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REPORT TO THE EUROPEAN PARLIAMENT AND THE COUNCIL ON THE APPLICATION OF REGULATION (EC) 3381/94 SETTING UP A COMMUNITY SYSTEM OF EXPORT CONTROLS REGARDING DUAL-USE GOODS

(presented by the Commission in accordance with Article 18 of the said Regulation)

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I) Introduction: EU export controls in the international context

Export controls are a trade aspect of international security. In the European Community, export controls have existed for years prior to any legislation at Union level. Most Member States have a long-standing policy of controlling not only the export of arms but also the export of "sensitive" goods and technologies - the so-called dual-use goods which, although they are by no means weapons and in most cases primarily intended for civil applications, may be used for military purposes or could significantly enhance the military capacities of the country acquiring them.

Until the year 1995, export controls in the Community were implemented by national legislation only, and the most important discussions and negotiations relating to the substance of such controls, in particular the establishment of product lists, took place in international non-proliferation regimes. The best known of these regimes was the now defunct COCOM, an informal grouping of Western countries which pursued the objective to avoid export of high-technology items to countries of the former Soviet bloc.

In the last decade, the nature and purpose of export controls have profoundly changed. Three factors account for this change. The most important factor is the end of the Cold War which has shifted the emphasis of controls - away from a policy of general economic containment of a specific country group and towards the objective of avoiding inadvertent or deliberate contributions to programmes concerning the development of weapons of mass destruction and/or to possible regional arms races. Export controls today are focus more on the specific end-use and end-user of a given good or technology. Generally speaking, the tendency of public authorities world-wide has been to reduce the number of items controlled and to allow for simplified licensing procedures, whilst foreseeing a "catch-all" clause which permits control of any item, listed or not, if its export raises proliferation concerns. Whilst liberalising and facilitating the trade with dual-use items, public authorities have thus at the same time obliged exporters to "know their customers", a burden industry does not always feel comfortable with.

Nothing demonstrates the shift more vividly than the dissolution of COCOM in 1993 and its "replacement", in 1996, by the new Wassenaar arrangement of which Russia and most Central and Eastern European countries, formerly the most important targets of COCOM controls, are founding Members. Furthermore, the geographical spectrum of the non-proliferation regimes has broadened with South Africa for instance joining the Missile Technology Control Regime and the Nuclear Suppliers Group, and South Korea participating not only in the latter but also in the Wassenaar Regime and the Australia Group (the AG deals with proliferation issues concerning chemical and biological products).

The second major factor is the pace of the technological development. Certain types of computers still subject to individual export authorisations in the early 1990's are now so commonplace and so easy to acquire that public authorities have more or less reluctantly liberalised their export by granting general export authorization for shipments of these goods to a varying number of destinations. If the number of allowed destinations does vary from one country to another, in accordance with differing policy assumptions and differing administrative traditions, the general tendency in favour of lighter controls is obvious. The same holds true for entire categories of electronics and telecommunication equipment: the progress of technology invariably leads to a banalization of goods and technology which would have been considered "sensitive" only a few years ago. Administrations are therefore under increasing pressure from European exporters to ensure that export controls are constantly reviewed in light of technological developments and of policies of third countries whose exporters are important competitors.

A third major factor which has changed the situation for industry and public authorities in Europe has been the adoption of EU legislation (see below, point II).

II) Establishment of the EU export control regime for dual-use items

In the Community, the matter of export controls on dual-use goods was first raised in the context of the completion of the Internal Market. Considering as an objective that dual-use goods should move as freely between Member States as they do within each of them, and that the elimination of controls on intra-EC trade was only possible if all Member States established effective controls based on common standards for exports to non-EC countries, the Commission submitted a proposal for a Council Regulation to the Council on 31 August 1992[1]. On the basis of this proposal, the Council of the European Union ultimately adopted a system of export controls on dual-use goods consisting of two pillars: Council Decision N° 94/942/CFSP[2] on the one hand and Council Regulation (EC) N° 3381/94[3] on the other. Both texts were adopted on 19 December 1994, and are closely entwined by numerous cross-references.

