, Switzerland, United States (for a small number of other items these countries are not excluded);
- ▶ items covered by UN or EU Sanctions against particular countries;
- ▶ other dual-use items governed by the EU “catch-all” clause (see Section 3.4.2 below).

A licence is therefore not necessary for the movement within the EU of dual-use items which do not come within the category of “highly sensitive” dual-use items. In this case, the only obligation on exporters is to indicate on the relevant commercial documents that the goods are subject to control if exported outside the European Union.

### 3.4.2 The Catch-All Clause

The EU dual-use legislation also involves a “catch-all” clause. Under this, non-listed dual-use items may be subject to control if the exporter is aware or has been advised by the Department of Enterprise, Trade and Employment that the items may be intended, in their entirety or in part, for use in connection with weapons of mass destruction. In this case the exporter is obliged to notify the relevant authorities, in the light of which the authorities will decide whether or not it is expedient to make the export concerned subject to authorisation.<sup>32</sup>

An authorisation is also required for the export of non-listed dual-use items if the purchasing country or country of final destination is subject to an arms embargo and the goods in question may be intended, in their entirety or part, for a military end-use.

<sup>31</sup> *The Radiological Protection Act (particularly SI 125 of 2000); Chemical Weapons Act 1997, No. 28 of 1997; chemical Weapons (Licensing of Scheduled Toxic Chemicals and Precursors) Regulations, 2001.*

<sup>32</sup> *EU Regulation Article 4(4)*

### 3.4.3 Processing of Export Licences

Exporters needing a licence apply to the Department of Enterprise, Trade and Employment Export Licensing Unit on standard application forms (Form 1 for dual-use, Form 2 for military). These are available from the Unit, are normally on its website, and can also be supplied by some Customs Offices. Electronic application is not currently possible. Special procedures apply to non-military goods subject to sanctions, and to the catch-all clause. Military goods require an End-User Certificate with their application, dual-use exporters may be asked for one. There is no charge for any type of licence.

The factors that are taken into account when deciding if a licence should be granted include:

- ▶ the reputation of the exporter – exporters not known to the Department of Enterprise, Trade and Employment are required to submit a profile of their company before an application will be considered. The company profile should provide details of the exporter's activities, the products it exports and names of personnel authorised to sign export licence applications;
- ▶ the sensitivity of the product intended for export;
- ▶ the end-user;
- ▶ Ireland's obligations and commitments it has accepted as a member of the relevant international non-proliferation systems and export control arrangements, or by ratification of relevant international treaties (see Section 2.1);
- ▶ the country of final destination with particular reference to its membership of non-proliferation systems, its respect for human rights, and the existence of any internal or external conflict;
- ▶ obligations under sanctions imposed by the UN Security Council or agreed in other international fora;
- ▶ national foreign and security policy, including those covered by the European Code of Conduct on arms transfers;
- ▶ considerations about intended end-use and the risk of diversion.

Processing time for correctly completed forms seldom takes more than five days, but military applications may take longer. Information on actual processing times is published on the Department's website. Some applications can take considerably longer, especially those referred to DFA. Turnaround times are a topic of particular interest to users and we return to it in Chapter 6.

In making these assessments a variety of information is drawn on – the previous track record of the exporter, data-bases on exporters and end-users, colleagues in other EU Member States and the Department of Foreign Affairs (see Section 3.4.4 below). All military and about half of all dual-use applications are forwarded to DFA for its observations.

In practice, key steps in processing an application include:

- ▶ checking whether the item is licensable and if so under what heading, based mainly on the information provided by the company. In all but exceptional cases there is no technical input to these assessments;
- ▶ checking the status of the parties to the application, e.g. consignee and end-user, against databases of relevant information.

### 3.4.4 Role of The Department of Foreign Affairs

The Department of Foreign Affairs is routinely consulted. DFA essentially provides "observations" to DETE on applications passed to it:

- ▶ on military licence applications;
- ▶ on highly sensitive dual-use items destined for a destination outside the EU or the ten nations covered by the CGEA (see Section 3.4.5 below);

- ▶ if the items to be exported are listed on the very sensitive list of dual-use items and technology and are destined for a country that is not a party to international non-proliferation agreements;
- ▶ if the intended end-use is a military one;
- ▶ if there is a formal embargo in place with the consignee country or country of final destination;
- ▶ if the consignee or end-user details on the application match up to information received through the various international export control fora about sensitive end-users;
- ▶ if the consignee country or the country of final destination is regarded as a very sensitive destination.

### 3.4.5 Types of Export Licences

There are four main types of licence as described here.

#### **Individual licence:**

An individual export licence is normally valid for 12 months. A dual-use or military licence may cover several consignments of a specific good to the consignee/end-user specified on the licence.

#### **Global licence:**

In circumstances where an unusually large number of dual-use licences are required, the Department of Enterprise, Trade and Employment will consider granting a global licence to "prevent the creation of an undue administrative burden for the exporter". Global licences are not granted for exports to military or state security end-uses.

A global licence lists specific countries to which a category of dual-use items may be exported, i.e. it's multi-country rather than really "global". These licences are valid for a period of six months and are granted on the strict understanding that the exporter will comply with the following conditions:

- ▶ a global licence is valid only for the items and countries listed – dual-use items and countries not listed are subject to individual licensing requirements unless covered by a CGEA or NGA – see below;
- ▶ a global licence is valid for a period of six months;
- ▶ an exporter who has been granted a global licence must submit, on a three-monthly basis, details of the consignees to whom the items listed on the licence were exported;
- ▶ global licences are not granted for exports to military or state security end-uses.

#### **A National General Authorisation (NGA):**

This type of licence provides for export of specific dual-use items to a specified list of destinations, of which all exporters may avail themselves. The conditions for use of the general authorisation are specified within the licence. There is currently no NGA in force.

#### **Community General Export Authorisation (CGEA):**

The EU Council Regulation on dual-use goods introduced a Community General Export Authorisation (CGEA). Under the CGEA, any exporter may export dual-use items listed in Annex 1 of the dual-use regulation to any or all of the 10 exempted countries<sup>33</sup> without the need to apply for an individual or global national licence (except items falling under entries 0C001, part of 0C002, 1A102, 7E104, 9A009a and 9A117, and software and technology insofar as these relate to 0C001 or those items of 0C002 that are excluded from Annex 1V). Exports under the CGEA are subject to the catch-all clause as well as national registration and reporting requirements.

<sup>33</sup> Australia, Canada, Czech Republic, Hungary, Japan, New Zealand, Norway, Poland, Switzerland, US

General licences are valid for an indefinite period of time. Exporters may indicate on the customs document if they are availing themselves of a general licence.

In order to avail themselves of the Community General Export Authorisation (CGEA) to export to one of the exempted countries, exporters must notify the Department of Enterprise, Trade and Employment Licensing Unit in writing of their name and the address where export records may be inspected. The notification must be made before, or within 30 days of, the first such export. The exporter is also required to comply with certain conditions for use of the CGEA, which are specified in the authorisation itself.

#### **3.4.6 Are Licences Refused?**

A licence may be refused. When this happens, the exporter is advised of the reasons for the refusal. If an application is refused, an exporter may appeal. Any appeal should be submitted to the Department of Enterprise, Trade and Employment within 28 days of the refusal, together with any new relevant information or arguments that were not available to the Department when the original decision was made. The appeal will then be assessed in the context of the new information provided. In practice, while the number of refusals is growing it is very small relative to approvals.

### **3.5 Monitoring and Enforcement**

#### **3.5.1 Ensuring Exporters Apply for Licences**

The first step in enforcement is ensuring exports of both military and dual-use goods who need to do so apply for licences. The primary onus in this regard is on companies themselves to be aware of whether their goods are controlled goods and if so to apply.

The DETE provides information on its website and in hard copy. The Customs and Excise Tariff of Ireland also provides details of products needing an export licence.

In general, however, this aspect of the Irish system is not very proactive.

#### **3.5.2 Records to be Retained by Exporters**

Current export control legislation does not require exporters of military products to maintain records, nor does it give power of inspection to the Department of Enterprise, Trade and Employment.

Regarding dual-use goods, Article 16 of the EU Regulation obliges exporters to keep detailed records of transactions concerning the export of controlled items. Such records must be kept in respect of all transfers of dual-use items, including transfers which do not require a licence. They must include, in particular, commercial documents such as invoices, manifests and transport and other dispatch documents containing sufficient information to allow the following to be identified:

- ▶ the description of the items;
- ▶ the quantity of the items;
- ▶ the name and address of the exporter and of the consignee;
- ▶ where known, the end-use and end-user of the goods.

The records must be kept for at least three years from the end of the calendar year in which the export took place and must be produced to officials of the Department of Enterprise, Trade and Employment or of the Revenue Commissioners on request. Similar records should be kept in respect of military goods (and other goods subject to licence). Regarding dual-use, company audits are carried out by the Department with 7 companies audited in 2002 and 8 in 2001.

### 3.5.3 Penalties for Failure to Comply

Penalties are prescribed in Irish law for failure to comply with the terms of EU and national legislation on controlled goods, as follows:

- ▶ a fine not exceeding €12,700 or three times the value of the goods, whichever is the greater, and/or imprisonment for a term not exceeding two years, could be imposed for a breach of the Control of Exports Act, 1983. This penalty may be applied in circumstances where false or misleading information was provided for the purpose of obtaining an export licence;
- ▶ a fine not exceeding €1,905 and/or imprisonment not exceeding 12 months may be imposed for a breach of the European Communities (Control of Exports of Dual-use Items) Regulations, 2000. Similar penalties are prescribed for failure to comply with the terms of UN/EU sanctions;
- ▶ a fine not exceeding €125 or three times the value of the goods may be also imposed under the Customs Act of 1956 if dual-use or military goods are exported without a licence.

We understand that there have been no prosecutions initiated for failure to comply with export controls. An implication of the absence of any prosecutions is that existing legislation governing both military and dual-use items has never been tested.

## 3.6 The Role of Other Bodies

### 3.6.1 Revenue

Revenue, through Customs, is the main formal enforcement body involved in the military and dual-use export licensing process.

From a Customs perspective, its role is comparable to that which it has in regard to any other export outside the EU which requires an export licence. This involves a role in providing information to exporters of the overall requirement for a licence for specified goods, and for overseeing compliance with this export licensing requirement. Exporting a good requiring a licence without such a licence is an offence under Customs as well as Export Licensing Legislation.

Revenue carries out this type of role as an agent of the relevant parent department, in this case Department of Enterprise, Trade and Employment. At present, the Department notifies Customs with regard to general authorisations issued. It also occasionally notifies Customs in relation to companies where there may be particular concerns.

Customs is involved in a number of respects. Firstly, at an information level they publish the Customs and Excise Tariff of Ireland, Part 2 of which contains a list of items on which there may be prohibitions, restrictions, etc, including military and dual-use goods.<sup>34</sup> This is therefore a core source of information for companies alongside that provided by the Department.

Secondly, Customs require exporters to indicate on Customs export documentation (hard copy or electronic) whether or not their export requires a licence. In the event that it does, the export must be accompanied by an appropriate licence. This documentation can potentially be checked by Customs at the point of export. In order to assist Customs officers in this task, they are provided with detailed operational instructions in this regard together with lists of dual-use goods and military goods subject to licence and export prohibitions, which are updated as the need arises.

Thirdly, in addition to checks at the point of export, Customs can also carry out audits on exporters' records. These can be done on a desk basis (hard copy or electronically), or through visits to exporters' premises. In the former case companies would not necessarily be aware of such checks.

<sup>34</sup> <http://www.revenue.ie/pdf/TARO3-FRONT.pdf>



Traditionally, monitoring export licences for military and dual-use goods would have been prioritised by Customs alongside its many other responsibilities. With heightened awareness of international security considerations generally, and of a general need to meet international arms control obligations, the priority attached to this work will have to be re-assessed to ensure that Ireland continues to meet its obligations in this regard.

In common with customs authorities in other countries examined (see chapter 4 and Annex 2), the Customs role in monitoring military and dual-use export licences is evolving to meet the new requirements and specific consideration is being given as to how the DETE Export Licensing Unit can co-operate more closely with Customs in this regard. This co-operation will focus on specific areas of common concern, appropriate pooling of resources, joint audits and information provision. In the context of modern commerce, such a proactive approach and targeting of effort is seen as providing more effective controls on the movement of these goods.

Also in common with other countries, challenges will remain in such areas as intangible technology transfers, appropriate classification of highly specialist products, and identifying exporters who may be unaware of or ignore export licensing requirements.

### 3.6.2 Department of Defence

The Department of Defence is the responsible national department for defence and defence policy and also has at its disposal the technical military expertise of the defence forces in such areas as ordnance. As an occasional procurer of military and dual-use goods of other jurisdictions, the Department also has some experience of other countries' export licensing systems.

The Department of Enterprise, Trade and Employment is the export licensing authority for military and dual-use goods. There is no requirement for the Department of Defence to take on any central role in Ireland's military and dual-use export licensing system. However, the Department of Defence would seem to have a potential advisory role beyond any to date.<sup>35</sup>

Regarding exports of military equipment, the Irish defence forces (and the Gardaí) are exempt from the need for export licences when sending equipment abroad for specified uses or purposes.<sup>36</sup> These are:

- (i) for use by an International United Nations Force in the course of its duties as such;
- (ii) for the purpose of their being repaired, over-hauled, refitted, modified, tested or maintained, and returned to the State;
- (iii) for the purposes of their being used at international military competitions, or
- (iv) for the purpose of the testing of munitions.<sup>37</sup>

## 3.7 Departmental Resources

The Department of Enterprise, Trade and Employment is the principal resource-provider. The export licensing system has a full-time Clerical Officer and a full-time Executive Officer, 80% of a Higher Executive Officer, and 50% of the time of an Assistant Principal. Other staff are also utilised when pressure of work requires it.

In the Department of Foreign Affairs, the other Department currently involved in the process, 2-3 people work directly on licensing as part of their wider responsibility, although many others are consulted in particular through the geographical desks.

<sup>35</sup> Following the publication of the Phase 1 scoping report for this review, it has been accepted that technical experience is available within the Defence Forces to assist and advise as required and this assistance will be available through the proposed Technical Advisory Panel (see Chapter 6, Section 6.7)

<sup>36</sup> The Control of Exports Order, 2000, Article 4(a)

<sup>37</sup> A recent practice of applying for export licences for equipment going to the Kosovo Mission, on the grounds that this was UN-mandated but not UN-implemented (it was implemented by NATO on behalf of the UN) has been discontinued.

## 3.8 Level of Licensing Activity

### 3.8.1 Overall Licensing Figures

Table 3.1 below summarises the level of licensing activity over the period 1999-03. It shows numbers of licences issued and the value of these. Value figures are in millions in the case of military goods, and billions in the case of dual-use goods. In presenting licence values it must be emphasised that these do not necessarily correspond to actual export values. They represent exporter intentions, not necessarily what they eventually export.

**Table 3.1:** *Military and Dual-Use Licences Issued, 1999-2003*

Type	1999	2000	2001	2002	2003
<b>Military</b>					
- No.	419	416	60 <sup>2</sup>	73 <sup>2</sup>	84 <sup>2</sup>
- Value (€mn) <sup>1</sup>	60.3	32.3	53.6	35.9	35.5
<b>Dual-use (Individual)</b>					
- No.	907	739	396	694	911
- Value (€bn) <sup>1</sup>	2.1	1.7	2.6	3.2	1.1
<b>Dual-use (Global)</b>					
- No.	50	37	18	36	37
- Value (€bn) <sup>1</sup>	1.6	6.0	0.4	1.7	1.2
1 Values refer to the value of approved licences but actual exports are lower. Military value are €mn while dual-use are €bn.					
2 Reduced licence numbers reflects removal of controls of shot-guns and sporting rifles.					

*Source: Department of Enterprise, Trade & Employment/Irish Arms Export Reports in Accordance with Operative Provision 8 of the EU Code of Conduct on Arms Exports*

A total of 84 military export licences were issued in 2003. Although this was an increase in the number of licences on the previous year, the value of these licences (€35 mn) was similar to the 2002 figure. It can be estimated that the value of actual exports in these years is typically in the region of €10-20 mn (excluding any shot-gun or Department of Defence transfers).

Dual-use goods constitute the bulk of licensing activity. There were 911 individual dual-use licences issued in 2003. This was considerably more than in 2002. The value of the licences in 2003 was €1.1 bn. The number of global dual-use licences issued in 2003 was 37, and these had a value of €1.2 bn (for description of licence type see Section 3.6.5 above). Exports of dual-use goods under CGEAs are not incorporated in these figures.

Values of dual-use licences must be treated cautiously for two reasons:

- ▶ firstly, exports are mostly sold to civilian users and so do not represent military exports in any sense;
- ▶ secondly, as already noted, the value of goods covered by an export licence reflects the estimated value of exports of controlled goods planned by the exporters over the period of the licence's validity, i.e. it represents the maximum value of controlled goods that may be exported under the licence. Companies may not subsequently in practice export items to the full value of the licence.

In regard to the first points, in 2003 four of the 911 individual dual-use licences issued had a stated military end-use or end-user. These four had a combined value of about €600,000 out of the total nominal value of €2.3 bn (€1.1 bn individual and €1.2 bn global). Military end uses are not covered by global licences.

### 3.8.2 Breakdown of Military Licences

Table 3.2 shows the number of military licences issued in 2003 by destination and by the value of licences. As already shown in Table 3.1, a total of 84 licences were issued. This was in respect of 27 countries. In terms of licence numbers, the US is the most frequently licensed destination (leaving aside Irish army shipments to peacekeeping forces in Serbia/Montenegro). When considered on a regional basis, most licences were issued for the export of goods to other EU Member States.

In value terms – and again emphasising that these do not necessarily represent actual export values – the main countries of destination were Germany, Singapore, the US, Greece, Turkey, New Zealand, the Netherlands and Switzerland.

In terms of export licence numbers, some seven company exporters received military licences in 2002. This number is typical of recent years, although the firms can vary somewhat from year to year. Licences tend to be very concentrated among a few main exporters – about three firms typically dominate.

**Table 3.2:** *Export Licence Data for Military Goods (2003)*

Country	No of Licences	Value of Licenses (€)
<b>European Union</b>	<b>22</b>	<b>10,332,493</b>
Finland	1	93,588
France	2	6,837
Germany	6	5,142,190
Greece	1	1,533,000
Italy	1	8,838
Netherlands	1	1,145,500
Norway	1	598,519
Sweden	2	747,356
Great Britain	4	748,900
Northern Ireland	3	307,765
<b>Other European Countries</b>	<b>27</b>	<b>16,060,979</b>
Croatia	1	9,274
Poland	2	13,814
Switzerland	7	3,264,891
Serbia and Montenegro	141	9,549,004
Turkey	3	3,223,996
<b>North America</b>	<b>14</b>	<b>1,307,942</b>
United States	12	1,218,154
Canada	2	89,788
<b>Oceania</b>	<b>6</b>	<b>1,896,685</b>
Australia	3	662,354
New Zealand	3	1,234,331
<b>Middle East</b>	<b>5</b>	<b>826,884</b>
Egypt	1	700
Iraq	1	754,532
Kuwait	2	68,056
Lebanon	1	3,596
<b>North East Asia</b>	<b>1</b>	<b>114,611</b>
Republic of Korea	1	114,611
<b>South East Asia</b>	<b>4</b>	<b>4,930,595</b>
Singapore	4	4,930,595
<b>Sub-Saharan Africa</b>	<b>3</b>	<b>20,337</b>
Somalia	1	16,737
South Africa	2	3,600
<b>South America</b>	<b>2</b>	<b>10,470</b>
Uruguay	2	10,470
<b>Total</b>	<b>84</b>	<b>35,500,997</b>

The 14 licences for military exports to Serbia/Montenegro, value €9,549,004, were issued to the Department of Defence for equipment required for peacekeeping operations. The total value of military export licences issued in 2003 with these 14 licences omitted is €25,951,996

*Source: Fifth Annual by the Irish Government in Accordance with Operative Provision 8 of the Code of Conduct on Arms Exports*

### 3.8.3 Breakdown of Dual-use Goods Licences

#### Individual licences:

There were 911 individual dual-use licences issued in 2003. Since some of these licenses were issued for more than one control list code or destination, the number of export “authorisations” exceeds the number of licences issued. For example, in 2003 there were 911 individual dual-use export licences issued but the number of export authorisations on these licences was 1,039. Table 3.3 shows a description of the type of dual-use goods authorised for export on these licences.

**Table 3.3:** *Number of Dual-Use Authorisations Issued, by description of item (2003)*

Description of Item	Number of Authorisations Issued	% of Authorisations
Cryptographic Software	344	33
Integrated Circuits	249	24
Cryptographic Hardware	188	18
Cryptographic Technology	138	13
Computer Software	59	6
Optical Fibres and accessories	17	2
Equipment for semiconductor manufacture	23	2
Telecommunications Equipment	9	<1
Computer Hardware	6	<1
Radio equipment	6	<1
<b>Total</b>	<b>1,039</b>	<b>100%</b>

*Source: Department of Enterprise, Trade and Employment*

As shown in Table 3.4, dual-use goods were licensed for export to over 60 countries in 2003. Two countries –Taiwan and China – together accounted for about 30% of all licence authorisations.

As with military licences, the companies can vary from year to year but the bulk of licences generally go to a small number of exporters.

