



EXPORT CONTROL COMPLIANCE AND THE TRANSPORT SECTOR: LESSONS FOR INTERNAL COMPLIANCE PROGRAMMES

RONALD B. ORZEL, DEBIKA PAL AND PETE HEINE

INTRODUCTION

By the nature of its business, the transport sector is well placed to counter the proliferation of weapons of mass destruction (WMD): its potential for contributing to global counterproliferation efforts should not be underestimated. All parties in the international supply chain have a responsibility to ensure that a transaction complies with the numerous requirements captured under the general description of ‘export controls’ or ‘strategic trade management’. This may include the fulfilment of export, transit and trans-shipment licence requirements; and end-use, dual-use and restricted-party screening. Complying with export control regulations can be particularly complex for the transport sector since transactions involve multiple jurisdictions and, in some situations, have extraterritorial implications.

The SIPRI Good Practice Guides on the transport sector as counterproliferation partner have been developed to support partnerships between the transport sector and government authorities to counter proliferation and to implement proliferation-related United Nations Security Council resolutions. The series identifies and explores various aspects of the transport sector as a counterproliferation partner, with the aim of strengthening the sector’s contribution in this area.

This guide pays specific attention to how lessons from export control-related internal compliance programmes can contribute more broadly to the transport sector’s efforts to counter proliferation-related activity. It demonstrates how export control-related internal compliance programmes can be applied within the transport sector to increase its growing counterproliferation good practices.

BACKGROUND

On 29 January 2016, the Singapore-based shipping company Chinpo was fined 180 000 Singaporean dollars (\$126 500) for offences related to UN sanctions against North Korea and running an unlicensed remittance business. It was found that Chinpo had facilitated the transfer of two disassembled aircraft, 15 aircraft engines and components for surface-to-air missile sys-

SERIES SUMMARY

● The SIPRI series of good practice guides on the transport sector as counterproliferation partner is the culmination of a MacArthur-funded research project that recognizes the importance of the transport sector to counterproliferation efforts and seeks to encourage the sector’s enhanced activity and partnerships with government authorities.

Throughout 2015 the project team engaged with a broad range of transport sector stakeholders in Asia, Europe, the Middle East and the United States to better understand their compliance challenges; to explore risks and obligations; and to identify, share and test good practice. In doing so, the team also hosted regional good practice workshops that brought together government officials, experts and transport sector representatives and provided a rare opportunity for a spectrum of stakeholders to engage directly on counterproliferation issues.

The guides reflect the main findings of the project’s research, engagement and workshops. They explore an array of counterproliferation activities and can be used individually or combined to support training, awareness raising or the development of internal compliance programmes. The format and focus have been developed in consultation with the transport sector.



tems and ammunition.¹ The cargo was found hidden beneath 10 500 tonnes of sugar on the North Korean vessel *Chong Chon Gang*. Chinpo paid \$72 016 to the Panamanian shipping agent C B Fenton and Co. to allow the *Chong Chon Gang* to pass through the Panama Canal on 8 July 2013, but Panamanian officials intercepted the ship. It was discovered that the company had also arranged remittances on behalf of North Korean entities with no access to the international banking system due to UN sanctions. Lawyers for Chinpo argued that the company did not know that the vessel was carrying sanctioned cargo, but prosecutors at the Singapore District Court argued that Chinpo had failed to carry out due diligence checks.² This was the first incident of a company being fined for violating UN sanctions in Singapore.

In May 2014 the Dubai-based Aramex Emirates agreed to pay a fine of \$125 000 to the United States Department of Commerce for facilitating the export or re-export of unlicensed network devices and software to Syria via the United Arab Emirates in violation of sanctions against Syria. In January 2015, General Logistics International (USA) was fined \$90 000 for facilitating the unauthorized export of steel scrap, valued at \$672 022, from the USA to the People's Steel Mills in Pakistan, a company on the US Department of Commerce Entity List. In its export shipping documentation, General Logistics International had incorrectly indicated that no licence was required for these exports.³

In 2008, the Norwegian shipping company Airsped AS was fined 1 000 000 Norwegian kroner (\$115 800) for transporting a gyroscope through Norway from the United Kingdom to Iran.⁴ The company responded that there had been a procedural error, after an employee unintentionally filled out the transit documents incorrectly.⁵ The shipment violated Norwegian law as well as UN sanctions.

