

The Eighth International Export Control Conference - Overview

Jointly hosted by the governments of the United States and Romania, the Eighth International Export Control Conference was held from March 6-8, 2007, in Bucharest at the Athenee Palace Hilton Hotel. Part of the U.S. Department of State's Export Control and Related Border Security (EXBS) program, the conference brought together over 180 officials from 55 countries. Policymakers, enforcement, and licensing officials as well as representatives of nongovernmental and multilateral organizations discussed recent export control initiatives and ways to strengthen nonproliferation efforts globally.

Keynote speeches were delivered by Ioan-Mircea Plangu, State Secretary, Office of the Prime Minister of Romania, and Ambassador Peter Burian, Chair of the UNSCR 1540 Committee. The conference was organized into plenary sessions with presentations of interest to all officials, and smaller discussion groups for more in-depth discussions in the three areas of Policy, Licensing, and Enforcement. Plenary presentations included updates on the multilateral export control regimes and the work of U.N. 1540 Committee, NGO analysis of the proliferation threat, a description of recent cooperative activities undertaken by U.S. EXBS program, European Union Commission, and World Customs Organization updates, and an NGO presentation on approaches to enhanced prosecution and sanctions for dual-use export control violations. Officials from Hong Kong shared their experiences in strengthening strategic trade control in terms of legislation and enforcement. In addition to receiving the various presentations, the plenary also held two roundtable discussions: one on efforts to control the proliferation of Man-Portable Air Defense Systems (MANPADS), and another on the proliferation of technology in the information age with an emphasis on travel visa review for proliferation concerns.

The plenary divided into three discussion groups to conduct sessions providing an opportunity for officials to examine export control issues from the perspective of their individual specializations, and to hear presentations of particular interest to each group.

The Policy discussion group exchanged ideas on various strategies for the implementation of U.N. restrictions on strategic trade including UNSCR restrictions on Iran and DPRK; international cooperative efforts such as the Proliferation Security Initiative (PSI); UNSCR 1540 outreach and assistance

efforts; MANPADS controls; and brokering issues. The Policy discussion group also listened to presentations on: Japan's perspective on the implementation of UNSCR's addressing proliferation to North Korea; the importance of export licensing in the context of the PSI; E.U. outreach in the area of arms transfer controls; and a German perspective on brokering legislation covering Small Arms and Light Weapons as well as the feasibility of establishing brokering controls on dual-use goods. In addition to receiving formal presentations the policy discussion groups saw extensive sharing of experiences by the participants. Concerns about the administrative and financial costs of applying export controls were raised on a number of occasions and issues related to extraterritoriality consumed the interest of the group.

The Licensing group discussed national experiences in requiring internal compliance programs for industry; comparative approaches to administrative penalties to improve industry compliance with strategic trade controls; the question of technical resources and their limitations; and end-use monitoring issues. The discussion group sessions were filled with numerous presentations that aimed to share past experiences of more developed export control systems. In doing so, the participants saw both the successes and shortcomings of these experiences. Specifically, delegates were interested in how other states are implementing Internal Compliance Programs (ICP's) within small, private companies and to what success. Additionally, the concept of "Person Responsible for Export" (PRE) raised numerous questions about how to implement the concept and then how to enforce it. The Licensing group was characterized by constructive discussions, which followed presentations and often continued over working lunches.

The discussions during the Enforcement group focused on cooperative enforcement efforts and strategies for enforcement capacity building. The participants of the group sought to identify best practices and highlight priorities for implementing enforcement measures. The Enforcement group received presentations from a variety of national, regional, and multilateral enforcement agencies and initiatives, as well as a non-governmental organization, regarding their export control enforcement activities. Specifically, presentations were given on PSI; the projects of the Southeast European Cooperative Initiative (SECI) Regional Center; Mexico's experience with designated points of entry for strategic materials; a U.S. customs international investigation cooperation case study; a description of the unique challenges of inspecting commercial maritime cargo; and finally

a demonstration of the Wisconsin Project's Risk Report Database. These presentations offered the participants an opportunity to discuss the rationale behind certain types of enforcement approaches and compare them with their own efforts.

Receptions for the delegates, hosted by the Romanian National Agency for Export Control (ANCEX) and the United States Embassy, provided informal venues for export control officials to meet their international colleagues.

