

THE EMERGING NON-PROLIFERATION EXPORT CONTROL POLICY OF BULGARIA AFTER 1990

by

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“The need to introduce changes in the Law on the Control of Foreign Trade Activity in Arms and in Dual-use Goods and Technologies arises from the obligations of the Republic of Bulgaria in accordance with its membership in international organisations, international treaties and the global community of democratic and civilised states.

Ivan Kostov

Prime Minister of Bulgaria in letter to Parliament justifying the proposed changes in national export controls legislation on 20 January, 1999

“The lack of control over arms exports can jeopardise Bulgaria’s national security and its efforts to integrate in Nato and the EU.”

Blagoi Genov

Secretary of the Inter-departmental Council on the Military-industrial Complex and Mobilisation Preparedness at the Council of Ministers

The following report reflects the views of the author alone. It does not and should not be considered to reflect in full or in part views of either Nato or the Government of the Republic of Bulgaria or any other interested third party. It is based in its entirety on publicly available sources and interviews with government officials and researchers.

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Executive Summary

National non-proliferation export controls are one of the corner stones of the global non-proliferation regime. They should ensure control over the supply of arms and dual use goods and technologies, thus limiting access to them by potential proliferators. Within this context, achieving a better understanding of how non-proliferation export controls work, has paramount importance to the stability of international non-proliferation regimes.

This report aims at studying the Bulgarian system of export controls that has emerged since the beginning of the 1990s. It will study the factors that led to a delay in the development of a comprehensive national export control system in the early 1990s and analyse the existing regime, introduced with the Law on the Control of Foreign Trade Activity in Arms and in Dual-use Goods and Technologies in 1996 and proposed amendments.

Part One of the report will provide an overview of the international non-proliferation export regimes for nuclear, chemical and biological weapons, missile technology and conventional weapons and dual use goods and technologies. The effectiveness of multilateral export control regimes depends on many variables – participation, comprehensive control lists and effective national export control policies. Effective national export control systems are perhaps the most important link in the system of non-proliferation.

Part Two will review briefly different models of national export controls. Although many consider the US system as a ‘model’ national export control system, theoretically there are

three models – the consensus, arbitration and collaboration model. Countries have developed hybrid models that are based on parts of all three systems.

Part Three will focus on the importance of export controls for Bulgaria. As the Bulgarian arms industry increases its competitiveness a lax export controls system can have disturbing repercussions for arms control in the future. An ineffective controls system will undermine the international credibility of Bulgaria and its efforts to integrate into Nato and the EU.

Part Four will provide a review of the development of the current Bulgarian export controls system and assess the prospects for its future development. The development of export controls in Bulgaria since the beginning of the nineties can be considered to have two stages - 1991 – 1995, when basic regulations were put in place to control initially arms trade and later dual use goods and technologies, and since 1995, when an Exports Control Law was adopted by Parliament.

In 1997 the Government has proposed to Parliament amendments to the Export Controls Law aimed at enhancing the law's effectiveness. These include additional circumstances allowing the government to restrict arms and dual use exports. These changes have been proposed in order to provide the legislative basis for coordination of Bulgarian policy with the Common Foreign and Security Policy of the EU and Nato. Other substantial changes focus on strengthening eligibility criteria for foreign trade activity in arms and dual-use goods and technologies. They will severely limit eligibility to only limited liability companies and stock holding companies and exclude physical persons. In addition, the abolition of the minimum 50% Bulgarian capital requirement will open the door for the privatisation of

national arms industries. Other changes include the strengthening of administrative and criminal liabilities for violations of the export controls regime.

The proposed changes by the Government are a substantial step forward and they open the process for further elaboration and needed strengthening of the export control regime. Implementing the following changes and policies can further strengthen the Bulgarian export controls regime:

- Creation of single body responsible for licensing, permits and controls of foreign trade in arms and dual-use goods and technologies.
- Further strengthen the operational co-ordination between the licensing process and the Ministry of Interior, General Customs Directorate and the security services.
- Improved staffing policies at the different levels of the licensing, permits and control process
- Adequate international technical assistance and training for building the needed capacity among civil servants to handle export control issues
- Enhance contacts and co-ordination with other national export control authorities to exchange information and best practices
- Enlist the participation of the business community by enacting principles of internal reliability
- Declare the political will to implement stringent export controls as important conditions to integrating Bulgaria into Nato and the EU.

Introduction

International concern over issues of proliferation of weapons of mass destruction (WMD) has evolved a long way since the 1960s¹ when it was primarily focused on containing the spread of nuclear weapons. International efforts at limiting the use of both chemical (CW) and biological (BW) weapons, however, date back to the 1920s and the Geneva Protocol of 1925. With the end of the Cold War concern over proliferation of unconventional weapons has been highlighted by the UN Security Council Summit (January 1992), at which the permanent members declared them to be 'a threat to international peace and security'², hence justifying the use of force and pledging future actions to strengthen international non-proliferation regimes.

National non-proliferation export controls are one of the corner stones of the global non-proliferation regime. They should ensure control over the supply of arms and dual use goods and technologies, thus limiting access to them by potential proliferators. Within this context, achieving a better understanding of how non-proliferation export controls work, has paramount importance to the stability of international non-proliferation regimes. The challenge of export controls is to prevent the spread of WMD, weapons grade material and related technologies without placing unnecessary obstacles in the path of a country's economic development. This of itself becomes a more finite task when one relates to the countries of the former Eastern Europe and the successor states of the Soviet Union.³

¹ Roberts, B., 'From Non-proliferation to Anti-proliferation', *International Security*, Vol. 18, No. 1, 1992, p.139

² See UN Document S/PV.3046, as cited by Roberts, B., *Ibid.*, p. 139

³ Coming from command, or planned, economies the countries of the region need to develop government mechanisms that operate in a market environment.

The end of the Cold War and the collapse of the Soviet Union diminished the threat of global nuclear war but brought the front a new threat – that of the uncontrolled spread of WMD. Existing capabilities, stocks and know-how became the target of rogue regimes worldwide who wanted to acquire access to WMD technologies and materials. To address this threat the West has placed renewed emphasis on non-proliferation policies and tools⁴, including (1) physical protection; (2) accounting and control; (3) export control⁵. The introduction of export controls in Central and Eastern Europe and the CIS has faced multiple challenges. Perhaps its single biggest challenge has been to strike a balance between national obligations under international non-proliferation agreements and export restrictions that do not hinder economic growth and technological advancement in a time of transition from a centrally planned economy to a market one.

This challenge, as well as differences in the transition process in all countries of the region, has signified that each country of the former Soviet Block has undergone the process of introducing national export controls at a different pace⁶. Poland and the Czech Republic, for example, have been more advanced than Bulgaria. This can be attributed to the difficult transition process that Bulgaria had, faltering will for economic reform and over-reliance on

⁴ See 'White House Fact Sheet on Non-Proliferation and Export Control Policy', *Arms Control Today*, Vol. 23, No. 9, 1993, pp. 27-28.

⁵ See Bertsch, G. and Khripunov, I., 'Restraining the Spread of the Soviet Arsenal; *Export Controls as a Long-term Non-proliferation Tool*', Status Report, CITS (University of Georgia: Athens, GA, 1996); Rudney, R., 'Pitfalls and Paradoxes of Export Controls', *Armed Forces International* Vol. 131, No. 6, 1994; and Bailey, K and Rudney, R (ed.), *Proliferation and Export Controls*, (Lanham: New York, London 1992) for a discussion of the importance and challenges of export controls.

⁶ For a good discussion and comparison of CIS export controls see Bertsch, "Non-proliferation Export Controls in the Former Soviet Union," in *Global Proliferation of Weapons of Mass Destruction*, Vol. 1, Hearings before the Permanent Subcommittee on Investigations, U.S. Senate (Washington, DC: USGPO, 1996), pp. 35-39 and 257-269; Bertsch and Khripunov, eds., *Export Controls in the New Independent States, Proceedings of the International Workshop*, October 3-4, 1994, Minsk, Eridan Publishing House, 1995 (in Russian); Bertsch, ed., "Restraining the Spread of the Soviet Arsenal: NIS Non-proliferation Export Controls" (CITS Occasional Paper 1997); Gotchev, At., *Export Controls for the Purposes of Non-proliferation in Central and Eastern Europe*, (Albatross Publishers: Sofia, 1999 – in print), (in Bulgarian).

military exports⁷. Other pressing political and economic reform priorities diverted attention from the issue of export controls.

This report aims at studying the Bulgarian system of export controls that has emerged since the beginning of the 1990s. It will study the factors that led to a delay in the development of a comprehensive national export control system in the early 1990s and analyse the existing regime, introduced with the Law on the Control of Foreign Trade Activity in Arms and in Dual-use Goods and Technologies in 1996 and proposed amendments.

Part One of the report will provide an overview of the international non-proliferation export regimes. Part Two will review briefly different models of national export controls. Part Three will focus on the importance of export controls for Bulgaria. Part Four will provide a review of the development of the current Bulgarian export controls system and assess the prospects for its future development.