These are just a few of the recent cases where transport companies have been charged and penalized for violations of sanctions or trade controls. The Chinpo case was a particularly egregious circumvention, but many other transport companies have been fined for violations involving less obvious, dual-use items (i.e. commercial materials and equipment that also have military uses). These companies are often found to have failed to check the lists of sanctioned goods, destinations, companies or individuals.⁶

¹ 'Singapore company fined over DPRK arms shipment', *World ECR*, [n.d.], <<http://www.world-e-cr.com/singapore-company-fined-over-dprk-arms-shipment/>>.

² Chevlan, V. P., 'Singapore firm Chinpo fined \$180,000 over N Korea arms shipment', *Channel News Asia*, 30 Jan. 2016, <<http://www.channelnewsasia.com/news/singapore/singapore-firm-chinpo/2469770.html>>.

³ US Department of Commerce, Bureau of Industry and Security (BIS), *Don't Let This Happen To You: Actual Investigations of Export Control and Antiboycott Violations* (BIS: Washington, DC, July 2015), <http://www.bis.doc.gov/index.php/forms-documents/doc_view/1005-don-t-let-this-happen-to-you-071814>.

⁴ Gjermundshaug, A., 'Sendte våpendeler til Iran' [Shipped weapons parts to Iran], *Romerikes Blad*, 26 Nov. 2008, <<http://www.rb.no/lokale-nyheter/sendte-vapendeler-til-iran/s/1-95-3950578>>.

⁵ 'Norsk selskap vedtar millionbot for Iran-eksport' [Norwegian company accepts 1 million kroner fine for Iran exports], *Dagens Perspektiv*, 27 Jan. 2009, <http://www.dagensperspektiv.no/nyheter/etikk_og_samfunnsansvar/norsk-selskap-vedtar-millionbot-for-iran-eksport->.

⁶ Palmer, M., 'Restricted parties and the transport sector', SIPRI Good Practice Guide: The Transport Sector as Counterproliferation Partner no. 2, Sep. 2016, <www.sipri.org/publications/2016/restricted-parties-good-practice-guide>; and Palmer, M., 'Proliferation red flags and the transport sector', SIPRI Good Practice Guide: The Transport Sector as Counterproliferation Partner no. 3, Sep. 2016, <www.sipri.org/publications/2016/red-flags-good-practice-guide>.



A GROWING FOCUS ON SUPPLY CHAIN SECURITY

Goods routinely transit or trans-ship during their journey from one country to another.⁷ If poorly managed, trans-shipment can weaken the security of the global supply chain by creating opportunities for the diversion of strategic goods to unauthorized end users. If well managed, it can provide an important opportunity to detect or interdict high-risk shipments. First, companies in the transport sector around the world are not always aware of the latest compliance standards, their legal obligations or the correct procedures to follow in order to ensure compliance, especially when shipments pass through many legal jurisdictions. They must carry out their obligations of due diligence by either developing internal compliance programmes (ICPs) or adopting ICP best practices. Some countries, such as Singapore, facilitate this with industry outreach programmes that provide information on setting up ICPs or screening end users.⁸

Second, because cargo is rarely opened or examined, the transport industry often has no idea of what is being shipped.

Third, while companies are expanding their services, they are not performing the legal due diligence necessary to meet the demands of their growing businesses. The expansion of world trade and growth in export volumes, as well as demands for faster delivery times and lower transport costs, mean that the transport industry is evolving rapidly to provide services beyond the physical movement of goods.⁹ According to one European Union (EU) report, ‘These services can include handling, packaging, customs processing, consolidations, documentation, insurance, and customs clearance. Especially for customs clearance, certain aspects of the actual and potential role of transport actors have to be kept in mind regarding compliance with transit, transshipment and export control provisions’.¹⁰ The FedEx Trade Network is a prime example of a company that handles export and import paperwork, finds a carrier (which is not necessarily FedEx) with which to place the package and arranges delivery to the final destination.

