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LIMITE

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OUTCOME OF PROCEEDINGS

of: Ad hoc Working Party on Dual-use Goods

on: 5 July 1999

1. Commission proposal for a Council regulation setting up a Community regime for the control of exports of dual-use goods and technology (doc. 8888/98 + COR 1)

The Presidency reminded delegations⁽¹⁾ of the two main goals of the proposed regulation: to create a Community General Export Authorization (CGEA) and to simplify and reduce intra-Community controls. The Working Party had achieved consensus on the greater part of a revised version of the proposal. However, agreement on Articles 6 and 21 was conditional on the contents of Annexes II (CGEA) and IV (intra-Community controls), upon which delegations' views varied widely. The Presidency called on delegations to show a spirit of compromise in order to reach agreement on these annexes, as instructed by Coreper on 5 May.

1.1 Identification of items to be included in Annex IV - Intra-Community controls (DS 29/99, DS 30/99 DS 32/99)

The Presidency had drawn up and circulated DS 29/99, a compilation of the various proposals tabled so far for the contents of Annex IV.

⁽¹⁾ The Spanish delegation was not represented.

The French delegation reiterated its position that since there was no Community harmonization of export controls, all sensitive items should be included in Annex IV to allow Member States to trace transfers and subsequent exports, and to fulfil their non-proliferation obligations; unlike in the US, where one central authority authorized and monitored exports of sensitive items, in the EU fifteen different authorities were responsible for these tasks. It pointed out the virtually negligible impact on trade of sensitive MTCR items which were used almost exclusively for military purposes. It suggested that transfers of certain sensitive MTCR items used in connection with the European Space Agency Ariane programmes might benefit from an exemption from licensing obligations. In addition, it felt that general authorizations should not be allowed for any of the items listed in Annex IV.

The German delegation confirmed its opinion that, as a token of respect for Member States' export controls, Annex IV should be as short as possible and contain only those items listed in the current CFSP Decision, minus cryptographic goods. However, in the spirit of compromise, it might agree to add some items.

The United Kingdom delegation acknowledged that in principle only very few items should be subject to intra-Community controls but agreed that some rarely traded sensitive items should be subject to authorization for ease of traceability. It suggested dividing Annex IV items into three groups: the first to contain items which Member States were clearly obliged to control at national level in accordance with international regimes; the second to contain items which it seemed logical to control for traceability purposes; and a third containing those items which only some Member States wished to control. General authorizations could not be granted for the first two groups. (It undertook to submit a written proposal to this effect as soon as possible.) The Austrian delegation saw some merit in the United Kingdom's suggestion and noted that its own goal was not to have a longer Annex IV but to ensure that Member States fulfilled their obligations in particular under the N.P.T. (Zangger Committee and NSG Trigger lists, and the IAEA Additional Protocol).

Referring to DS 29/99, delegations commented on the items proposed for inclusion under the five headings in Annex IV as follows:

Part I:

- items of stealth technology

NL/B felt that no items under this heading should be controlled.

UK/F/GR/S/DK/D/A/IRL could agree to controls on all the items mentioned.

- items of the Community strategic control

NL/B felt that no items under this heading should be controlled.

A/D/S/IRL/FI/I were in favour of abandoning controls on cryptographic goods.

UK/DK/FR felt that cryptographic goods should continue to be controlled, at least to some extent, with possible exemptions for certain end-uses.

The Cion tabled DS 30/99, a paper drawn up by the European Encryption Working group and arguing for the removal of cryptographic goods from Annex IV of the current CFSP Decision. Delegations were invited to take account of the arguments contained in the paper before pronouncing their final opinions on the matter of cryptography.

UK/D/A could agree to add three category 8 items to those controlled under this heading in Annex IV of the current CFSP decision, as suggested by F. D, however, underlined that its agreement was conditional upon F showing a spirit of compromise in other areas.

- items of the MTCR technology

NL/B felt that no items under this heading should be controlled. A basically agreed with NL/B, but was willing to accept the Presidency/Cion proposal (which was to focus controls on MTCR Category 1 items).

D/DK/I also endorsed the Presidency/Cion proposal, with D calling for a Presidency proposal concerning the exemption from controls of items for use in connection with European Space Agency programmes.