⁷ This argument is made in Gotchev, At., *Op. cit.*,

Part One: Understanding Multilateral Export Controls

Export controls are an important part of the international non-proliferations regimes. They aim to curb the supply of weapons, weapons grade material and dual-use technologies from states that possess such capabilities to potentially hostile or adverse governments or groups. Thus they are part of a country's national security system, as the spread of WMD and dual-use technologies is one of the foremost threats to the stability of international order. Export controls are designed to prevent or regulate the movement of certain goods by controlling sources of supply. They create a consistent approach that responsible supplier countries can support and implement. Shared export control structures create an international standard that also leads to positive "peer pressure" among countries to maintain, enforce and improve their national export controls.⁸

Export controls were first used as a non-proliferation tool in the nuclear arena. Their success was based on the fact that nuclear technology is non dual-use, is very expensive and available only from a limited number of suppliers. Thus, it was difficult to develop clandestine nuclear programmes, although some states, including Iraq, succeeded. In 1949, the US and several West European countries created COCOM – Coordinating Committee for Multilateral Export Controls – for the control of sensitive exports to the Soviet Union and its allies.⁹ With the signing of the Nuclear Non-proliferation Treaty in 1968, the creation of the Nuclear Suppliers Group (NSG) in 1976, the signing of the Biological Weapons

⁸ *Answers to Questions on Canada's Export Controls on Military Goods*, Department of Foreign Affairs and International Trade, Canada, p. 8.

Convention (BWC) in 1972, the creation of the Australia Group (AG) in 1985, the signing of the Chemical Weapons Convention (CWC) in 1993 and the Missile Technology Control Regime (MTCR) in 1987, a more or less comprehensive international non-proliferation regime emerged.¹⁰ The end of the Cold War has led to the dismantling of COCOM and the creation of the Wassenaar Arrangement (WA) in 1996 to control the export of weapons and sensitive technologies.

The effectiveness of the existing non-proliferation treaties is a debatable subject. Within the last 50 years a number of states have acquired both missile technology and nuclear capability. Iraq's nuclear development programme was the result not only of IAEA safeguards failures but also of clandestine exports of dual-use technologies. Israel received reactor and reprocessing technology, as well as weapons information, from France; heavy water from Norway; and huge amounts of natural uranium from Germany and Belgium. Pakistan acquired enrichment technology from the Netherlands and Belgium, and a panoply of other commodities from all over Europe, particularly from Germany. India got heavy-water technology from Germany and other important assistance from France and Belgium. South Africa profited mainly from Germany, but also from Britain and France. Brazil was helped by Germany and the Netherlands; Argentina by Germany, Italy, and Switzerland; and Iraq again by all- with Germany in the lead. Even North Korea is now reported to have received critical material from East German companies.¹¹

⁹ In 1949 COCOM members included Belgium, Canada, Denmark, France, Italy, Luxembourg, the Netherlands, Norway, the United Kingdom, the United States and West Germany. Portugal joined in 1951, Japan in 1952, Greece and Turkey in 1953, Spain in 1985 and Australia in 1989.

¹⁰ For a discussion of these regimes see Davis, Z., *Non-proliferation Regimes: Policies to Control the Spread of Nuclear, Chemical and Biological Weapons and Missiles*, CRS Report to Congress, (Washington DC 1993; Brauch, H., (ed.), *Military Technology, Armaments Dynamics and Disarmament*, (Macmillan Press: 1989).

¹¹ See [Mueller, H., *Europe's Leaky Borders*, *Bulletin of Atomic Scientists*](#).

Nuclear Export Controls

Nuclear export controls are by far the most easy to observe and effective in comparison with controls over the export of dual-use technologies for missiles, chemical and biological weapons. This is not to say that the international nuclear non-proliferation regime and the nuclear export controls agreed by the Nuclear Suppliers Group and the Zangger Committee have prevented clandestine development of nuclear weapons programmes by non-nuclear states. Most recently India and Pakistan have joined the club on nuclear nations. It is believed that since the 1950s Israel has the nuclear capacity and later delivery mechanisms to be considered for all practical purposes a nuclear weapons state.

The relative effectiveness of nuclear export controls lies in the fact that the development of nuclear weapons presents is an expensive and time consuming exercise. A lot of the technology that is needed is available only from a limited number of suppliers and is visible, thus making it difficult to export. Very few of the components of a nuclear weapons programme are dual-use. Resources and know-how usually restrict their indigenous development. Nuclear weapons are also increasingly political weapons, and potential proliferation targets are infinitely more limited than potential missiles, chemical or biological weapons states.¹²

The Zangger Committee was set up in 1971, shortly after the signing of the Nuclear Non-proliferation Treaty, by major nuclear supplier states as a coordination mechanism to elaborate a 'trigger list' of items whose export to non-nuclear states would demand safeguards (end-user certificates and verification mechanisms). After the explosion of a

¹² India and Pakistan have recently acquired nuclear weapons and delivery mechanisms, Israel continuously holds an ambiguous nuclear posture, and Iraq's nuclear weapons programme was curbed and Iran also poses a serious nuclear proliferation threat.

'peaceful nuclear devise' by India in 1974 the NSG was formed to enhance this regime by publishing guidelines for the export of items that are of exclusively nuclear use, including nuclear material, reactors and reactor equipment, non-nuclear material for reactors, plant and equipment for the reprocessing, enrichment and conversion of nuclear material and for fuel fabrication and heavy water production, and related technologies.¹³ In 1992 the NSG decided to also establish guidelines for the transfer of nuclear-related dual-use equipment, material and technology. It also agreed, among other things, to make full scope IAEA safeguards a condition for the future supply of trigger list items to any non-nuclear weapons state. As of 1994 the NSG has 34 permanent members and the European Commission holds permanent observer status. Of the Soviet Union successor states only Russia and Ukraine are members of the NSG.

David Fischer makes an argument that the nuclear supply regime has a series of deficiencies.¹⁴ These include (1) deficiencies in safeguards; (2) limited membership of international bodies; (3) limited policy consensus on essential controls; (3) incomplete lists of sensitive or dual-use items; (4) ineffective enforcement of internationally agreed controls; (5) inadequate international information exchange; and (6) lack or collapse of central authority.

Missile Export Controls

The MTCR is an informal agreement originally between the seven industrialised countries that aim to limit the proliferation of nuclear weapons by controlling the supply of unmanned delivery systems. It was formally announced at the G-7 Summit on 16 April 1997. It is a supply side regime that sets out common guidelines to which the countries adhere in their

¹³ IAEA Document INFCIRC/254, published in 1974 and subsequently amended.

export policies. The MTCR envisages two categories that need to be monitored by the participating countries Category I includes complete rocket systems, sub-systems and missile production facilities that should not be transferred under any circumstances. Category II includes dual-use technologies (guidance systems, launch/ground support equipment, etc.) for the export of which end-user certificates are required and certain other conditions need to be met.¹⁵

The MTCR has contributed to the curbing of international transfer of missile technologies but has not managed to eliminate this proliferation threat. Thus if one considers that the aim of the MTCR is not to *halt* the spread of such technology but to *slow it down*, it can be said that it has come to be a workable framework for limiting the spread of ballistic missiles. There are, however, problems that are inherent in its design and implementation which limit its utility.

This regime is based on the assumption that the Third World countries are dependent for their ballistic missile programmes on external assistance.¹⁶ The logic that followed was build around the supposition that is the supply of technology can be curbed it will be harder for less developed countries to acquire nuclear missile capability. This approach is completely different for the NPT, which is ultimately an exclusively prohibitive regime where non-nuclear countries agree not to develop nuclear weapons and nuclear states agree not to supply them with such. Although modified this approach was echoed by the BWC and the CWC. Another distinction between the MTCR and the other non-proliferation regimes is

¹⁴ See Fischer, D., 'The London Club and the Zangger Committee: How Effective?', pp. 39-48, in Bailey, K and Rudney, R (ed.), *Proliferation and Export Controls*, (Lanham: New York, London 1992)

¹⁵ See MTCR Documents in Findley, Y., (ed.) *Chemical Weapons and Missile Proliferation*, (Lynne Rienner Publishers: Boulder, London, 1991), pp. 149-161.

¹⁶ See Navias, M., 'Ballistic Missile Proliferation in the Third World', (IISS Publication: London 1991), *Adelphi Paper # 252*, p. 55

the fact that it is not a universal international treaty but an informal agreement. This in itself significantly limits the applicability of the MTCR and its effectiveness vis-à-vis third countries.

One of the most serious drawbacks of the missile export controls under the MTCR is that very nature of the technology covered by the regime. Missile technology and equipment is in most cases dual-use and it is very difficult to distinguish between its military or non-military character. It is also quite small and relatively inexpensive, thus difficult to trace. Whole offensive missile programmes can be hidden behind civilian 'space exploration' programmes. With the end of the Cold War lax border controls in the successor states of the Soviet Union may become channels for the transfer of existing technologies to the Third World. Kathleen Bailey argues that we cannot expect the same success of missile export controls as has been achieved in the field of nuclear export controls.¹⁷ According to information from CDISS (Centre for Defence and International Security Studies, Lancaster University, UK) some 36 countries currently possess ballistic missiles of some type.¹⁸

Chemical and Biological Export Controls

The proliferation of chemical warfare agents is even less susceptible to export controls than missile technology. Biological weapons related exports are the least effective of all. Chemical weapons have been used as far back as World War I, and as recently as the Iran-Iraq war. Any country with a developed industrial base can produce chemical agents for warfare. They are cheap to produce and easy to stockpile. This is even more valid for biological and bacteriological agents – such can be produced in any medical laboratory. A chemical

¹⁷ Bailey, K., 'Non-proliferation Export Controls: Problems and Alternatives', in Bailey, K and Rudney, R (ed.), *Proliferation and Export Controls*, (Lanham: New York, London 1992)

weapons warhead of 15 tonnes can, if utilised properly, affect an area of up to 60 sq. km., while a biologically armed 10 tonne warhead can affect an area of 100 000 sq. km.¹⁹

The regimes governing non-proliferation of chemical and biological weapons are based on different approaches. The basis of the CW regime are three 'schedules' (lists), identifying toxic chemicals that either have been used as chemical weapons or can be used as such. Those falling in Schedule I are subject to the most rigorous verification mechanisms. At the same time it is hardly possible to devise such lists for biological agents of warfare. It has been argued that the scope of Article I of the BWC is not comprehensive enough to cover developments in biotechnology, new artificial toxins and DNA recombination techniques.²⁰ This also partially accounts for the fact that BWC does not contain any effective verification mechanisms. Articles 5 and 6 of the Convention refer to co-operation among parties in order to clarify issues arising from the BWC and an agreement to rest cases of allegations with the Security Council.