National governments—in their implementation of multilateral non-proliferation export control regimes, UN Security Council Resolution 1540, and other UN sanctions—have traditionally placed responsibility for export control compliance with manufacturers, research and development

⁷ The WCO defines transit as the transportation of goods through a territory where the goods remain onboard the means of transportation (e.g. vessel, train or aircraft), whereas trans-shipment is defined as the transportation of goods through a territory where the goods are unloaded from one means of transportation and loaded on to another means of transportation (e.g. from a vessel to a train). See World Customs Organization, <<http://www.wcoomd.org/en.aspx>>; Dunne, A., ‘The role of transit and trans-shipment in counterproliferation efforts’, SIPRI Good Practice Guide: The Transport Sector as Counterproliferation Partner no. 6, Sep. 2016, <www.sipri.org/publications/2016/transit-and-trans-shipment-good-practice-guide>; and Nuclear Suppliers Group, ‘Good practices for the implementation of brokering and transit/transshipment controls, 2014’, NSG Plenary <https://www.sipri.org/sites/default/files/National_Good_Practices.pdf>.

⁸ Singapore Customs, *Strategic Trade Scheme Handbook*, Oct. 2015, <<http://www.customs.gov.sg/businesses/strategic-goods-control/published-guidebooks>>.

⁹ See e.g. Jones, S., ‘Counterproliferation good practice for freight forwarders’, SIPRI Good Practice Guide: The Transport Sector as Counterproliferation Partner no. 4, Sep. 2016, <www.sipri.org/publications/2016/transit-and-trans-shipment-good-practice-guide>.

¹⁰ Ecorys and SIPRI, *Final Report: Data and Information Collection for EU Dual-use Export Control Policy Review* (European Commission: Brussels, 2015), <http://www.cecimo.eu/site/fileadmin/documents/eu_legislation_and_dossiers/dual-use_legislation/final_report.pdf>, p. 36.



enterprises, exporters and the financial sector.¹¹ More recently, national governments have started to focus on the importance of the transport sector to supply chain security. For example, in 2011 the US Department of Commerce's Bureau of Industry and Security published the *'Best Practices' for Industry to Guard Against Unlawful Diversion through Transshipment Trade*, and in 2012, it published a Freight Forwarder Guidance.¹²

The international customs community is increasing its focus on security matters, as demonstrated by the World Customs Organization's (WCO) landmark Punta Cana Resolution, which was issued by the WCO's Policy Commission (the group's highest body) in December 2015.¹³ The WCO has launched a programme on strategic trade control enforcement to encourage and assist WCO member states to effectively enforce trade control measures and sanctions related to strategic goods in line with Resolution 1540.¹⁴

WHAT CAN THE TRANSPORT SECTOR DO TO AVOID EXPORT CONTROL VIOLATIONS?

Preventing weapons of mass destruction and related strategic commodities from falling out of regulatory control is not only good citizenship but also good business practice, as violations can lead to costly litigation fees, fines, imprisonment, denial of export privileges and bad publicity. There are measures that exporters, carriers, freight forwarders, consolidators, express carriers, fast parcel operators, shippers' associations and others in the transport sector can implement in order to mitigate the risk of violations. These are primarily related to knowing your cargo and knowing your customers, which can be addressed through harmonized system (HS) codes and internal compliance programmes.

Using harmonized system codes

Custom agencies depend on the HS codes in their risk assessment process and will scrutinize shipments with vague commodity descriptions.¹⁵ It is important to avoid making inaccurate declarations to customs by ensuring that the

¹¹ Multilateral non-proliferation export control regimes include the Wassenaar Arrangement, the Nuclear Suppliers Group, the Australia Group and the Missile Technology Control Regime. US Department of State, 'UN Security Council Resolution 1540', <<http://www.state.gov/t/isn/c18943.htm>>; and US Department of State, 'A resource on strategic trade management and export controls: nonproliferation regimes', <<http://www.state.gov/strategictrade/resources/c43178.htm>>.

