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UNICE COMMENTS ON THE IMPACT ASSESSMENT STUDY ON POSSIBLE OPTIONS FOR THE MODIFICATION OF THE EU REGIME ON EXPORT CONTROLS ON DUAL-USE GOODS

General comments

UNICE welcomes the European Commission consultation on the impact assessment study¹ on possible options for the modification of the EU regime for export controls on dual-use goods and technologies.

In recent years, UNICE has been committed to supporting a reform of the export controls system and has made concrete proposals to that end. This study is a step in the right direction, but UNICE would have preferred a more ambitious approach in the reform proposals.

The study focuses mainly on improvements within the limits of the existing framework without looking at improvement of the regulatory system as such. UNICE supports a broader assessment starting with the basics like procedures and documents and addressing a far-reaching reform of export controls policy, in close coordination with the business community.

European business believes that it is necessary to thoroughly review the current export controls to ensure the competitiveness of European companies and to simplify legislation as part of the EU initiative on better regulation. Intra-Community trade in dual-use goods should be fully liberalised.

Furthermore, UNICE has some reservations on the conditions in which the study has been conducted with a short timeframe to develop the assessment, a limited sample of economic actors. With 143 answers, the study reflects only a limited scope of the impacted business community. From our point of view, better dialogue with industry at an early stage could have increased the quality of the questionnaire.

Moreover, the study does not clearly indicate which Member-State is concerned when national legislation or practice is described. This makes it difficult for business to compare the environment in different states and to draw meaningful conclusions. UNICE believes that future Community legislation should take account of the best practices in EU Member States.

Increased transparency

UNICE supports work towards harmonisation and transparency of export controls and welcomes the proposals made with that objective in view. However, harmonisation should not be at the price of additional administrative burden. The decentralized execution of the export control through national authorities provides companies with competent national export control know-how. The European Commission can play a role in supporting Member States efforts to strengthen the knowledge about export

¹ http://europa.eu.int/comm/trade/issues/sectoral/industry/dualuse/pr230206_en.htm

controls and eliminate potential weaknesses instead of developing additional EU-wide export control requirements.

Although progress has been made at the Community and Member-State level, UNICE considers that the Commission's website and information on EU rules could be further improved. The Commission website should be a "one-stop shop" serving as a reliable entry point for exporters. Links could be established with the different national websites of EU Member States, which should ideally also be in English. The model of the TARIC tariff site would be useful for an export controls database within this site.

Raising awareness among uninformed exporters remains an important issue. To tackle it, the Commission and EU Member States must develop initiatives linked to business events and outreach meetings to address export control issues. Efforts should also focus on prospective EU Member States to ensure a high level of compliance on accession.

Amendments to the Community General Export Authorisation (CGEA)

In general terms, UNICE supports proposals for harmonisation of administrative procedures, documentation (eg end-use statement) and approaches across the EU. However, it opposes additional reporting requirements exceeding the current practice. Reporting should be based on the proportionality principle and on the option of reporting after first use, as this provides industry with the necessary flexibility to export immediately.

UNICE considers that the list of countries for which the CGEA applies is far too limited and could be expanded to reliable members of the regimes. Use of the CGEA can be less burdensome than other licences and its further use should be facilitated through the expansion of the list. UNICE feels that, as a minimum, candidates for EU membership should be included once their accession treaty is signed.

European business supports in the proposals to develop an e-licensing system and it is ready to further discuss this issue with the European Commission and EU Member States. A successfully implemented system could significantly reduce the paperwork burden.

Control of Intangible Transfers of Technology

Controls on Intangible Transfers of Technology (ITT) are creating separate compartments within a company and interfering with commercial and research operations, which are sometimes impossible to trace.

Companies must be recognised as a single entity and be granted a licence exemption for transfers of intangible technology within the company and its subsidiaries worldwide.