In 1985 twenty-one states came together to create the Australia group. Their aim was to bring together informally countries committed to stopping the proliferation of chemical and biological weapons. They agreed on the need to impose export controls on dual-use chemicals – initially 8 chemicals but later a further 46 was added to the list. Controls have also been introduced on human, animal and plant pathogens, as well as dual-use equipment. Thus, the Australia group member countries are currently applying licensing measures

¹⁸ Data available at < <http://www.cdiss.org/btablea.htm>>

¹⁹ 'Biological Convention Weapons Status Report', *Arms Control Reporter* 1995, pp. 701 - 706

²⁰ Geissler, E., (ed) *Strengthening the Biological Weapons Convention by Confidence Building Measures*, SIPRI, (Oxford 1990), pp. 32-33 and Federation of American Scientists, 'Proposals for the Third Review Conference of the Biological Weapons Convention', *Arms Control*, Vol. 12, No. 2 (September 1991), pp. 241-242

covering dual-use items and technology for both chemical and biological weapons.²¹ Since 1990 its membership has grown from 21 to 31.

Conventional and Dual-use Export Controls

The Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-use Goods and Technologies was signed in 1996 to replace COCOM. It is the first multilateral agreement that relies solely on the effectiveness of national export control policies to curb the spread of conventional military capabilities that undermine international security. WA creates an arrangement whereby signatory states can exchange information, on a voluntary basis, on arms transfers, sensitive dual-use goods and technologies. The decision to transfer or deny transfer of any item remains the sole responsibility of the participating state.

The Wassenaar Arrangement has two pillars - one dealing with arms and one dealing with dual-use goods. Both pillars have a list of controlled items and, to varying degrees, have guidelines for control, information exchange, and review. On the dual-use side, the list is divided into: a basic list [tier 1] (e.g. telecommunications equipment) with two annexes of sensitive items [tier 2] (e.g. super computers) and a small number of very sensitive items [sub-set of tier 2] (e.g. stealth technology). Although member states are required to adopt these lists within their national export controls, transfers or transfer denials will take place at national discretion with extreme vigilance exerted over exports of very sensitive items. Notifications of transfers will, however, take place, on the following basis:

- denials of tier 1 items will be notified, on an aggregate basis, twice a year;
- licences issued or transfers made of tier 2 (and sub-set of tier 2) items will be notified, on

²¹ See Lundbo, S., 'Non-Proliferation: Expansion of Export Control Mechanisms', *Aussenpolitik*, November 1997, pp. 137-147

an aggregate basis, twice per year;
- denials of items in tier 2 (and sub-set) will be notified on an individual basis, preferably within 30 days, but no later than 60 days, of the date of the denial.²²

‘Multilateral Export Control Efforts are only as Strong as the Weakest Link’

The effectiveness of multilateral export control regimes depends on many variables – participation, comprehensive control lists and effective national export control policies. Currently there is no global non-proliferation regime to which all states subscribe. It is perhaps impossible to envisage such a regime in the future. It is however important to bring into existing regimes those countries that present a potential source for the proliferation of arms and dual use goods and technologies. It is infinitely more difficult to expect the development of a global conventional arms export control regime than nuclear, chemical or biological. As far as the development of nuclear weapons is concerned the resources needed for the implementation of a national nuclear programme limit the potential spread of nuclear related technology. Despite this curbing the spread of nuclear weapons is in the front run of the international non-proliferation agenda – the destabilising effect of such weapons presents the greatest threat to international security. Annex 1 lists international participation in non-proliferation export control regimes.

The comprehensiveness of control lists is also an important issue in the effectiveness of international non-proliferation regimes. The constant development of new technologies and materials puts substantial pressure on the different regimes to keep control lists up-to-date. There is an inevitable time lag between different technological improvements, the negotiation and inclusion on control lists and their implementation into national legislation.

²² The full lists are available at www.wassenaar.org, with current updates of 3 December 1998.

This issue is perhaps most valid for biological/bacteriological materials covered under the BWC, where latest developments in DNA recombination techniques have threatened to seriously undermine the effectiveness of the regime. A further complication is added when one looks in particular at dual-use goods and technologies. Export controls on cryptography are a case in point – the rapid development of cryptography has forced governments to consider placing export controls on such technologies, to address national security concerns. Fifteen years this issue would not have been considered even vaguely important.

Effective national export control systems are perhaps the most important link in the system of non-proliferation. Export control thinking has emerged over the last fifty years from relatively straightforward supply-side controls on the part of governments to comprehensive mechanisms, including verifiable end-user certification. After the end of the Cold War and the break up of the Soviet system a series of new actors have emerged on the international scene. Endemic instability in Central Africa, the Pakistan – India conflict and other hot spots is a source of concern, albeit different from the ideological conflict during the Cold War, for international security. In this flux environment national governments should strengthen their export controls and increase incentives for industry to comply.

Export controls are a vital link in the non-proliferation regime. They are ultimately the responsibility of individual states but their effectiveness for international security depends on multilateral action. The creation of unified lists under the different regimes ensures uniformity of action among the participating states. Their implementation is a task for national governments. Without that commitment multilateral non-proliferation regimes will be substantially weakened. Uniform implementation of national export control policies, that

are part of the non-proliferation regime, is important not only to products and technologies from national suppliers, but also to control transits.

Part Two: Models of Export Controls

Among export controls researchers the US system has come to be considered as a model.²³ There are a number of different perspectives as to what is necessary to create or enhance an export control system. The Office of Technology Assessment (OTA) with the U.S. Congress, published its version of an 'ideal' export control regime in the May 1994 publication, *Export Controls and Non-proliferation Policy*.²⁴ These recommendations clearly seem to bear the best interests of the business community in mind. Other will argue that there are no 'universal' solutions and every country possesses a unique legal tradition and system, government, and history.

Having said this, it is important to note that there are several common elements that form the basics of any export control system. These include a comprehensive regulatory framework, including laws and other regulatory acts; regulations should balance between the security interests of the state and the individual interest of trading companies; internal co-

²³ Suggestions have been made that it may be a viable option for the countries of the CIS. See Safaraliev, R., 'Russia's Export Controls', *The Monitor*, Vol. 3, No. 1, Winter 1997 Other analysts have also provided a critique to this system and pointed out that national specificities do not allow for generalisations to be made. See Chellaney, Br., 'An Indian Critique of US Export Controls', *Orbis* Vol. 38, 1994. Russia has received by far the greatest percentage of US assistance for the development of its export control policy. See Kiritchenko, E., 'Evolution of the Russian Non-proliferation Export Controls', *The Monitor*, Vol. 2, No. 3., Summer 1996

²⁴ Office of Technology Assessment, *Export Controls and Non-proliferation Policy*, (US Congress Publication: 1994)

ordination mechanisms between the different agencies of government need to be established effectively; stringent penal and criminal procedures should be installed.

William Domke, from the Lawrence Livermore National Laboratory, has developed three distinct versions of an effective export control system.

1. The consensus model

The consensus model is based on the system functioning in the US. It is centred on the concept of intergovernmental review of sensitive export license requests and the final decision to issue a license must be consensual. Strong laws and the capacity and mechanisms for dispute resolution are imperative in order to avoid gridlock. Cooperation between the intelligence community and the technical specialists is paramount. In order for accurate decisions to be taken, evidence and analysis must be provided from a variety of sources.

2. The arbitration model

German export controls system is perhaps the best example of this model. It is based on the concept of a single licensing agency. This agency can involve other departments in a consultation process, but the decision rests with its own authority. Its effectiveness is conditional on a strong criminal justice system that pursues investigations rigorously.

3. The collaboration model

Collaboration Model, in which government and industry work together, based on the consensus understanding of the importance of export controls is a third model. National systems in which the government plays a significant role in formulating industrial policy may

also develop a collaborative style of export controls. The roles of the justice system and the licensing process are less crucial in this model since the firms are fulfilling the role of the authorities through self-policing policies. The resources that are dedicated to enforcement and licensing authorities in other national systems can be applied to other areas such as communication between government and industry and promulgation of regulations. Export controls are achieved through cooperation rather than confrontation in this model that exists in Sweden.

Countries have developed hybrid models that are based on parts of all three systems described above. Within the U.S. and German systems, for example, there exist elements of each system that complement the other methods. In fact, combination systems may achieve greater levels of success, since most governments do not exactly fit any of the three descriptions above. The box below provides an outline of the German system.

The German Export Controls System

The licensing authority in Germany is the Federal Export Office of the Federal Economic Office within the Ministry of Economics and as part of the export control revisions, it was given greater autonomy in an agency whose primary role is to promote exports to boost the national economy. Other major revisions include: the scope and authority of the customs authority has been increased; government communication with German firms and foreign governments has improved; there has been a marked improvement in the number and quality of export control officials in an increased number of bureaucratic offices established to monitor exports; more modern equipment has been installed; harsher penalties have been established and the authorities have been provided with broader powers with which to carry out investigations and prosecute those who are caught; and a consensus seems to be developing in the Parliament on the necessity of export controls. In order to attract more qualified personnel for the export control agencies, special bonuses were offered above the regular federal pay scale; also, more engineers and scientists were recruited in order to provide the decision-makers with the most accurate technical information. The status of the export control agency was also elevated to that of a higher federal agency.

