

Implementing Catch All Controls

A Risk Assessment-based Approach Toward Nonproliferation



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Overview

- Reason for Catch-All Controls
- Purpose & Basis for Catch-All Controls
- U.S. Implementation of Catch-All Requirements
- Implementation by Industry and Government
- Risk Assessment Techniques to Catch-All Controls
- Other Countries Catch-All Controls
- Catch-All Controls in the UNSC Resolutions

Catch-All Controls

- Controls items based on the End Use and End User rather than based on listed types of items.
- Catch-All controls applicable to all types of items, but are only triggered for those individual transactions where an end use or end user of concern is suspected.
- Catch-All controls can be applied outside the normal licensing process.

Reason for Catch-All Controls

- Proliferators increasingly seek non-listed equipment and technology for use in programs of concern ...
 - “Easier” to acquire than listed items.
 - Items with performance levels slightly below that of similar “listed” items may be a perfectly acceptable substitution.
 - Non-listed items may be suitable for the indigenous production of listed items that cannot be openly obtained.
 - Non-listed items may be modified (or combined with other non-listed items) to generate a capability equivalent to that of “listed” items.

Purpose of Catch-All Controls

- Provide a legal and regulatory basis to prevent exports of unlisted items when there is reason to believe (knowledge) such exports could contribute to end uses of proliferation concern.
- Apply not only to “non-listed” items, but also to items “listed” by one regime but raising proliferation concerns covered by another regime
- Apply to items that are similar to a “listed” class of items but fall below the technical specification thresholds for “listed” items.

Basis for Catch-all Controls

- Each Multilateral Control regime's Guidelines contain provisions to provide for catch-all controls.
- Many governments have their own national catch-alls; standard part of world class system
- Several UNSCRs Contain WMD and Conventional Catch-All Authorities
 - UNSCR 1540, 1737, 1929, etc.
- Catch-All controls are not bans.
 - They are regulatory efforts to prevent specific individual transfers of items that contribute to programs of concern.

*Multilateral Control Regimes consists of the Missile Technology Control Regime (MTCR), Nuclear Suppliers Group (NSG), Australia Group (AG), and the Wassenaar Arrangement (WA))

U.S. Implementation of Catch-All Requirements

- Export Administration Regulations
 - Part 744 Control Policy: End-User and End-Use Based
 - 744.2 Restrictions on certain nuclear end-uses
 - 744.3 Restrictions on Certain Rocket Systems (including ballistic missile systems and space launch vehicles and sounding rockets) and Unmanned Air Vehicles (including cruise missile systems, target drones and reconnaissance drones) End-Uses
 - 744.4 Restrictions on certain chemical and biological weapons end-uses
 - 744.6 Restrictions on certain activities of U.S. persons
 - Other end-use or end-user restrictions including terrorist end users and military end use controls.

U. S. Implementation continued...

- License requirement based on exporter's knowledge of end-user and/or end-use of item, or on government's knowledge
- “Know” or “Is Informed”
 - Knowledge: “know” or “reason to know” - Industry
 - “Is Informed”: By specific notice or publication - Government
- Includes controls on activities of U.S. persons beyond exports
 - E.G., financing, transportation, freight forwarding

Industry

- Exporter files license application based on knowledge
 - Exporters also submit license application for end-user check

Industry

- Requests that raise questions should be considered for submitting to the government for catch-all considerations
- General Catch-all Template
 - Know your customer
 - Know your product
 - Delivery instructions

Government

- Exporter “Is Informed”
 - Individually by specific notice
 - Oral – followed by written notice within 2 working days
 - Written notice
 - Amendment to the Export Administration Regulations
 - Entity List

Government

- Sources of information
 - Open source
 - Trade data
 - Targeting
 - Tips
 - Investigations
 - Classified
 - Other countries

Risk Assessment in Export Controls

Applicable to all exports; especially relevant to Catch-All controls.

- To implement a government's nonproliferation responsibilities and determine whether it is prudent to authorize the export of an item.
- Multilateral Regime guidelines provide the fundamental basis for effective risk assessments.
- Some level of inherent proliferation risk is associated with almost every export of a strategic commodity.
- "Unacceptable risk" of use in, or diversion to, a proscribed end use is an appropriate standard, especially for WMD related transfers.

Key Multilateral Regime Criteria in the Risk Assessment Process

- **Capabilities / goals / objectives of the recipient country.**
 - Consider the proliferation of WMD for all exports in a broader nonproliferation context.
- **Significance of the transfer in terms of the potential contribution to development of programs of concern (i.e., WMD, WMD-delivery systems, and advanced conventional weapons).**
- **Assessment of the end use of the transfer, including any relevant assurances.**
 - Does the stated end use conform to known activities of the end user?
 - Is the stated end use consistent with the type and quantity of the items requested?
 - Are there any specific or broad assurances that may apply?
- **The risk of the item falling into the hands of terrorist groups or individuals.**
 - Consider any ties the end user has to known or suspected terrorist groups, as well as links to states known to support international terrorism.