The regime entered into force on 1 January 1995 and became applicable six months later, on 1 July 1995.

Article 18 of the Regulation stipulates that, every two years, the Commission "shall present a report to the European Parliament and the Council on the application of this Regulation".

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[1] COM (92) 317 final; O.J. C 253/1 of 30.9.92 p.13

[2] OJ L367 of 31.12.94, as last amended by by Council Decision 98/232/CFSP (OJ N°L92 of 25.3.98)

[3] OJ L367 of 31.12.94, as amended by Regulation 837/95 of 10 April 1995 (OJ N°L 90 of 21.4.95)

In conformity with the provisions of this Article, the Commission therefore presents for the first time its assessment of the way the present EU export control regime for dual-use goods has worked in practice. It should be noted that this assessment is confined to the analysis of the practical application of the Regulation and does not represent a comprehensive judgement on all aspects of the export control regime, its structure, legal basis and underlying policy assumptions. Therefore the two rulings of the Court of Justice (cases C-70/94 and C-83/94) regarding the export controls of dual-use goods and firmly establishing exclusive Community competence even if such controls are motivated by foreign and security policy objectives, will not be discussed in this report.

III) The main characteristics of the common export control regime

1) Basic features

The basic principles of the Regulation are:

*establishment of a common external fence by adoption of an identical list of dual-use goods and technology requiring a licence if exported from the Community. (common product list). This licence requirement is spelled out in Article 3.1 of the Regulation, the list of products itself is contained in Annex I of the CFSP Decision.

*mutual recognition of export licences. Article 6.3 explicitly states that an export authorization granted by the competent authorities of one Member State "shall be valid throughout the Community".

*in general, free movement of dual-use goods inside the Community. However, restrictions are maintained for certain highly sensitive goods (Annex IV of the CFSP decision). Furthermore, some Member States still maintain national controls for transfers of certain dual-use items which they consider particularly sensitive (Annex V of the Decision).

*a catch-all clause which subjects non-listed dual-use goods to a licence requirement if there is a proliferation risk associated with their export.

In terms of harmonisation of policies, the legislation is limited to the strict minimum necessary to allow free movement of dual-use goods inside the Community. The system does not constitute a common export policy for dual-use goods. It is a common framework, but for national policies which continue to differ, in some aspects significantly.
As the seventh preambular paragraph of the Regulation itself makes clear:

"this system represents a first step towards the establishment of a common system for the control of exports of dual-use goods which is complete and consistent in all respects; (...) it is desirable that the authorization procedures applied by the Member States should be harmonized progressively and speedily".

2) Administrative cooperation

Since the present Community export control regime is based on a "mutual recognition" approach of differing national policies rather than on effective development of a common policy, it relies to a very large extent on administrative cooperation between national authorities to bridge the gaps between Member States policies and procedures.
Accordingly, provisions regarding various forms of administrative cooperation and exchange of information are a major feature of the Regulation.

*consultation of another Member State before granting an individual export licence is compulsory when the good in question is not located in the Member States where the licence application has been made. The Member State where the good is or will be located has the final word on an export being allowed to go ahead or not (article 7.2)

*Member States may request of each other not to grant a licence or to revoke etc. a licence if they feel that their essential interests might be prejudiced (article 7.3)

*Member States inform each other about any denial of an export authorization, as well as about any annulment, modification, suspension or revocation of a licence previously granted (article 9.2)

* Member States generally undertake to "establish direct cooperation and exchange of information between competent authorities, in particular to eliminate the risk that possible disparities in the export controls may lead to a deflection of trade" (article 13.1)

*Member States also apply, mutatis mutandis, Council Regulation 1468/81 of 19 May 1981 on mutual assistance regarding the law on customs matters, which allows for instance for information exchange on anti-fraud measures (article 13.2)

3) Coordination at Community level

A Coordinating Group chaired by the Commission has regularly convened to discuss the practical application of the Regulation. Member States are usually represented by their licensing officials, but customs officers have also participated repeatedly. The Group focuses on resolving practical problems and has adopted informal "Elements of consensus" (see annex 1 to this report) on how to interpret certain provisions of the Regulation. The meetings have been very useful in terms of exchange of information on the shortcomings of the present regime, and has also served as a forum for discussing possible improvements. Furthermore, in line with its mandate, the Group has consulted exporters by holding a hearing with industry representatives in February 1996 (article 16).

