

A practical way to implement export control lists in developing countries

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Implementing the traditional control lists of the disarmament, nonproliferation, and arms control treaties and export control regimes, covering both weapons of mass destruction and conventional arms, poses a challenge for many countries, even more so for developing states.

This article explores ways and means to help developing countries implement UN Security Council resolution 1540 (2004), with specific reference to its operative paragraph 6, which “Recognizes the utility in implementing this resolution of effective national control lists and calls upon all Member States, when necessary, to pursue at the earliest opportunity the development of such lists.”

Resolution 1540 prescribes what to achieve. States shall refrain from providing any form of support to non-state actors seeking nuclear, chemical, or biological weapons or their means of delivery. Governments shall adopt and enforce laws which forbid non-state actors to develop, acquire, manufacture, possess, transport, transfer, or use such weapons. States shall work to prevent proliferation, including by establishing appropriate controls over related materials.

However, the resolution outlines neither how this should be achieved nor which specific items should be controlled, beyond the broad description of the weapons, delivery systems, and related materials. The how and the specific items are left to each individual country to work out. Various approaches could be followed to manage this challenge and to tailor implementation of resolution 1540 for a specific country.

An important dimension of implementing export controls is identifying items to be placed under national control. The nature of the items included on the control lists should be taken into account. The relevance and the match with national needs should be considered. Given the volume of items on the control lists and the range of technologies covered, the content should be communicated to customs officers in a practical and understandable format to allow effective



border control. Targeted action or rules-based control could have a major impact on control activities without losing its effectiveness.

NATURE OF CONTROL LISTS

Customs officials at national borders identify items crossing the border using the Harmonized Commodity Description and Coding System (HS) of the World Customs Organization (WCO).

When experts debate nonproliferation export control lists at various export control regime fora, they use the following criteria to decide whether an item should be included on a control list:

- The item in question poses a high proliferation risk.
- The volume of trade: an item is designated only if very few items of this type are traded or no trade takes place at all.
- A unique technology is involved, and it is not widely available on the world market.

The specifications agreed on would be the most stringent set of parameters, excluding the bulk of generally traded items.

Sometimes the rules for the same item differ on different lists, owing to the unique requirements of each export control regime.

Therefore, based on the criteria used to determine an export control list, the reality is that the movement of controlled items is very limited, even in the developed economies.

WHICH CONTROL LISTS?

Since resolution 1540 is aimed at WMD and their delivery systems, its scope could be limited to the lists made available by the multilateral disarmament and nonproliferation treaties and the various export control regime areas.

Only the CWC has an agreed, negotiated list of controlled items. Although the BTWC was negotiated in a multilateral forum, no agreement could be

reached on a list of items to be controlled. However, the AG reached agreement on a control list in the chemical and biological field.

Similarly, the NPT has no agreed negotiated list of controlled items. The Zangger Committee (ZC) developed the so-called trigger list of items, a document drawn from Article III (2) of the NPT, which refers only to “source and special fissionable material as well as equipment or material especially designed or prepared for the processing, use or production of special fissionable material.” Building upon the work of the ZC, the Nuclear Suppliers Group (NSG) adopted Guidelines for Nuclear Transfers. The NSG later adopted Guidelines for Transfers of Nuclear-Related Dual-Use Equipment, Materials, Software and Related Technology. The IAEA circulated the latter as an information circular at the request of the NSG participating governments (INFCIRC/254/Rev.10/Part 1 and INFCIRC/254/Part 2). The UN Security Council used these control lists to identify (S/2006/814, 815, 816) items prohibited for export to North Korea under UNSCR 1718 (2006).

Conventional-arms export control lists could be considered if a country needs such lists or parts thereof, but conventional arms could be excluded if the objective is only to focus on WMD-related materials and delivery systems. Because of the very large number of items covered by the Wassenaar Arrangement (WA), whose control lists cover conventional arms (munitions list) and related dual-use goods and technologies, it may be imperative to limit the number of controlled items.