The German government has enlisted the participation of the business community by enacting the "Principles on the Reliability of Exporters of War Weapons and Related Goods." These principles require that one particular individual be designated personally responsible for a company's exports. This provides the person in charge with a clear vested interest in ensuring that all regulations are followed. Companies also supported the government's efforts because they did not want to suffer the consequences of being linked to the WMD programs of a rogue state like Iraq, which appears to have caused significant financial losses. In fact, some firms have even exceeded national regulations out of the fear of scandal. The collaboration of industry is a sine qua non of a successful export control system. The combination of increased governmental political will and the resolve of the industry have made the German model a relatively successful export control case.

Part Three: Why should Bulgarian Export Controls Matter

Bulgaria was one of the major arms exporters during the Cold War. Within the Warsaw Pact system it specialised in the production of military vehicles (including personnel carriers and light-armoured vehicles), anti-tank weapons, artillery (including 122 millimetre calibre guns and 120 millimetre self propelled mortars); light weapons (assault rifles and hand guns); navigational equipment; chemical and radiation detection equipment; electronic and laser optical equipment and some radio-communication and radar systems; units for launch devices; elements for anti-aircraft systems, etc. Bulgarian arms exports reached several billion dollars in the pre-1989 era but, with the demise of communism, fell to a few hundred million dollars annually.²⁵ The loss of markets and co-operation within the integrated defence production system of the Warsaw Pact led to holdings of unsold inventory of USD 800 million. In 1995 the total value of sales from the military industrial complex has been reported as \$160 million of which \$150 million was for export.²⁶ In the first 6 months of 1997 aggregate revenues in the military industry were said to have increased by 30 per cent compared with the same period in 1996.²⁷ It is believed that most of Bulgaria's exports before 1990 went to other Warsaw Pact countries but also to markets in the Middle East and Africa – Algeria, Egypt, Iraq, Libya, Syria, Yemen, etc.

The Bulgarian economy was over-reliant on arms exports before the end of the Cold War and the loss of markets was a difficult shock for the industry. With the political instability and slow privatisation process until 1997, Bulgarian arms industries remained under state

²⁵ Bulgaria Tries to Sell its Arms Industry, *Reuters*, 6 May 1998

control. A three-year privatisation moratorium was placed in 1993 on arms industries. In 1998 this moratorium was abolished and the state monopoly on arms exports lifted. The Government has opened the military industrial complex for cash privatisation, while aiming to retain 34% share in four major state owned companies – Arsenal, VMZ, DUNARID, Electron Progress and TEMA.

As the Bulgarian military industries re-emerge a lax export controls system can have disturbing repercussions for arms control in the future. The natural interest of arms production companies to look for profitable markets could be an incentive in sidetracking government imposed limitations on exports to certain countries. Large existing holdings of arms can be an additional incentive for such a process. Bulgaria's interest in developing a strong export control policy is two-fold. On the one hand an ineffective controls system will undermine the international credibility of Bulgaria and further reduce market access to legitimate markets. This will become a disincentive for the modernisation and increased competitiveness of Bulgarian arms exports. On the other hand Bulgaria's policy to integrate into Nato and the European Union can also be undermined substantially by the lack of an effective export controls policy.

²⁶ *Jane's Defence Weekly*, 28 Feb. 1996, p. 11.

²⁷ Bulgaria Prepares Arms Plans for Sale, *Reuters*, 27 Oct. 1997.

Part Four: National Export Controls in Bulgaria

The current Bulgarian export controls system has developed since 1990. This section will begin with a brief historical review of the development of export controls in Bulgaria. It will later look at the current system and discuss its main deficiencies. The concluding part will review proposed legislative changes in light of strengthening and streamlining export controls in Bulgaria. Bulgaria is a party to the Nuclear Non-proliferation Treaty and the Biological Weapons Convention. It is an original signatory of the Chemical Weapons Convention and a founding member of the Nuclear Suppliers Group, IAEA Board of Governors and the Zangger Committee. Bulgaria also applies the guidelines and principles of the MTCR and of the Australia Group. The implementation of the Bulgarian dual-use and arms licensing control involves protection of intellectual property as well.

In the development of its export control policy Bulgaria has adopted a two-tier approach – companies trading in arms need to be licensed by an Inter-departmental Council; each transaction, however, needs a permit issued by a Commission at the Ministry of Trade and Tourism. This is valid for both arms and dual-use goods and technologies.

In assessing the current system of export controls in Bulgaria the following five elements will be considered: (1) Legal basis for dual-use and arms export controls; (2) policy making mechanism; (3) an effective and efficient executive mechanism; (4) lists of items subject to controls; (5) an effective compliance mechanism. In this respect it would be fair to conclude that any functioning export controls system relies on four key elements – political commitment to fully undertake the state's responsibilities as part of the international non-

proliferation regimes, including the development and implementation of an effective export controls programme; the imposition of a comprehensive legislative framework; the creation of an effective licensing process, including the relevant bodies governing the approval of transactions; and effective enforcement mechanism, based on domestic and international inter-agency co-ordination.

Historical overview

After the 1991 elections, the first democratically elected government of Philip Dimitrov, declared that Bulgaria will create rules and regulations for trade in arms and strategic materials. In 1991 the Council of Ministers (CoM) issued a number of regulations: Regulation No. 13 of 12 February 1991 introduced state restrictions on arms trade. Later in 1991 the Government created a licensing regime for military technologies and equipment. A licensing authority was also created – The Regulatory Commission on Production and Trade with Special Produce.

In addition to this in 1991 (CoM Regulation No. 115) an Inter-departmental Committee At the Council of Ministers was created to provide oversight of production and trade of military equipment and technology. Initially the Minister of Defence headed this Committee, but later it was headed by the Prime Minister. In this early stage of the development of Bulgarian export controls, the new regulations introduced focused primarily the production and trade in military equipment. Dual-use technologies and materials were not targeted under the newly created Bulgarian export controls regime. This can be accounted for by two sets of factors. On the one hand the Dimitrov Government was largely inexperienced. It was based

on a fragile coalition, brought down in 1992 by an arms-trade scandal. Its year in office was rigged with scandals and revelations about past arms-exports to Libya, Iraq, etc. In its efforts to assert itself, the Government's policies were aimed at a complete break with the Communist past. Public statements to the effect of asserting controls over the arms industry (considered a Communist stronghold) were a major part of Philip Dimitrov's policy. On the other hand an argument can be made that the new administration misunderstood the West to be concerned only with the control of arms exports, and not controlling dual-us technologies.²⁸

Towards the end of 1992, the Government passed CoM Regulation 114 (amended by CoM Regulation 224), which signalled the beginning of Bulgaria's dual-use export controls. This regulation stipulated controls over the import, export, re-export and transit of goods, materials, technologies, equipment and services that can have possible dual-use for the creation of nuclear, chemical, biological and other weapons of mass destruction.

In 1992 an Inter-departmental Committee at the Council of Ministers dealing with trade in dual-use materials was created. It was headed by the Minister of Trade. Licenses for dual-use imports, exports, re-exports and transit were issued by the Foreign Trade Regime Department at the Ministry of Trade. The licensing process required that applicants provide an end-user certificate for exports, the Bulgarian translation of which should be certified by a representative of the Bulgarian state in the respective country – usually the trade representative with the embassy. Thus, towards the end of 1992 Bulgaria had installed the basic legislation for implementing non-proliferation export control policy.

²⁸ This argument is made in Gotchev, At., *Op. cit.*

The development of Bulgaria's export control policy was rather delayed in comparison to the development of similar systems in the rest of Central and Eastern Europe.²⁹ The main reason for this can be found in the delay of economic restructuring in Bulgaria. A number of successive governments before 1997 lacked the will to implement radical structural reform of the economy, leading to an economic collapse in 1996. In addition to this Bulgaria's economy was more integrated into the Soviet market (the Soviet Union accounted for circa. 80% of Bulgarian imports and exports until 1990) and the loss of markets to the East had grave economic consequences for the country's economy. Political instability can also account for the late development in Bulgaria's export control policies - between 1990 and 1997 Bulgaria had six successive governments.

Endemic political instability in Bulgaria led to reduced co-ordination and cohesion between the different factions of government and state institutions. As day-to-day problems emerged, export controls remained a contested question. In this situation a powerful lobby of military industry emerged, strongly backed by trade unions,³⁰ who felt that the introduction of further export controls on military and dual-use technology can lead to the further loss of markets, revenue and jobs. Thus the restructuring of the military industry became a politically contested issue.

Despite this towards the end of 1992, the Government, political parties and business, came

²⁹ For an excellent review of the development of Polish Export controls see '*Conventional Arms Export Controls in Poland – an Emerging Framework in the New Political-Economic Reality*', *Infomanage International* www.infomanage.com, also see Jacobson, S., *Op. cit.*

³⁰ Bulgarian Arms Industry Workers Step up Protest, *RFI/RL*, 27 November 1992, Rally in Defence of Bulgarian Arms Industry, *RFI/RL*, 15 October 1992

to understand the importance of stringent and verifiable non-proliferation export controls. This effort was to a certain extent driven by pressures from the international community for Bulgaria to take on its full responsibility in the world non-proliferation effort. Bulgaria has a vested interest in becoming a member of the EU and Nato. Integration into both organisations was inevitably linked to the implementation of effective export controls. This became more apparent as Bulgaria liberalised its trade regime and signed the Europe Association Agreement with the EU in 1993. If Bulgaria was serious about its intent to join both organisations, arms control restrictions had to be taken seriously.