IV) Functioning of the export control system: assessment of the practical application of the Regulation

The overall assessment by the Commission of the practical application of the Regulation two years after its implementation is mixed. Whilst successful in terms of intra-European trade facilitation and establishment of the Internal Market, the regime would appear to have largely failed to function as a credible common export control mechanism.

Achievements

The new EU regime has led to appreciable improvements for industry as well as for public authorities by significantly facilitating intra-Community trade and thus cutting red-tape for exporters and administrations.

*the existence of a common regime and external fence has permitted free movement of nearly all dual-use goods inside the Community. This is not only important in terms of the proper functioning of the Internal Market, but also because it cuts back on the administrative burden for companies as well as for administrations. In terms of the efficient use of scare resources, cutting back on such paperwork enables public authorities and companies to devote more time and money to the combat of fraud for instance, or to the in-depth screening of sensitive exports.

*administrative cooperation between Member States has clearly increased. Consultations on specific exports as well as exchange of views regarding policy issues in the Coordinating Group have contributed to the development of a network of national officials responsible for export controls. It is safe to say that knowledge of other Member States' policies has indeed improved, thus laying the foundation for future common policies.

*practical difficulties with applying and interpreting certain provisions of the Regulation have been solved by the Coordinating Group through informal agreements between Member States which are recorded in a document called "Elements of consensus" (see Annex 1 to this communication).

*in connection with the EC Regulation, many Member States have revised or introduced national legislation on export controls. It clearly appears that the general tendency is one of increasing de facto convergence of licensing policies and procedures, especially with regard to exports to Australia, Canada, Japan, New Zealand, Norway, Switzerland and the United States of America (see Annex 2 to this communication).

Deficiencies and problem areas

The Regulation and the way it has been applied in practice has not succeeded in creating a effective common export control regime which is both easy to administer and cost-effective to comply with. In particular, due to an insufficient convergence of national policies and practices, the system is too complex to be routinely enforced by customs with a sufficient degree of automaticity. It would clearly appear therefore, that a level playing field among European exporters has not been established.

Companies have made it very clear to the Commission and to Member States, in a hearing by the Coordinating Group organised in February 1996, that they find it difficult, if not impossible, to operate in a cost-effective manner at European level when complying with relevant export control legislation. The Union of Industrial and Employers' Confederation of Europe (UNICE) and the European Round Table of Industrialists (ERT) for instance have both urged the Commission and Member States to simplify the general and global licensing system, to provide information on sensitive end-users at European level, to restrict the scope of the catch-all clause to certain products, and to match US liberalisation of exports of certain widely traded products.

In practice, during the first two years of the existence of the common regime, the main difficulties with effectively applying the Regulation have been linked to the following three issues:

1) differences in national licensing systems

2) novelty of the catch-all clause

3) limits of administrative cooperation

1) Differences in national licensing systems

The first difficulty is the recognizability of licences. The Regulation foresees the possibility of three different types of export authorizations: individual, global and general licences. Customs officials must be capable of recognizing and accepting export licences from other Member States if the principle of mutual recognition is to be respected in practice. The Commission has been informally told by companies about cases of non-recognition of licences. The problem is by no means that Member States are deliberately breaching the Regulation. The problem is one of delays at borders because customs officials do not know the licensing systems of other Member States, and therefore need to make inquiries about the validity of a given export authorization. Many exporters have concluded from such delays that the system is actually inapplicable and have become reluctant to export from one Member State with a licence provided by another, because even if the licence is ultimately recognized and the export finally goes ahead, the loss of time incurred is far too costly.