#### National Global Licences

A global licence is issued by DETE in circumstances where a large number of licences may be required and therefore each licence may relate to more than one control list code or destination. As such the number of licensed authorisations far exceeds the number of licences issued. While there were 37 Global licences issued in 2003, the number of export authorisations on these was 2,272.

**Table 3.4:** *Number of Dual-Use Authorisations issued per Licensed Destination (2003)*

Licensed Destination	Number of Authorisations Issued (each)
China	219
Taiwan	109
South Africa	91
India	67
Hong Kong	61
Israel	53
Singapore	48
Turkey	40
Malaysia	34
Republic Of Korea	28
Thailand	25
United Arab Emirates	25
Lithuania	21
Mexico	17
Russia	16
Slovakia	14
Latvia	12
Saudi Arabia	12
Estonia	11
Philippines	11
Pakistan	9
Vietnam	7
Colombia, Indonesia, Kuwait, Oman, Puerto Rico	5
Botswana, Brazil, Kazakhstan, Serbia & Montenegro	4
Ecuador, Italy, Lebanon, Nigeria, Romania	3
Argentina, Belize, Comoros, Croatia, East Timor, Egypt, Iran, Jordan, Macedonia, Morocco, Nicaragua, Papua New Guinea, Somalia, Uruguay, Venezuela	2
Andora, Belarus, British Virgin Islands, Bulgaria, Chile, Cook Islands, Cyprus, Grenada, Guatemala, Guyana, Hungary, Iceland, Korea, Monaco, Montserrat, Peru, Qatar, Sri Lanka, St. Kitts And Nevis, Tunisia, Turks And Caicos Is., United States, Yemen	1

*Source: Department of Enterprise, Trade and Employment*

Table 3.5 describes the type of dual-use goods authorised for export on these global licences. As with individual licences, global licences were issued in relation to cryptography equipment, as well as telecommunication and information security goods. The export of computer products and electronics was also authorised.

**Table 3.5:** *Number of Dual-Use Global Licence Authorisations by description of Item (2003)*

Electronics, e.g. integrated circuits	192
Computers	48
Telecommunications and Information Security, e.g. cryptographic hardware, software and technology.	2,032
Total Number of Authorisations	2,272

*Source: Department of Enterprise, Trade and Employment*

In presenting these data on dual-use licences, it should again be emphasised that they should be treated cautiously and as an indication of licensing activity rather than necessarily actual exports. Also, it must be re-emphasised that most licensed dual-use exports are licensed as going to civilian end-users or uses. Exporters using CGEA procedures are not captured in the data.

### 3.9 The Irish System in an International Context

#### 3.9.1 Comparative EU Military Licensing data

In the case of military goods, data on the value of annual export licences is provided to the EU by each Member State as part of the Code of Conduct. This allows comparison of Ireland with the other Member States on a number of variables.

Table 3.6 shows that in 2002, with 73 licences, Ireland issued the fourth smallest number of military export licences. Comparing the value of the licences issued, Ireland's €35 mn figure was the third smallest reported in the EU, greater only than Luxembourg and Portugal.<sup>38</sup>

<sup>38</sup> Portugal did not publish a figure for the value of its licences, but rather the value of the exports, which we have used here.

**Table 3.6:** *EU Military Licence Export Data (2002)*

	Number of Licences Issued	Value of Licences Issued(€)	Value of Exports (€)	Value of Exports as % Value of Licences	Avg. value per Licence	Value of Licence as % GDP
UK	13,116	3,197,466,743	1,497,303,000	47%	243,784	0.20%
Germany	11,317	3,257,641,306	N.A	N.A	287,854	1.39%
France	5,720	11,376,868,173	N.A	N.A	1,988,963	1.75%
Austria	1,660	233,829,846	43,753,618	19%	140,861	0.19%
Belgium	1,013	1,145,839,299	294,966,000	26%	1,131,135	0.27%
Netherlands <sup>1</sup>	958	N.A	450,330,000	N.A	470,073	2.09%
Italy	622	869,625,549	471,250,265	54%	1,398,112	0.07%
Spain	575	566,310,130	274,709,800	49%	984,887	0.49%
Sweden	548	638,099,371	373,182,903	58%	1,164,415	0.49%
Denmark	164	113,468,000	N.A	N.A	691,878	0.01%
Finland	156	59,407,221	53,973,159	91%	380,816	<0.00%
Ireland	73	35,894,599	N.A	N.A	491,707	0.03%
Portugal <sup>1</sup>	63	N.A	6,078,814	N.A	96,489	<0.00%
Greece	62	52,257,000	N.A	N.A	842,855	0.02%
Luxembourg	16	57,986	57,986	100%	3,624	<0.00%
<b>EU Total <sup>2</sup></b>	<b>36,063</b>	<b>22,003,174,037</b>	<b>3,465,605,545</b>	<b>44%<sup>3</sup></b>	<b>610,132</b>	<b>0.25%</b>

(1) Value of military exports as % GDP, as the value of licences is not provided.  
(2) EU totals relate only to the figures provided;  
(3) The figure of 44% is the total value of exports as a % of the total value of licence for the countries where both figures are known.

*Source: Fifth Annual Report According to Operative Provision 8 of the EU Code of Conduct on Arms Exports*

Eight of the 15 Member States provide figures on both the value of the licences and the actual value of exports. On average, the value of actual exports is only 44% of the value of the licences. In some cases, such as Austria, the figure is only 7%. With the exception of Finland, no country showed the value of actual exports greater than 58% of the value of the licences.

Taking the average value per military licence issued, the Irish figure of €491,707 slightly below the average of €597,492, but way below that of some countries such as France, Belgium, Italy and Sweden. It suggests that on the one hand Ireland is not issuing very large numbers of licences relative to values, but on the other hand could possibly issue fewer licences. Fewer but higher value individual licences is, however, also a function of the size of export orders which will be larger where large final products are involved. However, Germany and the UK as two major exporters actually had average lower value licences than Ireland.

Table 3.6 also shows that Ireland is one of the minority of current EU countries not publishing the actual value of military exports. The others are France, Germany, Denmark and Greece.



If one was to assume that the ratio of actual exports to licence value in Ireland was similar to the EU average (44%) this would suggest actual Irish exports of controlled military goods of €16 mn in 2002. This ratio is likely to be a lower band. Taking the Swedish ratio of about 60% would give an Irish export figure of about €20 mn. As stated earlier, in Ireland it is likely that actual commercial military exports currently run at about €10-20 mn annually. It should also be noted that data for Ireland, and other countries, can vary considerably year-on-year. As shown in Table 3.1 above, the Irish military licence value in 2001 was higher (€53.6 mn) and in 2000 was lower (€32.3 mn).

Relative to the size of the economy (measured by GDP), Irish export licence values in 2002 were .0.3%. This compares to a high of 2.0% in the Netherlands followed by 1.75% in France and 1.4% in Germany. While low, Ireland's is not the lowest percentage, however.

### **3.9.2 Export Licensing Structure**

This Section presents some key aspects of the Irish export licensing structure in a comparative international context. This is done in Tables 3.7 and 3.8. The tables deal with EU countries, together with the US and Canada. The focus is on information which can be presented in this type of synoptic format. More detailed information is contained in Annex 1. Four of the countries – UK, US, Sweden and Austria – are the subject of more detailed case studies presented in both Chapter 4 (and also in Annex 2).

#### **Export Licensing Authority:**

Table 3.7 indicates the export licensing authority in the various countries. As shown, this generally involves either the defence ministries, justice/interior ministries, economics/industry/trade ministries, or in a few cases specialist agencies. In a number of countries, the function is split with a different authority licensing military goods on the one hand and dual-use goods on the other. The most common licensing authority is the economy/enterprise/trade ministry, i.e. the DETE equivalent.

#### **Enforcement:**

Table 3.7 also shows the identified enforcement agencies. This suggests that in most countries the Customs plays a prominent role, at least nominally, with the police also referred to in a number of cases. The principal licensing ministries (Defence, Interior and Economy/Trade) are not necessarily also prominent in enforcement.

In common with the position in many other countries, Customs in Ireland has the primary formal enforcement role in this area – a central Civil Service Department such as DETE cannot be expected to function as a law enforcement agency. The Customs role in relation to the export control system is evolving everywhere. Here, the priority attaching to it is also being re-assessed to ensure that Ireland continues to meet its obligations.

#### **Published Data:**

Table 3.8 summarises the data available across 13 countries. It shows the position regarding four pieces of information:

- ▶ numbers of military licences issued;
- ▶ value of military licences;
- ▶ actual value of military exports;
- ▶ number of licence application denials.

About half the countries publish all four, and most of the remainder – including Ireland – publish three out of the four. Ireland is one of the four countries not publishing the value of actual exports.

**Table 3.7:** *Export Licensing and Enforcement Authorities*

	Austria	Belgium	Denmark	Finland	France	Germany	Ireland	Italy	Netherlands	Portugal	Sweden	UK	USA	Canada
<b>Licensing Authority (Ministry)</b>														
<b>Military Goods</b>														
Defence				P						P				
Interior/Justice	P		P						P					
Economy/Industry/Trade		P			P	P	P					P		P
Foreign Affairs/External Relations								P					P	P
Specialist Agency											P			
<b>Dual-Use Goods</b>														
Defence				P						P				
Interior/Justice			P											
Economy/Industry/Trade	P	P			P	P	P					P	P	P
Foreign Affairs/External Relations								P	P					P
Specialist Agency											P			
<b>Enforcement</b>														
Ministry of Defence					P					P		P	P	
Ministry of Interior	P													
Customs		P	P	P	P	P	P	P	P	P	P	P		P
Police		P									P			
Other					P				P		P		P	

<sup>1</sup> US Department of State is the Licensing Authority for Munitions List items in the US

Source: SIPRI Database on National Export Control Systems

**Table 3.8:** *Publication of Licensing Data*

	Austria	Belgium	Denmark	Finland	France	Germany	Ireland	Italy	Netherlands	Portugal	Sweden	UK	USA
No. of military export licences issued	P	P	P	P	P	P	P	P	P	P	P	P	P
Value of military licences issued	P	P	P	P	P	P	P	P	X	X	P	P	P
Value of actual military exports	P	P	X	P	X	X	X	P	P	P	P	P	P
No. of licence application denials	P	P	P	P	P	P	P	P	P	P	P	P	P

*Source: Fifth Annual Report According to Operative Provision 8 of the EU Code of Conduct on Arms Exports*

# 4 Other Countries' Export Licensing Systems

## 4.1 Introduction

This Chapter reports on key elements of other countries/export licensing systems. It draws on four case studies of the UK, US, Sweden and Austria – to look in at issues of relevance to the Irish system.

The choice of countries, which was largely specified in the Terms of Reference, involves three fellow EU Member States plus one non-EU country. Within the EU, the UK and Sweden are two large arms exporters with very well developed export licensing systems. Austria is a smaller country, more comparable to Ireland in size terms. The US is of interest both as another large exporter with an extensive control system, and also as a system with which US companies in Ireland are familiar and must also comply. The chapter is divided into two sections reflecting the nature and legal basis for export controls:

- ▶ munitions and military goods controlled through national legislation;
- ▶ dual-use goods for which in Ireland the EU Council (EC) Regulation 1334/2000 provides the primary basis for control.

Each of these sections is organized around the main elements of the export control and licensing system: policy, context, legislation, licence types and licence application, assessment, transparency and political accountability, and enforcement. More detailed country-by-country descriptions of the four case-study countries are given in Annex 2.

## 4.2 Control of Munitions and Military Exports

### 4.2.1 Policy Issues

While military goods are still subject to Member States' national laws, there is a process within the EU to harmonize the national approach to control in this area. The European Union Code of Conduct on arms exports is considered the most comprehensive arms export control regime in the world and Member States are considering how it can be further reinforced, including the possible development of a full Common Position on arms exports.

At the same time the case studies indicate that, beneath the general agreements among EU states in the area, there continue to be wide differences about how national authorities should interpret their commitments when making specific export licensing decisions.

**Table 4.1:** *Current Provisions of EU Member States and US on Brokering of Arms*

<b>Austria</b>	The Federal Law on Imports, Exports and Transit of War Material, BGB1 no. 540/1977, defines brokering and establishes penalties for brokering. Unfortunately, the drafters of the legislation omitted to include the paragraph in the law making the activity subject to control. Consequently there is no legal requirement at present for brokers to apply for authorization when conducting business in Austria or for Austrian legal persons to apply for authorization when conducting business outside Austria. This oversight may be corrected in a forthcoming legislative amendment.
<b>Belgium</b>	The law of 27 June 2002 concerns the profession of dealer/intermediary in the legal trade in small arms. Article 10 of that law, amending the law of 5 August 1991 on the importation, exportation and transit of weapons, states that: "no Belgian or foreigner residing or trading in Belgium may ... , negotiate, export or supply abroad or hold for that purpose, weapons, munitions or material specifically intended for military use or related technology, or act as intermediary in such transactions, without holding a licence for that purpose issued by the Minister for Justice. An intermediary shall be considered to be any person who, for payment or free of charge, sets up conditions with a view to the conclusion of a contract for the purpose of negotiating, exporting or supplying abroad, or holding for that purpose, weapons, munitions or material specifically intended for military use or related technology, whatever the origin or destination of the goods and irrespective of whether or not they enter Belgian territory, or any person who concludes such a contract where the transport is carried out by a third party."
<b>Finland</b>	Activity where the parties are brought together in order to conclude a contract concerning export or transfer of defence materiel between two third countries is subject to control. Licensing is on a case-by-case basis and national arms exports rules and criteria as well as the EU Code of Conduct are applied. The controls apply to transactions that take place on Finnish territory as well as transactions abroad carried out by Finnish citizens or private persons or companies domiciled in Finland irrespective of the origin of the items.
<b>France</b>	According to a regulation adopted in January 2002, brokering activities related to military goods are included in the framework of trade operations, thus requiring the issuance of an authorisation prior to production and trade of concerned goods. Brokers operating in France are obliged to be registered and have to keep records of all their brokering activities.
<b>Germany</b>	Anyone who intends to broker a contract on the acquisition or transfer of war weapons located outside federal territory or to show that an opportunity exists for concluding such a contract shall require a licence. Anyone who intends to conclude a contract on the transfer of war weapons located outside federal territory shall also require a licence. These provisions shall not apply if the war weapons are to be imported into or transported through federal territory in the execution of the contract.
<b>Italy</b>	Provisions of law 185/90 cover brokering activities related to import into, export from or transit through Italian territory. The request for authorisation for these transactions must include indications of any brokering fees paid for each transaction.
<b>Sweden</b>	Brokering is not mentioned in legislation but activities that involve the supply (which includes intermediation) of military equipment, inventions concerning military equipment and methods for the production of such equipment may not be conducted unless a permit is granted. This applies in Sweden and to Swedish authorities, Swedish companies and persons who are resident or permanently domiciled in Sweden when abroad.
<b>UK</b>	UK secondary legislation currently being introduced will require that no person shall arrange or negotiate or agree to arrange or negotiate, a contract for the acquisition or disposal of any controlled goods where that person knows or has reason to believe that such a contract will or may result in the removal of those goods from one third country to another third country. No person shall in return for a fee, commission or other consideration do any act or agree to do any act, calculated to promote the arrangement or negotiation of a contract for the acquisition or disposal of controlled goods where that person knows or has reason to believe that such a contract will or may result in the removal of those goods from one third country to another third country. These provisions apply to any act, or any part of any act, done in the United Kingdom.
<b>USA</b>	No person may engage in the business of brokering activities without a licence issued in accordance with the Arms Export Control Act. There are exceptions to this rule for certain activities by or for an agency of the US Government or that are arranged wholly within and destined for NATO, Japan, Australia or New Zealand.

## 4.2.2 Legislation

There is wide agreement on the need to update national legislation (including both primary and secondary legislation) to form the basis for a modern and effective control system. All four case-study countries have specific legislation controlling exports and transshipment of munitions and other military items. All the countries are also reviewing legislation to see how it can be updated to include additional elements needed as part of a modern and effective control system.

New legal authority, or additional clarification regarding existing legal provisions, is seen as required in the following specific areas:

- ▶ effective legal controls on brokering that target persons operating in grey areas or the illegal sector, while also not leading the same transaction being assessed and licensed multiple times;
- ▶ effective controls on electronic transfers of controlled technology or software.

Of the countries examined Sweden, the United Kingdom and the United States now control all transfers of controlled military items, including by intangible means, while Austria still controls only exports (i.e. consignments of goods and technologies) of listed items.

None of the countries in the sample group are at present planning additional legal controls to cover production of military goods under licence, a third area that some critics have also suggested as a weakness. In the case of items (such as machine tools) or technologies designed or developed for military use their export is already controlled. To control civilian machine tools that are used in military production would require an extension of the catch-all system to cover all military end-use. This military end-use control already exists in Articles 4.2 and 4.3 of Council (EC) Regulation 1334/2000 for cases where the importing country is subject to an EU, OSCE or UN arms embargo or where the non-listed items are for use in military items that were exported illegally. As far as can be determined a further extension of the control beyond these two cases is not currently planned.

## 4.2.3 Licence Types and Licence Application Procedures

In line with established practice for military goods, the countries in the sample group require individual licences for exports of controlled military items. However, they are investigating how simplified procedures might be developed both through bilateral talks and (for the UK and Sweden) as part of the six-nation Letter of Intent (LoI) process. The requirement for individual authorisation for every cross-border movement of military items is being eroded.

The holders of a UK Open Individual Trade Control Licence are authorised to make multiple shipments to multiple destinations as specified in the licence. Advising exporters of the availability of this licence is one element of industry outreach.

Under the LoI a Global Project Licence has been introduced which is in effect a prior approval for shipments to the armed forces of any LoI signatory state where the shipment is connected with a particular designated project.

The holders of Swedish Global Project Licences will have to register each use of the licence but do not need to provide end-use certificates. The licence can be used by sub-contractors making transfers in the framework of the approved project and the licence (which will be valid for 5 years) will cover all modes of transfer.

The UK Global Project Licences will be valid for the entire duration of the particular project. They will be held only by companies that request them and receive them after assessment.

Unlike Ireland, Sweden, the UK and the USA all have provisions for electronic application for licences and encourage exporters to use this form of application.

None of the countries in the sample group charge for licences. However, in the United States charges are levied to cover the costs of exporter and broker registration. In Sweden the costs of running the independent agency responsible for export licensing (the Inspectorate of Strategic Products or ISP) are met through a charge to exporters of controlled items based on a percentage (2.5 per cent) of their turnover in the previous financial year.

#### 4.2.4 Licence Assessment

All four countries examined assess exports of military items against a wide range of criteria in the framework of national laws and policies and (for Austria, Sweden and the UK) to ensure compliance with the EU Code of Conduct. The assessment process requires a range of expertise to be brought to bear on individual licence applications. At the same time, there is a need for the system to respect the interests of users by delivering licence assessments within a reasonable time.

The countries in the sample group approach licence assessment in different ways. There are three models:

- (a) a single agency able to complete the licence assessment from its own internal resources;
- (b) a ministry responsible for assessment but with a statutory requirement to circulate applications to other ministries and departments;
- (c) a ministry responsible for assessment but with the discretion to circulate applications to other ministries and departments for assessment (effectively the Irish model).

In the United Kingdom circulation is at the discretion of the Export Control Organisation within the Department of Trade and Industry (DTI) – the licensing authority. In cases of military items there has been a tendency for most if not all applications to be sent for inter-agency review. However, this does risk delays and duplication in the assessment. The DTI supplies exporters with the names and contact details of the individuals in other departments assessing their application and encourages exporters to make direct contact with those individuals in case of delays longer than 15 days.

Countries with inter-agency assessment procedures have put in place working practices intended to shorten licence application processing times.

In the United States regular meetings take place in separate inter-agency working groups for military items and for missiles at which assessments can be discussed both in general and in detail. This allows a clear understanding to be developed about what needs to be circulated and what can be dealt with by the licensing authority without further reference, as well as avoiding assessment by each agency of the same basic information. For example, if assessment criteria are clear then open source information available to all agencies need only be considered once during the licensing process and not by each agency in turn. Working group meetings are also an opportunity for general information exchange and to take up any problems arising in the licensing process.

#### 4.2.5 Transparency and Political Accountability

##### Transparency

There has been a trend towards collection and publication of a range of information related to exports of military items. The Annual Report published by the European Union has significantly increased the amount of information contained in its statistical annexes year-on-year.

More individual countries are producing national annual reports on exports of military items and these reports are becoming more detailed. Information is also contained in public reports issued by exporting companies and by industrial associations (Sweden and the United Kingdom both have defence manufacturers associations).

Published information in Sweden, the United Kingdom, most other EU countries and the USA (but not Austria) includes the annual value of exports, as well as the value of licences issued (see also Section 3.9.2 earlier on this issue). The information about the number and value of licences and about the value of exports is broken down by recipient region and by recipient country.

The government supplied data does not refer to individual companies. However, in Sweden the defence industry association publishes annual aggregate data on the value of exports of defence equipment. This information is not broken down by recipient region or recipient country. The countries in the sample group all submit customs data to the United Nations COMTRADE database. The COMTRADE data is sorted into product categories using the harmonized system of customs classification. Some of the product classes and categories allow military items to be identified. However, many military items are impossible to disaggregate from civilian goods in customs data. This is especially so with components.

It is the practice in Denmark to publish the names of all companies that received export licences for military items in the previous year and the number of licences received by each company (but not the identity of the country to which items were licensed or the value of the items as stated in the licence application).