By 1995 the Bulgarian Government came to understand that it needed a comprehensive export control system, grounded in law. Any regulatory decisions taken should relate only to issues that change in relation to the evolving international environment – control lists, embargo countries, etc. As a result of this process in 1995 an Export Controls Law³¹ was developed and passed by Parliament in 1996 and the Council of Ministers adopted the necessary secondary legislation³² of its implementation.

In the years since 1991, the Bulgarian government has received little assistance in the development of its export controls regime. Such support was provided by the United States through different programmes that focused on the development of the 1995 Export Controls Law. With the creation of the Wassenaar Arrangement it became imperative for Bulgaria to put more order and structure into its export controls policy, namely by streamlining licensing responsibilities, control lists and implementation.

³¹ Law on the Control of Foreign Trade Activity in Arms and in Dual-use Goods and technologies (Annex 3), published in *State Gazette* No. 102, 1995 (Export Controls Law)

Legal basis for dual-use and arms export controls

The current export control system is based on the law adopted in 1995. It provides a sound framework governing foreign trade activity in arms and in goods and technologies of potential dual-use and state control over these initiatives.³³ *Chapter One* outlines the aims of the law, its scope and defines cases in which the Government may impose bans, or restrictions, on arms and dual-use exports. These include, cases in which the materials are intended or may be used for the development of weapons of mass destruction, their trade is contrary to international obligations, undertaken by Bulgaria, including Security Council imposed sanctions. The lists of arms and dual-use goods and technologies are published by the Council of Ministers. *Chapter Two* defines who is eligible to conduct trade in arms. According to Art. 5, Para. 1, only trade companies that have at least 50% Bulgarian ownership may undertake such trade. All trade in such materials is subject to licensing. Transit movement of goods is also subject to licensing. *Chapter Three* defines who is eligible to conduct trade in dual-use goods and technologies. According to the law any person, in accordance with the provisions of this legislation, can do this. This chapter includes a 'catch-all' clause:

“Article 13. The issue of a permit for foreign trade activity in dual-use goods and technologies not listed in Art 4 shall be required when the exporter or importer is aware of, could have been aware of or has been informed in writing by the relevant bodies that:

³² Regulation on the Implementation of the Law (Annex 4), published in *State Gazette* No. 21, 1996. (Export Controls Regulation)

³³ Export Controls Law, Art. 1, Para. 1, see Annex 2

1) the dual-use goods and technologies may be intended, in their entirety or in part, for the development, production, handling, operation, maintenance, storage, detection or dissemination of chemical, biological or nuclear weapons or for the development, production, maintenance or storage of missiles capable of delivering chemical, biological or nuclear weapons, covered by the international agreements for the prohibition or non-proliferation of such weapons;

2) dual-use goods and technologies are intended for a country in respect of which the Security Council of the UN has undertaken measures for the maintenance or re-establishment of international peace and security, or in respect of a country, in whose territory military operations are being conducted or which participates in a military conflict.”

Chapter Four defines the obligations of parties involved in foreign trade activities both in arms and dual-use goods and technologies. These include the need for end-user certificates and their non-transferability. *Chapter Five* stipulates the control procedures for the regime and *Chapter Six* outlines the administrative and penal procedures in case the law is breached.

The secondary legislation governing the implementation of this law is set forth in a separate implementation regulation, adopted by the Government in early 1996. It defines additional requirements and procedures for putting into practice the Export Controls Law. It defines the obligations of an Inter-departmental Council on the Military-industrial Complex and Mobilisation Preparedness at the Council of Ministers (The Inter-departmental Council) to review arms trade in Bulgaria. The Council licenses foreign trade in arms and dual-use goods

and technologies. Permits for individual transactions are issued by a Commission for Control and Permission of Foreign Trade in Arms and Dual-use Goods and Technologies at the Ministry of Trade and Tourism (the Commission). The regulation also defines the application and grievance processes.

With the passing of the above noted legislation, Bulgaria has put in place the basic elements of a comprehensive export controls system. It is important to note that under this legislation the export controls process in Bulgaria is two tier – foreign trade activity in arms and dual-use goods and technologies is licensed by the Inter-departmental Council, while permits for individual transactions are issued by the Commission.³⁴

Policy making mechanism

The Inter-departmental Council on the Military-industrial Complex and Mobilisation Preparedness at the Council of Ministers is charged with drafting national policy in the field of arms and dual-use goods and technologies. It also issues limited or full licenses for foreign trade activity; keeps a register of licensed foreign trade companies; co-ordinates the activities of the Ministries and other departments on related issues, including international contacts, and asserts control over trade with arms and dual-use goods and technologies. The Deputy Prime Minister and Minister of Industry³⁵ chairs the Inter-departmental Council. Its permanent members include the Deputy Ministers of Trade and Tourism³⁶, Industry, Defence, Finances, Foreign Affairs, the Interior, Transport, Regional Development and the

³⁴ The Law and accompanying regulation clearly define the difference between a 'license' to trade in arms and dual-use goods and technologies, and 'permits' for individual transactions. This report will use this existing distinction.

³⁵ Until 1997 the Inter-departmental Council was chaired by the Prime Minister. (CoM Regulation 193 / 1997)

Deputy Head of the General Staff, and the Head of the National Investigative Service and the National Security Service³⁷. Its other obligations include the review of national and sectoral policies for the development of the military-industrial complex.³⁸

This senior level government co-ordination mechanism is also staffed by a permanent secretariat, headed by a secretary appointed directly by the Prime Minister. The secretariat also includes three 'sector' specialists (or assistants to the secretary) on strategic reserves, mobilisation preparedness and export controls.

The Inter-departmental Council meets at least once a month and according to information from the Council's secretariat at almost every meeting considers issues related to licensing trade in arms and dual-use technologies. On average it has provided about thirty full and limited licenses for trade in arms. A similar number of licenses are provided to companies trading in dual-use goods and technologies. About ten are the annual licenses to companies transporting arms across the territory of Bulgaria. Although legislation allows the Council to provide licenses for up to one year, most of the current licenses are for six months only.

The Council was also involved in the drafting of proposed legislative changes in the Export Controls law. These changes were spurred by identified operational weaknesses in the export controls regime that became apparent with its implementation. The proposal for changes, discussed later in this paper, was the result of the work of a review committee at the Ministry of Trade and Tourism. They were proposed to the Inter-departmental Council for

³⁶ Formerly the Ministry of Trade and Foreign Economic Co-operation

³⁷ The Heads of the two branches of Bulgaria's security services were added in 1997 (CoM regulation 193 /1997)

consideration and submission to the Council of Ministers.

While the Law and the Regulation establish the framework and procedures for export control policy in Bulgaria, the Inter-departmental Council serves as the policy-making mechanism. Recently proposed changes in export controls legislation were drafted by the Council and proposed to the Government. It serves the dual function vis-à-vis export controls to, on the one hand, license foreign trade in arms and dual-use goods and technologies, and on the other hand to formulate and co-ordinate export control policy with the other agencies in the executive. The fact that it is based at the Council of Ministers and not within one of the ministries (trade, defence or foreign policy), illustrates the fact that export control policy in Bulgaria represents a fine balance between national security concerns and industrial development policies. Having said this it has to be noted that the Council's very name and functions go beyond that of export controls and in more of the military field of mobilisation preparedness. Initially the Council was directly subordinate to the Prime Minister, which may account for the need to balance between strong interest groups in society vis-à-vis military exports in particular.

It is important to note that the Inter-departmental Council deals with a broad set of issues related to Bulgaria's arms production policy and mobilisation preparedness. Within this set of responsibilities the licensing of companies for foreign trade with arms and dual-use goods and technologies is one sub-set of responsibilities. Although this provides a framework for the better co-ordination of these related policies, it does also raise the issue of the possible lack of focus and specialised expertise needed for the implementation of a comprehensive arms and dual-use licensing system. It will not be understated to say that the Council's

³⁸ CoM Regulation No. 51, 21 March 1994

secretariat is understaffed and overburdened with responsibilities, especially vis-à-vis export controls. To this observation one can add the understanding that staff and members have received very limited technical assistance and specialised training over the last two years.³⁹

The recent inclusion of representatives of the state security services is a positive step forward in enhancing policy co-ordination at this senior government level, especially in view of the need to strengthen control mechanisms.

Executive mechanism

Individual export licenses, or permits, in Bulgaria are issued by the Commission for Control and Permission of Foreign Trade in Arms and Dual-use Goods and Technologies at the Ministry of Trade and Tourism (the Commission). It can issue three types of permits – for imports, exports and re-exports and transit of arms and goods and technologies with dual-use. The Commission also regularly informs the Inter-departmental Council of its activities. It is chaired by the Minister of Trade and Tourism and its permanent members include the Deputy Ministers of Trade and Tourism, Industry, Foreign Affairs, the permanent secretary of the Ministry of the Interior and the directors of departments 'Military Economic Co-operation' and 'Internationally Controlled Trade' at the Ministry of Trade and Tourism.

The Commission also meets on a regular basis to provide permits for individual transactions only to companies that have been licensed by the Inter-departmental Council. It also has a limited staff of two persons that provide support to its work. The author was unable to obtain information as to the average number of permits provided per annum. It would be fair to assume that on the basis of information on the total value of arms exports in 1996

³⁹ In practice there has been only one inter-departmental mission of US export controls experts that visited

USD 160 million⁴⁰, on average about twenty permits per year must be issued.

The Commission also keeps an archive of cases considered and provides regular information to the Inter-departmental Council on its activities. As part of the process of licensing companies to trade in arms and dual-use goods and equipment, the Inter-departmental Council also requests information from the Commission on permitted transactions before issuing or extending licenses.

Co-ordination of the control of the implementation of permits rests with the Commission. The Regulation provides that every application for transaction, and permit, needs to be copied to the Ministry of the Interior and the General Customs Directorate. These agencies are responsible for effecting border and police control over the implementation of transactions. Prohibition of re-export is included as a requirement in all transaction contracts.

