Meeting of the States Parties to the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction

13 August 2015

English only

2015 Meeting
Geneva, 14-18 December 2015

Meeting of Experts
Geneva, 10-14 August 2015
Item 7 of the agenda
Standing agenda item: strengthening national implementation

Measures to implement Article III: Elements of an effective national export control system

Submitted by Australia, Belgium, Bulgaria, Canada, Chile, Columbia, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Japan, Lithuania, Luxembourg, Netherlands, New Zealand, Norway, Poland, Portugal, Republic of Korea, Romania, Slovakia, Slovenia, Spain, Sweden, Switzerland, Turkey, Ukraine, United Kingdom of Great Britain and Northern Ireland and the United States of America

1. At the 2014 Meeting of States Parties (MSP), 37 Parties submitted a working paper entitled "Strengthening national implementation: elements of an effective national export control system."[1] This working paper proposed common understandings that the widely accepted elements it described "are core elements of the effective national export controls called for by the 2012 Meeting of States Parties" and that six widely recognized indicators of proliferation risk "should be taken into account by States Parties in making licensing decisions for the export of BW-relevant items."

2. As stated in the 2014 working paper, effective systems for processing requests for government permission for transfers of tangible and intangible goods and technologies generally have six key elements:

(a) Laws and regulations that are sufficiently clear and comprehensive, and that establish necessary legal authorities and appropriate penalties for violations;

(b) Clearly established procedures and mechanisms for appealing licensing decisions, investigating possible violations, and enforcing rules and penalties;

[1] BWC/MSP/2014/WP.2 and WP.2/Add.1. The latter document simply provided an updated list of Parties that sponsored it.

(c) A list of items subject to control that is clearly written and focused on the materials and technologies needed to develop, produce, or stockpile biological weapons, such as the list set out by the United Nations in S/2006/853 ("List of chemical and biological items, materials, equipment, goods and technologies related to other weapons of mass destruction programmes, as approved by the Committee pursuant to paragraph 8(a) (ii) of resolution 1718 (2006)"). Such lists should be regularly reviewed and updated as necessary;

(d) Controls on technology directly associated with listed items, including transfers of such technology in intangible form and via intangible means;

(e) A "catch-all" provision that obligates exporters to seek government permission for an export if they have reason, either from government communication or in the course of business, to suspect the export is intended to contribute to the development, production, or stockpiling of biological weapons; and

(f) Regular outreach to life science researchers and the biotechnology industry concerning these requirements to ensure awareness and compliance, e.g. through publication of regulatory handbooks and other guidance and resource documents, making such materials available online, and arranging or taking part in seminars and workshops to inform industry and academia.

3. The 2014 paper also explained that officials evaluating requests for government permission to export BW-relevant items should consider certain factors in making a licensing decision, such as:

(a) Information about proliferation and terrorism involving biological weapons, including any proliferation- or terrorism-related activity, or information about the involvement of any of the parties to the transaction in clandestine or illegal procurement activities;

(b) The significance of the transfer in terms of (1) the appropriateness of the stated end-use (e.g., consistency of the item with the stated end-use, and the consistency of both with the stated end-user, including any relevant assurances submitted by the recipient state or end-user, (2) the other possible civil and military applications of the item, and (3) the potential development of biological weapons;

(c) The assessment of the end-use of the transfer, including whether a transfer has been previously denied to the end-user, whether the end-user has diverted for unauthorized purposes any transfer previously authorized, and, to the extent possible, whether the end-user is capable of securely handling and storing the item transferred;

(d) The role of distributors, brokers, or other intermediaries in the transfer, including, where appropriate, their ability to provide authenticated documents specifying the importer and ultimate end-user of the items to be transferred, as well as the credibility of assurances that the items will reach their stated end-users;

(e) The capabilities and objectives of the chemical and biological activities of the recipient state and the extent and effectiveness of the export control system of the recipient state, as well as any intermediate states;

(f) The applicability of relevant multilateral agreements or sanctions, including the BWC.

4. These proposals were made by 37 States Parties and little criticism of them was voiced at the MSP, but the Meeting adopted language in its Report[2] stating only that Parties had "discussed" such measures then. We believe that support for using these elements and indicators is now strong enough that the 2015 MSP should adopt a common understanding that these are key elements of an effective national export control system, as called for by the Seventh Review Conference, that fulfill the obligations of the BWC's Article III.

[2] BWC/MSP/2014/5.