National Global Authorisations

Not all Member States have introduced global authorisations as provided for in article 6.5 of the export control regulation. Global authorisations are very advantageous for exporters dealing with large export flows and UNICE requests that the authorisation is implemented without delay across the EU.

Internal Compliance Programmes

Most large European companies apply internal compliance programmes (ICPs). These voluntary programmes can assure all stakeholders that a company is developing better business controls through common standards worldwide and a greater security of trade based on modern risk management practices.

No Member State should create a link between the granting of global authorisations and the presence or absence of an ICP in a company. ICPs must be both voluntary and very flexibly conceived and applied as they have the potential to create additional administrative burdens, particularly for SMEs. This may undermine their acceptance and consequently reduce the overall effectiveness of the export control system. For these reasons some companies will be reluctant to use ICPs and are sceptical of the merits of any EU-level system.

Any system of voluntary ICPs should be based on proportionality and added value. The main issue for EU business to judge the interest of ICPs will be the proposed criteria, which should not under any circumstances lead to further administrative burdens, on top of what already exists.

Transit and Transshipment

The efficiency and practicability of control measures transposed from United Nations resolutions into European legislation is far from clear. Export controls should take place at the beginning of the export operation – i.e. in the company – and not during transport. However, awareness-raising among forwarders and transporters could be an answer to the problem of improving scrutiny of goods in transit or transshipment together with the development of awareness-raising initiatives among all other economic actors. Public actors should rely on intelligence and risk analysis.

The impact assessment study's reference to Regulation 648/2005 amending the Customs Code is misleading as the potential for prior declarations in customs procedures to improve security is questionable. The proposed criteria for granting the status of an "Authorised Economic Operator" (as laid down in the draft implementing provisions of the Community Customs Code) are much too stringent and burdensome for companies and its expected benefits very limited.

Brokering of dual-use goods

UNICE believes that a clear definition of brokering is needed. Any proposed definition has to refer to active intermediation to facilitate a sale and not just to involvement in the operation.

European business would like to underline that any system of extraterritorial controls is difficult to enforce and raises administrative difficulties as is the case of US export controls regulations. Any possible controls imposed should be balanced and proportionate to any associated risks.

Before any decision on licensing brokering activities concerning dual-use goods some experience on the brokering legislation of EU Member States concerning military goods should be collected.

Control of both transit and transshipment and brokering should not be built simply on the standard and classic trade procedure. Before undertaking controls authorities should first use to the full extent the information available from the original transaction.

Catch-all clause

Catch-all controls remain a major problem for European companies active in the dual-use field. Companies still have difficulties in understanding the scope and handling of this provision in day-to-day-business. Therefore, they often consult authorities on a case-by-case basis, leading to delays, increased costs and unexpected blockage of non-sensitive goods.

Business needs further information and transparency from the Commission and EU Member States, i.e. regarding embargo states. They need better knowledge of which information they have to consider when checking exports according to catch-all controls.

The practical experience with the lists of the so called Anti-Terrorism-Regulations (2580/2001 and 881/2002) shows that the approach of listing specific end users of concern is inefficient. A list approach does not bring the supposed results but rather confronts business with an extremely burdensome screening procedure. Any person or entity mentioned on a list will immediately change the respective information (name, address etc.) so that a list will be useless after a couple of days.

UNICE believes that catch-all decisions should be further harmonised. A system of fast advice could be put in place leading to EU-wide agreed deadlines for reaction by authorities, which could be limited to a maximum of three weeks. Responses should be in writing as companies need clear instructions and cannot be content with verbal responses. It could also be relevant to establish common guidelines for elements which the exporters should pay attention to.

EU business welcomes the proposals to strengthen the information exchange in the regimes. Member States should increase their coordination and especially with the European Commission to speak with one voice in the international control regimes.

Conclusion

UNICE looks forward to pursuing an active dialogue with the European Commission and other interested partners towards a workable reform of the EU export control system. It might complement/review these proposals as the debate develops.