The thus created two-tier system of licenses and permits provides a good basis for the effective implementation of export control policy, based on a co-ordinated inter-departmental mechanism. To this effect the representation of the same set of agencies at both levels – policymaking and implementation – creates the appropriate circumstances for enhanced co-operation and co-ordination. Having said this it has to be noted that such a complex mechanism, whereby the Council and Commission are involved in the licensing and permit process, also poses a danger that poor co-ordination may undermine the effectiveness of the system. Understaffing and lack of training and technical assistance at the

Bulgaria in January 1999, upon the invitation of the Government, to review proposed legislative changes.

implementation level is also a potential loophole in the process of effectively implementing export control policies.

Lists of items subject to controls

Export and import of dual-use goods and materials are listed in four annexes to the Regulation. These include (1) list of nuclear equipment, materials and nuclear related technologies with potential nuclear weapons application (INFCIRC/Rev.1/Part 1 and Part 2, former COCOM International Atomic Energy List and NSG List); (2) list of internationally controlled goods and technologies (former COCOM Industrial Core List); (3) list of dual-use chemical and biological precursors, materials, equipment and technologies (Australia Group); (4) list of dual-use goods and technologies with potential application in the systems capable of delivering chemical, biological or nuclear weapons (MTCR List). The former COCOM Munitions list (control list of Military and Special Products, technical Assistance and Services) is published in the State Gazette No. 57/95.

It was not until late last year that a consolidated list of arms, goods and technologies with potential dual-use was published in a special annex to the State Gazette.⁴¹ Until then it was the responsibility of the applicant for a license or permit to stay informed about updates and changes in control lists. This caused a certain level of confusion, which has been overcome by the consolidated publication. The Inter-departmental Council and the Commission are currently discussing a proposal to publish annual updates of the control lists as they become available, or publishing a wholly updated lists. This will certainly be a factor in speeding up

⁴⁰ Value of all foreign sales by the defence industry, *Jane's Defence Weekly*, 28 Feb. 1996, p. 11

⁴¹ State Gazette, 16 September 1998

the licensing and permit process and avoiding possible confusion. Due to resource restraints however they are likely to proceed with publishing the updated lists as annexes to the State Gazette, rather than proceeding with a special publication.

An effective compliance mechanism

An effective compliance system is based at least on effective and verifiable end-user certification and stringent controls as well as their rigorous implementation.

End-user certificates are required for export and re-export of both goods and technologies.⁴²

End-user certificates need to clearly declare for what purpose the goods and/or technologies will be used. Its presentation is an intricate part of the application for permit process. In case that the transaction is conducted through middlemen, the provision of a certificate is required of the export or re-export contract.

This legislation however puts the pressure and responsibility for the validity of end-use certificates on the end-users themselves and relieves the licensing authorities of the need to provide verification. An authorised representative of the Republic of Bulgaria should validate the Bulgarian translation of the certificate. This, however, does not explicitly stipulate the need to confirm the *content* of the validity of the certificate itself. In this respect the system might be strengthened by instituting a formal verification procedure that could be implemented through Bulgarian diplomatic representations abroad in close co-ordination with the licensing authorities.

Existing control mechanisms provide for direct inspections before and after issuing of licenses or permits. The Export Controls Law provides that:

‘the controls on the performance of the obligations and terms related to the issued license or permit under the present Law is enforced *by the bodies issuing the license or permit and by other government bodies in accordance with their competence.*⁴³

This article is further clarified in the Regulation⁴⁴ to mean that the Inter-departmental Council, the Commission and the General Customs Directorate shall have the right to check on behalf of the Bulgarian part the fulfilment of the obligations in each transaction. To this end they can attract authorised specialists and request official confirmation of the receiving of the goods subject to export through the official representatives of the Republic of Bulgaria. Further to this the Export Controls Law establishes a set of administrative and criminal penalties for non-compliance.

It will not be an understatement to say that the current control mechanism reflects only the basis of effective compliance controls. The Regulation provides some overlap within the authorities, respectively of the Inter-ministerial council and Commission, on the one hand, and the General Customs Directorate. The lack of a clear-cut distinction of roles may lead to ineffective control mechanisms. It is apparent from discussions at different levels of Government that there are currently no criminal or administrative prosecutions under the existing legislation. This undermines, to a certain extent, the effective deterrent that administrative and penal procedures have.

⁴² Regulation on the Implementation of the export Controls Law, Art 30 -32

⁴³ Export Controls Law, Art. 17, Para. 1

⁴⁴ Regulation on the Implementation of the Export Controls Law, Art. 36 - 38

Review of the proposed changes in export controls legislation

On the 20th of January 1999, the Council of Ministers submitted to Parliament for consideration amendments to the Export Controls Law. These were drafted by the Inter-ministerial Council, based on proposals by a review of export controls and practices conducted in the Ministry of Trade and Tourism. These changes are intended to fill in most of the loopholes in the Law and enhance its effectiveness. The major part of the proposals can be grouped in four distinctive sets.

1. Additional circumstances allowing the Government to restrict arms and dual-use exports

Under the Export Controls Law restrictions are possible when (1) they undermine ‘the national security and the foreign political interests of the state’ and international stability; (2) the goods and technologies are intended or may be used for the development, production, operation, handling, maintenance, storage and dissemination of mass destruction weapons; (3) are contrary to international conventions on non-proliferation of the weapons to which Bulgaria has acceded, as well as in the event of sanctions in respect of a certain state, introduced by the Security Council of the UN.⁴⁵

The current proposal of the Government adds to these circumstances obligations arising from Bulgaria’s accession to decisions of international organisations, where Bulgaria is not a permanent member.⁴⁶ It also defines regional instability, including internal military conflict,

⁴⁵ Export Controls Law, Art. 4, Para. 1

⁴⁶ CoM Decision No. 24, 20 January 1999

as a viable condition for imposing a ban on exports. These changes have been proposed in order to provide the legislative basis for coordination of Bulgarian policy with the Common Foreign and Security Policy of the EU⁴⁷ and potential obligations that the country holds under its agreements with Nato.

2. Strengthening eligibility criteria for foreign trade activity in arms and dual-use goods and technologies.

The current legislation allows trading companies with at least 50% Bulgarian capital to conduct foreign trade activity in arms and in addition allows physical persons to conduct foreign trade activity in dual-use goods and technologies.⁴⁸

The proposed changes would limit eligibility in both cases to only trade companies that have capital of at least BGL 300 million. The proposed changes have two aims – on the one hand they will severely limit eligibility to only limited liability companies and stock holding companies where controls are more stringent and exclude physical persons. This will allow for better controls to be put in place and harmonise the regime with other effective provisions of the Trade Code. In addition to this the abolition of the minimum 50% Bulgarian capital requirement will open the door for the privatisation of national arms industries.⁴⁹

⁴⁷ Bulgaria joined the EU ban on weapons exports to Central Africa and the region. See Declaration by the Presidency on behalf of the European Union on the arms trade to and within the Great Lakes Region, PESC 99/62

⁴⁸ Export Controls Law, Art. 5, Para. 1 and Art. 9, Para 1.

3. Strengthening administrative and criminal liabilities for violations of the export controls regime

Under the current Export Controls Law administrative and penal liabilities range between BGL 25 000 and BGL 500 000. While these sums could have been considered substantial penalties in 1995 when the law was drafted, subsequent inflation had reduced their maximum to, roughly, three times the average salary. The proposed changes would amend these amounts to range between BGL 2 million and BGL 50 million. In addition to this property sanction 'to the twice of the value of the transaction' have also been introduced.

It is believed that these sanctions will have a stronger deterrent effect on potential violators. This can be achieved only if stringent application and prosecution of alleged crimes back it.

4. Wording changes in references to the licensing and permitting bodies

The seemingly unimportant changes of wording from a plural reference to a singular reference to licensing and permitting bodies, reflects thinking in the Inter-departmental Commission as to the potential creation of a single executive agency dealing with export controls.

Overall evaluation and proposals

In the past nine years since the fall of Communism Bulgaria has laid the foundations of a comprehensive export controls system. Despite the slow development of the early nineties, after 1995 the country has moved decisively towards increasing its institutional capacity to strengthen its export controls regime. This is reflected by the generally comprehensive

Export Controls Law and regulation, the two-tier inter-departmental review process and the commitment to further strengthen the implementation and control within the system.

The current system can be strengthened by a number of actions that would require the concerted effort of the Government, the specialised community and international actors in the field of export controls. The proposed changes by the Government are a substantial step forward and they open the process for further elaboration and needed strengthening of the export control regime.

Below are some ideas of how the Bulgarian export control regime can be further strengthened and enhanced.

1. Creation of single body responsible for licensing, permits and controls of foreign trade in arms and dual-use goods and technologies.

The existing complex system of co-ordination between the different government departments in the export controls process can potentially create difficulties that will undermine the effectiveness of the regime. Split responsibilities for licensing and permits, in an environment of an underdeveloped culture of inter-departmental co-ordination can lead to loss of institutional memory and practice. The ambiguities as to the responsibilities vis-à-vis the controls on permits can also downgrade the current system.

The creation of a single government agency dealing with export controls can, to a large extent, overcome the current and potential problems with co-ordination and implementation. The effective implementation of export controls is the crust of success.

Without the adequate bodies that can support the implementation of existing legislation, it will remain weak and fragmented. The proposed amendments in the Export Controls Law open the door towards such thinking and action. The placement of such an agency is a political question that needs to be decided by the Government on the basis of a substantial needs assessment and as study of practices in other countries of the region. To ensure a balance between government stakeholders it might be feasible to consider placing such an agency in the administration of the Council of Ministers.