The Keynote Addresses

In the Romanian keynote address, State Secretary Ioan-Mircea Plangu stressed the necessity for cooperation at the sub-regional, regional, and international levels in order to effectively engage in export control efforts. The State Secretary emphasized that export control cooperation is critical to combating proliferation and enhances collective security. According to Mr. Plangu, issues of industry, technology, and dual-use items are complex strategic considerations and it is the responsibility of all states to manage what is being exported and how. He also observed that states must engage in more inventive thinking in order to curb proliferation because faster and freer flows of goods and information have made it easier for non-state actors to proliferate dangerous items and technologies.

Ambassador Peter Burian, chairman of the United Nations Security Council's 1540 Committee, described the work of the committee and focused on the status of the implementation of the resolution. He also described the findings and recommendations of the report issued by the Committee in April 2006. Ambassador Burian noted there has been significant progress in implementation across various regions; however, there are still many challenges and problems to overcome in order to achieve full implementation. Ambassador Burian stressed that full implementation of the resolution by all states is a long-term objective requiring continuous efforts at the national, regional, and international levels. He particularly emphasized the need for further implementation efforts with regard to both border and export controls and encouraged states to establish national systems to control transshipments and re-exports.

The Plenary

Plenary sessions were chaired by Paul van Son, Office Director of the U.S. Department of State's Office of Export Control Cooperation, and Cristian Irinel Munteanu, President of the Romanian National Agency for Export Control (ANCEX).

Dr. Richard Cupitt, an expert serving on the 1540 Committee, provided an assessment of the implementation of UNSCR 1540 highlighting that the results of this assessment demonstrate that, on average, implementation of these obligations is currently at a fairly low level. Generally, states fall into one of two groups: states that have adopted about half of the required provisions, and states that have taken few if any of the required measures. He further noted that states have taken more measures in regard to establishing a legal framework for UNSCR 1540's control obligations than for its enforcement provisions. Dr. Cupitt suggested the matrix created by the 1540 Committee can be used as a planning tool for the development of national actions plans on implementation and to determine where assistance may be targeted.

Mr. John Matiussi from the European Union Commission described the EU's efforts regarding export control outreach and assistance. The Commission indicated that the adoption of UNSCR 1540 both reinforced and helped to provide a framework for the EU's own export control assistance activities. Mr. Paul van Son provided an overview of the U.S. EXBS program, which provides assistance to states to improve their export control and enforcement capabilities. The EXBS program engages in capacity building activities in a number of areas, including adopting legislation, licensing procedures, enforcement techniques, government outreach to industry, and interagency coordination.

The plenary also heard a briefing from the World Customs Organization (WCO) pertaining to its capacity building activities. The WCO highlighted the role of its Security And Facilitation in a global Environment (SAFE) Framework of Standards to Secure and Facilitate Global Trade in enhancing export controls through the implementation of advance electronic manifest information, a consistent risk-management approach, provisions for the inspection of outbound cargo, and enhanced trade facilitation through the adoption of business standards for export control compliance.

Representatives of non-governmental organizations presented their perspectives on the proliferation threat and ways to enhance international

cooperation. The Monterey Institute's Center for Nonproliferation Studies discussed the proliferation threats posed by both state and non-state actors, underscoring a recent trend that the distinction between these two groups is beginning to blur. Two speakers from the Stockholm Institute for Peace Research presented the findings of a recent study comparing the prosecution of a number of export control violations in Western Europe. The conclusions of their study were that: corporations are key partners in the enforcement process; efforts should be made to raise awareness along the supply chain to prevent unintended violations; catch the items before they have left the country and prosecute for conspiracy to commit violations; and finally, party's denied an export license should not be trusted to comply, instead the goods in question should be confiscated. The Center for International Trade and Security provided a briefing on the International Export Control Association, an initiative intended to bring export control experts from industry, academia, nongovernmental centers, and think-tanks together to share the expertise and resources to promote export controls through research, training, education, and outreach.

Presentations were made describing the work and recent activities of the Missile Technology Control Regime, Nuclear Suppliers Group, Australia Group, and the Wassenaar Arrangement. It was noted that UNSCR 1718 regarding the Democratic People's Republic of Korea (DPRK) and UNSCR 1737 regarding the Islamic Republic of Iran both increased the salience of the MTCR and NSG due to their requirements to prevent the export of nuclear and missile-related technologies to those two countries.