The problem appears to have been partly solved for exports requiring individual licences (a small fraction of exports, although important because the most sensitive ones). A proposal by the Commission Services to informally harmonise national licence forms in line with a Standard Model was accepted. Most Member States are using this Model form, and all have indicated their intention to apply it. Ultimately, use of this standard model should become mandatory.

For exports under general and global licences, however, the problem of non-recognition at borders has, to the best of the Commission's knowledge, remained sufficiently serious throughout the entire period to create a significant lack of confidence on the side of industry regarding the practical applicability of the Regulation.

The problems are numerous: not only do customs officials lack knowledge of other Member States' export licences - there are important differences between Member States in the scope of products covered and the destinations allowed for exports under general export authorizations - but in some cases, these general licences (which are basically a general permission by public authorities to export controlled goods to certain destinations) are defined by legislation only, and are not "materialised" by a licence document. For the customs official in another Member State, it is therefore difficult to assess if the export has been authorised or not, even when indications are provided on the relevant commercial document.

Furthermore, global licences (a licence given to a specific company for export of certain goods to certain destinations) represented a new concept for some Member States, and therefore is still not always understood and accepted at borders by customs officials.

Again, one must stress that non-recognition is not the consequence of a deliberate breach of the Regulation, but of the complexity of the regime which allows for the coexistence of very different licensing systems without providing customs official with efficient tools to cope with this complexity. The result, less dramatic for the customs administrations than for the exporter, is delay. The risk of delay in turn is a strong deterrent for industry to use the possibility of the EU regime to export from a given Member State with a licence issued by another Member State. It is fair to say that in the present circumstances, most companies avoid to make use of Article 6.3, and only have recourse to it in exceptional cases. This assessment is corroborated by the fact that the Commission has been informed not only by exporters, but also informally by certain national officials that in practice the use of Article 6.3 is so rare that when it does occur, higher ranking officials are contacted which in turn sometimes need to consult their counterparts in other capitals.

Some Member States, observing that in practice few exporters use the possibility offered by article 6.3, have concluded that therefore the practical implications are quite limited, and no action is required. Industry has taken a different view, and UNICE as well as the ERT have urged the Commission to improve the present system, especially with a view of ensuring a level playing field for European exporters in comparison to their American and Japanese competitors. Generally speaking, it is quite clear that industry does attach considerable importance to an efficient European export control system - and it is precisely because confidence by exporters in the practicality of the current regime is lacking that it is not used. The problem is not so much one of faulty application or lack of interest, but of non-application in practice, because industry in general does not believe the system will work.

A second major difficulty with the discrepancy between national licensing systems is that they are extremely difficult to manage efficiently for companies established in several Member States. These companies are precisely among the most important producers and exporters of dual-use goods. Although operating, economically speaking, as one large company, they are considered in legal terms - and therefore for export control purposes - as separate national entities.

For the export of non-controlled goods, the commercial logic of "eurologistics" usually prevails - the different subsidiaries have common "hubs" and stocks, and orders from customers are processed with a view to minimise costs:

the subsidiary which can ensure the quickest, most cost-effective delivery does the deal. In practice, such logistics are actually computerised and very routine.

For controlled goods however, a conflict between the economic and the legal logic emerges. When considering possible exports, companies cannot operate on a purely logistical basis (how to deliver the products to the customers in the quickest and most cost-efficient way), but must also check if the national subsidiary in question - a completely distinct entity for export-control purposes - is allowed to deliver the item by virtue of a global or general licence for instance, and what kind of supplementary requirement (end-use certification for instance) may be obligatory. Furthermore, it must be clearly established who owns the goods or has similar rights of disposal, in other words who is, legally speaking, the exporter.

Faced with these difficulties, certain companies appear to have tried to organise themselves in such a manner as to ensure that the export of a dual-use good from a given Member State is preferably done by virtue of a licence delivered by that same Member State. Companies tend to try and obtain a licence in the Member State where the goods are actually located and to export directly from that Member State. Again, use of article 6.3 would appear to be confined to exceptional cases, where it cannot be avoided for contractual reasons. Other solutions are judged to be too complex to manage, especially since they must be implemented in every-day work routinely by order-desk staff which is assisted by logistic software.