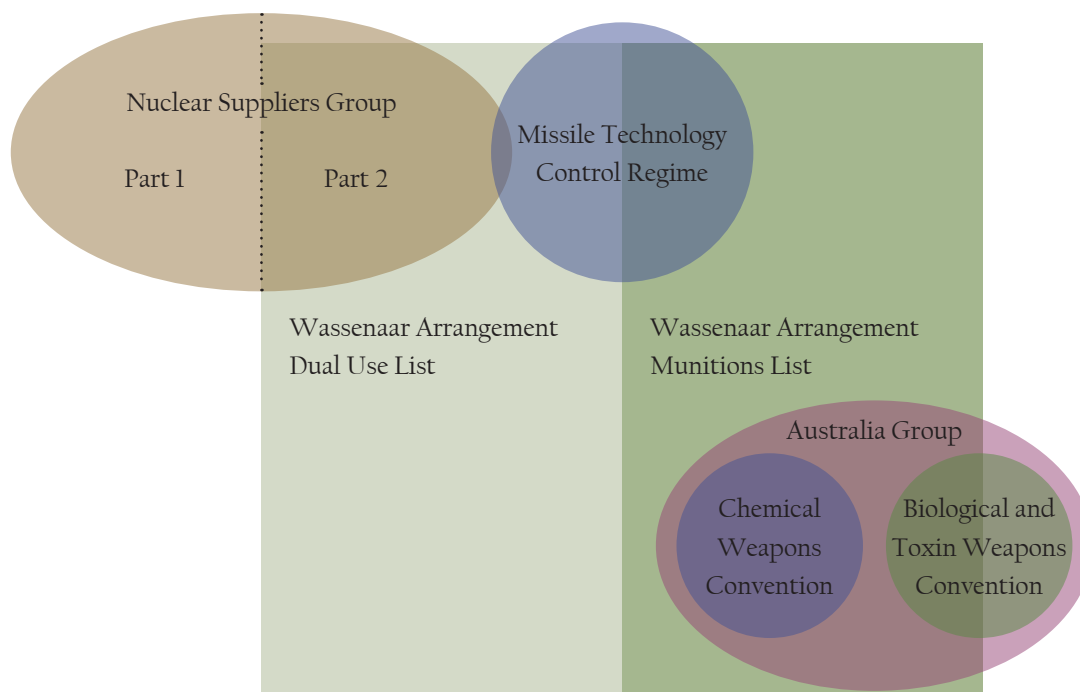
The various control lists also overlap each other (see Figure 1), and the accompanying graphic diagram attempts to illustrate the overlap between the various control lists.

COMMUNICATION TO CUSTOMS OFFICERS

The Harmonized Commodity Description and Coding System of tariff nomenclature is an internationally standardized system of names and numbers for classifying traded products developed and maintained by the World Customs Organization. Virtually all trade in the world is identified by HS codes. The HS codes are harmonized worldwide up to the six-digit



FIG 1. OVERLAP IN TREATY AND REGIME CONTROL LISTS



level, and trade statistics are internationally available at this level. Countries may increase the level to suit their own purposes. Eight-digit levels are common, but systems of up to ten digits exist.

Due to the complexity and structure of export control lists, a one-to-one relationship between the HS codes and the various control lists is impossible. To increase the complexity (digit level) of the HS system, to cater to all such control lists, is impractical.

The bottom line is that the HS codes are the language of customs officers all over the world, and any communication should use them as a basis.

HYBRID CONTROL LISTS

A reference list was developed in South Africa, with the assistance of various international partners, listing the export control regime-controlled items against the HS codes. This was done at an eight-digit level. It should be noted that these HS codes will also contain other items that are not covered by the regime lists.