Representatives from Hong Kong's Departments of Customs and Excise and Trade and Industry briefed the plenary on its experience in implementing strategic trade controls, stating that such controls did not impede legitimate trade but did help to prevent illicit smuggling and proliferation. Hong Kong Customs stressed the need to adopt a risk management approach, and to have the necessary investigatory power to stop, board, search, and detain any vessel, aircraft, or vehicle which is reasonably suspected of engaging in illegal activities.

In addition to receiving presentations, the plenary session also held two roundtable discussions: one on efforts to control the proliferation of man-portable air defense systems (MANPADS), and another on controls on the proliferation of technology in the information age particularly focusing on transfers related to education and training. During the discussion on

MANPADS, it was announced that over 95 states have agreed to implement strict controls over the export of MANPADS. It was further noted that controls under the Wassenaar Arrangement, as well as two U.N. resolutions on their proliferation, have helped build awareness regarding the threat posed by the proliferation of MANPADS and contributed to curbing their spread. Participants in the roundtable on the proliferation of technology outlined the various vetting processes used to protect against foreign nationals seeking to acquire sensitive technologies from their respective countries.

The Plenary session concluded with reports from the discussion groups on their perspectives and suggestions to enhance export control cooperation regionally and internationally. The Policy group emphasized the role of UNSCR 1540 in strengthening export controls and promoted the targeting of outreach efforts on the basis of needs assessments. Furthermore, the Policy group suggested that efforts to fulfill obligations under UNSCRs 1718 and 1737 could serve as the basis for further general strengthening of export control efforts. The Licensing group recommended the use of information technology tools to obtain information about end users and identify commodities. According to the Licensing group, pre-license and post-license checks should be used to verify end use. The Enforcement Group encouraged the use of sustainable capacity building and country-tailored export controls to make the best use of available resources. It also promoted closer coordination between agencies and cooperation between countries in export control enforcement.

Policy Discussion Group

The Policy group engaged in wide-ranging discussions on a number of topics. International cooperation and questions related to the provision of effective outreach and assistance were recurring themes throughout the discussions.

The first session included a presentation on Japan's perspective on the implementation of UNSCR 1718 addressing proliferation to North Korea. The group's discussions noted the importance for export controls in lieu of the adoption of UNSCRs 1718 and 1737. It was noted that by reference to UN secretariat documents S2006-814/815 these resolutions effectively universalize the MTCR and NSG control lists. This was generally noted as a positive development, potentially pointing the way to globally standardized

control lists. However, concerns were raised regarding the capacity of some countries, such as Pakistan, to implement the resolutions and a desire for assistance was expressed. There was interest in the possibility that as the international regimes (MTCR and NSG) improve their transparency they may begin to involve themselves more directly in outreach and assistance efforts but this was countered by the observation that the control regimes lack the institutional structure or resources to undertake such efforts. Another concern was that in the absence of a process for regular updates of the control lists embodied in UN secretariat documents S2006-814/815 the passage of time could see a widening divergence between controls embodied in UNSCRs 1718 and 1737, and the MTCR and NSG.

The group's second session included a presentation from Mr. Bevan Brownhill of the U.K. Ministry of Defense on the Proliferation Security Initiative (PSI) before moving on to a discussion of PSI cooperation issues. The capacity of PSI to serve as a framework for regional cooperation efforts, including exercises, interagency outreach, and intelligence sharing was praised and welcomed as a means to strengthen export controls generally. Several representatives noted the flexibility of PSI and described its capacity to encourage international cooperation and information sharing. Concerns were expressed regarding liability and financial responsibility issues for countries interdicting shipments under PSI. Additional concerns were raised that PSI might encourage the redirection of illegal shipments to secondary ports, however it was noted that front companies often do this already. It was observed that in some regions there is a need for capacity building at all levels of government and that this directly impacts export controls. Finally there were indications that the commercial sector is interested in a harmonization of export controls internationally in order to simplify intra-company transactions.