2. Introduction of a mechanism to verify the validity of end-user certificates

As noted earlier the lack of a system to verify end-user certificates remains a weak link in the export controls chain. The current provisions for legalised translations of end-user certificates needs to be amended whereby Bulgarian diplomatic representations abroad can take a more active role in this process. This would imply an enhanced role for the Ministry of Foreign Affairs in the process of export controls in Bulgaria. Such additional obligations and requirements would need to be studied and perhaps proposed as amendments to current legislation. Their implementation would also represent an additional financial burden on the public administration, but would close an existing loophole in the system.

3. Further strengthen the operational co-ordination between the licensing process and the Ministry of Interior, General Customs Directorate and the security services.

As part of the process of strengthening co-ordination of policies and control over the issuances of permits, the role of other government agencies becomes increasingly important. Some steps have been taken in this direction but further efforts should prove to be productive.

4. Improved staffing policies at the different levels of the licensing, permits and control process

Currently, both the administration of the Inter-ministerial council and the Commission is understaffed. A needs assessment of staffing needs should be undertaken to see how the implementation capacity of each of these units could be strengthened. In case that a single government agency is created it should be properly staffed with highly qualified and well-motivated civil servants. Despite current budgetary restraints that face the Bulgarian administration, export controls remain an issue of paramount importance to both Bulgaria's industrial development, international credibility and Euro-Atlantic integration policy. Staffing policies for the implementation of export controls should reflect the political importance of the topic.

5. Adequate international technical assistance and training for building the needed capacity among civil servants to handle export control issues

The international community has targeted substantial assistance to the Building of export control regimes in the post-Soviet countries. Most of this assistance, understandably, has targeted the countries of the C.I.S. Bulgaria has obviously remained in the periphery of efforts to build effective export controls in the second half of the nineties. Even so it remains a major exporter of arms and dual use goods and its geographic location makes it an important point in halting illegal transfers of goods and materials. As illustrated by the proposed legislative changes the Government is keen to strengthen the system of export controls. This effort should receive adequate international support by both governments and universities, where substantial knowledge and information has been accumulated.

6. Enhance contacts and co-ordination with other national export control authorities to exchange information and best practices

The current level of information exchange and contacts between the Bulgarian export controls establishment and counterparts in other countries is limited. Such contacts and exchanges should be an important source of information and practices. Existing mechanisms under the Wassenaar Arrangement and other sources, including the SIPRI Project on Export Controls, should be utilised.

7. Enlist the participation of the business community by enacting principles of internal reliability

In order to enhance internal compliance mechanisms the Government should develop a policy to reach agreement with the business community on a covenant of good practices and policies that companies should be urged to accept. Such a covenant can include the designation of specified individuals within each trading company to be personally responsible for its exports and contacts with the licensing authorities. This would personalise responsibility and strengthen internal commitment to abiding by the law. In addition regular meetings and exchanges can also help build support for the government's export controls policy.

8. Declare the political will to implement stringent export controls as important conditions to integrating Bulgaria into Nato and the EU.

Despite the fact that export controls remain a highly specialised area that is rarely visible to the public, their comprehensive legal base and effective implementation and control are a *sine*

qua non for advancing Bulgaria towards membership in Nato and the EU.⁵⁰ Given the fact that Euro-Atlantic integration policy enjoys wide public support, an underdeveloped, or inadequate, export control system should not be a hindrance to this process. It is important that export controls be understood not only as a vital link in Bulgaria's trade policy, but also as an integral part of the security posture of the country. It is encouraging that the Prime Minister, in his motivation to parliament on the proposed changes to the export controls law, alludes to this fact.

⁵⁰ For more information on the relationship between export controls and the accession process see Jones, S., 'An Enlarging Europe: Implications for EU Non-proliferation Export Controls', *The Monitor*, Vol. 3, No. 3., Summer 1997

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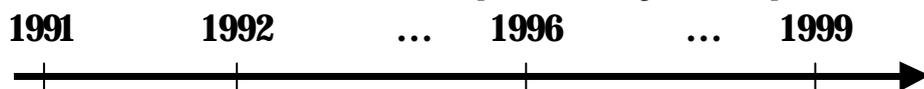
Annex 1: Membership of international non-proliferation export control regimes

State	Zangger Committee	Nuclear Suppliers Group	Australia Group	Missile Technology Control Regime	Wassenaar Arrangement
Argentina	X	X	X	X	X
Australia	X	X	X	X	X
Austria	X	X	X	X	X
Belarus					
Belgium	X	X	X	X	X
Brazil		X		X	
Bulgaria	X	X			X
Canada	X	X	X	X	X
China	X				
Czech Republic	X	X	X	X	X
Denmark	X	X	X	X	X
Estonia					
Finland	X	X	X	X	X
France	X	X	X	X	X
Germany	X	X	X	X	X
Greece	X	X	X	X	X
Hungary	X	X	X	X	X
Iceland			X	X	
Ireland	X	X	X	X	X
Italy	X	X	X	X	X
Japan	X	X	X	X	X
Kazakhstan					
Korea, South	X	X	X		X
Latvia		X			
Lithuania					
Luxembourg	X	X	X	X	X
Moldova					
Netherlands	X	X	X	X	X
New Zealand		X	X	X	X
Norway	X	X	X	X	X
Poland	X	X	X	X	X
Portugal	X	X	X	X	X
Romania	X	X	X		X
Russia	X	X		X	X
Slovakia	X	X	X		X
Slovenia					
South Africa	X	X		X	
Spain	X	X	X	X	X
Sweden	X	X	X	X	X
Switzerland	X	X	X	X	X

Turkey				X	X
Ukraine	X	X		X	X
UK	X	X	X	X	X
USA	X	X	X	X	X
Total	33	35	30	32	33

Source: *SIPRI*, information current 1 March 1999

Annex 2: Cornerstones of the Development of Bulgarian Export Controls



CoM Regulation No. 13

- Introduction of licensing restrictions of arms trade
- Licensing authority created Regulatory Commission on Production and Trade with Special Produce

CoM Regulation No. 114 (amended by CoM Regulation No. 224)

- o Controls introduced over the import, export, re-export and transit of goods, materials, technologies, equipment and services that can have possible dual-use for the creation of nuclear, chemical, biological and other weapons of mass destruction
- o Inter-ministerial Committee at the CoM created - dealing with trade in dual-use materials

CoM Regulation No. 115

- o Inter-ministerial Committee at the CoM created - oversight of production and trade of military equipment and technology

Law on the Control of Foreign Trade Activity in Arms and in Dual-use Goods and Technologies

- o Authorises government control of export, re-export, import and transit of arms and dual use goods and technologies
- o Imposes eligibility criteria on who can engage in arms trade
- o Establishes two-tier review process of licenses in transaction permits
- o Establishes record keeping obligations for exporters
- o Establishes criminal and administrative penalties

CoM Regulation on implementation of the Law

- o Establishes detailed requirements and procedures for licensing foreign trade in arms and dual-use goods and materials and transaction licensing

**CoM Proposal for
Amendments to the Export
Controls Law**

- Additional circumstances allowing the Government to restrict arms and dual-use exports
- Strengthening eligibility criteria for foreign trade activity in arms and dual-use goods and technologies
- Strengthening administrative and criminal liabilities for violations of the export controls regime

Annex 3: Law on the Control of Foreign Trade Activity in Arms and in Dual-use Goods and Technologies

unofficial translation

REPUBLIC OF BULGARIA
THIRTY-SEVENTH NATIONAL ASSEMBLY

LAW
ON THE CONTROL OF FOREIGN TRADE ACTIVITY IN ARMS
AND IN DUAL-USE GOODS AND TECHNOLOGIES

CHAPTER ONE

General Provisions

Article 1

1. The present Law regulates the terms and procedure for the conducting of foreign trade activity in arms and in goods and technologies of potential dual-use and state control over these activities.
2. Goods and technologies are deemed to be of potential dual-use when they can be used for both civil and military purposes.

Article 2

The conducting of foreign trade activity pursuant to Art 1 is subject to state control in order to ensure that national security and the foreign political interests of the state will be protected, international credibility and stability strengthened and the international obligations of the Republic of Bulgaria fulfilled.

Article 3

In order to ensure the attainment of the purposes referred to in Art 2 the government bodies, within the scope of their competence, may directly cooperate and exchange information with the corresponding competent authorities of other states, the signing of Cooperation Agreements included.

Article 4

1. The state may introduce restrictions and impose bans on the execution of foreign trade activity in arms and in dual-use goods and technologies when:
 - 1) the activity contravenes the purposes referred to in Art 2;
 - 2) the goods and technologies are intended or may be used for the development, production, operation, handling, maintenance, storage and dissemination of mass destruction weapons;
 - 3) the Republic of Bulgaria has acceded to international conventions on non-proliferation of the weapons or by virtue of membership in international

organizations has undertaken such obligations, as well as in the event of sanctions in respect of a certain state, introduced by the Security Council of the UN.

2. The list of the arms and of the dual-use goods and technologies in respect whereof the regime to Para 1 is applied, shall be established by the Council of Ministers and shall be published in the State Gazette.

CHAPTER TWO

Foreign Trade Activity in Arms Regime

Article 5

1. Foreign trade activity in arms may be solely effected by trade companies where Bulgarian equity participation exceeds 50 % under observance of the provisions of the present Law.

2. Foreign trade activity in arms is effected on the basis of a license granted for the execution of the respective activity and a permit for every individual transaction, issued by government bodies designated by the Council of Ministers and headed by Ministers.

3. The license and permit have a certain period of validity. The scope of the license is laid down by the body referred to in Para 2.