¹² US Department of Commerce, Bureau of Industry and Security (BIS), Office of Technology Evaluation, *BIS 'Best Practices' for Industry to Guard Against Unlawful Diversion through Transshipment Trade* (BIS: Washington, DC, 2011), <https://www.bis.doc.gov/index.php/forms-documents/doc_view/625-best-practices>; US Department of Commerce, Bureau of Industry and Security (BIS), Office of Exporter Services, Export Management and Compliance Division, *Freight Forwarder Guidance* (BIS: Washington, DC, 2012), <https://www.bis.doc.gov/index.php/forms-documents/doc_view/620-new-freight-forwarder-guidance>.

¹³ World Customs Organization Newsroom, 'WCO issues the Punta Cana Resolution', Press release, Dec. 2015, <<http://www.wcoomd.org/en/media/newsroom/2015/december/wco-issues-the-punta-cana-resolution.aspx>>.

¹⁴ World Customs Organization, <http://www.wcoomd.org/en/topics/enforcement-and-compliance/activities-and-programmes/-/link.aspx?_id=7404797F451C4CBABEA0657BD33FBB39&_z=z>.

¹⁵ World Customs Organization, 'What is the harmonized system?', <<http://www.wcoomd.org/en/topics/nomenclature/overview/what-is-the-harmonized-system.aspx>>.



correct HS codes are used to classify the cargo, and to insist on detailed and specific commodity descriptions from shippers. Be cautious when the commodity description given simply matches the text corresponding to the HS code provided. Currently, it is common for transport companies to require shippers to declare whether the goods they are shipping are hazardous. It may be time to also insist that shippers declare whether their goods are subject to strategic trade controls, although the shipper will not necessarily know the details of all the relevant jurisdictions that the goods might transit on the way to their destination. At a minimum, transport companies should require shippers to certify that their commodity descriptions are accurate and the HS codes are correct.

Setting up an internal compliance programme

Many transport companies are now adopting the same export control compliance policies and procedures that have been used by exporting companies for decades. These ICPs come in a variety of forms. FedEx, for example, probably has a much more extensive ICP than a freight forwarder with a small staff. Many small- and medium-sized enterprises struggle to maintain an in-house ICP due to a lack of resources and, at times, a lack of awareness of the need to have one in place. Even when they are aware of the requirements, compliance can be onerous, creating an economy of scale that disadvantages small operators. There are, however, lessons and tips borrowed from standard ICPs that can be implemented in order to prevent such enterprises from being penalized. The basic steps towards creating a typical ICP programme are set out below.¹⁶

Ensure management commitment

The commitment of senior management is essential, in the form of a written policy and resources dedicated to the ICP. Employees must be made aware of the policy and their legal obligations. The first step should be to document that every employee has read and understands this management policy statement.

Provide written procedures and responsible officials

Next, create written procedures to be incorporated into the workflow of the transport company. Ensure that the procedures are understood by all the employees involved in the process and assign clear responsibility to a person or department, depending on the size of the company, for ensuring adherence to these procedures. This person will be responsible for compliance and serve as the single point of contact for export control-related issues, training and questions, and also serve as the main liaison between the company and the government. The procedures must be available in writing, kept up to date and posted online where employees can access them.¹⁷

¹⁶ The elements of an effective ICP outlined here are accumulated from the sources referenced in this article. The authors have also borrowed from their own experience of working for the US Department of Energy, Argonne National Laboratory and the US Bureau of Industry and Security (BIS), Office of Export Enforcement.

¹⁷ Oerlikon, 'Compliance', <<http://www.oerlikon.com/en/company/compliance/>>.



Running an internal compliance programme

Perform risk assessments

Risk assessment means ‘know your customer’. When working with a customer, especially a new customer, insist that a risk assessment is performed as part of the ICP at the same time as the standard assessment is performed to assess the customer’s ability to pay. The increased liabilities placed on the transport sector increase the need to know the customer by performing due diligence using a variety of methods, including basic end-user checks, screening and red flags.

Basic end-user checks. Check addresses, contact numbers, business registration and other information to ascertain that the end user is not a ‘front company’, possibly one involved in proliferation efforts.