The third session of the Policy discussion group focused on assistance and outreach efforts, particularly in the context of UNSCR 1540 but encompassing discussions of MANPADS and conventional arms. The group listened to a NGO presentation on E.U. outreach in the area of arms transfer controls. It was observed that the adoption of UNSCRs 1540, 1718, and 1737 has increased the political acceptability of export control regimes and made it easier for countries to seek assistance from the control regimes and their member states. Although the 1540 Committee is prevented from coordinating assistance and outreach activities by other parties, it is facilitating these activities through its website. The importance of UNSCR

1540 for structuring the needs assessment process, which would then better enable targeted outreach and assistance, also was underlined. The considerable progress made by countries in Eastern and Southeastern Europe in developing and implementing effective export controls was praised. Finally it was noted that well-constructed export control systems can have a beneficial effect on trade.

Finally the Policy group discussed several issues associated with brokering including the development and application of legislation with extraterritorial reach. The discussion was assisted by a German presentation on brokering legislation covering Small Arms and Light Weapons (SALW) and dual-use goods that included a description of German application of extraterritoriality; in this case referring to the actions or activities of German residents conducted outside of Germany. The discussion noted that applying export controls to brokering was a difficult policy and enforcement issue but also very important. The conclusion was that even if brokering controls should at some point become universal, extraterritoriality would still be a useful and necessary provision to assist enforcement efforts.

Licensing Discussion Group

The Licensing group discussions addressed key areas of difficulty and introduced some practical ways to facilitate effective export control licensing. Instilling in the companies a sense of responsibly exporting, utilizing a variety of different sanctioning tools, and employing outside resources and tools to improve accuracy and efficiency were themes reiterated throughout the discussions.

The group concluded that, while authorities need to be vigilant, export controls are most effective when companies make proactive efforts from within to develop and maintain internal compliance programs. This argument, which was emphasized throughout the conference, was based on the idea that authorities do not need to “chase after violators” if they build working relations and “know their companies.” Participants also stressed that export controls begin within the exporting companies, and company administrators, with their intimate knowledge of the companies, can be very effective. This working relationship, along with implanting a sense of responsibility and duty on company administrators, is believed to greatly improve industry compliance by eliminating much of the burden on the licensing officials. In this line, it was argued by one presenter that Internal Compliance Programs need not be mandatory when companies realize the long-term benefits of responsible exporting practices.

During the second discussion session, the licensing break-out group examined administrative penalties and administrative enforcement practices of various European Union states as a way of enhancing industry compliance. Group members discussed the wide range of administrative tools, from warning letters and fact checks to license revocation and fines, which can be employed in different cases. In addition, the distinction between administrative penalties against companies and criminal penalties against individual Persons Responsible for Export Control (PRE) were clarified during the discussions. It was noted that licensing authorities in reality have a variety of tools and measures to prevent and address export control violations. Transparency and clarity of regulations and penalties were recognized as the noticeably crucial elements of administering such administrative tools and achieving industry compliance.

The third discussion session viewed three presentations that showcased two online tools and one software package designed to aid export control

authorities to do their jobs with greater precision and efficacy. The demonstrations of Internet resources showed that even accurate and up-to-date open source information – not necessarily classified – can be an immense asset to export control authorities by providing historical facts of past violations, legislations, company profiles, technical data, and more. Additionally, the live demonstrations involving these online tools and software illustrated the significant role of nongovernmental organizations' unique perspective, filling a unique niche in overall export control efforts.

End-use and end-user verification issues were discussed at length during the final discussion session. The two main points of conclusion drawn were: 1) cooperative efforts among different actors with specific roles are essential to the end-use verification process; and 2) vast financial and human resources are not necessary – nor possible – to effectively monitor the end-use of exported strategic goods. It was emphasized again that necessary collaboration should include not only actors such as licensing, customs, intelligence, and diplomatic officials, but also the exporting companies and NGOs, reminding the participants that the verification process can be a very fluid and dynamic process requiring flexibility and persistence. It was also stressed, however, that such a process does not require an unlimited pool of resources. The discourse pointed out that a significant amount of pre-license and post-shipment checks often yielded satisfactory conclusions via simple phone or email correspondence.

Enforcement Discussion Group

The Enforcement group focused its discussion on cooperative efforts in preventing the illicit trafficking in strategic technologies and military goods, as well as activities which contribute to export control capacity building. With respect to cooperation, the participants addressed mechanisms at the bilateral, regional, and international levels. The role of UNSCR 1540 in strengthening export controls was highlighted, and the group explored ways to make the most effective use of limited resources to implement these obligations.