#### Public Accountability

The transparency measures noted above contribute to public accountability by helping to support a dialogue on arms export control issues among interested parties. Much of the information that is now published was originally developed for submission to national parliaments. Of the four countries in the study group Sweden, the United Kingdom and the USA all have a statutory role for parliamentarians in their export control processes.

The United States Congress has a right of prior approval for certain arms export transactions. However, the right has never been used and would in practice be very difficult to operationalise. It should be seen more as a political consultation exercise and political accountability measure than a true control measure.

Swedish parliamentarians have a right of prior consultation and an opportunity to provide an opinion on exports of military items, but no right of approval. In practice this consultation process has had a direct bearing on export licensing and is a strong informal control procedure.

In the UK, parliament has used its system of committees as well as parliamentary questions to monitor export licensing.

#### 4.2.6 Enforcement

In all countries examined, national exporters of military goods are familiar to the authorities. In Sweden and the United States companies must also register and receive permits to engage in development, production or sale of military items.

The countries in the sample group emphasize preventive enforcement in keeping with the overall basic philosophy of export controls as a preventive measure, and work closely with exporters. There has been a significant and continuous increase in interactions with industry and encouragement for industry associations and individual exporters to invest in export control compliance procedures.



In Sweden, the UK and the US enforcement is increasingly proactive with responsible authorities making contact with exporters and making increasing use of statutory rights to information of certain kinds, as well as making efforts to persuade companies to be more aware of export control compliance issues.

In the United States there are a significant number of prosecutions of exporters for export control violations concerning military items. The government publicises the outcome of successful prosecutions as a deterrent to exporters about what can happen if they ignore or violate export control laws. The State Department publishes a list of parties that are debarred as a result of Arms Export Control Act violations. In addition to these statutory debarments, other persons are debarred for violations of other statutes or because they are for some reason ineligible to receive licences from other government agencies. Persons may also be administratively debarred on a case by case basis for non-criminal violations of the Arms Export Control Act and its implementing regulations.

The United States is the only country in which the responsible authorities carry out regular post-shipment checks to any significant extent as an export control enforcement measure. In cooperation with exporters, enforcement agencies in Sweden and the United Kingdom may receive information about previously exported items when exporters carry out subsequent maintenance or repair on those items.

## 4.3 Control of Dual-use Exports

### 4.3.1 Policy Issues

The legal basis for control of dual-use items relevant to Ireland is Council (EC) Regulation 1334/2000. This regulation includes a List of Dual-Use Items and Technology subject to control as Annex I. This annex is a composite of dual-use items that governments have decided to subject to internationally agreed controls. The purpose of these internationally agreed controls is partly to support the international nuclear, biological and chemical (NBC) weapon non-proliferation framework described in Chapter 2. However, the controls are also intended to support other security policy objectives agreed by the states participating in informal multilateral export control arrangements.

The EU regime for dual-use export controls therefore has a wider purpose than non-proliferation, though issues related to nuclear, biological and chemical weapons as well as unmanned delivery systems for them (cruise and ballistic missiles) are currently the central focus of policy discussions.

The underlying assumption of export controls has been that the end-users will put dual-use items to civilian use and that exports should therefore be authorized unless there is a clear reason to prevent a transaction. The current emphasis on non-proliferation has been driven by concerns about clandestine efforts to acquire nuclear, biological and chemical weapons.

The underlying policy assumption in favour of approving exports of dual-use items may be revisited as far as items relevant to nuclear, biological and chemical weapon programmes are concerned to take into account both the greater proliferation risk from certain countries and regions and also the risk that non-state groups may try to acquire chemical and biological weapons.

The dual-use items that are not related to NBC weapons or missiles, but which might contribute to the military capacity of states if put to military end-use, are not be seen in the same light. However, within the EU, regulation of this set of dual-use items is not differentiated or set aside for separate criteria when assessed. This latter group is also of most interest in the Irish context.

It would be in Ireland's interest to maintain the focus of EU Member States on the need for a more disaggregated approach to "dual-use items" when discussing the implications of current reviews of policy.

### 4.3.2 Legislation

There are few national legislative issues related to dual-use items as this is established at the EU level. The legislation requires controls over intangible technology transfer and the catch-all system has the effect of controlling brokering activities in any transactions where NBC weapons and missile delivery systems are concerned.

### 4.3.3 Licence Types and Licence Application

The approach to export authorisation is laid down clearly in Article 6 and Article 7 of the Council Regulation<sup>39</sup> and no deviations from this approach was seen in the sample group of countries.

### 4.3.4 Licence Assessment

The information about the countries in the sample group suggests that significant issues need to be addressed in all EU countries related to how Council (EC) Regulation 1334/2000 is implemented. Under the regulation all exporters based in the EU should in principle be treated equally.

There are two primary issues of equity:

- ▶ National product classifications should reach the same conclusions when deciding whether or not a particular item needs an export licence prior to shipment.
- ▶ National assessments should subsequently take into account the criteria contained in Article 8 in the same manner when processing export licence applications.

Council (EC) Regulation 1334/2000 establishes catch-all controls.<sup>39</sup> The regulation does allow for a certain national discretion in implementation of these controls. Controls apply in all cases where an exporter has been informed by competent authorities of a need to apply for authorisation. Where an exporter is aware that non-listed items are intended for a purpose that triggers the catch-all the exporter is obliged to notify the authorities who will decide if a licence is required. The Regulation also provides that Member States can if they wish introduce an additional element through national legislation requiring an exporter to seek authorisation prior to export of non-listed items if the exporter “has grounds for suspecting” that the items will be used in a way that would trigger the catch-all controls.

None of the three EU countries in the group studied – UK, Sweden, Austria – has introduced such a provision. It is also considered controversial by some exporters because of the potentially ambiguous nature of their obligations when implementing any such provision.

All of the countries operate a policy of outreach to industry with the message “when in doubt, seek advice from national authorities” and one (Sweden) has seen an increase in requests for product classification after the introduction of the catch-all controls. (A criticism exporters make of the Irish system is the absence of this kind of advice, see Chapter 5).

The information from the countries in the sample group suggests that there are some differences in the national capacities and approaches as regards both questions. These national differences may already lead to exporters being treated differently in different parts of the EU.

Under Article 8 of the dual-use regulation countries are obliged to take into account the EU Code of Conduct on arms exports when deciding whether or not to grant an export authorisation. This means that dual-use exports should be assessed against criteria including the human rights record of the country in question as well as the behaviour of the buyer country with regard to the international community, in particular with regard to its attitude to terrorism. There seem to be national disparities in the information available to the authorities in making such assessments, leading to a range of approaches. These are broadly:

- ▶ first, countries with a sufficient level of knowledge about the product and the end-user make a judgement about the impact of the particular transaction;

<sup>39</sup> EU Council Regulation No. 1334/2000 of 22 June 2000, setting up a Community regime for the control of exports of dual-use items and technology.

- ▶ second, countries with a general knowledge about the product and the country to which it is being exported make a more broad assessment of whether the particular transaction should be authorised.

The critical variables here are the level of knowledge about products and about end-users available to licensing officers, and the level of resources (mainly licensing officer time) that countries are able to devote to individual assessments of dual-use items. These are the critical issues that need to be addressed to increase the standard application of controls.

The US Department of Commerce publishes information about weapon programmes of concern and about specific end-users of concern and this information is accessible to any potential exporter. No European countries publish similar information.

Therefore, the issue of how to increase the amount of information and use it more effectively has in practice been linked to:

- ▶ progress in cooperation regarding information sharing in the multilateral export regimes. However, this cooperation has become more complicated in the light of expanding membership;
- ▶ the development of informal arrangements allowing countries to take advantage of expertise elsewhere on a bilateral basis.

#### **4.3.5 Transparency and Political Accountability**

##### **Transparency**

The collection and publication of information about dual-use exports is much less well developed than is the case for military products. No national export reports from the countries in the sample group of countries provide detailed information broken down by product category, region or country in the manner of reporting on military items.

This partly reflects the breadth of goods coverage which means that aggregate data collected would be of minimal value in evaluation and analysis. The most valuable data on dual-use exports would be related to denials of export licence applications as this would give exporters the best idea of what kinds of transactions they need to evaluate most carefully.

Note should be made here of the practice in Denmark to publish information about suspicious buyers and negotiating situations, critical products and technologies and critical export markets. The Danish information includes examples of critical export orders that combine product types with a sensitive country list. While this information is neither quantitative nor detailed, it at least gives some assistance to exporters, including crucially those in civilian sectors of industry that are not used to dealing with export licensing matters.

##### **Public Accountability**

There is a much smaller public debate on export control issues for dual-use items than for military items. This is probably because of a combination of factors:

- ▶ the lack of transparency and the sensitivity surrounding some of the information about problem countries, products and end-users which makes informed debate difficult;
- ▶ the relative lack of interest in the issue among European NGOs, most of whom are primarily concerned with issues arising out of exports of military items.

#### 4.3.6 Enforcement

The number of exporters of dual-use items is much greater than the number of exporters of military items. The exporters are often less well known to the authorities. The catch-all provisions in Council (EC) Regulation 1334/2000 mean that producers of non-listed items may also have licensing obligations. All of these factors make enforcement in the dual-use area a great challenge, even in large countries.

As in the case of controls over military exports, the countries in the sample group emphasize preventive enforcement and try to work closely with exporters.

Sweden, the UK and the US have taken systematic steps to highlight the need for exporters to put in place export compliance systems within their companies. The export control authorities in these countries have developed assistance tools that help companies design and set up such compliance systems. In this regard the use and promotion by Denmark of a company compliance programme based on certification using ISO 9000 quality standards is noteworthy.

In Sweden, the UK and the US the authorities seek contact with exporters and make increasing use of business forums such as chambers of commerce and industry associations. Sweden and the United States have also established dedicated networks linking company officers responsible for implementing company compliance measures.

In the United States there are a significant number of prosecutions of exporters for export control violations concerning dual-use items. As with military items, the government publicizes the outcome of successful prosecutions as a warning to exporters about what can happen if they ignore or violate export control laws.

Post-shipment checks on dual-use items are very rare.

# 5 Stakeholder Views on Ireland's Export Licensing System

## 5.1 The Consultation Process

### 5.1.1 Overview

Alongside examination of comparable overseas practice, the other major input to this review of Ireland's export licensing system for military and dual-use goods has been obtaining the views of various interested parties in Ireland. These views were obtained in two ways:

- (a) through direct consultations with some 40 bodies, including exporters and their representatives, state agencies, and non-governmental organisations;
- (b) through a public consultation process involving a newspaper advertisement and the receipt of written submissions. This process is described more fully in Section 5.1.2 below;

This Chapter presents a synthesis of the views obtained through both consultation processes. These views and opinions are a summary of what consultees said and are presented as such. Their inclusion here does not necessarily imply agreement with these views. Our own views as consultants on the way forward are evident in Chapter 6.

Reflecting the nature of the contents, remaining sections of this Chapter are presented in a distinct textual style to remind the reader of the nature of the contents.

### 5.1.2 Public Consultation Process

**Figure 5.1:** *Advertisement from the National Newspapers*

## Export Licensing of Military and Dual-Use Goods

**Request for Submissions**

Forfás on behalf of the department of Enterprise, Trade and Employment, has appointed independent consultants to carry out a review of the export licensing of military and dual-use goods in Ireland. This is with a view to recommending to government how best Ireland can modernise and strengthen its export licensing controls so as to ensure full compliance with international obligations.

As part of this process, interested persons or bodies are invited to make submissions on current export control arrangements in Ireland. An information pack is available which includes a synopsis of the issues relating to the current review as well as detailed background information.

To obtain an information pack please telephone (01) 6073222 or email [export.licensing@forfas.ie](mailto:export.licensing@forfas.ie). alternatively, the information is available online at [www.entemp.ie/export/whats.htm](http://www.entemp.ie/export/whats.htm) submissions should be sent in duplicate via post to –

**Export Licensing,**  
Forfás,  
Wilton Park House,  
Wilton Place,  
Dublin 2

or by email to [export.licensing@forfas.ie](mailto:export.licensing@forfas.ie)

*We welcome submissions on or before 17 October 2003. Submissions may be the subject of a request under the freedom of information Act.*

**Forfás** 

An advertisement calling for submission was placed in the national newspapers by Forfás on two occasions during September 2003 (see Figure 5.1). This invited submissions from, and offered a background information pack to, interested parties. This background information was also available on the DETE website. The IDG and the consultants also identified a number of key stakeholders who were directly informed about the process and invited to make a submission.

In total, 15 organisations made formal submissions. Those organisations who made submissions and who agreed to be identified are listed in Table 5.1. Of that total, eight were users of the export licensing system and industry representative bodies, three were state agencies, and four were NGOs, including a joint submission by three organisations.

**Table 5.1:** *List of Written Submissions Received*

Organisation	Category
American Chamber of Commerce Ireland	User Representative
Health and Safety Authority	State Agency
Catalyst Software	User Company
IDA Ireland	State Agency
Údarás na Gaeltachta	State Agency
Amnesty International Oxfam Ireland International Action Network on Small Arms	Non-governmental organisations
Church of Ireland Archbishop of Dublin	Non-governmental organisation
ICT Ireland	User Representative
Irish Engineering Enterprises Federation	User Representative
L3/ESSCO Collins Limited	User Company
Price Waterhouse Coopers	User Representative
Timoney Technology	User Company

### 5.1.3 Status of Views Summarised

As already emphasised, by definition views summarised here must be read as representing who made submissions.

Reasons for the relatively small number of submissions are a matter for speculation only. However, contributory factors are likely to include the relatively specialist nature of the topic and the focus of the review on procedures and practices rather than on wider policy issues, and from a company perspective the small number (about 30) who use the system regularly.

Note should also be taken of the relatively small number of organisations making written submissions, including small numbers of both companies and NGOs. While sometime strongly held and expressed, the views summarised therefore reflect the view of the small number of organisations making formal submissions.

The relatively small level of general interest is evidenced in the fact that in total only 12 public consultation submissions were received. It may also be influenced by the fact that the focus of the study is about procedures and practices, rather than about the overall policy issues involved.

The relatively small number of companies involved as users, about 30 combining military and dual-use exporters, is probably also a factor.

While part of the consultation process was public in the sense that it publicly invited submissions from the public, the results as presented here do not in any sense reflect the views of the public in general, but only that small minority of the public who are actively interested in this relatively specialist topic.

## 5.2 Summary of Stakeholder User Views

### 5.2.1 User views – introduction

As shown in Figure 5.1, user companies and industry representative bodies accounted for eight of the 15 formal submissions received. In addition, the two industrial development agencies' submissions were also broadly reflective of user concerns.

User companies and their representatives are generally reasonably satisfied with the system, and it is not spontaneously high on their list of overall business concerns. In part this reflects the fact that for most users, especially dual-use exporters, it affects only a minority part of their business. However, when asked, most users do have some concerns and suggestions as summarised below.

### 5.2.2 User views – information provision

A number of submissions from user companies and their representatives dealt with provision of information. Their suggestions included:

- ▶ greater clarity in relation to what products and destinations require an export licence. A comprehensive and updated listing of these e.g. on the DETE website, or sent directly to exporters, was suggested. (In part this reflects the view of firms familiar with the quite different and more "itemised" US approach – see Chapter 4);
- ▶ greater clarity as to what constitutes a "dual-use" good. Again, firms would wish to see a comprehensive list posted on the DETE website or elsewhere;
- ▶ in general, companies say that the DETE website should be kept up to date as it is a key source of information for users of the system. The site should also be developed to become more informative and user-friendly;
- ▶ better advance notice should in their view also be given of any changes to items covered under the definition of military and dual-use goods, or of any changes in the licensing process and legislation, in order to facilitate decision making at company level;
- ▶ companies generally stress the need for as much clarity and certainty as possible, and a willingness to comply provided it is clear with what they must comply. Uncertainty is a company's greatest concern about regulation;
- ▶ companies see DETE as the primary information source, and do not perceive Customs as playing a significant role in this regard.

### 5.2.3 User views – procedural issues

There were a number of proposals made by users as to how to improve procedural aspect of issuing export licences. Company views on this included:

- ▶ a time limit to be imposed on DETE (and DFA) for the processing of applications; (some suggest 24 hours);
- ▶ more use of new technology to accelerate and simplify licensing procedures, including on-line application. (Dual-use exporters in the ICT sector expressed particular impatience with what they perceive as an absence of e-business capability in the process by comparison to their own businesses);
- ▶ explicit and swift explanation for reasons for the rejection of any application;
- ▶ the possible reclassification of military and dual-use goods into sub-categories, each having different licensing requirements, including the possibility of licence exceptions under certain conditions e.g. dual-use goods for particular civilian end-use/end-users or for low value shipments;
- ▶ any procedural changes should build on the best elements of export control processes used by Ireland's major trading partners;

- ▶ *there is a perceived need to address the clarity of regulations governing the export of software and ICT technology;*
- ▶ *software/ICT technology expertise should be available in a more systematic manner to the licensing system than the present ad hoc approach.*

#### **5.2.4 User views – transparency**

*Lack of transparency with regard to the level and detail of Ireland's exports of military and dual-use goods and their end-use is a criticism often levied at the current system by NGOs (see Section 5.3 below). Companies counter that they experience negative coverage in the media, based on what they see as incomplete and inaccurate information. Some also feel that they have no "champions" willing to publicly point to the fact that they are law-abiding firms going about their business.*

*Proposals companies make in regard to improving transparency are:*

- ▶ *periodical compliance audits by the authorities as a means of addressing any concern about the adequacy of controls at company level;*
- ▶ *making available information that is accurate and reflective of the true level of exports, while not compromising commercially sensitive information. It is stated (correctly) that the value of export licences does not represent the true value of shipments but tends to over-estimate the level of activity;*
- ▶ *related to the above, companies have mixed views about publishing aggregate data on actual exports. Some feel it would be helpful as a way of avoiding exaggeration, others that it could lead to an endless request for more information, and eventual compromise of commercially sensitive information.*

#### **5.2.5 User views – resources**

*User companies and their representatives that made detailed recommendations on how the licensing process could and should be changed. They recognised the fact that this may require greater resources within the Department to meet these objectives.*

*Compliant companies also feel that most resources are currently used regulating them even more tightly, whereas any real issues may relate to firms not applying for licences.*

#### **5.2.6 User views – end-use monitoring**

*Regarding end-use monitoring, one submission suggests a process involving the approved Government agency responsible for export controls in the country of the end-users.*

*In the area of software/ICT technology, significant financial or other penalties for providing misleading information or not using all reasonable effort to check planned end-use at the time of export from Ireland was suggested.*

*It was also suggested that industry should be given the responsibility to self-certify end-users using specified criteria from the DETE. This would move DETE's role to one of monitoring compliance instead of controlling individual export decisions.*

#### **5.2.7 User views – technology transfer**

*Users drew attention to a number of issues in this area. Major ones were:*

- ▶ *that a clear framework and defined terminology is required to govern the controls of such technology recognising the complexity of the modern production and business processes;*
- ▶ *when part of an international project, frequent and spontaneous technology transfers are an integral part of activity. In these cases the licence should cover the transfers without the need to quantify the frequency of the exchanges;*
- ▶ *there is need for greater technical expertise in the licensing process in this area.*



### 5.3.1 Introduction

*Just four NGOs made submissions. This involved a detailed joint submission by Amnesty International, Oxfam Ireland and IANSA, and a submission from the Church of Ireland Archbishop of Dublin. Both submissions focused on issues relating to transparency, procedural issues, current legislation, resources and end-use monitoring, though in different levels of detail.*

### 5.3.2 NGO views – overall assessment

*The NGO joint submission generally involved a negative critique of the Irish export licensing system, as it would other systems. It reflects previous Amnesty criticisms of the Irish system made in its 2001 report.<sup>40</sup>*

### 5.3.3 NGO views – transparency

*The following points were made in relation to the transparency of the current system:*

- ▶ *in common with most export licensing systems, there is ultimately no real ex post check on whether goods granted a licence for shipment to one country actually go to that destination or are rerouted somewhere else;*
- ▶ *it is not possible to get a clear sense of what is being exported from Ireland, where it is going and what it is to be used for, despite the fact that this information is in the possession of the licensing process;*
- ▶ *no Oireachtas committee has the specific responsibility to monitor and exercise scrutiny of the export of military and dual-use goods from Ireland. The submission recommend setting up the Dáil Committee with the resources and capacity to carry out this function (based on the model of the UK's Quadripartite Committee);*
- ▶ *it is unclear whether DETE can identify goods being transhipped through Ireland that would require an export licence from Ireland, or whether the value of the goods transhipped through Ireland is included in export licence figures;*
- ▶ *a list of the registered arms dealers in Ireland should be made public, and there should be a way of identifying the nature of their sales without compromising customer confidentiality.*

### 5.3.4 NGO views – procedural issues

*The issues raised by NGOs in relation to the operation of the current licensing system were:*

- ▶ *the fact that the company can decide in the first instance whether or not a licence is required and if yes, which licensing product code will apply, is a cause of concern. This is particularly in relation to dual-use goods that have a very direct military application;*
- ▶ *export restrictions should apply to all countries caught up in conflict and civil disorder, as well as countries subject to export restrictions by UN, EU and OSCE embargoes;*
- ▶ *the fact that cattle prods are excluded from the Control of Exports Order military list is an anomaly. This is despite the fact that Amnesty International has documented dozens of cases where they have been used as an instrument of torture;*
- ▶ *if a licence were likely to be refused a company would be allowed to withdraw the application. Normally such a refusal would trigger the EU Code of Conduct refusals mechanism to prevent undercutting. Allowing companies to withdraw their application would allow them to shop around for a more flexible export control system. If this were still practice, the group would have serious concerns;*

<sup>40</sup> Amnesty International Irish Section, *Ireland and The Arms Trade – Decoding the Deals*, Dublin, Amnesty International, 2001.