Screening. Screen all the parties to the transaction before moving any product, despite the fact that this might be difficult and costly.¹⁸ Most of the penalties imposed on transport enterprises have been for shipping to a party listed on one of the many person or party sanctions lists. It is important to remember that the applicable lists vary by jurisdiction and ignorance may not obviate liability for participating in an export violation. It is good practice to check the names of all the parties involved in the shipment against the individuals, businesses and other organizations included on various international and national screening lists, such as the particularly comprehensive US Consolidated Screening List.¹⁹

Screening can be time-consuming and there is software available for purchase that tries to simplify the process. Screening and risk management companies can be found through Internet searches. These companies maintain a global list and their software can be incorporated into the documentation process of a transport company. With software, of course, there is always a risk of creating false positives, which will require human intervention to resolve. Incorrect or ineffective data entry is one of the key reasons for generating false positives. One of the most effective ways to minimize false positives is to have a standardized way of entering data into an effective software algorithm. Avoid the most common mistakes in data entry, such as ‘poor spelling of name and address information, multiple names stored in a single field, name information mis-fielded into address, date-of-birth information in differing formats, entities and individuals mixed together, poorly fielded address information, non-standard country information’.²⁰

Red flags. It is important to have a list of ‘red flags’ available to all employees.²¹ These red flags are situations or conditions that make an experienced transport company question the validity of the shipment. Employees should be taught about red flags, and a list of red flags should be displayed in offices,

¹⁸ See Palmer, ‘Restricted parties and the transport sector’ (note 6).

¹⁹ US Department of Commerce, ‘Export.gov’, *Consolidated Screening List*, 15 Oct. 2015, <https://build.export.gov/main/ecr/eg_main_023148>.

²⁰ Oracle Corporation, *A Guide to Effective Watchlist Screening*, Oracle White Paper, Sep. 2011, <<http://www.oracle.com/technetwork/middleware/ows/documentation/ows-screening-guide-wp-1864952.pdf>>.

²¹ See Palmer, ‘Proliferation red flags and the transport sector’ (note 6).



trucks and other areas where employees work.²² Frequent reminders of red flags help to reinforce them. Typical red flags can include abnormal shipping routes, a freight forwarder as the final destination, a destination country is subject to unilateral or multilateral sanctions or a country of proliferation concern, unusual requests concerning labelling and vague delivery dates.²³ A company should decide what goes on its red flag list.

Explore export control compliance services

Investigate the range of possible services provided by specialists in export control compliance. These specialists can provide classification services, assist with business-specific software selection and integration, and help to determine, manage and fulfil regulatory obligations, among other things.

Strengthen relations with government

Establish a positive relationship with trade control, regulatory and enforcement agencies. Companies should seek commodity classification assistance and determine whether the relevant enforcement agencies provide a hotline number to report suspicious enquiries or means to self-disclose violations, which can often result in less severe penalties.

Establish and maintain solid record-keeping practices

Determine the required period for record retention, which varies by country. For instance, in the USA and Singapore records must be maintained for 5 years while some EU member states require record retention for up to 10 years. Examples of records include invoices, shippers export declarations/automated export system records, delivery notes, airway bills, bills of lading, packing slips, technical data logs, communications with customers as well as the government, import certification delivery verification, financial records and so on.²⁴ Proper record-keeping and an internal plan on how to address issues will provide a company with a prompt and accurate way to respond to customs or export control enforcement agencies when records are requested. A company should be able to retrieve records easily. The use of screening software may also allow for better record-keeping.

Conduct audits

Conduct audits by trained auditors annually. The purpose of auditing is to ensure that procedures for export compliance are being followed and the company's compliance system is working as planned. To avoid conflicts of interest, auditors should be either external or from a different department within the company. The audit should include examination of documents,

²² US Department of Commerce, Bureau of Industry and Security (BIS), Office of Exporter Enforcement, 'Red flag indicators', <<http://www.bis.doc.gov/index.php/enforcement/oeecompliance/23-compliance-a-training/51-red-flag-indicators>>.

²³ Institute for Science and International Security, 'Key elements of an export control system', <http://exportcontrols.info/key_elements.htm>.