In conclusion, the Commission believes that if the common export control regime is to fully function in practice, two steps must be taken:

*it will be necessary to harmonise the forms of national licences in order to ensure recognizability of licences (which is in fact simply a practical precondition for mutual recognition). Without such harmonisation, either the delays mentioned above will continue, or, if customs officials simply "assume" licences of other Member States to be valid, the risk of fraudulent export will increase.

*the degree of complexity of the present system, where numerous types of national global and general licences, often for the same destinations but with slightly different product scope, coexist, must be reduced to manageable levels. A harmonised Community licence for export to the Annex II destinations - presently Australia, Canada, Japan, New Zealand, Norway, Switzerland and the United States - should be introduced, especially since there is already much de facto convergence between Member States policies' in this respect. Furthermore, all Member States should be required to offer the possibility of global licences to their exporters. Such harmonization and simplification is in the best interest not only of exporters, but also of customs and law enforcement officials.

2) novelty of the catch-all clause

The introduction of a "catch-all" provision into the Regulation was one of the most difficult and controversial issues at the time the present dual-use export control regime was negotiated. Implementation of this clause - which makes any good subject to licensing requirement if the exporter is informed by his authorities or "knows" that the good is intended to be used in relation to a programme of weapons of mass destruction - has been an innovation for most Member States.

The main problem with the practical application of the catch-all clause is the different degree to which governments inform their exporters about sensitive end-users. The difference in information provided to exporters may of course be an indication of Member States governments' own differing degree of knowledge about ABC-weapons proliferation and proliferators. It may also have to do with administrative traditions, and with the more or less long experience with catch-all type provisions. Whatever the reason, the consequence is clearly that exporters are differently informed (and warned) about end-users depending on which Member State they are established in. This diversity not only raises questions of distortion of competition but puts the effective enforcement of the catch-all clause in doubt.

The Commission's conclusion is that the procedures as now foreseen in the Regulation are not satisfactory. In fact, in an internal market where unlisted goods move without restrictions, it would appear that in absence of improved exchange of information between Member States on the one hand, and between government authorities and exporters on the other hand, the catch-all provision can too easily be defeated.

In the first hand, legally speaking, nothing can prevent a company established in a country where application of the catch-all for a certain export is being considered to ship the good to another Member State whose authorities might not even be aware of any risk. The unlisted item could then easily be exported licence-free from that other Member State which has not decided - for lack of knowledge about any possible danger - to monitor (and possibly refuse) this specific transaction.

In fact, lack of in-depth information exchange between Member States on sensitive end-users - the catch-all is only applied when there are doubts about the end-user - may lead to a situation where exporters in other Member States, simply not aware of any danger, may ship similar or identical items to the sensitive end-user in good faith. Insufficient information-sharing thus defeats the purpose of the catch-all whilst also putting the exporter in the Member State where authorities have issued a warning at a competitive disadvantage.

In the Commission's view it will therefore be necessary that Member States significantly improve their information-sharing on sensitive end-users with a view to ensuring that a similar degree of guidance is given to exporters throughout the Community.

3) problems of administrative cooperation

As outlined above (see point II.2), different mechanisms of administrative cooperation are an important feature of the present Regulation. In the Commission's view, any common export control regime which stops short of full harmonization requires a maximum of cooperation between national administrations. Different export policies in this sensitive area can only subsist to the extent that this diversity remains manageable and is counterbalanced by the establishment of a network of responsible officials which routinely work together. In this respect, the problems relating to the catch-all clause as described above (see IV.2.b) are a case in point.

In the first two years of the application of the Regulation, the Commission has contributed to the extent possible to set up a network of direct communication, and Member States have generally been receptive to suggestions to improve channels of communication as well as the quantity and quality of exchange of information on individual cases as well as general policy. The Coordinating group has played a very positive role and has certainly enhanced mutual comprehension of national export policies.