- ▶ *Human Rights Unit as well as the Disarmament Section of Foreign Affairs should be consulted as a matter of course on the issuance of sensitive export licences;*
- ▶ *goods being transhipped through Ireland should be subject to the same level of controls as direct exports.*

#### **5.3.4 NGO views - legislation**

*The following points were made in relation to current legislation:*

- ▶ *the European Code of Conduct on military exports is not legally binding and involves certain omissions;*
- ▶ *the absence of legislation on either arms brokers or licensed production agreements in the export control system are major weaknesses.*

#### **5.3.5 NGO views – resources and end-use monitoring**

*The submissions made the following comments on resources and end-use monitoring:*

- ▶ *it should be possible for DETE to devise a system to address this issue. The matter of the resources needed is a reflection of the will or lack of it to put an effective system into place;*
- ▶ *technical expertise should already be available to the export licensing system.*

# 6 Conclusions and Recommendations

## 6.1 Introduction

This chapter sets out the conclusions and recommendations of the report, drawing on the previous chapters.

As described in Chapter 1, the overall objective of this examination of Ireland's export controls for military and dual-use (military/civilian) goods has been to review the licensing system "with a view to recommending how best to modernise and strengthen controls so as to ensure full compliance with its (Ireland's) international obligations".

The review was carried out using three principal methods:

- (a) consultations in Ireland, including a public consultation process and discussions with various stakeholders;
- (b) a review of four other countries' licensing systems in order to identify aspects of their practices that could be replicated in Ireland;
- (c) drawing on advice and assistance from the Inter-departmental Group (IDG) which guided the review.

Other inputs include the examination of existing procedures in Ireland, a review of published reviews and other material, and the analysis of relevant statistical data.

## 6.2 Context in Which The System Operates

### 6.2.1 International Context

The review of international trends, both for case study countries and more widely, provided information on the broad international context within which the Irish licensing system operates.

Key aspects of this context are:

- ▶ the international commitments from which the system derives provide clear principles and operational guidelines which Ireland should follow, including both binding legal commitments under international arms control treaties and more political commitments under other arrangements. However, these still leave room for national interpretation and implementation, both in Ireland and elsewhere;
- ▶ the international context is changing in multi-faceted ways. This includes the evolving political, security, economic and technological situation in which the international arms control regimes operate, and ongoing developments within the international arms control regimes and arrangements themselves;
- ▶ reflecting the international context, there are considerable differences between military and dual-use control regimes. Much of the international focus, and certainly international literature, tends to be on the former, whereas in the Irish context the latter is at least as important an issue;
- ▶ from an Irish perspective, there is also considerable evolution at EU level in terms of EU defence and security co-operation, the interface between defence and industrial policy, co-operation on national arms control regimes, and common EU practices regarding controls of dual-use exports;
- ▶ in reviewing its national export control arrangements, Ireland is not unique. Many countries, which, like Ireland take their obligations seriously, are doing so, and to a considerable extent the situation is one of ongoing review. This reflects the fact that most countries see that their regimes as less than perfect, and that changes in the international commitments from which national regimes emanate require this.

## 6.2.2 Trends in National Export Control Systems

In relation to export control system as operated in practice in different countries, reference has already been made to the fact that these are undergoing change and development.

Another shared feature is that they are also all quite contextually located within the distinct national government administrations in which they operate. While systems have common basic principles and parameters, how they implement these can vary. This is especially evident as between Europe's somewhat more qualitative and case-by-case approach and the more detailed and rule-based US system. Differing national policy emphases are also evident again within broadly similar international parameters.

At operational level a number of broad trends are evident:

- ▶ increasing emphasis on transparency, including transparency of criteria, transparency about activity levels and transparency in reporting. While this could be said to have a long way to go, there is a clear move away from export controls being "secret" to one where requirements should be clear, levels of licensing activity known, and where neither regulators nor compliant exporters feel that they have anything to hide;
- ▶ a trend away from attempts by regulators to control each individual export shipments on a detailed item-by-item basis, towards ensuring that exporting firms have proper compliance procedures in place, and overseeing the operation of these internal systems;
- ▶ increased emphasis on constructive dialogue and co-operation between national licensing authorities and compliant exporters;
- ▶ focusing administrative resources on areas of potential difficulty based on risk assessments, rather than across activities and sectors where there is an existing good track record of compliance;
- ▶ an emphasis on pre-shipment monitoring and control rather than reliance on either border or ex-post checking. In this latter regard, there is some divergence between thinking among regulators on the one hand and NGOs on the other, with the latter seeking more tangible end-use monitoring.

## 6.3 Irish Context

### 6.3.1 Irish Context

Alongside the international background, the other key context within which conclusions and recommendations must be formulated is the Irish context itself.

Key features of this are:

- ▶ Ireland is in absolute terms a relatively small country in geographic, demographic and economic terms, and with a relatively small public administration. This places limits on the scale of what can be delivered in Ireland in terms of licensing of military and dual-use products by comparison with large administrations such as the US or the UK. There is, however, no implication that small countries have any less responsibility than large countries to meet their international obligations in an appropriate way;
- ▶ Ireland, even for its size, has traditionally had relatively low defence spending, a relatively low level of armed forces and of defence and military resources and activity generally. Military neutrality has also meant an absence of defence commitments to international partners;
- ▶ Ireland has also traditionally had a relatively low level of involvement in purely defence-related industry and such involvement as there has been involved components rather than final product manufacturing. This situation largely continues, with typically about five companies applying annually for military export licences. Against this, a relatively small scale of military and dual-use equipment production (see below) makes ongoing monitoring and contact with individual exporters more practical;

- ▶ over the last 20 years, Ireland has been very successful in attracting high-tech inward investment, and to some extent in also growing indigenous technology-based enterprise. This means that a number of these companies, now about 25, currently manufacture technology-based products (mostly IT components and sub-components) which are classified as controlled “dual-use goods” requiring an export licence, i.e. technology-based products of a type or specification such that as well as ordinary civilian uses they also potentially have specific military uses.

### 6.3.2 Strengths and Weaknesses of the Irish Export Licensing System

In common with its counterparts in other countries, the Irish system for licensing military and dual-use goods has both strengths and weaknesses. While a review of this nature may inevitably highlight the latter, we also acknowledge the former here. Also, a key finding of the international case studies is that national systems differ in their practical implementation mechanisms, that each national system has pluses and minuses, and that “best practice” is not to be found in any one source.

Strengths of Ireland’s system are:

- ▶ the system is relatively accessible, and the DETE Export Licensing Unit is open to dialogue with interested parties including existing and prospective exporters and other interest groups;
- ▶ personnel involved are knowledgeable and are perceived as well informed on the complex administrative demands of their task;
- ▶ the level of information available on the DETE website is relatively detailed and informative;
- ▶ the Irish administrative structure is relatively simple – with a single licensing body in the form of DETE and an advisory element in the Department of Foreign Affairs – as against more complex systems in many other countries (e.g. separate licensing authorities for military and dual-use goods);
- ▶ the speed of response is generally reasonably rapid;
- ▶ a flexible rather than overly standardised approach, with DETE willing to tailor operational requirements to companies’ specific circumstances.

The system also has areas needing improvement, with many of these shared by other countries.

Specific aspects are:

- ▶ absence of dedicated primary national legislation governing the military licensing system;
- ▶ a number of recognised gaps in terms of what is controlled under the legislation;
- ▶ scope for a more proactive approach, especially regarding provision of advance information and advice;
- ▶ scope for greater involvement, on an advisory and consultative basis to DETE, of the range of relevant state resources outside the DETE itself;
- ▶ strengthening of the relationship between DETE and Customs to ensure that the most effective controls possible are being applied;
- ▶ more pro-active wider enforcement, especially regarding possible exporters who are not applying for licences;
- ▶ rotation of DETE and DFA staff, with a need for greater retention of corporate memory and expertise;
- ▶ increased and more structured access in the process to appropriate specialist technical and other expertise;
- ▶ increased transparency with regard to the decision-making process and criteria.

Our subsequent recommendations are designed to address these areas.

## 6.4 Approach to Conclusions and Recommendations

### 6.4.1 Overall Approach

Our conclusions and recommendations regarding improvements in and strengthening of the Irish export licensing system are based on a mix of inputs. Reflecting the Terms of Reference and our work programme, the main sources have been: the four overseas case studies; other international experience and practice generally; the public consultation process and other Irish consultations.

Out of these came a list of “candidate” recommendations of various types and varying degrees of precision, ranging from general suggestions about areas needing attention to detailed and specific proposals. Much of our work has therefore involved considering these possible recommendations and selecting those which we view as appropriate in the Irish context.

In considering the “appropriateness” of potential recommendations, we have taken account of a number of considerations:

- ▶ whether they address clear gaps or weaknesses in the present system;
- ▶ whether they are seen as good practice elsewhere;
- ▶ whether they might remove unnecessary administrative aspects not seen as helpful either by users or other stakeholders;
- ▶ whether they fit within the general Irish public administration system;
- ▶ whether they are something on which an individual country, in particular a relatively small country, can realistically act unilaterally.

### 6.4.2 The “Trade/Control” Balance

As reflected in the Terms of Reference and described in Chapter 1, this study has not been dealing with Irish policy towards production and export of military and dual-use goods, but rather with the regulatory system which implements Irish policy.

Assessment of the operation of the system cannot, however, be completely isolated from the policy context. In drawing our conclusions and recommendations, we have approached the national policy backdrop in the following manner:

(1) export controls are a somewhat unusual phenomenon in the modern largely free trade environment, and are essentially instruments of foreign and security policy rather than economic policy – although generally administered in the latter context in Ireland and elsewhere. Export controls on military and dual-use goods involve a decision to make this aspect of economic policy somewhat subservient to wider foreign and security policy considerations, including of course certain binding legal commitments in EU and international law;

(2) reflecting (1) above, and as with similar systems everywhere, Irish export controls face two essentially competing policy demands, namely that between effective controls and meeting international commitments on the one hand, and the need to facilitate trade and ease administrative burdens on the other, i.e. the “control interest” and the “trade interest” respectively. In the Irish case the trade interests are:

- ▶ the existence of a small number of exporters of military components. These are not very significant in a national context, and Ireland has no economic interest in military exports of the nature or scale of countries such as the UK, France, or Germany. However, such firms are of course important in their own localities and regions;
- ▶ a larger number of firms producing goods or technology which include some (generally a small minority) of controlled dual-use items – goods which therefore may require an export licence even when exported to civilian end-users.

The latter area, i.e. dual-use exports, is where any Irish national economic interest rests, and it is a relatively distinct one. While dual-use exports for military use are also not of large overall macro significance for Ireland, the number and nature of Irish-based firms exporting controlled dual-use goods is significant as part of an overall high-tech industry base. Furthermore, these companies and what they do in Ireland is mobile and Ireland must compete with other locations elsewhere.

Were Irish export licensing controls on dual-use items to be significantly tighter than competitor locations – keeping in mind these are mostly sold to civilian not military users – such business could relocate. Given that controlled dual-use items are mostly a small proportion of the sales of the companies involved in Ireland, this would be unlikely to involve actual departure of plants or firms. However, loss of some business to plants within the same multinational group in other locations globally is a possibility.

Against this “trade” or economic interest must be balanced Ireland’s “control” interest which includes:

- ▶ our desire to meet, and be seen to meet, EU and international legal and political commitments;
- ▶ Ireland’s wider standing and credibility in the international arena, and its supportive foreign policy position on arms control generally;
- ▶ the danger to Ireland’s economic and political interests were any illicit military or dual-use exports to bypass the Irish export control system.

(3) the appropriate balance between these two interests is a policy and not an administrative question. We therefore do not in this report directly address the question of the appropriate balance as such. Instead, in making recommendations, we deal with it in a number of ways:

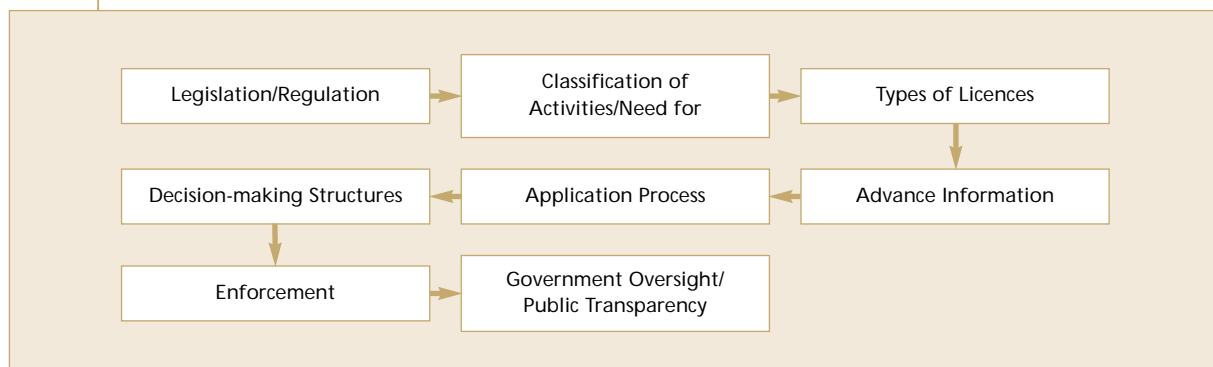
- ▶ we identify as particularly appropriate any recommendations which would be attractive from both the trade and the control perspectives, or which is positive for one while neutral for the other;
- ▶ we have taken the view that where necessary both the existing system and any amendments to it must strike a balance between these two interests, as this is the de facto policy at present. This in turn means that recommendations cannot be absolute in either direction, i.e. either in terms of attempting to achieve a 100% watertight control system at the cost of very large administrative burdens and disruption of trade, nor on the other hand of facilitating exporting companies to the extent that Ireland’s international commitments or reputation could be jeopardised.

(4) finally, and directly reflecting the Terms of Reference, we have taken as a guide the fact that Ireland would wish to apply what is perceived elsewhere as good practice on aspects of its system. This means, as a corollary, that Ireland would not necessarily wish to go beyond what is seen as good practice elsewhere, and any decision to do so would be a policy one and therefore outside our remit.

### **6.4.3 Structure of Conclusions and Recommendations**

The structure we have adopted for the purpose of presenting recommendations is shown in Figure 6.1. This broadly reflects the “flow of activity” from overall legislation and regulation down through what products need a licence, the types of licences involved, the application procedures and decision-making, through to enforcement and general oversight and transparency.

Figure 6.1: Structure of Conclusions and Recommendations



## 6.5 Conclusions and Recommendations

### 6.5.1 Legislation and Regulation

#### Key Issues:

The key issue regarding legislation is whether current legislation in Ireland is adequate as a legal basis for our export licensing system for military and dual-use goods. “Adequate” here refers to clarity and strength in the event of any legal challenge, and to appropriateness given related legally binding international commitments.

As set out in Chapter 2, the Irish military controls system involves Ministerial orders under general primary Control of Export legislation, while the dual-use system is based on an EU Regulation transposed into Irish law via Ministerial Order. To date, the Irish legislation has never been tested. No prosecutions have been taken for non-compliance, and no company has mounted a legal challenge to licensing decisions. However, there is no guarantee that these could not happen in the future, and new dedicated primary legislation would provide a better basis for the military licensing system in such an event.

Also, Ireland is out of line with other countries in not having any dedicated primary legislation governing licensing of military goods. Up to recently the UK was in the same position, but has now passed new dedicated legislation.<sup>41</sup>

#### Conclusions/Recommendations:

We conclude that:

- ▶ Ireland should introduce new primary legislation to govern military export controls;
- ▶ this new legislation should encompass the commitment to regulate arms brokering under the EU Code of Conduct, but it is recognised that defining brokering will require careful consideration;
- ▶ provisions should include powers to inspect and audit exporting companies;
- ▶ new legislation should also involve revised penalties for non-compliance;
- ▶ while provisions to govern licensed production abroad is legally feasible, this is not a priority concern in the circumstances of the Irish industrial base;
- ▶ despite differences in the nature and scale of involvement in exports, similarities in legal systems mean that close examination of the recently enacted UK legislation should be undertaken in this context.

<sup>41</sup> *The Export Controls Act, 2002 (Chapter 28)*



## 6.5.2 Classification of Controlled Exports

### Key Issues:

The central issue here is whether interpretation of the products currently deemed as needing an export licence in Ireland is either too tight from the point of view of the trade interest, or too loose from the point of view of the control interest, or about right.

### Conclusion/Recommendations:

Our conclusion is that, reflecting existing obligations, on the military side there is a need for licensing of a number of additional activities, namely brokering and technical services.

In the case of dual-use goods, the general system is sufficient, particularly in the context of the EU "catch-all" clause. However, we feel there is a need for more proactivity in relation to sectors where there may be a chemical or biological product being traded (outside the EU).

Control of service exports is already the subject of an EU joint action, but how to implement it is still not very clear. This is an area where Ireland could become proactive if it wanted to be ahead of the field, rather than just match it, e.g. encompassing training provision in Ireland or from Ireland to overseas military and police in the system. However, again this would be going ahead of other countries and implications for sectors such as education and training would need to be considered.

Exporters have made various suggestions in relation to possible easing of restrictions in relation to temporary exports and to exports of very small quantities of controlled products, and to easing of the burden on dual-use goods going to civilian end-users. While sympathetic to points being made by companies, we do not see scope for relaxing these areas if the core spirit of the system is to remain intact and credible, e.g. even tiny amounts of Nuclear, Biological and Chemical (NBC) materials can be lethal.

In relation to the potential burden placed on dual-use industry by the EU "catch-all" clause, there is need for greater clarity from the licensing authorities as to the requirements this places on companies, and a degree of confusion on this exists among exporters. Also, in relation to the "catch-all" clause, it should be noted that it is of course a national decision as to whether to prosecute a company for failing to comply with the clause.

Amnesty International has proposed that cattle prods be placed on the list of controlled military items, given their potential use as torture instruments. This appears to be a reasonable proposal.

## 6.5.3 Types of Export Licences

### Key Issues:

The overall issue in relation to types of licences is also one of the balance between the control interest and the trade interest, i.e. whether the system is sufficiently tight to meet international objectives or is creating unnecessary administration from the point of view of all parties directly involved. Two specific topics that have arisen in this context are as follows:

- ▶ production licences: a number of countries (e.g. US, Sweden) license production as well as exports of military products. This involves a permit being needed for production of military goods. This would have the attraction of clarifying with what companies there needs to be interaction about military export licences. Such a system could also apply to arms brokering, again with a view to identifying the companies who need subsequent monitoring;
- ▶ global licences: the general desire of exporters for more global or global-type licences (i.e. multiple end-users), or licences of longer duration.

#### Conclusion/Recommendations:

In relation to military production licenses, we do not see this as necessary. In Ireland the relatively small number of affected firms, and the absence of companies who produce but do not export, means that companies can be identified as easily for export as for production licences purposes. Also, introduction of an on-line application system (see Section 6.5.6) with a requirement for users to register would create a de facto register of producers.

In relation to global licences, these already exist for dual-use goods and it is a matter between DETE and individual exporters to negotiate on the circumstances in which they are appropriate.

On this issue as a whole, we would generally support the concept of increased use of open licences where possible, but within a system where these are clearly seen as a privilege, where reasonable enforcement takes place, where the penalties of breaches of licence conditions are a sufficient deterrent, and where there is a reporting obligation regarding the extent to which the open licence is used. This in turn requires either custom data that are compatible with export licence categories (difficult in practice), or reporting by exporters to DETE on actual export levels (a more realistic option).

#### 6.5.4 Information, Consultation and Outreach

##### Key Issues:

An area of consensus among many stakeholders across a range of interests is the desirability for good advance information, and for early consultation with regard to developments in the export licensing systems. User feedback here is that the Irish system is generally responsive and accessible when issues are brought to its attention, but is less satisfactory in anticipating problems, in proactively spreading the message with regard to the need for export licensing (especially among dual-use goods producers who may be unfamiliar with export licensing) and in consulting stakeholders with regard to developments in the international system.

##### Conclusions/Recommendations:

Developments that we would regard as desirable here are:

- ▶ a more early, active, and two-way consultative approach between DETE, users and other stakeholders regarding international developments and how these are going to affect Ireland and Irish industry;
- ▶ continuous improvement and updating of the existing communication instruments, including DETE's booklet and website, and Customs information;
- ▶ more use of other channels to spread information about the need for export licences, the circumstances in which these are needed, how they are obtained, and the implications of non-compliance, e.g. in the Revenue Commissioners "Customs" leaflets and Annual Tariff Code publication, via the enterprise agencies, and via business advisors and trade representative bodies, professional bodies, and specialist publications;
- ▶ briefing meetings for interested parties, annual or biannual, in a number of suitable venues, possibly jointly by DETE, Revenue and trade representative bodies;
- ▶ publication of a hard copy or electronic newsletter, again possibly annually or biannually, with regard to trends and developments in the systems;
- ▶ provision of rulings on the classification of goods for licensing purposes where these rulings are requested;
- ▶ encouragement to industry representative bodies to speak with a clearer representative voice regarding issues of interest to members.

### 6.5.5 Licence Application Process

#### Key Issues:

This Section refers to the process of making an application. Again, this faces the need to balance being as user-friendly as possible on the one hand, while adhering to the overall control requirements on the other.

