

## Brexit and Strategic Trade Controls: key implications

Quentin Michel and Ian Stewart

On 24/25 April, Quentin Michel from the University of Liege and Ian Stewart from King's College London convened a small group of government officials, academics, and industry practitioners with the purpose of examining the implications of Brexit on strategic trade controls. The workshop was conducted under Chatham House rules with participation in private capacities. The purpose of this short article is to capture the key impressions and issues identified by the hosts. This document does not reflect the views or comments of any specific participant.

The main finding of the workshop was that the exit of the UK from the European Union strategic trade control system will have an impact that goes far beyond trade control law regulations and procedures. Much attention was given to the implications of the trading arrangement that will replace the UK's access to the 'single market'. Concerns abound that board tariffs will be adopted by both the EU and UK. However, while the issue of export controls will likely receive scant public attention, inadequate arrangements could have a negative impact that is even more significant than the effect of tariffs. The EU, and separately the UK, must devise mechanisms to ease transfer and, more specifically, licensing of dual-use goods after Brexit. It is unclear presently whether the EU will have the capacity to take the steps required, while also conducting an unrelated review of its own dual-use items export control Regulation, 428/2009. Considering the usual two years delay necessary to finalise the process to adopt a regulation, it is strongly recommended to integrate already the Brexit into the review process.

During the course of the workshop, numerous specific implications were identified. These can broadly be categorised into five areas:

- ***The legal basis and the 'Norway issue'***: Before addressing other issues related to Brexit, an answer is needed on what legal basis the UK will use to implement export controls in the future. One alternative would be that the UK will adopt national legislation (initially through the 'Great Repeal Act') implementing the requirements of the international export control regimes directly, rather than drawing on the EU regulation applicable in all EU Member States. If this is the case, UK and EU export controls can thus be expected to diverge over time after Brexit. The alternative would be for the UK to align systematically its national provisions to the EU regulation, perhaps following the path of Norway. However, Norway at present cannot take part in EU working groups on export controls and therefore has not possibilities to defend its views when the regulation is amended or updated. Moreover, Norway is excluded from information sharing arrangements whereas that will change probably soon.
- ***Harmonisation of controls and competition***: There is a real possibility that EU and UK export controls will diverge post-Brexit and that this could result in unhealthy competition and a 'race to the bottom' in terms of controls. This might could result in

an increase in undesirable transactions, for example. It could also distort markets, particularly if the EU moves forward with the adoption of an autonomous control list in relation to human security issues, as proposed by the European Commission under the recast review, which the UK did not adopt.

- **Information sharing:** trade facilitations between States and effective implementation of export controls is contingent on various types of information being shared. This includes not only information on licence denials, which is necessary to prevent ‘undercutting’ and a race to the bottom, but also more sensitive intelligence or other information related to specific transactions. In many cases such information sharing could take place through other channels. However, there would be specific advantages to a structured exchange of information in relation to denial notifications and the updating of any relevant control lists. Ideally, the UK will continue to have access to the DUeS platform.
- **Licensing conditions:** The UK is to leave the single market which will mean that the transfer of all strategic items will require licensing to and from the UK and not only a limited number (e.g. Annex IV of Dual Use Regulation 428/20009). This will affect a substantial range of goods and sectors. A solution will be required to allow such items to be easily transferred while minimising the burden on industry. The easiest option might well be to create ‘general’ or ‘open’ licences. However, this would generally require companies to report transfers to authorities and be subject to audit, which might in itself be a substantial burden for industry and licensing authorities. Alternatives include reliance on individual licences (which could be burdensome for companies and authorities) or the creation of some new mechanism intended to record transfers in a low-burden way.
- **Technical capacity:** Presently, it is the UK that drafts the EU control list. The UK also provides vital expertise and advice to EU Member States in assessing technical parameters of certain items. While the UK might still be in a position to provide such support post-Brexit, the EU27 might nonetheless need contingency plans.

An additional key area of consideration relates to sanctions. Presently, the UK is a principle actor in relation to EU sanctions. It is understood that the UK has produced several of the evidentiary packages that have been used in relation to specific sanctions designation listings, for example. As one of the largest global economies (equal in size to the 20 smallest EU States) and as a central player in the global financial system, UK adherence to sanctions has been central to their effectiveness. Any move away from harmonisation of sanctions with the European Union could thus undermine either common foreign policy goals or the effectiveness of sanctions. Moreover, practical questions related to sanctions such as who will maintain evidentiary packages for EU sanctions submitted by the UK before Brexit and who will produce evidentiary packages for EU sanctions in the future, if not the UK, must also be considered.

Two important final questions emerged from the discussions. The first concerns how the EU will devise a response to the issues outlined above. It seems apparent that only a group of officials, such as the Council's Dual-use Working Party, will have the necessary expertise to examine these issues in depth and devise a policy for future dual-use trade between the EU and UK. The second question, which is related, is whether it is feasible to advance both Brexit and the recast of the EU export control regulation (428/2009) in parallel. Given the sheer volume of the dual-use trade implications of Brexit and the fact that the recast, which has now been underway for more than 4 years is the main way in which the EU could adopt a new or amended general export licence for the UK, it seems at the least that it would be useful to consider Brexit issues as part of the recast.