Nevertheless, with regard to the assessment of the quality and the frequency of administrative cooperation between Member States, the Commission is unfortunately unable, because of limitations foreseen by the Regulation itself, to fully discharge itself of the responsibilities and obligations conferred to it under Article 18. For instance, the Commission cannot fully assess the quality of the consultation procedure (Article 7.2), since it is not involved in these bilateral or multilateral contacts (which take place when the good is or will be located in another Member State than the one issuing the licence).

The procedure spelled out in Article 7.2 involves the licensing authorities of the concerned countries, and the Commission has only indirectly, or via discussions in the Coordinating Group, been informed about some of these consultations. From such discussions, it would appear that whilst occasional problems have arisen with regard to delays in replies and also with the degree of precision of exchanged information that, on balance, the consultation procedure has worked to the satisfaction of Member States. This judgement is however no more than a plausible assumption on the basis of the limited information available to the Commission.

As far as exchange of information regarding denials of licences (or modifications, suspensions, limitations of already granted licences) are concerned, the problem is similar, Member States being free to choose whether to communicate such information to the Commission also, or only to the other Member States. In the first two years of the application of the Regulation, a large majority of Member States have chosen not to involve the Commission in such exchange of information. As far as the Commission can tell, it would appear that, with regard to denials of licences, Member States exchange little information beyond what is foreseen in the international non-proliferation regimes of which they all are Members.

Furthermore, the information exchange seems to concentrate too much on the denials, which is a somewhat formalistic approach since actual denials are not that frequent. National administration often do not need to resort to actually refusing an application for an export licence but may convince potential exporters to abstain from asking permission for selling to certain destinations/end-users. There is no obligation to discuss such "dissuasive practices" (which usually convince exporters) with other Member States, and as far as the Commission can tell, based on comments by national officials interested in increased exchange of information, there are indeed too few exchanges of views on such matters.

Certain national administrations have however asserted that they do, on a case-by-case basis, inform partners when they think that it is relevant.

Whilst recognising the value of such informal contacts, they appear to be insufficient for developing a more harmonised approach on exports of dual-use goods, implying that Member States come to common views on sensitive destinations and end-users, and that relevant information is quickly shared and discussed, and, if appropriate, communicated to customs and law enforcement officials.

V) Conclusions

The practical problems with the application of the Regulation all appear fundamentally linked to the fact that the present Community export control regime is essentially limited to a mutual-recognition exercice. Member States have agreed to recognise each others' export licences but do not necessarily agree with the each others' different export policies underlying these licences. There is a lack of agreement in substance which cannot indefinitely continue if an effective common export control regime is to function properly.

In the Commission's analysis, administrative cooperation has not been sufficient to overcome this lack of agreement on export policy with regard to dual-use goods, and it is highly doubtful that even the best will of national administrations to co-operate would in itself suffice to bridge this policy gap.

As far as the Commission can judge, the present system is too complex to be routinely managed by custom officials at the border, and is in any case judged by industry to be too cumbersome to be useful in practice.

In the Commission's view, these difficulties are inherent to the regime itself, and only a more harmonised export control regime, combining elements of common policy with reinforced administrative cooperation will produce a system satisfactory to the practical needs of exporters and public authorities, ensuring both swift and smooth enforcement of the shared non-proliferation objectives. The Commission is therefore submitting, simultaneously with this report, proposals for an improved Regulation.

EUROPEAN COMMISSION
DIRECTORATE GENERAL I
EXTERNAL RELATIONS : COMMERCIAL POLICY, RELATIONS WITH NORTH AMERICA, THE FAR EAST; AUSTRALIA AND NEW ZEALAND
I-M-2 - Investments, TRIMS, Dual Use, Standards and Certification

Annex 1

Brussels, 15 July 1997
I.M.2

ELEMENTS OF CONSENSUS BETWEEN MEMBER STATES

In implementing the Council Regulation on the control of exports of dual use goods, the Member States have, on an informal basis, agreed to the following guidelines:

Procedures for consultations

For the consultation between licensing authorities based on Article 7 par. 2 of the regulation, two forms have been developed, one for initiating the consultation and one for the reply. The forms are included as an annex to these "Elements of consensus".