UK felt that for Member States to meet their MTCR obligations, all Category 1 items should be controlled, although the Cion considered that other MTCR members had accepted the principle that intra-EU trade was not intra-partner trade.

F considered that in view of the lack of harmonized Community export controls, for both security and technical reasons, a long list of both Category 1 and Category 2 MTCR items should be controlled. MTCR made no distinction between purely military and civilian goods, and without the requisite safeguards, it was essential that none of these items should be allowed to circulate freely.

- items of the Chemical Weapons Convention

F withdrew its proposal to add three additional items to the two (Ricin and Saxitoxin) which are currently subject to intra-Community controls. All delegations could agree to this status quo, (although GR wondered whether item 1C350/23 should not also be included under this heading).

Part II

- items of the Trigger List

A noted that its proposals contained in DS 13/98 were not included in DS 29/99. It considered (supported by F/S) that the Dublin Declaration was now obsolete, but that the provisions of the IAEA Additional Protocol in connection with notification of transfers of Zangger Committee and NSG Trigger List items (these two Trigger Lists were similar and would soon be identical) were clear. All these items should be included in Annex IV.

NL referred to DS 32/99 in which it proposed a limited list of Category 0 items for inclusion in Annex IV.

UK revised its earlier opinion, and felt that it would be sufficient to include under this heading only those items set out in the IAEA Information Circular INFCIRC/540, Annex II.

B preferred to abide by its NSG commitments through the Dublin Declaration, which it considered was a notification procedure.

D noted its position was close to that of NL. It wondered whether graphite should no longer be subject to controls in view of the widespread civilian use of "nuclear grade" graphite. F agreed that only graphite for use in nuclear reactors need be controlled, and NL could agree to abandon controls on graphite.

It was agreed that the inclusion of all Trigger List items under this heading would be further discussed at the meeting on 28 July. To what extent transfers of graphite should be controlled would be considered in detail. Furthermore, proposals to include NSG items other than those on the Trigger List will also be discussed at that meeting.

The Presidency undertook to draw up and circulate a revised version of DS 29/99, taking into account newly tabled proposals, before the 28 July meeting of the Working Party.

1.2 Identification of items to be included in Annex II - Community General Export Authorization (8519/99, DS 28/99, DS 33/99)

The Presidency referred to DS 28/99 setting out four options as to which items should be excluded from the CGEA.

The fourth option (connected to end-use), proposed by D, was withdrawn.

NL tabled DS 33/99, a proposed text for Annex II, (to be read in conjunction with DS 33/99, its proposal for a greatly reduced Annex IV). In addition to excluding from the CGEA several items which it had not considered should be subject to intra-Community controls, NL suggested deleting from the Presidency/Cion proposal conditions 2 and 3 for the granting of the CGEA.

The Cion noted that most delegations would prefer the list of items to be excluded from the CGEA (in accordance with Annex II) to be the same as those subject to intra-Community controls (under Annex IV).

D, supported by UK, feared political repercussions if exports of certain items to the US under a general authorization were prohibited, and placed a reservation on this issue. Nor could D/UK agree to delete conditions 2 and 3 from the Presidency/Cion proposal. UK expressed a reservation on the use of the words "is aware or" in condition 2.

GR considered that agreement should be reached on the contents of Annex IV before finalizing Annex II, which should exclude from the CGEA at least all the items subject to intra-Community controls. It also suggested reinserting the requirement in Annex II to keep the list of destinations under constant review. However, the Cion felt that such requirement might raise false hopes for countries seeking EU membership.

1.3 Article 21

A agreed in principle to the contents of this article but lodged a reservation pending agreement on Annex IV.

Discussion of this article would be resumed at the 28 July meeting.

1.4 Annex IIIb (DS 31/99)

S tabled DS 31/99 proposing alternative wording for Annex IIIb. It was agreed that this proposal would be discussed further at the 28 July meeting (unless S decided to withdraw it).

Discussions on all the above items would be continued at the 28 July meeting. The Presidency urged delegations to pursue bilateral and multilateral informal contacts in an attempt to reach consensus on the contents of Annexes II and IV, thus ensuring a fruitful discussion at the next meeting.

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