#### Conclusions/Recommendations:

Specific proposals here are:

- ▶ advance information as set out in Section 6.5.4 should include the maximum possible explanation of what documentation and evidence will be required from the intending applicant;
- ▶ use of the DETE website for applications be developed both in terms of downloading hard copy application forms and the ability to make electronic applications. The absence of these facilities is regarded by the industry as a serious deficiency (particularly in the context of users who are themselves leading IT companies) and as out of keeping with Ireland's commitments to e-government generally;
- ▶ in the context of web-based applications, that electronic scans of end-user certificates be adequate for application and approval (with a commitment that originals will be made available retrospectively and/or available for inspection if required);
- ▶ a user's charter governing the service commitments of the system as a whole, including DETE as the licensing authority, Customs as the enforcement agency, and DFA and other bodies in advisory or supporting roles.

### 6.5.6 Decision-making Structure and Process

#### Key Issues:

This refers to the process by which licensing decisions are taken, and the structures within which these are taken.

#### Conclusions/Recommendations:

We make a number of proposals for improvement and strengthening of the decision-makers process:

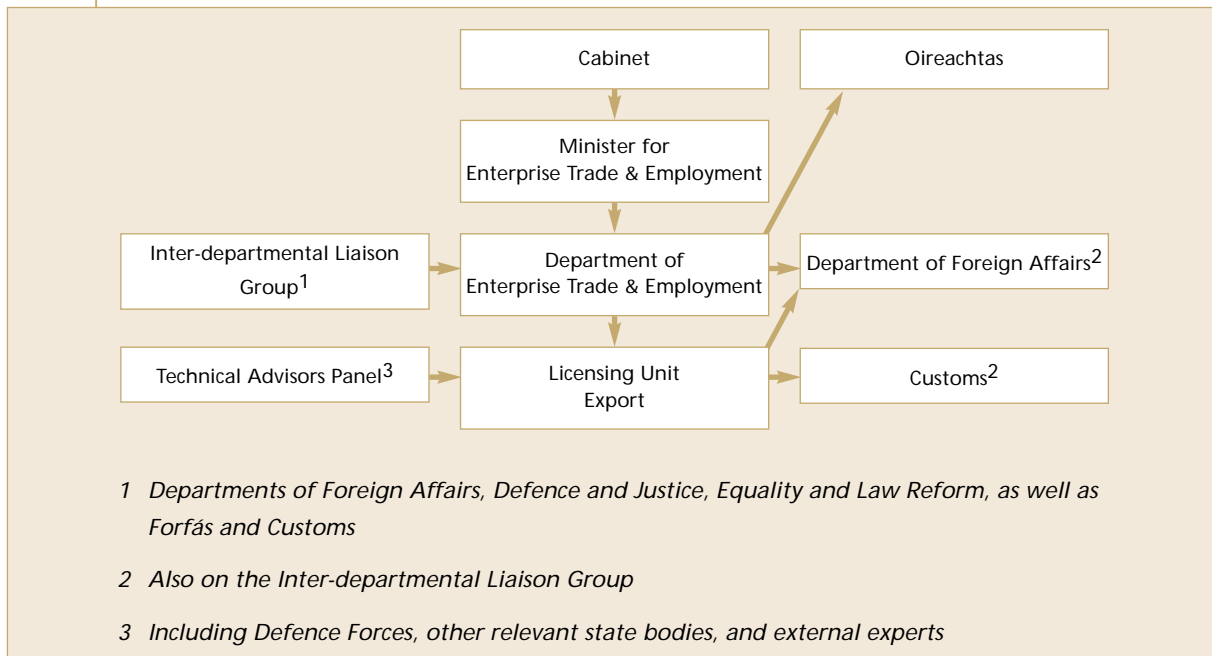
- ▶ DETE is the most appropriate location for the licensing authority function. While it could in principle be argued that the Department has a conflict of interest as also responsible for export promotion, this potential conflict exists in many countries. Also, the Department combines both a regulatory and a promotional role in many areas. Also, there is no evidence of a more appropriate institutional location in Ireland, and the scale of activity would not merit establishment of a stand-alone body as exists in some large exporting countries;
- ▶ there should be a written procedures manual for use by DETE, DFA, Revenue and any other parties involved. This should set out the procedures and criteria being used, and the roles and responsibilities of all parties (without of course breaching confidentiality in relation to any confidential information sources);
- ▶ DETE should consider means by which greater continuity of licensing personnel can be ensured, within the Irish departmental personnel structures;
- ▶ in relation to withdrawal of applications, NGOs have expressed discomfort with DETE practice regarding the Code of Conduct in that it distorts the formal exchange of information at EU level. NGO's concerns apply only to military licences and DETE have taken steps to address this issue. Irish practice is common to other Member States and any decision to tighten it would involve Ireland raising the bar to a level above its partners;
- ▶ Ireland should explore the possibility of increased co-operation at EU level in relation to availability of technical input sometimes needed in licence assessments, e.g. establishment of an EU-wide technical expert panel, or having formal liaison persons in each Member State. This would to facilitate access for

smaller Member States such as Ireland to the specialist technical expertise of the defence research establishments and other organisations in larger Member States.

In relation to structures, we propose that:

- ▶ a permanent Inter-Departmental Liaison Group be established to advise and support DETE in its function. This would be chaired by DETE and would also include the Departments of Defence, Justice Equality and Law Reform, and Foreign Affairs, together with Customs and Forfás. Its role would be advisory, it would not take individual export licensing decisions;
- ▶ a Technical Advisory Panel should also be established from organisations within and outside the public sector with specialist technical expertise, including legal expertise, in the main relevant areas such as munitions, IT, software, chemical and biological materials, nuclear material and technical classification. Membership could include such organisations as the Defence Forces, State Laboratories, academics and other experts. Members would operate both as advisors on individual decisions as required (when they would operate on a bilateral basis with the Department) and could also meet as a group with the Department to review ongoing technical requirements;
- ▶ members of the Technical Advisory Panel could also take on the role of attendance at more technical international discussions, thus easing pressures on existing DETE and DFA personnel. Combined with the Inter-Departmental Liaison Group, this panel could also provide an increased degree of permanency to the export licensing structure.<sup>42</sup>

Figure 6.2: Structure



<sup>42</sup> Personnel from the Ordnance Corps would be the most appropriate from within the Defence forces to provide the type of expertise required. In order to do so in the most effective manner, however, the designated personnel would require access to the technical groups associated with the following: Chemical Weapons Convention (CWC); Certain Conventional Weapons Convention (CCW); Biological and Toxin Weapons Convention; Missile Technology Control regime (MTCR); The Wassenaar arrangement on Export Controls for Conventional Arms and Dual-use Goods and Technology (WA). In addition to the Ordnance Corps, some input may be required from the Directorate of Communications and Information Systems (D CIS) in relation to sensitive IT technology and this input will also be available.

### 6.5.7 Enforcement

#### Key Issues:

Enforcement is one of the more problematic issues surrounding the export licensing of military and dual-use goods, in Ireland and elsewhere. It also gives rise to the greatest divergence of views between the control and the trade interests. The criticism made by NGOs is that without proper end-user checking and enforcement, the entire system could become meaningless and could in principle be avoided or abused with impunity. The contra-argument is that genuine ex post enforcement is extremely difficult and very resource-intensive if it is to be meaningful, and that the focus must be mainly on preventative action.

In addressing the enforcement issue, it is thus important to distinguish between two types of enforcement:

- (a) pre-shipment preventive actions;
- (b) post-shipment checking.

The general international trend is towards the former (combined with penalties if companies are found to be in breach of regulation), rather than very detailed post-shipment checking. The US is the only country trying to do detailed post-shipment checks, and even its system has only limited coverage.

#### Conclusions/Recommendations:

Specific recommendations here are:

- ▶ that better advance information to military and dual-use exporters, and to potential exporters, as recommended earlier is a key prerequisite for preventive action. The Irish system is currently too reactive;
- ▶ that Revenue should continue with its existing enforcement of export licensing requirements on behalf of the Department and should ensure, on an ongoing basis, that this activity receives the required level of priority and involves increased information exchange and co-operation between the two bodies;
- ▶ that a system of annual auditing to agreed standards be developed and introduced which would focus on company compliance procedures. This auditing could be done either by DETE itself or possibly by recognised agents. Where such audits are successfully completed exporters would then merit favourable treatment in areas within the licensing authorities' discretion, e.g. in relation to global licences;
- ▶ that one element of good practice in companies would be some level of post-shipment checking by companies themselves, e.g. in the context of service visits to customer sites;
- ▶ that DETE and Customs adopt a practice of proactively identifying and contacting companies who might be expected to require export licences, but who are not applying. This could be based on such sources as trade directories, websites, media reports and liaison with the industrial development agencies. Without such proactivity exporters, especially of dual-use items, could be inadvertently or deliberately exporting without licences;
- ▶ that penalties for breaches of the export licensing regulations be increased.<sup>43</sup>

### 6.5.8 Oversight and Public Transparency

#### Key Issues:

These two aspects of the system are dealt with together because there is considerable overlap between them.

Regarding oversight, the key issue is whether the normal level of governmental and ministerial oversight such as exists within any departmental function is adequate, or whether specific arrangements need to be put in place.

<sup>43</sup> *Updating penalties in legislation has recently been addressed more generally by the Law Reform Commission which recommended automatic indexing of fines so as to prevent their erosion over time (Law Reform Commission, The Indexation of Fines – A Review of Developments LRC 65-2002)*

Regarding transparency, the balance to be struck is that between the legitimate desire for commercial confidentiality on the part of individual exporters, and on the other hand the need to provide sufficient information to allow some level of oversight and to avoid creating an unnecessary air of secrecy.

In relation to Ireland's general position, it can be said that the level of transparency in Ireland has improved and that Ireland is not out of line with the international average. However, Ireland is behind the more transparent countries, particularly in the absence of regular publication of data on the value of actual exports of military goods (even an overall aggregate figure), and in the absence of any specific structures to increase the level of oversight of this sensitive regulatory function.

#### Conclusions/Recommendations:

Specific recommendations are:

- ▶ the core responsibility and accountability is, and should remain, as it is, i.e. export licensing is a DETE function, DETE is the licensing authority and should remain so, and it reports through the normal Ministerial channels and structures. Other surrounding structures, both existing and as proposed here, are advisory to DETE;
- ▶ DETE should prepare and publish an annual report in relation to the licensing and exporting of military and dual-use products (an annual report is already prepared in relation to military products as part of the EU Code of Conduct);
- ▶ this annual report should be laid before the Oireachtas;
- ▶ the Department should collect and publish regular data on the aggregate value of licensed military exports.

## 6.6 Resource Implications

With regard to resources, the recommendations made in Section 6.5 above will have resource implications, principally for the Department of Enterprise, Trade and Employment, and also for the Department of Foreign Affairs and Customs.

In each case we suggest consideration of assignment of an additional full-time person or full-time equivalent to the export licensing function. The existing DETE Assistant Principal responsible for the system as the most senior person involved on a day-to-day basis, should also be full time.

One way to increase available resources would be to introduce a system of charging for military and/or dual-use licences. A number of countries do this. Fears that this could encourage unnecessary levels of licensing could be dealt with by relating charges to the level of actual exports rather than to numbers of licences.

Only a minority of countries currently levy charges, however. We feel it is not appropriate to Ireland at this stage in the evolution of the system. The priority now should be on developing and strengthening the system in co-operation with compliant exporters. Introduction of fees could damage the atmosphere in this regard for relatively limited levels of resources raised. However, the issue could be kept under active review. Improved use of IT will also have scope to allow greater efficiency in the Export Licensing Unit in such areas as electronic applications and improved use of databases. However, it will have short-term costs.

## 6.7 Wider Issues

In accordance with its Terms of Reference, this report has focused on the licensing of exports of military and dual-use goods from Ireland. The review has, however, also raised a number of wider related issues on which we also make a number of observations.

The issue of licensing military and dual-use exports straddles a number of distinct policy areas, namely enterprise policy, foreign policy and defence and security policy. The resulting inter-departmental nature of the topic has arguably not been fully recognised hitherto outside the enterprise/foreign policy relationship. Hence, a theme of the recommendations above is the need for more inter-Departmental and inter-agency dialogue and co-operation, for involvement of all relevant state resources, and for generally more “joined-up government” in relation to both policy and delivery of the export control system.

The topic of export licensing of military and dual-use goods is also one of a number of aspects of enterprise policy which have similar interfaces with both foreign, defence and security policy. Other examples are:

- ▶ policy towards relevant inward investment and indigenous start-ups, where there may be a need to address the issue of Ireland’s policy towards Irish-based high-tech firms with international defence industry links;
- ▶ EU R&D policy, where linkage between this and EU defence and security policy co-operation will give rise to issues for Ireland regarding funding for and co-operation in defence-related EU R&D projects.<sup>44</sup>

Going beyond the specific topic of export licensing and military and dual-use goods, there may therefore be a need for more debate and more structured co-operation to deal with a range of other issues which similarly involve the interface between enterprise, foreign and defence/security policy. Otherwise, there is a danger that national decisions on these policy areas are taken within individual departments and reflect the valid preoccupations of those departments rather than the type of dialogue necessary to establish a rounded view of the overall composite Irish interest – economic, foreign policy and defence/security policy – in these complex and sensitive areas.

<sup>44</sup> From a critical review of the R&D issue see Afri, *Death from a Distance: the Ongoing Militarisation of Ireland, 2004*

# Annex 1

## List of Persons Consulted Overseas

### **Austria**

Rudolf Lohberger, Chamber of Commerce  
Helmut Krehlik, Ministry of Economics and Labour  
Rudolf Agstner, Ministry of Foreign Affairs  
Andrea Ikic-Böhm, Ministry of Foreign Affairs  
Kai Jan Krainer, Member of Parliament, SMÖ  
Walter Grohsinger, Interior Ministry

### **Sweden**

Stefan Hansen, Deputy Director, Inspectorate of Strategic Products (ISP)  
Egon Svensson, ISP  
Thomas Tjäder, ISP  
Alf Sandek, Strategic Export Control Department, Ministry of Foreign Affairs  
Lars Olsson, Defence Industry Association

### **United Kingdom**

Spencer Chilvers, Head of Policy Unit, Department of Trade and Industry  
Bernadette Peters, Department of Trade and Industry  
Jon MacLennan-Hobson, Senior Export Control Policy Adviser, Ministry of Defence  
Andrew Barlow, Arms Control and Disarmament Research Unit, Foreign and Commonwealth Office  
Graham Zebedee, Head, Export Control Policy Section, Foreign and Commonwealth Office  
John Badley, Senior Policy Adviser, UK Customs

### **Brussels (EU)**

Rosemary Chabansky, Council Secretariat  
Antonios Antanasiotis (Commission: External Affairs)  
Marc Deffrennes (Commission: External Affairs)  
Francoise Herboullier (DG Trade)

### **United States**

Patricia Slygh, Compliance Office, Directorate of Defense Trade Controls, Department of State



# Annex 2

## Case Studies of Austria, Sweden, UK and US

### A.1 Introduction and Background

#### A.1.1 Introduction

Chapter 3 in the main report has summarised key features and developments in export licensing systems for military and dual-use goods with particular reference to four "case-study" countries examined as part of the review. These countries were Austria, Sweden, the UK and the US. This annex describes these four countries' systems in some more detail.

The Annex deals with export control systems under five headings, and describes each country's system under these headings. The headings and the corresponding sections of the annex are:

- ▶ Section 2 National Policy Context
- ▶ Section 3 Legislation
- ▶ Section 4 Licensing Operations
- ▶ Section 5 Enforcement

#### A.1.2 Background

During the 1990s the national export control systems of Sweden, the United Kingdom and the United States were changed very significantly. At the time of writing (Autumn 2003) all three countries are also currently at different stages in a process of evaluating their national export control systems.

The UK is coming to the end of a very extensive legislative review that has led to fundamental changes, including the introduction of new primary legislation in 2002. Sweden is in the first stages of a national review of legislation, legislation that had previously been modified very extensively in the period 1992-95. The United States is carrying out a review of arms export policy and the export licensing of munitions list items. It is also reviewing its foreign policy related dual-use export controls, aiming to pass new primary legislation to control dual-use exports.

Meanwhile, Austrian export legislation is to be amended to take into account the recommendations of the EU Common Position on Brokering of June 2003 and an amendment to the Foreign Trade Act, which already applies to brokering, is currently prepared.

Thus an important observation of relevance to Ireland is that, although a lot has changed in export control in the past decade, changes are not complete. It is widely recognised that from now on national export controls can be expected to undergo a more or less continuous evolution in response to changing conditions.

The most important of these changing conditions have been:

- ▶ the new international security environment brought about in part by the end of the Cold War;
- ▶ new forms of military-operational technique; associated with these new techniques;
- ▶ rapid technological development and a change in the nature of military and security-relevant technology;
- ▶ accelerated internationalisation within industry stemming from increases in cross-border financial investment, multinational collaboration and the growth of a wider supplier base;

last but not least as far as Austria, Sweden and the UK are concerned, the European Union has developed a range of legal and political export control instruments that Member States are committed to use and with which a growing number of countries wish to be associated, including the accession countries (and of course Ireland).

Prior to 1990 there was a broad consensus about the “why” and the “who” of export controls when the issue was embedded in a Cold War framework, i.e. the objective of export control was to deny an identified adversary items that could enhance their military capability. The main players were the main Cold War adversaries. However, after 1990 the objectives of export control and the identity of those participating in the discussion have changed.

During the Cold War export control cooperation was also secretive and closed. The Coordinating Council on Multilateral Export Control (COCOM) consisted of the United States and its allies, and its existence was officially secret. Other arrangements (the Nuclear Suppliers Group and the Zangger Committee, the Australia Group and the MTCR) were largely dormant prior to the 1990s. After 1990 international export control cooperation has expanded to include countries that were neutral and non-aligned during the Cold War, the European countries that were former members of the Warsaw Treaty Organisation, and some countries formerly thought of as part of the developing world. The expansion continues, including countries that have emerged from the former Soviet Union.

The national export licensing systems of the four case-study countries are affected by the outcome of the decisions taken in international cooperation arrangements. The need to participate in and help shape international cooperation means that maintaining an informed view about matters subject to cooperation has become an increasingly important task within a national export control system.

International export cooperation arrangements, including those within the EU, now see merit in transparency. A growing number of governments also conduct systematic outreach both domestically to their own industry, to the public and to other countries to achieve better understanding of their national and collective activities.

There is a clear tendency to see export controls as an activity carried out in partnership with industry. There has been a conscious attempt by regulators to develop rules that both sides (government and exporters) agree to be necessary and reasonable to create a platform for more effective joint implementation.

In Sweden, the United Kingdom and the United States the governments all have a statutory requirement to report regularly to the parliament on aspects of their exports and the way in which these exports are controlled. This is not the case in Austria, though the preparation of the consolidated report on arms exports by the European Union in the context of the Code of Conduct means that public information is becoming available in Austria for the first time.

Increased levels of reporting and public explanation have been a defensive mechanism in Sweden and the United Kingdom. In both countries a failure to maintain modern controls and to explain those controls adequately had led to domestic controversy in the past. The process of legislative review, reform, transparency and accountability have now gone a long way to restoring confidence that there is a good faith effort to control exports in a responsible way in these countries. Transparency and reporting on exports of controlled items has become much more normal and routine, certainly among the countries included in this report.

International cooperation is looser than during the Cold War. Then, COCOM involved an embargo on the transfer of a wide spectrum of goods and technologies to named destinations. Exceptions could be made only with the consent of all partners (which was rarely given). Since the end of COCOM (in 1995) cooperation has aimed to develop an agreed body of positive and negative rules related to the end-use of controlled items. However, except for dual-use goods within the EU, states are alone responsible for interpreting and applying common rules and do not need the consent of others to approve exports.

The security issue areas for which export control-related rules have been or are being elaborated has expanded to include:

- ▶ safeguarding and enhancing regional stability and security;
- ▶ preventing the proliferation of nuclear weapons;
- ▶ preventing the proliferation or illegal use of chemical weapons;
- ▶ preventing the proliferation or illegal use of biological weapons;
- ▶ preventing the proliferation of missiles that could be used to deliver nuclear, chemical or biological weapons;
- ▶ the protection of human rights;
- ▶ anti-terrorism.

The situation where export control cooperation is continuously expanding to encompass more countries, more issues and more transaction types is beginning to make it more difficult to achieve harmonisation. However, in the area of greatest current concern (the need to prevent the proliferation of nuclear, biological and chemical weapons) clearer and specific common rules are beginning to emerge.

On other matters general objectives have been written into documents agreed in the United Nations, the OSCE, the EU and into the guidelines and documents of informal cooperation arrangements. However, while accepted in broad terms there is not agreement on precisely how these objectives should be translated into national decisions.

The convergence of views on export control policy issues (including how to interpret the guidelines agreed in international multilateral forums) is increasingly greater within the European Union. The current US policy review is partly to consider whether the United States should continue to adopt foreign policy controls in conditions where EU states are unwilling to put similar controls in place.

Regarding the "how", there are widespread differences among the countries in the case-study sample regarding how they write their legislation and how they organise the administration of national export controls (including licensing and enforcement). Sweden, the United Kingdom and the United States all appear to have national systems that are effective in their particular context. This makes the search for international "best practice" more difficult.