The consultation shall be addressed to the person mentioned in the list of contact points under 'Licensing Offices'. Consultation should be initiated by fax. If so requested by the consulted Member State, the transmission by fax will be confirmed by letter. The start of the ten working day period, as foreseen in the Regulation will be the date of the fax.

Member States can also ask for consultation under Article 7 par. 3. This request shall be made by fax and will, if requested be confirmed by letter. The consultation includes the case of consultations between the licensing Member State and the Member State in which the export is intended to be declared for exports. The consultation shall be initiated by fax and addressed to the person mentioned in the list of contact points under 'Licensing Offices'. Upon request confirmation shall be provided by letter.

Exemptions to the need for consultations

Consultations under paragraph 2 of Article 7 of the Regulation are not necessary in certain cases. Although an exporter should still indicate where the good he wants to export is or will be located, national authorities agree that explicit approval of the authorities of the Member State in which this good is located is not necessary. This will apply to the following cases:

- Temporary exports
- Exports for the purpose of maintenance and repair
- Replacements within the framework of contracts already licensed after consultation.

Model Form for individual licences and global licences

The Commission Services have developed a model form, which constitutes the basis for national individual licence and possibly application forms. This form, as well as its note on elements of guidance, has been distributed for the meeting of the Coordinating Group of 22 March 1995. Member States have agreed to use the same model form as a basis for their global licences

If questions arise at the external border of the Community concerning a licence issued by another Member State than the one of which the customs authorities are dealing with the export declaration, the responsible customs officials can contact the point of contact under 'Licensing Office' of the licensing Member State directly in order to save time. The official may, however, prefer to establish that contact through his national licensing office.

Procedures with respect to the recognition of general authorisations

According to the Regulation, all authorisations (individual, global and general) are valid throughout the Community. Since it might, however, be difficult for enforcement authorities to control general authorisations issued by licensing authorities of other Member States, some procedural arrangements will have to be made. It will therefore be obligatory for exporters to indicate in the Single Administrative Document (SAD) accompanying the goods, under other information, the specific general authorisation their good is exported under. A summary table of the general authorisations granted by Member States has been made available by the Commission.

If questions arise at the external border of the Community concerning a licence issued by another Member State than the one of which the customs authorities are dealing with the export declaration, the responsible customs officials can contact the point of contact under 'Licensing Office' of the licensing Member State directly in order to save time. The official may, however, prefer to establish that contact through his national licensing office.

Relevant commercial documents

The relevant commercial documents referred to in Article 19.1.a. of the Regulation are, in particular, the sales contract, the order confirmation, the invoice or the dispatch note.

International Import Certificates

When delivering IICs, Member States will give the following commitment: the relevant goods "will not be reexported without the authorisation of the authorities of the Member State of the European Union where the exporter is established."

International Import Certificates will only be used to certify that an export authorisation for reexports from the Community exists. Such certificates will in no case be required for any intra-Community transfer of dual-use goods.

'Goods that only pass through the Community' (article 3, paragraph 3)

1. Goods imported from third countries and subsequently released for free circulation in the Community[4] are to be considered as Community goods and are thus subject to an authorisation when exported.

2. Non-Community goods brought into the Community territory are at all times assigned a customs approved treatment or use[5], with the exception of goods on board vessels or aircraft crossing the territorial sea or airspace of the Member States without having as their destination a port or airport situated in those Member States.[6] The latter are not subject to an authorisation.

3. In the light of the above, the following cases of non-Community goods brought into the Community territory should be considered as subject to authorisation under the Regulation:

   * customs warehouses[7].
   * inward processing[8];
   * processing under customs control[9]
   * temporary importation[10];

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[4] See Council Regulation (EC) N° 29/13/92 of 12 October 1992 establishing the Community Customs Code; OJ L302, 19.10.92, Title IV, Chapter 2, Section 2, p. 18

[5] vide supra, Title III, p.12

[6] vide supra, Article 38 par. 6, p. 13

[7] vide supra, Title IV, Chapter 2, Section 3, C, p.21

[8] vide supra, Title IV, Chapter 2, Section 3, D, p.24

[9] vide supra, Title IV, Chapter 2, Section 3, E, p.27

[10] vide supra, Title IV, Chapter 2, Section 3, F, p.28

4. The following cases are covered by Article 3(3) and are thus exempt from the export authorisation procedure:

   * external transit[11];

   * temporary storage[12] (this includes goods remaining on board of vessels or aircraft entering an EC port or airport).