Some Other Risk Factors

Nonproliferation Objectives / Considerations:

WMD and WMD-delivery capability and/or active development programs of recipient state
Significance of transfer to programs of concern
Assessment of the stated end use
Applicability of multilateral agreements
Risk of items falling into terrorist hands

End User / End Use Concerns:

Derogatory intelligence information
Derogatory information received from a foreign government
History of previous denials
Law enforcement information
Relationships with entities of concern
Co-location or shared production lines with programs of concern

Red Flags:

“Designated” End Users / Consignees
Ambiguous End Use Statements
Item’s capability do not match product line / stated end use
Inappropriate technology level for end use country / entity
Cash sales and/or time pressures
Unfamiliar / unverified entities
Cancellation of routine installation, maintenance, or training provisions
Unconventional delivery dates or locations
Abnormal shipping route / methods

Summary

- Implementing catch-all authorities into your domestic law is an important piece of any world class strategic trade system.
- Global security cannot be achieved by one government alone; requires a partnership between government and industry, and among countries in the international trading system.

BACKUP SLIDES

Basis for Catch-all Controls continued...

MTCR Guidelines Catch All Statement

- “The Government will provide that its national export controls require an authorization for the transfer of **non-listed items** if the exporter has been **informed by the competent authorities** of the Government that the items **may be** intended, in their entirety or part, for **use in connection with** delivery systems for weapons of mass destruction other than manned aircraft.”
- “and, **if the exporter is aware** that non-listed items are intended to contribute to such activities, in their entirety or part, provide, to the extent compatible with national export controls, for **notification by the exporter** to the authorities referred to above, which will decide whether or not it is appropriate to make the export concerned subject to authorization.

U.S. Implementation continued...

Export Administration Regulations

- 744.2 Restrictions on certain nuclear end-uses
 - License required for the export, reexport or transfer if exporter knows uncontrolled item will be used in:
 - » Nuclear explosive activities
 - » Unsafeguarded nuclear activities
 - » Specified safeguarded and unsafeguarded nuclear activities

U.S. Implementation continued...

Export Administration Regulations

- 744.3 Restrictions on Certain Rocket Systems (including ballistic missile systems and space launch vehicles and sounding rockets) and Unmanned Air Vehicles (including cruise missile systems, target drones and reconnaissance drones) End-Uses
 - License required if exporter knows item will be used in:
 - » Design, development, production, or use of unmanned air vehicles capable of a 300 kilometer range in or by specified countries
 - » Design, development, production, or use of rocket systems or unmanned air vehicles, regardless of range, for the delivery of chemical, biological, or nuclear weapons (WMD).
 - » Design, development, production, or use of rocket systems or unmanned air vehicles of uncertain range for WMD delivery.

U.S. Implementation continued...

Export Administration Regulations

- 744.4 Restrictions on certain chemical and biological weapons end-uses
 - License required for the export, reexport or transfer if exporter knows uncontrolled item will be used in:
 - » Design, development, production, stockpiling or use of chemical or biological weapons in or by any country or destination, worldwide

Other Countries' Catch-All Controls

- Hong Kong
 - Licensing requirement for articles or tangible technology if the importer/exporter knows that they are intended or likely to be used in any activity related to nuclear, chemical or biological weapons, or missiles capable of delivering them
 - Articles include chemicals, toxin, biological agents, equipment, materials, software

Other Countries' Catch-All Controls

- Singapore
 - Licensing requirement for non-listed goods if a person has been notified by an authorized officer, knows or has reasonable grounds to suspect that the goods are intended or likely to be used, wholly or in part, for, or in connection with the development, production, handling, operation, maintenance, storage, detection, identification or dissemination of any nuclear, chemical, or biological weapons or their delivery systems

Other Countries' Catch-All Controls

- Taiwan
 - Licensing requirement for goods on the Sensitive Commodity List (SCL) for export to Iran and North Korea
 - SCL – lower-technology, non-regime items, by customs code, that may have WMD uses
 - Licensing requirement for all other unlisted items when the shipment is suspected of being used in developing nuclear, chemical, or biological weapons and their delivery systems
 - Suspicion based on existence of red flags

UNSC Resolutions and Catch-All

- Several UNSCRs Contain WMD and Conventional Catch-All Authorities
 - UNSCR 1718 (2006)
 - UNSCR 1737 (2006)
 - UNSCR 1747 (2006)
 - UNSCR 1874 (2009)
 - UNSCR 1929 (2010)