## A.2 National Context and Policy

### A.2.1 Defence Technology and Industry Base

The national export policies of the four countries are all shaped partly by the level of arms production and trading and the presence of dual-use industries, as well as by foreign and security policy stances adopted by the country in question.

To support its stated objective of building and maintaining military forces that are “beyond challenge” the United States maintains a massive research, development and production base. The US is the main source of new military innovation. At the same time, the United States continues to need effective and mutually beneficial defence relationships with other countries partly because the growing cost and complexity of defence equipment makes it increasingly difficult to meet national requirements entirely from a design and production base supported by sales to the US government alone. Therefore, US policy includes continued international cooperation with friendly countries (including exports) and places special emphasis on ties to countries allied by mutual defence treaties.

In 1999, the last year for which a published estimate is compiled, the value of arms production in the US was \$66.3 billion (€56.7 bn) of which approximately \$18 billion (€15.6 bn) was exported. There is no precise estimate available of employment in arms production in the United States. However, as a rough approximation, around 2.2 million people were directly or indirectly employed in the units of US companies where arms production was carried out.

The United Kingdom, along with France, has the most highly developed defence technology and industrial base (DTIB) in Europe. Sweden also has a relatively highly developed base in European terms. The UK and Sweden have both retained the national capacity to provide their armed forces with a significant proportion of the equipment they require. However, even more than the United States, they need international cooperation to help sustain a capability to meet their needs.

The UK defence industrial policy requires that the equipment needs of the armed forces must be met on time and at acceptable cost. The UK armed forces have a threefold role: territorial defence against external aggression, actions in support of decisions taken by the international community (ideally but not necessarily in the form of decisions taken in the United Nations) and in certain circumstances to help maintain internal order. A wide range of equipment is needed to carry out these responsibilities either independently or in cooperation with forces from other countries.

Current Swedish defence industrial policy requires that the country retain capacities to regenerate military capabilities should there be a change in threat assessment. This requires the retention of defence industrial competence in technical areas considered central to reconstitution unless and until Swedish authorities are fully confident that their military needs can be met in some other manner. Sweden does not intend to join an alliance or collective defence arrangement and so this security of supply must include a certain independent capability.

According to the UK Ministry of Defence, the defence industry has an annual turnover of around £15 billion (€21.5 bn) and employs roughly 345,000 people directly and indirectly in the UK. The defence industry provides around 3% of total UK manufacturing output. Defence exports over the period 1997-2001 averaged £5.3 billion per year and account for around 100,000 jobs.

In 2002 the Swedish defence industry (defined as the companies belonging to the national Defence Industry Association) recorded combined sales to military users of approximately SEK19 billion (€2.1 bn), 51 per cent of total sales by these companies to all customers. Total military equipment sales in 2002 were worth around SEK8.5 billion (€0.9 bn) of which around 40 per cent was exported. These Swedish companies employ around 24,000 people in total, of whom around 14,000 people work in military production.

Against this background the United Kingdom and Sweden both need to avoid defence industrial policy choices that close off too many future options either in terms of technology or in terms of potential partners. To meet their needs both countries have pursued a defence industrial policy that places growing emphasis on internationalisation. In both countries military production takes place predominantly in the private sector, though the government in each case retains significant defence research capacity in public ownership. The governments also encourage inward investment

into local defence industries and have permitted significant foreign ownership of defence manufacturing companies.

National defence budgets in Europe cannot support the full spectrum of research required to retain leading-edge capabilities in all potential future areas of interest. International collaboration is becoming an important instrument to ensure access to military-relevant technology and the UK and Sweden (with France, Germany, Italy and Spain) hold the core European defence research capacity. In the six -nation Framework Agreement the Directors of Defence Research from these countries are trying to identify areas in which shared research can be planned, organised and the results made available to partners in order to make the most effective use of resources.

The United States and the United Kingdom have both had offensive and defensive biological weapons programmes as well as chemical weapon development and production programmes in the past. While both are parties to the Biological and Toxin Weapon Convention and the Chemical Weapon Convention respectively (and have thereby abandoned their offensive programmes), the US and the UK retain the technical knowledge gained in the past.

Of the four case-study countries, the United States, the United Kingdom and Sweden have all actively explored nuclear weapons development, while the US and UK have also gone on to produce and deploy nuclear weapons along with delivery systems. Sweden abandoned its nuclear weapons programme at the time it signed and ratified the Nuclear Non-proliferation Treaty, but the specific knowledge gained during the research and design stages is retained. The Swedish Defence Research Agency has also developed detailed technical expertise in the area of biological and chemical weapons.

Using their national resources, the United States, the United Kingdom and Sweden can all make authoritative technical analyses to determine whether features that are present in other countries could support nuclear, biological and chemical weapon programmes of concern. These national technical capacities in turn inform judgements about what should be subject to control when exported.

Austria has a much smaller defence industry. Historically, arms exports included heavy artillery, armoured vehicles and small arms. However, recently most licence applications refer to small arms and most of the recipients of Austrian small arms are police forces, interior ministries and individuals.

## A.2.2 Export Policy

### A.2.2.1 Policy on Military Exports

Sweden, the United Kingdom and the United States all have published arms export policies as well as national guidelines that are taken into account when making decisions about approving or denying applications to export controlled items.

#### **Sweden's Military Export Policy:**

Swedish arms export policy has been influenced by the distinct nature of its wider foreign and security policy choices in relation to neutrality and non-alignment. According to Swedish legislation (described in Section 3) export of weapons from Sweden is prohibited – stemming from the traditional policy of non-alignment in peace and neutrality in war – and because of the general Swedish commitment to disarmament and arms control. However, this prohibition is qualified in

the light of the need noted in Section 2.1 above to maintain a defence industry as an element of national defence policy.

Military equipment may be exported for security policy or defence policy reasons provided the export does not conflict with Sweden's foreign policy and only after thorough scrutiny of every individual case. Moreover, in law a distinction is drawn between "weapons" (defined as lethal equipment) and "other military equipment" and these items are not assessed in exactly the same manner when export licence applications are reviewed.

The practical effect of this policy approach has been to limit the markets into which Swedish exporters of military equipment may legally sell their goods and services. However, the policy has become progressively more difficult to implement nationally because of the decision by Sweden to participate in increasing internationalisation of production and sales. To safeguard its own policy, Sweden has had to push for increased harmonisation of export control rules with its main industrial partners (within the European Union, in the Framework Agreement and bilaterally with the United States). The primary objective at present is to minimise the most obvious contradictions in export policy (for example related to countries in the Middle East and South Asia) that could be a barrier to increased defence industrial cooperation by raising concerns about sales to third parties. It is recognised that in the medium and long term a deeper harmonisation will be required.

#### **United Kingdom Military Exports Policy:**

UK policy on arms and dual-use exports has been laid down in ministerial statements and the main emphasis is placed on foreign policy interests, defence interests and the need to uphold United Nations and other sanctions. The UK supports the right of all countries, as sovereign states, to defend themselves from attack, as embodied in Article 51 of the United Nations Charter, while noting that not all nations have the industrial infrastructure to produce their own equipment. Therefore, policy statements emphasise the positive benefits gained from defence exports: to contribute to the security of friends and allies overseas, to support a strong UK defence industry, to maintain the skills of the industrial manufacturing base, to reduce the burden of UK defence spending and to promote the economic and social welfare of the communities in the UK where exported articles are produced.

UK policy emphasises that arms exports must be managed responsibly, in particular so as to avoid their use for international aggression or internal repression. The UK does not approve defence equipment exports if to do so would fail to comply with UK's international obligations or if there is a clear risk that the proposed export might be used for internal repression or international aggression, or may affect regional stability in any significant way.

The UK policy statements note that the close bilateral relationships created through defence cooperation (in which equipment cooperation and defence sales are often the most important element) can also have a broader positive effect on bilateral political relationships as well as contributing to the defence of friends and the maintenance of regional stability.

Unlike Sweden and the United States, the UK considers that because of the importance of the DTIB as part of the overall manufacturing base and because local economies throughout the UK are highly dependent on the jobs created by defence exports, these exports should be promoted in part to safeguard the economic and social health of these parts of the UK.

In recent years ministerial statements have increasingly been made on specific export control policy issues, often in response to parliamentary questions.

### **United States Military Exports Policy:**

The arms export control policies of the United States are set out in a number of public documents, including legislation. Defence articles and defence services can be sold or leased to friendly countries solely for internal security, for legitimate self-defence, to permit the recipient country to participate in regional or collective arrangements or measures consistent with the Charter of the United Nations, or to permit the recipient country to participate in collective measures requested by the United Nations for the purpose of maintaining or restoring international peace and security. As in Sweden (but not in the UK) arms export policy is seen exclusively as a part of national security policy and is not regarded as an element of trade policy.

The primary formal statement on conventional arms export policy is the Presidential Decision Directive (PDD-34) on Conventional Arms Transfer Policy announced on 17 February 1995 by President Clinton. In 2002 the State Department initiated a review of US arms export policy to ensure that defence trade supports the security of the United States, contributes to peace and stability (including regional security), supports non-proliferation and counter-terrorism policies, strategies and international commitments, controls military critical technologies and protects such technologies from diversion. At time of writing, this review has not yet been completed.

It is US policy to facilitate common defence first and foremost with allies but also with friendly countries by means including exchange of data, research, development, production, procurement, and logistics support. To help implement this policy US legislation authorises sales to friendly countries that are able to equip their own military forces without placing an undue burden on their economies. These sales must be made in accordance with the restraints and control measures specified in legislation.

Defence articles and defence services are to be supplied solely for internal security (including for antiterrorism and non-proliferation purposes), for legitimate self-defence, to permit the recipient country to participate in regional or collective arrangements or measures consistent with the Charter of the United Nations, or otherwise to permit the recipient country to participate in collective measures requested by the United Nations for the purpose of maintaining or restoring international peace and security.

Legislation also authorises the US government to provide defence articles and services to allies and friendly countries at reduced cost or as aid where there is considered to be a compelling reason grounded in national security and defence policy. The United States also has a policy of trying to reduce the economic burden of armaments. The Congress has also expressed in legislation the view that the US should not pursue a policy of trying to increase the overall value of arms exports. In cases where the US sees a need to do so the Foreign Assistance Act of 1961 authorises the export, sale, and grant of defence articles and defence services as well as the use of economic assistance where necessary defence programmes risk having a negative impact on programmes for social and economic development.

The Arms Control and Disarmament Act establishes a policy to encourage regional arms control and disarmament agreements and to discourage arms races. The US Congress has also expressed in legislation that the President should initiate multilateral discussions to seek agreements among the principal arms suppliers and arms purchasers to control the international arms trade.

#### **A.2.2.2 Policy on Dual-use Exports**

All of the case-study countries are aware at policy level that there is a need for review of dual-use export controls to ensure that they remain effective and feasible in the light of changes in security

policy priorities — notably the increased political priority being given to both efforts to prevent the spread of nuclear, biological and chemical weapons and delivery systems together with the imperative to prevent the use of NBC weapons or other dangerous materials in terrorist attacks.

In all four countries there is a similar emphasis on ensuring that export controls do not place undue burdens on legitimate trade. At the same time, there is a change in emphasis in recent statements reflecting the non-proliferation and counter-terrorism imperatives that are currently leading some countries (certainly the United States and the United Kingdom) to focus their resources on increasing the effectiveness of dual-use export controls on NBC weapon components.

The practical consequence of these changes is to move away from controls based on applying agreed rules to all exports and towards a greater focus on targeting controls and assessments on exports to countries of concern.

#### **Sweden's Dual-Use Policy:**

Sweden maintains controls on dual-use items when they can be used in the production or facilitation of weapons of mass destruction and other military equipment or for other military purposes. In policy terms it is considered important that dual-use products can be used for completely legitimate civilian purposes.

The presumption for these products is that export is allowed but can be prohibited on a case-by-case basis if there is an unacceptable risk they will be used for development and production of weapons of mass destruction, or if there is a clear indication that they will be used to violate human rights. Trade policy is not used more broadly on a national basis as an instrument to encourage political change in other countries — and in the context of the European Union role in commercial policy could not realistically be used in this manner.

#### **United Kingdom's Dual-use Exports Policy:**

UK policy on dual-use export controls has progressively placed greater emphasis on the need to respond to nuclear, biological and chemical weapon proliferation threats.

The policy is increasingly one of identifying potential “choke points” in terms of critical technologies, and by understanding more fully the routes and methods by which the principal targets of export controls acquire controlled items. In parallel, the policy increasingly emphasises international cooperation with other countries to create conditions in which exports can take place safely. In these cases the policy is to make more use of types of control that industry will find easier and less costly to implement.

There is also a general policy of working more closely with industry both in the UK and internationally to enhance the effectiveness of dual-use export controls. This general policy is expected to be strengthened even further as new controls (in particular on intangible technology transfer) are being prepared.

#### **US Dual-use Exports Policy:**

With a very large and diverse high-tech manufacturing and science and technology base, including its universities and research institutions, the United States is a major source of dual-use items. This means that developing an effective and efficient export control system for dual-use products that satisfies legislative requirements, without placing a major burden on industry, is a great challenge for the US.



The Export Administration Act includes a declaration of policy on dual-use export controls. The main objective of US dual-use export control policy is to ensure that exports from the United States and re-exports of U.S.-origin items from third countries are consistent with U.S. national security and foreign policy objectives, without imposing unnecessary regulatory burdens on U.S. exporters or impeding the flow of legitimate trade. Therefore, the United States tries to encourage trade with all countries with which the United States has diplomatic or trading relations, except those countries with which such trade has been determined by the President to be against the national interest.

As a result, restrictions imposed on trade are only justified to restrict exports of goods and technology which would make a significant contribution to the military potential of any other country or combination of countries which would prove detrimental to the national security of the United States; or to restrict the export of goods and technology where necessary to further significantly the foreign policy of the United States or to fulfil its declared international obligations.

The Bureau of Industry and Security within the Department of Commerce is currently (late 2003) carrying out a review of the foreign policy aspects of controls on dual-use items to see whether they need to be amended and if so how. One element of the review is prompted by concerns expressed by exporters that they suffer a competitive disadvantage because similar foreign -policy-based controls are not in place in their competitors.

## **A.3 Arms Control Legislation**

### **A.3.1 Overview**

Austria, Sweden and the United States use separate primary legislation to regulate exports of military and dual-use items, respectively. The United Kingdom has introduced a single piece of primary legislation (the Export Control Act) to cover all types of item controlled for strategic reasons. Dual-use exports from Austria, Sweden and the UK are also governed by EU Regulation.

The primary legislation of Austria, Sweden and the UK tends to provide definitions, basic licensing requirements and general authority to the executive branch to write more detailed regulations into secondary legislation.

The US primary legislation, on the other hand, contains a lot of material that is included in policy statements and guidelines in the other countries. The legislation includes considerable detail related to policy questions expressed in language that is very close to being an instruction to the executive branch about how to carry out assessments during licensing.

### **A.3.2 Austrian Legislation**

In Austria, the import, export and transit of war material is controlled by the War Material Act (Federal Law on the import, export and transit of war material of 18 October 1977, as amended in June 2001). The list of war material subject to this law is defined in the secondary legislation (Ordinance of the Federal Government of 22 November 1977 regarding war material). The ordinance, which has never been amended, consists of the war material list. "War material" is defined to include weapons, munitions and equipment; land armaments; aircraft for war; naval equipment; and machines and equipment that can be used to produce war material.

The law establishes that the import, export, transit of war material require a government licence, and it includes definitions of these activities. The law establishes penalties for unauthorised transfer of war material.

All other controlled goods are subject to the Foreign Trade Law (Bundesgesetz über die Durchführung des Warenverkehrs der Ein- und Ausfuhr (Außenhandelsgesetz 1995 - AußHG 1995) und zur Änderung des Gebührengesetzes 1957, BGBl. 172/1995. The Foreign Trade Law was revised in 1995 and has subsequently been updated to reflect changes in EU legislation. The foreign trade list is regularly revised in line with EU legislation.

The Austrian foreign trade Law establishes that foreign trade does not require a licence except in cases explicitly prescribed in the law. The provisions of the foreign trade Law apply to import, export and brokering of items and technology, which are defined in the statute. Article 3 stipulates that an ordinance must specify those items and technology requiring an export licence within three categories: NBC weapons and technology, dual-use items and technology and arms, munitions and explosives, unless covered by the War Material Act.

The law establishes the Ministry of Economics as the licensing authority. Article 8 specifies the criteria to be considered when deciding on an application for permission to export a controlled item. These criteria are based on Austria's obligations under international law, (including sanctions implementation), the need to uphold world peace and international security, the need to safeguard the national security and external relations of Austria and the imperative to reduce the risk of armed conflict. Article 10 to 12 explain the licensing procedure and the information that can be required from the applicant as well as investigating powers of the competent authorities. Articles 17 to 20 of the law elaborate the penal provisions.

Austrian export legislation will probably be amended based on the recommendations of the EU Common Position on Brokering of June 2003 and an amendment to the Foreign Trade Act, which already applies to brokering, is currently already prepared. While the War Material Act also refers to brokering, "brokering" only appears in the definition of the term and in the legal sanctions to be applied, but the national criteria for export and transit licensing were not extended to brokering. The EU Common Position may provide an opportunity to close this loophole.

### **A.3.3 Swedish Legislation**

In Sweden the primary legislation regulating arms exports is the Law on Military Equipment (1992:1300). This provides the controlling legal authority for the Military Equipment Ordinance, defining the military equipment covered by law and containing the detailed regulations that apply to exporters.

The law includes a comprehensive requirement to hold a permit in order to manufacture, export or supply military equipment legally. The law establishes a requirement that permit holders report to the national authority (the Inspectorate for Strategic Products, ISP) on marketing activities, contracting and the transfer of items. Military equipment may not be supplied to a foreign end-user without a licence. The law defines supply as sale, transfer, offer for sale, loan, gift or intermediation (which is considered to include brokering though that word is not used in the law) and establishes that transmission by intangible means is equivalent to supply. The law establishes that any agreement involving the granting or transfer of manufacturing rights for military equipment abroad requires a licence.

The Ordinance includes more detailed instructions on licensing requirements, and record keeping, and establishes the national list of items subject to licensing.

The control list is developed around the principle that military equipment has been specially designed, developed or modified for military use. Military Items are further divided into two categories: war material for fighting and other war material. The main distinction is whether the

item is itself capable of destroying life or property. War material for fighting includes weapons, weapon-bearing platforms and ammunition but different regulations apply to firearms for hunting or sporting activities (which are classified as other military equipment).

The primary legislation regulating exports of dual-use products (other than the EU regulation) is the Law on control of dual-use products and technical assistance (2000:1064) which complements the EC Regulation 1334/2000 by defining the term "technical assistance"; establishing the Inspectorate for Strategic Products as the implementing agency in Sweden; detailing the requirements for exporters to report to ISP about their dual-use exports and providing the authority to verify the contents of these submissions and establishing penalties for violations as well as an appeal procedure for exporters denied permission to export.

In secondary legislation, the Ordinance on control of products with dual-use and of technical assistance (2000:1217) establishes more detailed provisions on licensing, including provisions that certain permits for nuclear-related exports should be sought from the Swedish Nuclear Power Inspectorate (SKI). The secondary legislation also establishes a requirement for exporters to report on their dual-use transfers to other EU countries to the Swedish Customs prior to the items leaving Sweden, and establishes circumstances when such advance reporting is not required.

#### **A.3.4 United Kingdom Legislation**

The UK is in the final stages of a comprehensive review and reform of export control legislation. Prior to the passage of the Export Control Act of 2002 the UK authorities (operating with legislation dating from 1939) only had statutory authority in UK legislation regarding the trade in goods, though EU legislation gave wider powers in relation to dual-use items and the United Nations Act gave wider powers with regard to controlling exports to countries under UN Security Council sanctions. The new Act had two main purposes: to update the powers available in light of the need to control new and different types of export and to increase the accountability and transparency of the export control system.

Under the new Act the Secretary of State now has the authority to control transfers by any means, including the transfer of intangible technology and technical assistance, activities facilitating transfers (brokering) and exports by UK nationals in cases where the goods in question are not physically located in the UK (trafficking). The legislation also provides the controlling authority for secondary legislation (not all of which has yet been introduced) to implement both controls on munitions list items and the European Union dual-use export control regulation. The legislation also updates the penalties for violations of the law.

The Act provides a legal basis for a greater parliamentary role in the export control system and it requires the government to send secondary legislation to the parliament for scrutiny and assent prior to entry into force. The Act also requires the Secretary of State to publish in general terms the current guidance being used in the implementation of controls, and requires an annual report to parliament on implementation of the legislation.

#### **A.3.5 United States Legislation**

Two pieces of legislation regulate US exports of military list items: the Arms Export Control Act (AECA) of 1976 and the Foreign Assistance Act (FAA) of 1961. The Congress has used annual Department of Defense and Department of State legislation along with other legislation (mainly Acts on international narcotics control) to amend the FAA and AECA. The AECA is the guiding legal authority for the International Traffic in Arms Regulations (ITAR), the main secondary legislation containing detailed provisions for exporters.

A large number of specific restrictions are written into US legislation. No defence article or service may be sold to any country or international organisation unless the President finds that the sale will strengthen the security of the US. The recipient must agree not to transfer title to, or possession of, any articles/services (including training) furnished to it by the United States without the consent of US authorities. To reduce risks of diversion, the recipient is obliged to apply the same level of security protection to the item that would be provided by the US to a similar item in its own inventory.