Article 6

The requirements to be satisfied by the trade companies applying for a license and a permit and the terms for the revocation thereof are established in the Regulation on the Implementation of the present Law in accordance with the purposes referred to in Art 2.

Article 7

1. Where necessary the government bodies to Art 5, Para 2 may request the opinion of other government bodies.

2. For the issue of licenses and permits and the performance of inspections the competent government bodies may designate experts who shall give their opinion on matters requiring specialist knowledge.

3. For the issue of the licenses and permits state fees shall be paid in amounts established by the Council of Ministers.

Article 8

Transit transportation of arms through the territory of the Republic of Bulgaria shall be effected on the basis of a transit transportation license wherein the customs posts, route and time of transit shall be indicated. The license shall be issued on a case-by-case basis under the terms and procedure established in the Regulation on the Implementation of the present Law.

CHAPTER THREE

Foreign Trade Activity in Dual-Use Goods and Technologies Regime

Article 9

1. Any person may carry out foreign trade activity in dual-use goods and technologies on observing the provisions of the present Law and in accordance with the Laws and Regulations in force.
2. Foreign trade activity in dual-use goods and technologies whereon restrictions have been introduced under Art 4, shall be effected on the basis of an individual transaction permit, issued by a government body designated by the Council of Ministers and headed by a Minister.
3. Foreign trade activity in a certain type of goods and technologies, referred to in the List to Art 4, Para 2, shall be effected on the basis of a license granted by the body to Para 2. A transaction permit for this type of goods and technologies shall be issued to the licensee.
4. The licenses and permits to this Chapter are issued with a certain period of validity according to the terms and procedure established in the Regulation on the Implementation of the present Law.

Article 10

1. For the issue of an individual transaction permit a declaration of confirmation is required from the end-user in respect of the end-use of the dual-use goods and technology.
2. For the issue of licenses and permits and the performance of inspections the competent bodies may designate experts who shall give their opinion on matters requiring specialist knowledge.
3. For the issue of the licenses and permits state fees shall be paid in amounts established by the Council of Ministers.

Article 11

The body pursuant to Art 9, Para 2 shall deny the issue of or revoke a granted license or permit when:

- 1) the information relevant to the issuance thereof has not been submitted or the information submitted is false or incomplete;
- 2) the Applicant has not complied with the terms under which the license and permit have been granted within the established time-limit;
- 3) circumstances contravene the purposes referred to in Art 2;
- 4) circumstances, envisaged by the present Law, arise.

Article 12

Transit transportation of dual-use goods and technologies through the territory of the Republic of Bulgaria shall be effected on the basis of a transit transportation license wherein the customs posts, route and time of transit shall be indicated. The permit shall be issued on a case-by-case basis according to the terms and procedure established in the Regulation on the Implementation of the present Law.

Article 13

The issue of a permit for foreign trade activity in dual-use goods and technologies not listed in Art 4 shall be required when the exporter or importer is aware of, could have been aware of or has been informed in writing by the relevant bodies that:

1) the dual-use goods and technologies may be intended, in their entirety or in part, for the development, production, handling, operation, maintenance, storage, detection or dissemination of chemical, biological or nuclear weapons or for the development, production, maintenance or storage of missiles capable of delivering chemical, biological or nuclear weapons, covered by the international agreements for the prohibition or non-proliferation of such weapons;

2) dual-use goods and technologies are intended for a country in respect of which the Security Council of the UN has undertaken measures for the maintenance or re-establishment of international peace and security, or in respect of a country, in whose territory military operations are being conducted or which participates in a military conflict.

CHAPTER FOUR Obligations of the Parties to Foreign Trade Activity

Article 14

The persons engaged in foreign trade activity in arms and in goods and technologies subject to control as stipulated in the present Law, are under the obligation to:

- 1) keep a separate register of the transactions effected as per the present Law, and retain transaction and transportation documents and the information related to the execution of the transaction for at least five years;
- 2) observe the terms and conditions under which this activity has been licensed, and immediately notify in writing the control bodies of any change thereof;
- 3) indicate the name, position and address of the representatives of the party to the transaction and of the end-user, in charge of the performance of the obligations to the transaction, and immediately notify of any replacement or change thereof;
- 4) inform the respective government bodies should a probability become apparent that the goods and technologies subject of foreign trade activity may be used in the way envisaged in Art 13.

Article 15

Importers and exporters of arms are under the obligation to incorporate a provision in the foreign commercial contract ensuring guarantees on the part of the buyer that the purchased arms may not be transferred to third natural or juridical persons without the express consent of the importer or exporter.

Article 16

The license and permit obtained under the present Law may be used solely by the grantee thereof. The transference of the license and permit or of rights thereof to a third party shall invalidate the said license and permit whereas the transferor shall thereby forfeit any rights arising from them.

CHAPTER FIVE
Control on the Observance of the Foreign Trade Activity in Arms and in Dual-Use
Goods and Technologies Regime

Article 17

1. The control on the performance of the obligations and terms related to the issued license or permit under the present Law is enforced by the bodies issuing the license or permit and by other government bodies in accordance with their competence.
2. The enforcement of control includes inspections prior to and after the issue of the license and permit for foreign trade activity under the present Law.
3. In the enforcement of control the control bodies pursuant to Para 1 may:
 - 1) request information necessary to the enforcement of control;
 - 2) apply to the competent organs of other states for their submission of information necessary to the enforcement of control;
 - 3) perform inspections on the observance of the obligations of the parties to the transaction and of the end-user in the event of import.
4. The control bodies are under the obligation to keep in confidence any official, production or commercial secrets of the persons undergoing inspection.
5. In the presence of information about a committed crime the government body designated by the Council of Ministers shall refer the matter to the prosecution authorities.
6. Representatives of a foreign state may participate in the enforcement of control in accordance with the international obligations of the Republic of Bulgaria assumed under international agreements or by virtue of participation in international organizations.

Article 18

A written protocol on the results of the inspection shall be prepared. On the establishment of evidence of a committed crime, the official preparing the protocol shall forward a copy thereof to the prosecution authorities.

CHAPTER SIX
Administrative-Penal Provisions and Property Sanctions

Article 19

The natural persons engaged in foreign trade activity, the representatives of the parties to the transaction and of the end-user of arms or dual-use goods and technologies shall be penalized with a fine in amounts ranging from 50 000 to 500 000 leva on failure to perform their obligations referred to in Arts 14 and 15 if the perpetrated act is not a crime.

Article 20

The juridical persons engaged in foreign trade activity shall be penalized with property sanctions on failure to perform their obligations referred to in Arts 14 and 15, amounting to double the total transaction value, determined on the basis of the foreign commercial transaction data.

Article 21

On non-performance of other obligations arising from the present Law natural persons shall be penalized with a fine in amounts ranging from 25 000 to 250 000 leva unless they are subject to a heavier punishment, whereas juridical persons shall be penalized with a property sanction in amounts of up to 500 000 leva.

Article 22

1. The protocol on the establishment of violations is prepared by officials of the organs of control to Art 17, Para 1.
2. Penal decrees shall be issued by the Minister in charge of the respective body to Art 5, Para 2 and Art 9, Para 2.
3. The drawing up of the protocol on the establishment of administrative violations, the imposition of administrative penalties, the appeal against and the enactment of the penal decrees shall take place as prescribed by the Law on Administrative Violations and Penalties.

Additional Provision

§1. In exceptional events, should the state's national security or the performance of international obligations assumed by the state be jeopardized, or should the state's foreign political interests be infringed, the Council of Ministers may ban the carrying out of import, export, re-export or transit transportation of arms and dual-use goods and technologies, regardless of the issued license and permit.

Transitional and Final Provisions

§2. In Art 5, Subpara 3 of the Law on Economic Activity of Foreign Persons and on the Protection of Foreign Investment (publ. in the State Gazette, issue 8, 1992; amended issue 92, 1992) the words "and trade in" are replaced by the word "of".

§3. In the Criminal Code (publ. SG, issue 26, 1968; amended issue 29, 1968; mod. and add. issue 92, 1969, issues 26 and 27, 1973, issue 89, 1974, issue 95, 1975, issue 3, 1977, issue 54, 1978, issue 89, 1979, issue 28, 1982; amended issue 31, 1982; mod. and add. issue 44, 1984, issues 41 and 79, 1985; amended issue 80, 1985; mod. and add. issue 89, 1986; amended issue 90, 1986; amended issues 37, 91 and 99, 1989, issues 10, 31 and 81, 1990, issues 1 and 86, 1991; amended issue 90, 1991; mod. issue 105, 1991, issue 54, 1992, issue 10, 1993 and issue 50, 1995) a new Article 233 is incorporated:

Article 233

1. Anyone engaged in foreign trade activity in dual-use goods and technologies without respective authorization shall be penalized with imprisonment of up to 6 years and with a fine to the amount of up to 500 000 leva.
2. For particularly serious offenses, referred to in Para 1, the penalty shall be imprisonment from 3 to 8 years and a fine to the amount of up to 1 million leva.

3. For minor offenses, referred to in Para 1, the penalty shall be a fine to the amount of up to 50 000 leva.

4. The dual-use goods constituting the subject of the crime shall be seized on behalf of the state irrespective of the fact whose property they are, or in the event of a lack or alienation thereof their equal value determined as per the foreign commercial contract shall be adjudged.

§4. The present Law shall enter into force two months after its publication in the State Gazette.

§5. The implementation of the present Law is assigned to the Council of Ministers that adopts a Regulation on its implementation within one month of its entry into force.

This Law was passed by the XXXVII National Assembly this 8th day of November, in the year 1995 and the State Seal was affixed thereto.

Source: *SIPRI*