5. Following the definition in the Customs Code, free zones[13] are part of the customs territory of the Community. Therefore, the re-export of non-Community goods which are leaving the Community via a free zone is covered by the Regulation. However, in the case of transhipment of goods in the free zone, when these goods are not placed under a customs procedure and where no record of them has to be kept of them in an approved stock record under the Customs Code, they are not subject to the export authorisation procedure.

   In the context of combating fraud, customs can of course check any good which is entering or leaving a free zone.

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[11] vide supra, Title IV, Chapter 2, Section 3, B, p. 20

[12] vide supra, Title III, Chapter 5, p. 14

[13] vide supra, Title IV, Chapter 3, Section 1, page 32

Annex 2

INVENTORY OF GENERAL AUTHORIZATIONS
(as per 1 July 1997)

Below you will find an overview of general export authorization granted by Member States on the basis of Article 6(1)(a) of EC Regulation 3381/94. As the latter does not impose an obligation on Member States to use simplified procedures for any destination, please note that **three** countries presently do **not** provide for any general export authorization: **Luxembourg, Portugal and Spain.**

I) General export licence to Annex II destinations

Australia
Canada
Japan
New Zealand
Norway
Switzerland
United States of America

This type of licence is granted by 12 out of 15 EU Member States, although the product coverage varies. Five "versions" of this general export licence exist :

1) General export authorization for **all dual-use goods listed in Annex 1** to the Annex II countries

except for	**a) *goods covered by annex 4**

This type of general authorization is granted by three EU countries: **Belgium, Ireland and the Netherlands.**

2) General export authorization for **all dual-use goods listed in Annex 1** to the Annex II countries

except for	**a) *goods covered by annex 4** **b) *all nuclear products (category O of Annex 1)**

This type of licence is granted by two EU countries: **Finland and Austria.**

3) General export authorization for **all dual-use goods listed in Annex 1** to the Annex II countries

except for	**a) *goods covered by annex 4** **c) *goods covered by the national column of Annex 5**

This type of licence is granted by three EU countries: **Greece, Sweden, Denmark.**

4) General export authorization for **all dual-use goods listed in Annex 1** to the Annex II countries

except for	**a) *goods covered by annex 4** **b) *all nuclear goods** **c) *goods covered by national column of annex 5** **d) * supplementary national exclusion lists**

This type of licence is granted by three EU countries: **Germany, Italy, United Kingdom.**

5) General export authorization for **all dual-use goods listed in Annex 1** to the Annex II countries

except for	**a) *goods covered by annex 4** **c) *goods covered by national column of annex 5** **d) *supplementary national exclusion list**

This type of licence is granted by one EU country: **France** (G001). It should be noted that the export of Australia Group items to Annex II countries is regulated in a separate French general licences (G 301) imposing specific conditions. Furthermore, certain nuclear products may be exported to Annex II countries under another separate French general licence (G201).

For the general licences of type 1, 2 and 3, the product scope is easily determined by consulting Decision CFSP 94/942. In the case of Ireland for instance, all dual-use items but the very sensitive products listed in Annex 4 may be exported to Annex II countries under the Irish general licence (Annex I products - Annex IV products = coverage of the Irish General Licence. In the case of Sweden, the Swedish Annex V products are also excluded (Annex 1 - Annex 4 - Annex 5, Swedish column = coverage of the Swedish General Licence.)

For countries using "supplementary national exclusion lists" however (type 4 and 5), the product scope of the general licence cannot be determined simply by looking at the relevant annexes of Decision CFSP 94/942. One must consult the **exclusion lists of the relevant general licences.**

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