Since 1999, all sales and lease agreements entered into by the US government give US authorities the right to verify “credible reports” that a defence article or service supplied has been used for a purpose not authorised under the terms of the agreement authorizing the transfer.

The primary legislation controlling exports of dual-use items remains the Export Administration Act of 1979. However, this Act expired in August 2001 and Congress has agreed no new primary legislation. At present the US is using emergency economic powers of the President to keep in place the provisions of the expired Export Administration Act to provide legal authority for the Export Administration Regulations (EAR), the secondary legislation containing detailed provisions for exporters.

The EAA defines an export as any item that is sent from the United States to a foreign destination. “Item” is defined to include both physical goods and software or technology, as well as so-called “deemed exports” (information and knowledge gained in the US and then taken out of the country by individuals when they leave). An item is also considered to have been exported if it is leaving the United States temporarily, if it is going to a wholly owned U.S. subsidiary in a foreign country or if it is a foreign-origin item being transmitted or transhipped through the United States.

As noted above, the US primary legislation is so comprehensive and detailed that it is difficult to summarise in a coherent way. Under the US legislation four factors may lead to a licensing requirement:

- ▶ the first factor is the classification of the item on the Commerce Control List that forms part of the EAR;
- ▶ the second factor is the country of ultimate destination as the US maintains a country list that specifies different controls on a country basis;
- ▶ the third factor is the ultimate end-user within the country of ultimate destination and the fourth factor is the ultimate end-use to which the item will be put by that ultimate end-user;
- ▶ finally, the arrangements by which the item is transferred—the forms of contracting, financing and freight forwarding—may themselves be licensable if they could be assisting in a weapon programme of concern because they form part of the US understanding of the term brokering.

The country list is in essence a matrix in which each country is coded to indicate the reasons for which an item is controlled. Certain items are controlled to all destinations while others require a licence only when exported to particular countries. If a control-listed item is exported to a destination to which that item is not controlled it is sufficient that the exporter state the item classification code and mark the Shipper's Export Declaration “no licence required”, and then submit the SED to the customs office at the point of export. This is in contrast to the European tendency for item or list -based controls by which no item that is on a control list can be exported without a licence of some form. The reasons for control are: anti-terrorism, chemical and biological weapon-related concerns, crime control, chemical weapons convention implementation, encryption items, firearms convention implementation, missile technology concerns, national security concerns, nuclear proliferation concerns, regional stability concerns.

The Export Administration Act allows for individual licences, global licences (called general licences in the US) and other forms of licence permitting multiple shipments.

## A.4 Licensing Operations

### A.4.1 Overview

The four case-study countries organise their licensing operations in different ways. Sweden has a specialised licensing agency, the National Inspectorate for Strategic Products. The United Kingdom has one licensing authority (the Department of Trade and Industry), with an extensive inter-agency review process. The United States and Austria divide licensing authority between government ministries. In the US the Department of State is responsible for licensing military articles and services, the Department of Commerce is responsible for dual-use items, and the Department of Energy is responsible for licensing some nuclear materials. In Austria the Interior Ministry is responsible for licensing military list items while the Economics Ministry is responsible for licensing all other controlled items.

The basic information requirements for licensing (information about exporters, information about products and technologies, information about end-users and information about transaction types) are common to all export control systems. However, the way in which this information is collected, stored and shared differs from system to system.

### A.4.2 Austrian Licensing Process

#### A.4.2.1 Organisational Structure

In Austria, the Ministry of the Interior (Department III.3) is the competent licensing authority for exports, imports and transit of war material.

The Ministry decides on a licence application in agreement with the Ministry of Foreign Affairs and after consultation with the Ministry of Defence. The following criteria are to be taken into consideration: obligations under international law and Austrian foreign policy interests; (the potential of) armed conflict, dangerous tensions as well as the human rights situation in the recipient country; UN embargoes; Austrian security or military considerations; and “other comparable important considerations”.

An end-user certificate can be, but need not necessarily be, requested. However, the Ministry of the Interior must immediately be notified of an actual export when it takes place.

Within the Interior Ministry, four staff work on military goods licensing and the responsibilities for dealing with licensing applications are divided by company. Change of personnel is rare. The Interior Ministry consults external experts for technical opinions.

Within the Economics Ministry, the licensing authority for all other controlled goods, three departments deal with different aspects of exports of dual-use goods and technology. However, these departments also cover other issues and are not exclusively dedicated to export control matters. Nuclear issues are dealt with by a department formerly located within the Federal Chancellery, but recently transferred to the Economics Ministry. Applications for nuclear dual-use exports are few (less than five per year) and individuals from this department cover both licensing and matters related to the NSG and the relevant EU Council working group. A second section covers dual-use licences and the Wassenaar arrangement. The third department actually issues export licences and also deals with MTCR matters as well as the Chemical Weapons Convention, Biological Weapons Convention and arms embargo matters. Within the department, six people deal with export licensing.

Within the Economics Ministry, one physicist, one chemist and two technical experts (one Information Technology specialist and one communications technology specialist) advise on technical matters. If additional expertise is needed (for example for military or biological items) a university or the ‘Amt für Wehrtechnik’ (armaments agency) provide an evaluation.

The technical experts are also used as a resource to work on other issues as needed, since technical evaluation of licence applications is not a full-time job. Change of personnel is rare within the Ministry and the current head of department has worked on export controls with the Ministry for the past 18 years.

In the Foreign Ministry, three to four people work directly on licensing, although many others are consulted, in particular geographical desks. Change of staff follows the usual rotation principle.

None of the three ministries involved in export control offer their staff special training or support.

#### **A.4.2.2 Licensing Procedures**

Only individual licenses are issued for war material. This is usually also the case for other types of military equipment and for dual-use goods. Global licenses are rare and Austria does not co-produce armaments jointly with other countries.

According to the War Material Act, the Interior Ministry issues export licences for war material in agreement with the Foreign Minister and after consultation with the Defence Ministry. In cases where the Interior Ministry itself decides on a denial, further consultation is not needed.

For licences issued under the Foreign Trade Act, opinions are sought from the Foreign and Defence Ministries, but these ministries do not have a statutory veto power over a licence application. The consultation process works according to a timetable in which no response within a particular period is interpreted as consent.

The Foreign Ministry forwards denials issued by the Economics and Interior Ministries to other countries. Consultations are also conducted by the Foreign Ministry. In 2002 the Interior Ministry issued one denial and was involved in two consultations related to reported denials. Since June 2001 (when the War Material Act was revised) Austria has been able to circulate denial notifications to other EU governments. Austria did not circulate any denials during the first three years of the operation of the EU Code of Conduct because of restrictions in its Data Protection Act.

The Economics Ministry formally denies approximately 5-6 licences annually each for military equipment and dual-use goods, though some applications are either not formally submitted or withdrawn after prior consultations between the exporter and the Ministry.

When assessing applications the Interior Ministry refers to information provided by the relevant Austrian overseas embassy (e.g. regarding human rights) and the 'Bundesamt für Verfassungsschutz und Terrorismusbekämpfung', inter alia. Information provided by foreign secret services is not used for legal reasons.

The Economics Ministry stores information about end-users in a database and, when assessing who is a legitimate end-user, decisions are based on denial notifications received from other governments in the framework of the EU Code and Wassenaar as well as information exchange in the context of other export control regimes; informal consultations with licensing officials in other EU Member States and accession states as well as other countries such as the Baltic states and open sources (including risk assessments purchased commercially from the United States). In making an assessment, the general rule is to deny dual-use exports to a military end-user located in a country of concern but to approve exports to all civilian end-users unless there is a compelling reason not to. Denials information provided by other countries is taken into account, but is not considered sufficient in itself in all cases for Austrian authorities to deny a licence.

While EU Code criteria are referred to in denial notifications circulated to other Member States, these cannot be used to internally justify a denial. Denials sent to companies do not refer to the EU Code but a provision from Austrian national law is referred to. Code considerations are therefore included indirectly, for example by mentioning foreign policy interests (i.e. of respecting the EU Code criteria). Exporters can challenge a licence denial in court.

### **A.4.2.3 Oversight and Reporting**

Apart from the approval of primary and secondary export legislation (acts and ordinances), there is little parliamentary involvement in the Austrian export control process.

The Foreign Ministry compiles the national military exports report prepared in the context of the EU Code of Conduct based on information from the Interior and Economics Ministries. The report is compiled from a series of basic material. The Interior Ministry annual report on 'deliveries of war material' details the number of items for export of seven categories of armaments into 12 regions. It also provides the number of transit licences issued. For other military equipment the Economics Ministry provides the following: for each licence, the value, quantity (number of pieces or weight), military list rating and recipient country are indicated. The number of denials per recipient country is also provided, together with the number of consultations received and initiated. Reasons invoked to refuse export licences are not mentioned but general information on the legal basis and procedures of decision-making is provided.

Austrian arms export legislation requires that the Government provide the National Security Council with an annual report on exports of war material. The law further specifies that the report must contain information about exports, broken down into types of 'war material' and geographical regions. The Council is made up of the Chancellor and Vice-Chancellor, representatives from all parties represented in Parliament and representatives from the relevant ministries. According to Austrian law, the National Security Council could be convened before a controversial licensing decision is taken, but this has not happened in the past decade.

Officially, the National Security Council is the only domestic body to receive statistics on Austrian arms exports, and these are treated confidentially. However, the statistics are basically the same as the ones given to other EU Member States in the EU Code report and are therefore published in the Official Journal of the European Communities, i.e. information considered confidential in Austria is available through the European institutions and on the internet.

## **A.4.3 Swedish Licensing Process**

### **A.4.3.1 Organisational Structure**

The National Inspectorate of Strategic Products (ISP) is the agency that approves and controls Sweden's exports of controlled items, both military and dual-use, with the exception of certain nuclear materials. The ISP has 19 full-time staff employed and a budget of approximately SEK20 (c. €2.1 mn) million. The ISP is authorised by the Swedish government to assess, approve or deny licence applications. The ISP can forward issues of principle or matters of particular importance to the Ministry for Foreign Affairs for decision. The decision about what to forward is taken by the ISP.

The Export Control Council, consisting of representatives from all political parties with a seat in the parliament, assists the ISP to interpret the guidelines for arms exports and also receives briefings on all export licences prior to a decision by ISP. The Export Control Council is an advisory body and does not have authority to approve or deny a licence. However, in practice the ISP Director General has not issued licences after objections by the Council.

The exporter has the primary responsibility for assessing whether or not an item requires a licence. However, the ISP has a Scientific and Technical Council attached to it to offer advice both to ISP and to exporters. Exporters are required to supply information to ISP about the function and use of the item in question, details about the construction and technical capabilities, information about who originally developed the product, for which customer and how the item was certified for use. Based on this information the Scientific and Technical Council offers an opinion to ISP, which decides on how to classify the item for the purposes of licensing. While numbers vary, roughly 30 such assessments are made annually.

The members of the Scientific and Technical Council are representatives of technical authorities such as the National Defence Research Agency, the Space Agency and the National Academy of Engineering and Science who in turn draw on the expertise of their particular agency in offering an opinion.

#### **A.4.3.2 Licensing Procedures**

The procedure for national export control of military equipment consists of the following steps. First, there are regular meetings with the companies registered and holding permits to develop and produce military equipment. Second, advance notification of a forthcoming contract is provided to ISP. Third, information is provided about the details of the tender and the contents of the contract. Fourth, there is an application for an export licence and an end-user certificate is provided.

ISP has developed a system for close consultation and has a calendar of regular bilateral meetings with military equipment exporters that include briefings on future marketing plans of the company and information about the negotiations with the foreign customer. The law gives the ISP a right to this information and the ISP uses it when necessary to require changes in contracts between Swedish exporters and foreign customers. As a result of this close cooperation, very few licence applications are denied since industry has been told in advance which types of transaction will be approved and which will not.

In the area of military equipment the Swedish government has tried to develop clear guidelines based on widespread discussions with parliament, and these were published in the Report of the Standing Committee on Foreign Policy (1992/1993:61). The guidelines include the statement that there are no foreign or security policy obstacles to supply of military equipment to Nordic countries, to countries that have traditionally been seen as neutral and non-aligned or to European Union member states. In this way the processing of most export licence applications is simplified without removing the requirement for a case-by-case assessment.

Many of the guidelines and licensing practices have been responses to demonstrated export control failures. The discovery of diversion of items to unauthorised destinations in the Middle East has led to a high emphasis on re-export controls. The ISP has tried to evaluate the effectiveness of the export control systems of countries to which exports are made. The current EU "peer review" process (in particular as applied to the new EU Member States) is very much welcomed as an extension of this effort.

Under the guidelines military equipment may only be exported to an end-user that is a state authority or a state-authorized end-user. Under the guidelines certain criteria would always lead to a denial (the existence of a UN, OSCE or EU arms embargo) and other criteria that are very likely to lead to one. The latter include cases where a country is known to have violated Swedish regulations on end-use or end-user control.

In cases where a licence is being sought to supply spare parts or other necessary items (such as ammunition) to support the use of an item previously granted an export licence, it is presumed that the licence will be granted unless there is a mandatory reason for denial (an arms embargo) or the conditions have changed significantly (e.g. the country is at war). In the latter case a licence will not necessarily be denied, depending on the circumstances.

Sweden does not use a standard format for military equipment export licences but deliberately modifies their structure and content to reduce the risks of documents being falsified without detection. In total, the ISP issues around 2000 licences per year for military equipment but only a small number relate to new sales. As Swedish law requires all transactions with military equipment to be licensed, the majority of licences cover the return of items sent to Sweden for repairs, the movement of equipment by the Swedish armed forces or the export of small quantities of items for demonstration purposes.



Applications for an individual licence must be accompanied by a Declaration of End Use regardless of whether the end-user is a military authority or when a company is acquiring equipment for onward delivery to a military authority.

As noted earlier, it is presumed that dual-use equipment will be approved for export unless there is evidence that the risks are too high in the context of established guidelines. ISP seeks to establish that the declared end-use is reasonable in the specific country context and judged against the available knowledge about the end-user. To make this risk assessment ISP works closely with other agencies that have their own sources of information. The main agencies for cooperation are the security police, the military intelligence agency and the Customs agency.

In addition ISP consults its own internal databases (including information provided by partners about denials), open sources and carries out a dialogue with the exporters. The information related to denials remains in the system as a "red flag" but as the more difficult cases are in any case dealt with individually (and therefore the circumstances at the time of the denial and the application can be taken into account) a past denial by a partner does not automatically lead to a denial by ISP.

In controlling dual-use equipment Sweden uses both the EU general licence and a national open general licence for certain items as well as for goods being taken for demonstration purposes or for the repair and maintenance of items exported under a previous licence. When using the open general licence exporters are still required to report their exports to the customs authority.

The use of general licences has greatly simplified the dual-use export licensing process in that the number of cases requiring detailed attention has been greatly reduced (to roughly 250 per year). These more complicated cases require individual licences. However, this has also strengthened the Swedish view that in future a more detailed discussion will be needed (in particular within the EU, but also with other "white list" countries) about how they carry out national licensing of dual-use products.

The licence application is submitted on a special form and the ISP has issued recommendations on how the form should be filled in (what kinds of information and what levels of detail are needed) to accelerate the processing of the application.

In cases requiring detailed attention, the ISP will try to establish who is the actual end-user and to satisfy themselves that the transaction is not being made with an intermediary or "front" company. For practical reasons the dual-use export control system does not allow the same level of deep and regular contact with exporters that is carried out in the case of military equipment exports. However, ISP emphasises the role of cooperation with industry to develop confidence that the exporting companies are as interested as the national authorities in making sure that exported items are used only for legitimate purposes.

The introduction of the catch-all or end-use control has had an impact on cooperation with industry. Although informal opinions about exports are not foreseen in legislation, they take place with increasing regularity (interpreted as an effort by industry to implement their catch-all obligations). The ISP advice to industry was that in cases of uncertainty exporters should consult with the authority and most companies appear to have judged the risk of doing business in sensitive countries without such consultations as too high. ISP has concluded that these consultations and advance opinions are worthwhile for the closer contact that they bring with exporters working in sensitive countries.

Swedish exporters appear to make relatively few transactions to export sensitive products to sensitive destinations and the most difficult licensing cases (i.e. the most time-consuming) are exports of dual-use products to military end-users. In these cases the Swedish guidelines require

the application of the EU Code of Conduct as part of the licence application assessment. ISP basically applies the assessment procedures that would have been applied had the product been judged to be military equipment. Sweden does not have a general military end-use control, and unlisted equipment can be exported to military end-users without a licence, unless there are reasons to apply catch-all controls under EU legislation.

In cases where an individual licence is needed to export dual-use products the ISP requires a commitment concerning re-export and peaceful use to be provided except in certain special conditions (if the end-user in the recipient country is a representative or a part of the Swedish exporter). In certain cases the end-user certificate will have to be provided by the government authority in the recipient country and in very exceptional cases the ISP can require that a product will be installed in a particular location and specify in detail the legitimate uses.

While the ISP maintains close bilateral contact with military equipment exporters, the Swedish Chamber of Commerce plays a critical role in dialogue with dual-use exporters. The Chamber of Commerce has established an Export Control Society to support company officers responsible for export licensing and export control compliance. The Society closely follows export control developments in Sweden, in the EU and in the United States and reports on these developments to its members (which include companies from across the Nordic region, not just Sweden). The Society also canvases its members for their opinions on export controls and forwards these views to ISP.

The Society mainly operates by organizing meetings at which issues of common interest can be discussed, including one large annual meeting to which government officials and licensing officers are invited to address the membership. The Society produces a regular newsletter available to be downloaded from a password protected area of its website.

#### **A.4.3.3 Oversight and Reporting**

Sweden has a relatively long history of publishing an annual report on export control related matters. As noted earlier, the reforms of the Swedish export control system followed demonstrated failures in the past, and there has been a determined effort to demonstrate the effectiveness of new measures and the good faith nature of implementation by the Swedish authorities. The Export Control Council's role has been described under "Organisational Structure" outlined above.

### **A.4.4 United Kingdom Licensing Process**

#### **A.4.4.1 Organisational Structure**

In the United Kingdom the Department of Trade and Industry (DTI) is responsible for issuing export licences. Within DTI the Export Control and Non-proliferation (XNP) Directorate is responsible for all export control matters, while the Export Control Organisation (ECO) within the Directorate is responsible for assessing licence applications.

The ECO has a staff of 150 and an operating budget of €7.6 million. ECO currently has an ad hoc team specially assembled to take responsibility for developing and implementing the new legislation, and it may be retained to conduct consultation, information and outreach activities both within government (inside DTI and to other departments) and outside.

A number of different licence documents are used of which the most important are the Standard Individual Export Licence (SIEL), the Open Individual Export Licence (OIEL), the Open General Export Licence, the Community General Export Authorisation, Transshipment Licence and the Global Project Licence. In addition, special licences are written on an individual basis to authorise exports to destinations where UN sanctions apply.

The number of licence applications has averaged roughly 11,000 in recent years. In 2000 around 300 of these applications were denied. In cases where DTI sends a licence application for inter-agency review the application can normally be processed in roughly 20 days. In cases where the review takes place within DTI the normal time for processing is 10 days.

#### **A.4.4.2 Licensing Process**

The process of licensing by DTI consists of the following tasks (which are not sequential): application, rating (in roughly 2–3000 cases per year DTI is asked to establish whether an export is licensable), circulation to other departments, assessment and decision by DTI, appeal (by the exporter in case the licence is denied), judicial review (in case the exporter is not satisfied with the outcome of the appeal).

The Export Control Organisation has a technologies unit staffed by specialists (scientists and engineers) able to assist with the rating of applications and with control list interpretation and development.

The DTI may refer licence applications to the Foreign and Commonwealth Office (FCO), the Ministry of Defence (MoD) and the Department for International Development (DFID) in making an overall assessment. Virtually all military list licences (roughly 10,000 per year) are now submitted to these agencies. Most cases are dealt with through communications among officials. However, the most difficult cases—usually those that involve particularly sensitive destinations or those that establish precedents—are submitted to ministers.

DTI is currently leading a special project (called the JEWEL project) to evaluate how cooperation across departments can be made more effective and efficient.

The Foreign and Commonwealth Office provides an opinion on most of the consolidated national and EU criteria with the exception of criteria 5 and criteria 7 (where opinions are given by the MoD) and criteria 8 (where an opinion is given by DFID). The main emphasis of the FCO appears to be placed on issues related to sanctions, upholding international commitments undertaken in the framework of international organisations and respect for human rights.

Decisions are taken by consensus and DTI does not override opinions of other agencies even though it has the statutory authority to do so.

While it is difficult to estimate the time contributed to licensing related tasks by agencies other than those directly responsible at DTI, it is clear that this activity is taken increasingly seriously within FCO in particular — which is reflected in resource allocation. About 15 people work full time on export control related issues, mainly legal officers, and in all about 100 people (mainly country desk officers) are in some way engaged in the process. To this would have to be added staff in embassies around the world. It is estimated that for many countries licensing questions take up only a small amount of desk officer's time (perhaps 5–10 per cent) but in some countries (Israel for example) it amounts to about 50 per cent of the workload.

The consolidated EU and National Arms Export Licensing Criteria were announced on October 26 by Foreign and Commonwealth Minister Peter Hain. These criteria are applied to all exports of arms and any goods controlled for strategic reasons on a case-by-case basis. In applying the criteria export licences are not approved if to do so would fail to comply with a UK international obligation, or if there is a clear risk that the proposed export might be used for internal repression or international aggression, or may affect regional stability in any significant way. The UK criteria applied in cases of arms exports are informed by the Guidelines for Conventional Arms Transfers agreed by the five permanent members of the United Nations Security Council in October 1991 and the Principles governing arms transfers agreed in the OSCE Forum for Security Cooperation in November 1993.

