

UAE export controls: Commitment commendable – but there's work to do
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Since the 2007 introduction of an export control law, the United Arab Emirates has strived to join forces against proliferation. But in the face of contemporary challenges more must be done – starting with a publicly-available control list, writes Bashar Malkawi.

The export of products and services comprises an essential part of conducting international trade. Nevertheless, many countries, including United Arab Emirates (UAE), place controls on the export of certain products, technology, and services to other countries, reflecting their national security and foreign policy concerns.¹ Export control systems are often concerned with the non-proliferation of weapons of mass destruction, including nuclear weapons, missiles, and biological weapons.² However, the scope of export controls are not always limited to weapons in their final form. The expansive scope of export controls may affect companies and even individuals.

The United Arab Emirates, along with many nations of the world, places controls on the export of certain products, technology, and services to other countries, reflecting their national security and foreign policy concerns.³

Globally, much has changed in the realm of export controls: most significantly, the terrorist attacks of September 11, 2001 forced countries such as the United States (U.S.) and UAE to reexamine the goals underlying export controls on critical goods and technologies in light of evolving security dangers.⁴ However, as new security threats emerge, UAE export control requires modification if it is to be calibrated to new threats.

The inadequacy of the UAE export control regime has attracted some publicity, and the concerns of the international community.⁵ A series of dubious transfers raised fundamental questions about the efficacy of UAE export controls and allowed other countries to exploit the country's weakness as a perceived proliferation front, diverting trade away from it. The

¹ See Daniel H. Joyner, The Enhanced Proliferation Control Initiative: National Security Necessity or Unconstitutionally Vague?, 32 Ga. J. Int'l & Comp. L. 107, 112-15 (2004).

² See Wei Luo, Research Guide to Export Control and WMD Non-proliferation Law, 35 Int'l J. Legal Info. 447, 453 (2007).

³ See Daniel H. Joyner, The Enhanced Proliferation Control Initiative: National Security Necessity or Unconstitutionally Vague?, 32 Ga. J. Int'l & Comp. L. 107, 112-15 (2004).

⁴ See Matthew D. Burrie, Tilting at Windmills? The Counterposing Policy Interests Driving the U.S. Commercial Satellite Export Control Reform Debate, 66 A.F. L. Rev. 255, 269-276 (2010). See also Lee Baker, The Unintended Consequences of U.S. Export Restrictions on Software and Online Services for American Foreign Policy and Human Rights, 23 Harv. J. Law & Tec 537, 553 (2010).

⁵ The U.S. significantly influenced the enactment of export control laws in the UAE. See Gary G. Yerkey, U.S. Planning New Controls on Exports to 'Diversion' Destinations such as UAE, 24 Int'l Trade Rep. (BNA) 319 (March 1, 2007). See also Gary G. Yerkey, U.S. Warns UAE over Diversion of Sensitive Technology to Iran, Syria, 23 Int'l Trade Rep. (BNA) 1819 (Dec. 21, 2006).

UAE responded with the introduction of legislation in 2007, although the lack of an institutional framework to ensure the oversight of trade remained a concern.

Greater commitment

In 2007, the UAE introduced Federal Law No. 13 of 2007, signaling a greater commitment to the adoption of the controls necessary for it to be allowed to carry on nuclear energy projects. It was ambitious attempt by the country to strike a grip on the control of exports.

The law puts in place a comprehensive set of controls that govern exporting, re-exporting, transshipment and the transit of dual-use/ sensitive goods across territories. The law also covers brokerage-involving transactions on restricted products and intangible items such as blueprints and software. The intention is to protect sensitive technology from abuse.

The UAE also accords state authorities the power to control items that can enter or leave the country.⁶ This is a 'catch-all' provision which permits authorities to evaluate goods and determine if they pose a risk to the country. Importers or exporters of sensitive or dual-use goods must seek approval from the relevant authorities before being granted the permission to handle such items.⁷ The law puts stringent guidelines on the importation and distribution of technology.⁸

Violations of the law can result in severe penalties. The punitive measures are both criminal and administrative which encompass heavy fines and even jail terms. The UAE export control legislation provides a wide but technical foundation that is useful in controlling exports. Under the provisions of the law, the emirate-level agencies are required to work alongside federal ministries when enforcing the requirements. By extending the applicability of the legislation to cover free trade zones, the law responds to the vulnerabilities which were previously exploited.

However, while the law established broad foundations for controlling exports, it failed to address issues of institutionalization and implementation. Apparently, 'grey areas' were to be addressed by a high-level committee to be formed at a later stage. Given that many practical regulations were not developed, the implementation of the law was bound to encounter many challenges.