Given the presumed low volume of trade in control-listed goods, some exploratory research was done

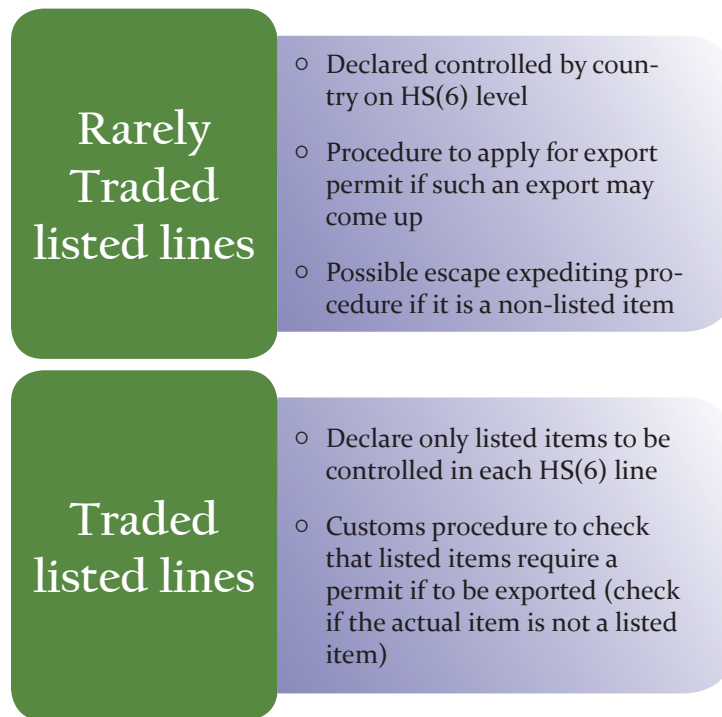
on trade statistics available on the internet (six-digit level).

Five developing countries were selected with different levels of economic activity. Only the Non-Agriculture Market Access (NAMA) codes were investigated. The amount of NAMA tariff codes at the six-digit level for these countries varies from 915 to 5,009. These NAMA codes contain 432 export control regime-listed items (NSG Part 2, Missile Technology Control Regime (MTCR), Chemical Weapons Convention (CWC), and AG (biological)) under 163 tariff lines. The trade statistics over one year indicated that the trade in the 163 tariff lines that may contain the 453 regime-listed codes for developing countries is limited to a small percentage.

The percentage of the tariff lines that may contain export control regime-listed items would be a guide to decide if there may be a benefit for a country to pursue the hybrid control-list route.

The hybrid approach could be followed, firstly, by controlling certain tariff lines by HS number on the non-traded or seldom-traded codes. This would have no practical (volume) impact on border control activities. However, a procedure needs to be introduced if

FIGURE 2. HYBRID CONTROL LISTS



such a code does present itself in an actual export. A national or an international backup support structure would be required to assist in decision-making (see Figure 2).

Secondly, the text of the export control regime list could be used where trade took place in tariff lines covered by the codes that could contain export control regime-listed items. Therefore, the export control regime-listed items should be declared controlled in terms of the relevant regime text, but structured in the HS six-digit format. If regular exports of goods not listed on the regime lists occur, such exports would not be impeded. However, customs officials would need training to distinguish the difference between these items and the regime-listed items. This would prompt the customs officer to ask about any deviations from normal exports that may in fact involve export control regime-listed items (see Figure 2).

CONCLUSIONS

Control lists could be reduced to the export control regime lists limited to WMD and their delivery systems.

Targeted or rule-based control could be employed in conjunction with hybrid control lists.

Trade statistics and analysis should guide a country as to whether the hybrid control-list concept may be viable.

The hybrid control list would be a fraction of the size of the export control regime lists, as the non-traded control list part would only contain HS codes.

The hybrid control-list concept would need national and international support.

Countries interested in the concept of hybrid control lists would need assistance to develop such an approach.

In order to understand the complexity and volume of proliferation-related controlled items that may be traded by a specific country, a proper evaluation must be done by experts who understand the relationship between the Customs HS Codes and the items on the various nonproliferation regime control lists.

REFERENCES

This article is based on a presentation made at the Workshop on the Implementation of UNSC Resolution 1540 for African States, held from November 21-22, 2012 in Pretoria, South Africa, entitled "South African Experience on the Implementation of Control Lists in the Context of UN SC Resolution 1540," by D. J. van Beek and E. Ncube.

