

Countering bribery and terrorism



The pivotal role of export controls

This concept note has been prepared for the session on Countering Bribery and Terrorism: The Pivotal Role of Export Controls that will take place at the Global Anti-Corruption and Integrity Forum on 31 March 2017.

Export controls are essential for limiting the ability of unauthorised users to obtain equipment, materials or technologies (whether nuclear or not) which risk being used for illegal purposes, including terrorism, or to get access to profitable sources of financing for terrorism. These controls are vulnerable to foreign bribery and solicitation from various sources, including customs and immigration officials but also intermediaries or brokers and any person in charge of securing export and import licenses. Terrorist groups have developed the ability to identify and exploit both weak or poorly-enforced export controls in supplier states and weak or poorly enforced anti-bribery regimes which allow them to avoid export controls. In particular, with respect to the the cross-border smuggling of nuclear components, corruption has been identified as the primary tool that criminals use to solicit help from officials (see quote).

“The greatest threat to post-Soviet nuclear security is no longer underpaid scientists selling their skills to the highest bidder. Much more dangerous today are the connections between corrupt officials who have access to nuclear materials, criminal groups that already control transit networks for illegal goods, and terrorist groups that want to acquire nuclear materials.”

“Dirty Entanglements: Corruption, Crime, and Terrorism”, by Louise I. Shelley, Director of the Transnational Crime and Corruption Center at George Mason University

The OECD Anti-Bribery Convention

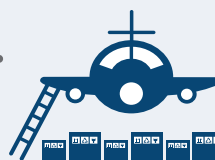


41
parties

together,
they cover



64%
of global outbound FDI



> 50%
of the world's exports

The Convention on Combating Bribery of Foreign Public Officials in International Business Transactions is a legally binding international agreement. Parties to the Convention agree to establish the bribery of foreign public officials as a criminal offence under their laws and to investigate, prosecute and sanction this offence. The OECD Anti-Bribery Convention is the first and only international anti-corruption instrument focused on the “supply side” of the bribery transaction – the person or entity offering, promising or giving a bribe. www.oecd.org/corruption/anti-bribery

MINIMISING THE GLOBAL SECURITY THREAT

Action is needed to minimise the global security threat presented by corruption in export controls. The integration of the OECD Anti-Bribery Convention into effective national export control regimes can make a significant contribution, but this is not enough. A global and coordinated approach by governments, business and international standard setters is needed. This multidimensional challenge requires integrating social, economic, and political factors into the security analysis and response. The OECD is well placed to do this in collaboration with all relevant players, including civil society.

THE ROLE OF GOVERNMENTS

Governments must develop and implement effective legislative frameworks to prevent both the export of dangerous goods/technologies that may fall into the hands of terrorists; and corruption which could undermine export controls. Export

controls cover a large range of products and technologies, including “dual-use items” which have a legitimate commercial use as well as possible military applications. Licensing regimes vary depending on the destination country, organisation, or individual, the end-use or end user of the export. Export controls aim to protect national security interests, preventing the export of weapons and technologies that could be used by international terrorists, and complying with international commitments (including international sanctions). Dedicated authorities need to be put in place to ensure proper implementation of the legislation.

THE ROLE OF ENFORCEMENT AGENCIES

In order to prevent export controls being abused and undermined by corruption, increased co-operation is needed between the authorities in charge of enforcing export controls and those in charge of anti-corruption laws. Recent enforcement cases highlight the consequences of non-compliance across regulatory regimes and

A coordinated effort is required to counter bribery and terrorism risks in export controls



the benefits of increased enforcement in both the areas of anti-corruption and export control. For example, on 26 November 2013, three subsidiaries of a company called Weatherford agreed to plead guilty to anti-bribery provisions of the US Foreign Corrupt Practices Act and bribery of foreign officials. The violations also involved the fraudulent misuse of the UN Oil for Food Programme and violations of the US Export Administration Regulations that govern exports of goods and services in the United States.

In May 2011, the BAE Systems plc case resulted in a consent agreement for 2,591 alleged violations of the US export control legislation (the International Traffic in Arms Regulations - ITAR), culminating in a penalty of USD 79 million and a US Department of Justice penalty of USD 400 million for US Foreign Corrupt Practices Act violations. This case marked the first time the US Department of State Directorate of Defence Trade Controls (DDTC) imposed a penalty on a non-US citizen for alleged violations of ITAR provisions. The BAE case also illustrates both inter-agency co-operation within a country (the United States) and international co-operation in the areas of anti-corruption and export control

as the DDTC investigation stemmed from the US Department of Justice and the UK Serious Fraud Office investigation.

THE ROLE OF BUSINESS

Companies engaging in international business transactions have an important role to play in preventing the export of dangerous goods and technologies that can threaten national and global security. Export companies need to have processes in place, including internal compliance systems, that ensure compliance with export control laws and regulations. The long-term viability of companies can be threatened if they are deemed to be responsible for illegal exports. Companies should address export control risks in tandem with anti-corruption risks. Both these areas should be considered part of a responsible prevention and compliance programme. As detailed above, recent enforcement actions in the United States have demonstrated the benefits of the convergence of anti-corruption and export controls and, as a consequence, the need for companies to better integrate the management of corruption and export control risks into their business operations.

Issues for discussion

Export controls are essential to limit the ability of unauthorised users to obtain equipment, materials or technologies which could be used for both perpetrating terrorist acts or to finance terrorism; however such controls are vulnerable to foreign bribery. The implementation of the OECD Anti-bribery Convention is therefore an integral part of an effective export control regime. This session will examine what governments are doing and what they could do better to minimise the global security threat that corruption in export controls presents. Participants will explore the increased interplay and actual cooperation between the agencies responsible for enforcing export controls and anti-corruption laws both domestically and across jurisdictions. It will also address the challenges faced by companies in creating effective compliance programs to prevent both illegal sales (in breach of export control rules and regulations) and corruption.

SPEAKERS

- Candice Welsch, Chief, Implementation Support Section Corruption and Economic Crime Branch, United Nations Office on Drugs and Crime
- Katherine Dixon, Programme Director, Transparency International's Defence & Security Programme, UK
- David Albright, Founder and President of the non-profit Institute for Science and International Security
- Lino Arboleda, General Electric Company, Export Control Specialist, Asia, Legal Shared Services, ITC COE

MODERATOR

- Patrick Moulette, Head of Anti-Corruption Division, Directorate for Financial and Enterprise Affairs, OECD

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