In 2009, the Committee for Goods and Materials Subject to Import and Export Control was set up.⁹ The composition of the body took into consideration federal ministries involved in export control matters. The Minister of State for Foreign Affairs chairs the commission. The Committee is to take charge of many responsibilities such as strategic planning, coordination

⁶ See Law on Export Control No. 13 of 2007, art. 2.

⁷ *Id.* art.4.

⁸ *Id.* art. 8.2.

⁹ See The Committee for Goods and Materials Subject to Import and Export Control, available at < <https://www.uaieec.gov.ae/en-us/about-us> >.

and cooperation, preparation of procedures, and developing implementation regulations. Thus, the Committee assumed both licensing and coordination roles.

Given the weighty mandate, of both institutionalizing the country's export control and developing the licensing system required to regulate trading in restricted products, little progress was made in the Committee's absence. Thus, at its inception, the expectation was that the UAE was progressing on the control of exports framework.

In practice

The enforcement record in the UAE is mixed. The assessment of the country's enforcement is fraught with limitations, leading to inconclusive perceptions about the state of export controls.

Ultimately, the development of an efficient coordination model among the stakeholders involved is a major challenge that must be overcome for the control system to work properly. The UAE has rolled out extensive training measures to enhance its capacity to control exports effectively. Dubai, in particular, has worked tirelessly to train its customs officers on how to identify and handle proliferation cases. Those enforcement efforts demonstrate that the Emirates state is committed to defeating illicit trade through the establishment of an effective export control framework.

Most of the events revolving around the law adopted by the UAE government have resulted from information emanating from foreign governments, which the GCC state enjoys cordial ties.¹⁰ Nevertheless, the *ad hoc* approach to the enforcement of the law is indicative of the scale of the task faced by the UAE authorities if they are to eradicate proliferation.

One area requiring urgent is that of outreach to those parts of the business community whose products are potentially caught by export controls.

On that front, the Committee for Goods and Materials Subject to Import and Export Control has not done enough to publicize export control guidelines. Another issue is that the Committee for Goods and Materials Subject to Import and Export Control has never publicized the individuals or companies that have been penalized so far, nor has it specified the penalties imposed. In the United States (and to a lesser extent, elsewhere) 'naming and shaming' is a common strategy used to deter violators.

Licensing systems entail collation and publication of lists of products that require licenses. Export trade control offences are thus defined as breaches of the licensing requirements for items published on control list. However, the UAE has not yet published a control list despite reference to a list being made in the export control law. Without a (publicly available) list, it is impossible to full implement and enforce the law.

¹⁰ See Johan Bergenäs, The Slippery Slope of Rational Inaction: Resolution 1540 and the Tragedy of the Commons, 15.2 The Nonproliferation Review 373, 378 (2008).

International Cooperation

In order to enhance its capacity in export controls, the UAE has entered into several international agreements, and ratified a range of initiatives and treaties and pacts relating to nuclear, biological and chemical, missile, terrorism and proliferation, influencing the strategic control of foreign trade.

Regarding terrorism, the UAE is a party to many initiatives such as the Container Initiative, the Security Freight Initiative, and the Megaports Initiative.¹¹

As regards proliferation, the UAE is a participant in many activities aimed at countering the supply of goods used to advance adverse engagements. For instance, the UAE has openly approved the Proliferation Security Initiative. Also, the UAE is a member of the Comprehensive Nuclear-Test-Ban Treaty and the Non-Proliferation Treaty, which bring together states, united against nuclear weapons development. In ratifying of the Chemical Weapons Convention (CWC) in 2000, UAE supports laws aimed at controlling the use of chemical and biological warfare. Thus, apart from the local laws, the UAE has domesticated international initiatives and treaties in its bid to contribute towards the control of exports.

The Way Forward

The UAE was among the pioneering countries in the Middle East who adopted export control law. The UAE law on export controls is derived from the country's international obligations and commitments as well as national interests. Besides establishing national laws to oversee export control in the countries, efforts have been made to work with other nations. As argued in the case of the UAE, entering multilateral arrangements provides a platform that is more likely to lead to a positive outcome in the pursuit of export controls. As opposed to unilateral or bilateral decisions, multilateral arrangements enjoy the support of many players, hence are more likely to attain better results.

Given that the world landscape keeps changing, the UAE export control system also needs to be changed in order to keep pace with the developments. Updating the export control system would be a major step in enhancing the control platform. Control lists are integral to the fight against illegal exports. The UAE does not have a list. Hence, the UAE has ground to cover towards succeeding on the fight against proliferation. In addition, adopting sound implementation policies would also be important in improving the effectiveness of the export control system. Such frameworks need to include well-defined evaluations criteria, reporting and enforcement requirements.

¹¹ See Export Control and Combating Terror Financing, available at <<https://www.uae-embassy.org/uae-us-relations/business-trade/trade-export/export-control-and-combating-terror-financing>> (last visited Jan. 24, 2020)