Exporters can submit licence applications electronically and a growing number do so. There is no requirement for exporters of controlled items to register with the export control authorities, but there is a need to register in order to use the electronic facility. The use of electronic licence applications is thus creating a de facto register of exporters.

In processing licence applications the ECO makes use of its internal resources as well as separate databases in which information from EU Member States and partners in international cooperation arrangements are stored. The UK practice on the use of information on licence denials is very similar to that of Sweden. As assessments are made on a case-by-case basis, the denials information from partners is retained in the database but does not in itself represent a reason for a UK denial. The ECO licensing group includes separate units dealing with single individual and open individual licences and a third unit that monitors compliance with general licences. The licensing units can also seek advice and support from other parts of ECO (such as the Policy unit and the Technologies Unit).

#### **A.4.4.3 Oversight and Reporting**

As noted earlier, the Act provides a legal basis for a greater parliamentary role in the export control system and it requires the government to send secondary legislation to the parliament for scrutiny and assent prior to entry into force. The Act also requires the Secretary of State to publish in general terms the current guidance being used in the implementation of controls, and requires an annual report to parliament on implementation of the legislation.

### **A.4.5 United States Licensing Process**

#### **A.4.5.1 Organisational Structure – Military Goods**

US responsibility for export licensing is divided between the Department of State (for military list items) and the Department of Commerce (for dual-use items). The Department of Energy is the licensing authority for nuclear military items while the Department of Commerce issues licences for dual-use nuclear-related items.

The United States devotes very large resources to export control, including exporting licensing. The Directorate of Defence Trade Controls (DDTC) is the unit within the Bureau of Political-Military Affairs of the State Department that processes licence applications for defence articles and services. Approximately \$10 mn of the total State Department budget is set aside for the personnel costs of the Directorate of Defence Trade Controls but this is only a part of the total costs of operating the licensing (which never appear to have been evaluated comprehensively).

The Bureau of Political-Military Affairs is under the responsibility of the Under-Secretary for Arms Control and International Security, who also has responsibility for the Bureau of Arms Control, the Bureau of Nonproliferation and the Bureau of Verification and Compliance. DDTC can also seek assistance in assessments from these entities and from other parts of the State Department (mainly country and regional desk officers). In addition, the Department of Defence permanently details ten military officers to the Directorate on a non-reimbursable basis (i.e. DOD covers their costs). The Department of State receives around \$4 million each year in registration fees from the manufacturers and exporters of defence articles and services.

#### **A.4.5.2 Licensing Process – Military Goods**

The DDTC assesses roughly 45–50,000 licence applications each year. Of those about one-third are referred outside DDTC. These referrals are usually to other parts of the State Department, to the Department of Defense or to the Missile Technology Export Committee (MTEC). Because many

items on the MTCR equipment and technology annex are controlled under the control lists of both the AECA (the Munitions List) and the EAA (the Commodity Control List) they have to be assessed by both the State Department and the Commerce Department, and the MTEC facilitates this process.

The DDTC has worked to reduce the time taken to process export licences partly by working with industry to help ensure that complete applications are submitted, as the main delays are associated with incomplete or incorrect submissions. The number of licensing officers is adjusted to try and ensure that the average weekly caseload for each officer does not routinely exceed forty.

There is a tendency to try to simplify licensing in routine cases and focus attention on more difficult cases. However, the US legislation is not very flexible and there is a statutory requirement for individual licensing for many items. Moreover, in a significant number of cases it is necessary to carry out multiple assessments of the same application to ensure compliance with different parts of the US legislation. The average time for processing a licence that does not require inter-agency review is 8 days from the receipt of a complete and correct application. The average time for processing a licence that does require inter-agency review is roughly 50 days.

Although licensing authority rests with one agency, there are extensive consultations between agencies on licensing issues. These consultations take place in specialised committees that are organised under the National Security Council, but chaired by the agency with the lead on the particular licensing matter. Decision-making aims at consensus but particularly difficult issues are passed up to senior officials and if necessary to principals, meetings (i.e. the cabinet ministers, meetings chaired by the National Security Adviser) or if necessary to the full National Security Council including the President.

Registration is required to be eligible to manufacture or export defence articles or services (as defined in the AECA and codified in the munitions list) and manufacturers must register whether or not they plan to export. Separate registration is needed to carry out brokering activities.

All exports require a licence, including temporary exports. Licence applications must be accompanied by all documents specified in the legislation. A non-transfer and use certificate is required for each export of significant military equipment and classified articles (including classified technical data). Some simplified procedures are available for certain types of export to certain destinations (essentially for exports to allies and close friends – treated in a similar manner to allies for export licensing purposes).

US legislation specifies a number of country-specific licensing policies. Licences for defence articles and services will normally be denied to Belarus, Cuba, Iran, Iraq, Libya, North Korea, Syria and Viet Nam. The United States maintains national arms embargoes against Burma, China, Haiti, Liberia, Rwanda, Somalia, Sudan and the Democratic Republic of the Congo, meaning that most applications to export defence articles and services to these countries will also be denied. The US also denies licence applications to export defence articles and services to countries it regards as having a persistent record of support for terrorism, a list that at the time of writing includes Cuba, Iran, Iraq, Libya, North Korea, Sudan and Syria.

Licence applications are processed mainly by evaluating their contents against information contained in the extensive databases and files maintained in the DDTC. These include past information about the exporter, the end-user and other entities involved in the export (such as any intermediate trading companies involved in the transaction and freight forwarders). The DDTC publishes some of this information in the form of a list of persons debarred from receiving export licences as a result of convictions for export control related offences.

The DDTC carries out systematic post-shipment checks in order to deter diversions of exported defence articles and services, to aid the disruption of illicit supply networks and to help in ensuring

compliance with the AECA. After 1999 the State Department has insisted that all new agreements include language that gives US officials authority to carry out inspections. These checks, known as “Blue Lantern” inspections, are far from being comprehensive and only a small percentage of foreign deliveries are actually checked. However, their frequency has increased and is now at over 400 each year—a number expected to grow as compliance-related activities receive additional resources.

A certification (with an accompanying explanation of the justification and expected impact) is required before a Letter of Offer and Acceptance (LOA) is made to sell defence articles or services for \$50 million or more, any design and construction services for \$200 million or more, or major defence equipment for \$14 million or more. The dollar thresholds for notification have been revised for particular countries and items. From September 2002, the dollar thresholds for notification for NATO countries, Japan, Australia, and New Zealand were increased to \$100 million, \$300 million, and \$25 million respectively. The certification threshold for small arms has been reduced to \$1 million where the export is made as a commercial sale (for transfers made under the Foreign Military Sales process there is no change in the certification requirement). For certain transactions the DDTC is required to submit a certification to the US Congress prior to issuing an export licence.

Where defence articles in the stocks of the Department of Defence are to be leased or loaned to a foreign country for any period of one year or longer, the Congress must be notified thirty days in advance.

In 2002 there were 56 such notifications. The Congress can block the issue of an LOA or a lease by adopting a joint resolution (a statement of disapproval of a proposed sale, transfer, or lease, which is passed by simple majority votes in both the Senate and the House of Representatives), though the President can either override this resolution by using emergency powers or veto it once it reaches his office. This provision appears never to have been invoked by Congress, and there would be great practical obstacles for Congress to use this device successfully.

If a country that has received US defence articles or services intends to retransfer them, in certain cases the Congress has a 30 -day review period (15 days for NATO, NATO members, Japan, Australia, and New Zealand) for articles or services valued (in terms of its original acquisition cost) at \$14 million or more for major defence equipment, or \$50 million or more for other defence articles, services, or training.

Under US law there is a statutory obligation to report to the Congress on the direct commercial sales of defence articles and services each fiscal year, and this report is published as the so-called “655 Report”.

#### **A.4.5.3 Organisational Structure – Dual-use Goods**

For US dual-use exports the Bureau of Industry and Security within the Department of Commerce is responsible for export licensing. The BIS assesses roughly 11,000 licence applications each year. Of the 10,767 licence applications assessed in 2002, around 8,000 were approved, 206 were denied and the others were withdrawn by the exporter or returned without action. Licence applications can be made in paper or electronic format, with electronic submissions now being the norm.

A number of licence types are available including individual licences and a range of different licences where it is desirable to authorise multiple shipments of items with a single document. The Export Administration Act establishes guidelines for when an individual licence should be sought and recommends that in all other cases some form of licence granting permission to make multiple exports should be used.

In its most recent licensing initiative the BIS has developed a Special Comprehensive Licence (SCL), available to experienced exporters that have demonstrated their capacity for and commitment to effective export control compliance. The SCL authorises multiple shipments of a specified item to multiple destinations specified in the licence. The licence can be used by selected exporters to replace multiple applications for individual licences where they have regular repeat business with a known customer.

Once received, licence applications are reviewed by different parts of BIS (in particular, by the Office of Strategic Trade and Foreign Policy Controls and the Office of Non-proliferation Controls and Treaty Compliance) each of which will apply the agreed criteria and guidelines for different areas specified in the EAA. These are: anti-terrorism, chemical and biological weapon-related concerns, crime control, chemical weapons convention implementation, encryption items, firearms convention implementation, missile technology concerns, national security concerns, nuclear proliferation concerns, regional stability concerns. According to the EAA, the Department of Defence must be consulted when evaluating export licence applications against national security criteria.

To assist in its evaluations the US Department of Commerce maintains a number of databases, parts of which are published as lists. The databases primarily contain information about weapon programmes of concern and about end-users known to have or to have had connections to these programmes. In cases where a licensable export is being made to a previously unknown end-user in a country of concern further efforts will be made to gather information about that end-user. This might include a visit to the end-user and in cases where an end-user does not allow such a visit this is a factor that is given strong weight in assessing licence applications. Some of the names of end-users that have not allowed visits are included on the “unverified list” (see below).

The published lists include individuals (the list of denied parties and the list of specially designated nationals) and companies and entities (the list of companies and entities subject to US national non-proliferation related sanctions and the unverified list).

Under the EAA the Department of Defence is obliged to maintain a continuous review of military critical technology. The Defence Technical Information Centre assists with commodity classification (a service to industry to help determine whether items are subject to control and, if so, under what legislation) as well as giving technical ratings of items both in individual licensing cases and to support the development and maintenance of control lists.

## **A.5 Export Control Enforcement**

### **A.5.1 Elements of Enforcement**

After ten years of international discussion there is a commonly accepted view of the parameters of the export licensing process. However, the same is not true in the case of enforcement. In published documents and in discussions with officials the question “how is export control enforcement organised?” often leads not just to different answers, but to a discussion of quite different questions. International discussion of enforcement is therefore at a much earlier stage, and little harmonisation in approach has been achieved.

For the purposes of this review enforcement is taken as including the procedures used to validate export licences both pre-shipment and post-shipment. The export licensing authorities themselves carry out a number of activities that are part of enforcement. Authorities responsible for border control (usually the customs) also carry out other important enforcement activities. Finally, the judicial system is engaged in export control enforcement in cases where persons are prosecuted under export control legislation. However, activities to prevent smuggling, combat illicit

trafficking and interdict unauthorised shipments are not included as these are outside the export control system, though obviously indirectly related to it.

#### **A.5.2 Enforcement in Practice**

Enforcement includes dialogue with exporters to ensure awareness of and compliance with existing laws and regulations. Three of the four case-study countries (Sweden, US and UK) conduct extensive and expanding activities in this area. As export controls are intended to be preventive, this could be said to be emerging as the central element of the enforcement effort, to a greater or lesser extent.

Sweden, the United Kingdom and the United States also all conduct regular checks on exporters through visits to companies. All three countries place a strong emphasis on the self-interest of companies in establishing effective internal procedures for managing export controls, and either have or are considering putting in place simplified licensing procedures that will only be available to exporters who can demonstrate consistent and effective compliance.

In all three countries there is a statutory right to carry out an audit of documents and to interview responsible company officers. The pattern of these visits seems somewhat similar, though the size of the respective industries means that the Swedish authorities find it easier to cover a larger proportion of exporters through visits.

Such visits begin with a general discussion with the company concerned about its internal procedures for export control compliance. In this general discussion it seems normal for the exporters to emphasise the effectiveness of the internal compliance procedures. This is followed by an examination and evaluation of particular transactions and, should this inspection indicate shortcomings, a more extensive or even a full audit of past licensable transactions. In Sweden this process of visits to exporters is part of the general responsibility of the ISP, while in the UK and the US dedicated units are established for this specific purpose.

In Austria there does not seem to be the same pattern of conducting regular post-shipment checks, though there is no principled opposition to them.

The United States has established Business Executive Enforcement Teams (BEETs) by which company officers are brought together to exchange information about export control compliance.

In Austria there appear to be no systematic consultations with the defence industry, which is small, and the initiative is left with companies to contact the relevant ministries in case of need and in the context of specific licensing requests.

Customs authorities play the central role in any enforcement of export controls at the border. In Sweden and the United States the licensing systems require advance notification by exporters about the time and place of an export and the presentation of a validated licence as part of the set of documents presented at the border. In Sweden, the United Kingdom and the United States a major investment is taking place in establishing electronic systems that will permit more rapid communication and exchange of documents between the licensing authority and Customs.

The United States Customs Service (now part of the Department of Homeland Security) has the responsibility for investigating criminal violations of the AECA and cooperates closely with DDTC. The DDTC is now able to provide licensing data to all Customs Offices electronically, allowing for accurate "real-time" monitoring and communication related to commercial arms shipments and the seizure of unlicensed commercial cargoes. In 2002, around 660 commercial arms shipments were seized at exit points.



In the case of dual-use items, the Office of Export Enforcement (OEE) within the BIS (the licensing authority) itself employs special agents in eight regional offices (with two additional offices planned) with wide police powers, including arrest and seizure of goods. The Office monitors the activities of US exporters and the activities of field officers are supported by a centralised Intelligence and Field Support Division that stores information and facilitates communication between field offices. A separate Office of Enforcement Analysis reviews information provided by the Customs Service (mainly in Shippers Export Declarations) and related to visas issued to individuals entering and leaving the US. SEDs must be filed in most conditions for any exports to countries subject to sanctions under US law or to other countries of concern regardless of whether the transaction was licensable, and OEAA looks for evidence of transactions that should have been submitted for licensing assessment but were not. Information gathered in this way is passed to the field offices for further investigation.

In addition the US Customs Service has its own investigators who operate both in the United States and overseas. The Office of Investigations and the Office of Field Operations in particular contribute to export control enforcement. The main focus of efforts by the Customs is related to inspecting goods at the border to prevent the proliferation of nuclear and missile technology as well as the acquisition of chemical and biological weapons.

In relation to post-shipment checks on goods exported, the United States also goes by far the furthest in its post-shipment efforts to enforce dual-use export controls. The United States puts very significant resources into monitoring suspected or actual weapon programmes in countries of concern. The US targets investigations on potential violations of export laws associated with these programmes and has increasingly prosecuted suspected violators. In many other cases the authorities have imposed administrative penalties on exporters who have accepted or settled these penalties to avoid litigation.

In the other three countries examined, the resources devoted to this type of post-shipment enforcement are far more limited. However, in the UK the Customs service has its own investigators with powers of arrest and seizure and these are increasingly being tasked with export control related information -gathering and investigations. In recent years a lot of effort has gone into the development of closer cooperation between DTI and the Customs service to make sure that the efforts of investigators are targeted as effectively as possible.

Outside the United States prosecutions for export control related offences appear to be very rare and not always successful. In both the United States and the UK there appears to be a clear sense among enforcement agencies that the balance between activities carried out at the border and away from the border is changing, and will have to change further if export control enforcement is to be more successful.

# Annex 3

## List of Key Internet Links for Export control documentation

### United States

#### Munitions list items

**Directorate of Defense Trade Controls, Department of State:**

<http://www.pmdtc.org/>

**Speeches and releases on policy:**

<http://www.state.gov/t/pm/rls/rm/>

**Primary and secondary legislation:**

<http://www.pmdtc.org/reference.htm>

**Information and guidelines for preparing a licence application:**

<http://www.pmdtc.org/learning.htm>

**Licence application forms:**

<http://www.pmdtc.org/licenses.htm>

**Information about licence processing times:**

<http://www.pmdtc.org/processtime.htm>

**Information about transactions notified to the US Congress:**

[http://www.pmdtc.org/CongNotify\\_intro.htm](http://www.pmdtc.org/CongNotify_intro.htm)

**Annual reports to Congress about exports and transfers of munitions list items:**

<http://www.pmdtc.org/rpt65intro.htm>

**Information about company export control compliance:**

<http://www.pmdtc.org/compliance.htm>

#### Dual-use items

**Bureau of Industry and Security (BIS), Department of Commerce:**

<http://www.bxa.doc.gov/>

**Speeches and releases on policy:**

<http://www.bxa.doc.gov/News/index.htm#Speeches>

**Primary and secondary legislation:**

[http://w3.access.gpo.gov/bis/ear/ear\\_data.html](http://w3.access.gpo.gov/bis/ear/ear_data.html)

**Information and guidelines for preparing a licence application:**

<http://www.bxa.doc.gov/licensing/exportingbasics.htm>

**Information about licence processing times, see the BIS Annual Report chapter 2:**

<http://www.bxa.doc.gov/news/2004/03annualrept/index.htm#Chap2>

**BIS Annual Report:**

<http://www.bxa.doc.gov/news/2004/03annualrept/index.htm#TOC>

**Annual report on foreign policy aspects of export controls:**

<http://www.bxa.doc.gov/PoliciesAndRegulations/04ForPolControls/index.htm>

**Export control enforcement:**

<http://www.bxa.doc.gov/Enforcement/default.htm>

## UK

### Department of Trade and Industry

**Home page:**

<http://www.dti.gov.uk/export.control/>

**Legislation:**

<http://www.dti.gov.uk/export.control/legislation.htm>

**Licence documents and application procedure:**

<http://www.dti.gov.uk/export.control/applying.htm>

**Licensing policy:**

<http://www.dti.gov.uk/export.control/policy.htm>

**Information about the Export Control Organisation (staff, costs, licence processing times etc.):**

<http://www.dti.gov.uk/export.control/help/introductiontoec01.htm>

### *Foreign and Commonwealth Office*

**Home page:**

<http://www.fco.gov.uk>

**International security policy, including defence export policy:**

<http://www.fco.gov.uk/servlet/Front?pagename=OpenMarket/Xcelerate/ShowPage&c=Page&cid=1007029394185>

**Strategic Export Control Annual Reports:**

<http://www.fco.gov.uk/servlet/Front?pagename=OpenMarket/Xcelerate/ShowPage&c=Page&cid=1007029395474>

**Sanctions, embargoes and restrictions on exports of strategic goods:**

<http://www.fco.gov.uk/servlet/Front?pagename=OpenMarket/Xcelerate/ShowPage&c=Page&cid=1007029391422>

### Ministry of Defence

**Home page:**

<http://www.deso.mod.uk/>

### Parliamentary Scrutiny of Export Licensing Policy and Practice: House of Commons

**Second Joint Report of the Quadripartite Committee of the House of Commons: Scrutiny of the Annual Report on Strategic Export Controls:**

<http://www.publications.parliament.uk/pa/cm200203/cmselect/cmdfence/474/47402.htm>

**First Joint Report of the Quadripartite Committee of the House of Commons: The Government's proposals for Secondary Legislation under the Export Control Act:**

<http://www.publications.parliament.uk/pa/cm200203/cmselect/cmdfence/620/62002.htm>

**Testimony of Rt Hon Jack Straw, Secretary of State for Foreign and Commonwealth Affairs, to the Quadripartite Committee of the House of Commons.:**

<http://www.publications.parliament.uk/pa/cm200304/cmselect/cmdfence/390/4022501.htm>

## Sweden

### **Inspectorate of Strategic Products:**

<http://www.isp.se/>

### **Military equipment**

#### **Primary and secondary legislation:**

<http://www.isp.se/nyaengelska/ekm/ekmlegi.htm>

#### **Annual Report:**

<http://www.isp.se/pdf/s0203eng.pdf>

#### **Licence application procedure and process:**

<http://www.isp.se/nyaengelska/ekm/ekmproce.htm>

#### **Information about the role of the Swedish parliament in export control:**

<http://www.isp.se/nyaengelska/ekm/ekmekr.htm>

### **Dual-use equipment**

Legal authority controlling dual-use exports from Sweden is found in EC Regulation 1334/2000 as well as in national primary and secondary legislation.

**The European Union legislation is available at URL <http://ue.eu.int/pesc/ExportCTRL/en/Index.htm> and an explanation of the dual-use export control system is available at URL**

**[http://europa.eu.int/comm/trade/goods/dualuse/index\\_en.htm](http://europa.eu.int/comm/trade/goods/dualuse/index_en.htm)**

**Unofficial English language translations of the Swedish primary and secondary legislation can be found at:**

<http://projects.sipri.se/expcon/dualuse/swe.htm>

#### **Licence application procedure and assessment criteria:**

<http://www.isp.se/nyaengelska/epda/epdaintro.htm>

## Austria

### **Government page on International disarmament, Arms control and Non-proliferation:**

[http://www.bmaa.gv.at/view.php3?f\\_id=42&LNG=en&version=text](http://www.bmaa.gv.at/view.php3?f_id=42&LNG=en&version=text)