²⁴ US Department of Commerce, Bureau of Industry and Security (BIS), Office of Exporter Services, *Compliance Guidelines: How to Develop an Effective Export Management and Compliance Program and Manual* (BIS: Washington, DC, June 2011), <http://www.bis.doc.gov/index.php/forms-documents/doc_view/7-compliance-guidelines>, pp. 126–36.



interviews with employees, reviews of procedures and record-keeping, and assessments of management commitment and screening practices.²⁵

Develop and support training

Train employees on internal compliance procedures, basic proliferation awareness, methods of export control evasion used by proliferators, red flags, the role of industry in preventing proliferation, examples of recent contraventions and legal obligations. Government outreach programmes for industry are usually coordinated through the Chamber of Commerce, the Ministry of Trade and Industry or the Ministry of Finance. There may also be training arranged in conjunction with foreign governments, especially the outreach programmes of the US Government and the EU. Such training is an excellent source of information. Compliance personnel should be aware of the most up-to-date and useful sources of information, and look for opportunities to network with the right government points of contact. Managers should encourage all employees that are involved in ensuring adherence to export control obligations to attend these training events.

CONCLUSIONS

No transport company wants to be surprised by the sudden appearance of customs enforcement agents or the detention of a shipment for proliferation reasons. Many companies are aiming to reduce their shipping times. The convergence of these pressures on the transport industry—to move commodities faster but within an increasingly security-conscious environment—will not abate, so transport companies must implement internal procedures that efficiently and cost-effectively ensure regulatory compliance and mitigate risk. Because exporters have been doing this for years, they can act as role models and provide excellent lessons.

²⁵ US Department of Commerce (note 20), pp. 137–40.

SIPRI is an independent international institute dedicated to research into conflict, armaments, arms control and disarmament. Established in 1966, SIPRI provides data, analysis and recommendations, based on open sources, to policymakers, researchers, media and the interested public.

GOVERNING BOARD

Sven-Olof Petersson, Chairman
(Sweden)

Dr Dewi Fortuna Anwar
(Indonesia)

Dr Vladimir Baranovsky
(Russia)

Ambassador Lakhdar Brahimi
(Algeria)

Ambassador Wolfgang
Ischinger (Germany)

Professor Mary Kaldor
(United Kingdom)

Dr Radha Kumar (India)
The Director

DIRECTOR

Dan Smith (United Kingdom)



**STOCKHOLM INTERNATIONAL
PEACE RESEARCH INSTITUTE**

Signalistgatan 9
SE-169 70 Solna, Sweden
Telephone: +46 8 655 97 00
Email: sipri@sipri.org
Internet: www.sipri.org

ABOUT THE AUTHORS

Pete Heine (United States) is Director of the Center for Strategic Security at Argonne National Laboratory. His focus is on strategic dual-use trade control, particularly in the advancement of effective strategies for identifying high-risk shipments and the establishment of training programs for export control enforcement personnel. Currently, he is also seconded to the World Customs Organization as a Strategic Trade Control Enforcement National Expert.

Ronald B. Orzel (United States) is a Principal Export Control Specialist at Argonne National Laboratory. He is also a National Security Advisor for CSRA Inc. of Alexandria, VA. Previously he was a Federal Agent and a Special Agent-in-Charge for the Office of Export Enforcement of the U.S. Department of Commerce. He has spent over 30 years working on WMD nonproliferation and export control issues.

Debika Pal (United States) is a Political Science Specialist at Argonne National Laboratory. She previously spent ten years at the Department of Energy/National Nuclear Security Administration's International Nonproliferation Export Control Program, implementing training projects for strategic export control professionals in enforcement, licensing and enterprise outreach throughout Europe and parts of Asia.

The information given in these guides is believed to be correct. The authors and SIPRI (the publisher) have taken every reasonable care in the preparation of the content, but cannot accept liability for any errors or omissions therein.

The information in the guides is intended for use as guidance and should not be considered as legal advice. If you have a concern about any of the issues covered in the guides, you should contact a legal professional or government for appropriate advice.

Throughout these guides, the publisher has provided external links to other information, but cannot accept responsibility for their content or guarantee their availability. These links are provided to improve access to information and exist only for the convenience of those who use the guides. The publisher does not monitor the content of third party websites.

MacArthur
Foundation

**THIS PROJECT FUNDED BY THE JOHN D. AND
CATHERINE T. MACARTHUR FOUNDATION.**