The first session of the enforcement group considered questions of regional cooperation. Mr. John Badley from Her Majesty's Revenue and Custom's Service provided a presentation on the role of PSI as a cooperative enforcement mechanism. He stressed the role of enforcement in controlling the movement of illicit items. These controls apply to the transshipment,

transit, import, and export of goods. PSI interdiction efforts require information sharing to obtain high quality specific intelligence and agreed procedures to search and seize suspect consignments. It was pointed out that efforts under PSI flowed from the responsibilities under UNSCR 1540 to prevent the illicit movement of WMD and related materials.

The enforcement discussion group also heard a presentation from the Southeast European Cooperative Initiative (SECI) Regional Center regarding its activities to halt smuggling, money laundering, and illicit migration. It was noted that organized crime and corruption have been declared major security threats to Southeast Europe. Addressing these threats requires streamlined regional cooperation and enforcement efforts. The SECI Center described a number of regional interdiction and anti-smuggling operations between 2002 and 2006, as well as trans-border joint investigations.

The group observed that customs and export control enforcement is essentially about controlling criminal activities. Such crime may range from money laundering, to human trafficking, to smuggling strategic technologies. It was also recognized that most states are just beginning to consider export controls as a national responsibility. Carrying out this responsibility requires resources and political will. Progress indicators and benchmarks are also necessary to maintain momentum for enhancing export controls. Participants further noted that working with other states requires inter-agency coordination in order to be effective. The group also highlighted the usefulness of employee exchanges as a form of enforcement training.

The second session of the enforcement group considered resource allocation for enforcement measures. A presentation by Mexican Customs described Mexico's efforts to implement its obligations under UNSCR 1540 with respect to the import and export of chemical, biological, nuclear and radiological materials. Mexico indicated it has restricted the import and export of these materials to a limited number of border points of entry and that these ports were selected on the basis of industry needs. The speaker emphasized that by limiting the number of ports through which such materials can enter and exit the country, Mexico was able to efficiently use the resources required to control their movement more effectively.

The participants recognized that sustainable capacity building practices are critical to the continued effectiveness of export control enforcement efforts. They noted that the practice of “training the trainers” allows important skill sets to be passed on to other officials and that it is important to have ready access to technical information about imports and exports. It is very important that officials be familiar with modern technological systems including the Internet. Given the limited resources available to engage in export control enforcement, it was stressed that effective resource allocation requires that controls be tailored to the needs of the country. Such tailoring includes designating certain routes and locations for the movement of hazardous materials.

The third session of the enforcement group considered international enforcement cooperation. The United States’ Immigration and Customs Enforcement (ICE) presented a case study involving an attempt to illegally acquire controlled military technology. ICE highlighted the cooperation it received during the investigation from a number of states, including Austria, the United Arab Emirates, Italy, Turkey, as well as INTERPOL. The presenter underscored the need to take actions which are consistent with the permissible law enforcement activities of the countries in which enforcement agents are operating.

The group observed that penalties for export control violations are generally low and expressed concern that fines and sentences are insufficient to deter potential violators. According to participants, this concern is difficult to resolve because the judicial and administrative branches of government of many states are separate. Therefore, penalties often are determined independently of the interests of the enforcement agencies. International agreements and arrangements supporting cooperative enforcement measures, such as the Mutual Legal Assistance Treaty (MLAT) and Mutual Administrative Assistance arrangements, were also seen to be central to effective enforcement cooperation and prosecution. In order to ensure that enforcement agents understand what is required for successful prosecution of violators it was recognized there is a need for better communication between enforcement agencies.

In its final session on enforcement challenges and resources, the group heard a presentation from the United States Coast Guard (USCG) describing its role in regulating the flow of transport vessels in territorial waters as part of its maritime security mandate. According to the USCG, smuggling of all

types tends to use the same routes. Maritime anti-smuggling operations for a variety of goods are therefore very similar in nature. The USCG also emphasized the importance of various maritime agencies sharing information about maritime conditions, port security, weather patterns, and other factors in order to provide a “common operating picture,” and to assist in coordinating maritime enforcement activities.