

2. BULGARIA'S EXPORT CONTROL SYSTEM

2.1. PRESSURES FOR CHANGING THE SYSTEM

It is important to understand that the strengthening of arms controls in Bulgaria was largely the result of sustained pressure from the international community. The pressures came from NATO, the EU, the US, the UN and international NGOs. US-based Human Rights Watch has been one of the leaders in this effort. Its 1999 report, *Bulgaria: Money Talks – Arms Dealing with Human Rights Abusers*, reported Bulgarian exports to war-torn countries such as Angola, Peru and Ecuador, to separatist forces in southern Yemen and West Bengal, to genocide perpetrators in Rwanda, to a Colombian drug cartel operating in the US, to Congolese rebels in the Democratic Republic of Congo, and to human rights abusers in Uganda, Sierra Leone, and Burundi.⁵⁶

Pressure also came from the UN. In 2000, the UN Security Council Committee investigating violations of the Security Council sanctions regime on Angola's UNITA forces found that Bulgarian-made weapons were sold to UNITA rebels under fake end-user certificates between 1997 and 1999. Although the Bulgarian government may have been unaware of the final destination, lax arms controls were used by brokers to export the arms.⁵⁷ Following the investigation the panel's chairman, Ambassador Anders Moellander of Sweden, stated that Bulgaria was co-operating with the panel to tighten arms export controls.⁵⁸

The most effective pressures came in the context of EU enlargement and NATO accession. In its annual Regular Report for 2000 on Bulgaria's progress towards EU accession, the European Commission called for revisions of the legislation "to ensure tighter controls on trade in arms and clearer division of responsibilities between institutions to eliminate potential sources of conflict of interest."⁵⁹ Negotiations with the EU on Bulgaria's adoption of the Common Foreign and Security Policy (Chapter 27) were concluded under the express condition that the country would bring its arms trade legislation in line with the highest existing standards.⁶⁰ NATO accession was also a stimulus for change. Even after the official invitation to join NATO, during a visit in

⁵⁶ Human Rights Watch, *Bulgaria: Money Talks – Arms Dealing with Human Rights Abusers* (New York, Human Rights Watch, 1999). HRW continued its campaign through a number of advocacy letters and a follow-up background brief *Reforming Bulgaria's Arms Trade: an Update*, (accessed on 5 October 2003).

⁵⁷ United Nations, Panel of Experts established by the Security Council pursuant to resolution 1237, Report of the Panel of Experts on Violations of Security Council Sanctions against UNITA, < http://www.un.org/News/dh/latest/angolareport_eng.htm > , (accessed 5 October 2003).

⁵⁸ Robert McMahon, 'UN: Bulgaria Faces Scrutiny Over Sanctions Report,' *Radio Free Europe*, March 2000. < <http://www.rferl.org/nca/features/2000/03/F.RU.000316152729.html> > (accessed 5 October 2003).

⁵⁹ European Commission, *Bulgaria: 2000 Regular Report*, (Brussels, European Commission, 8 November 2003), p 80.

⁶⁰ Interviews with MFA officials, 17 June 2003.

February 2003, NATO's Secretary General Lord Robertson discussed "areas in which Bulgaria still needed to make progress, such as control over arms exports."⁶¹

The US continues to put pressure on the Bulgarian government and demands stricter arms export controls.⁶² The Clinton Administration led a sustained campaign against the notorious Russian based arms dealer, Victor Bout, who was implicated in brokering Bulgarian arms to UNITA. An investigation by the weekly newspaper *Capital* uncovered that in 1996 Victor Bout had visited Arsenal, VMZ, Samel-90, and Beta Cherven-Briag.⁶³

2.2. EVOLUTION OF THE EXPORT CONTROL SYSTEM

The current Bulgarian export control system was established in 1995–1996 with the 1995 enactment of the Law on the Control of Foreign Trade Activity in Arms and in Dual-Use Goods and Technologies (LCFTADGT). In 1996, Bulgaria acceded to the Wassenaar Arrangement controlling exports of weapons and sensitive technology to countries of concern.

Bulgaria formally aligned itself to the EU Code of Conduct on Arms Exports on 3 August 1998 and committed itself to abide by all guidelines, decisions and positions related to arms transfers taken by the EU. In December 1998, Bulgaria made a political commitment to the EU Joint Action on SALW⁶⁴ and in November 2000 it signed the OSCE Document on SALW.⁶⁵ Bulgaria is also a member of the Australian Group and the Group of Nuclear Suppliers, and applies in full the rules of the Missile Technologies Control Regime.

Following the recommendations of the European Commission, in July 2002 the National Assembly passed major amendments to the LCFTADGT. A new Regulation on the Implementation of the law was also adopted.⁶⁶

Scope of the LCFTADGT

The LCFTADGT excludes from its scope the control of arms or ammunition belonging to the Bulgarian Armed Forces and foreign army and police contingents passing through and during their stay on the territory of Bulgaria for peacekeeping and humanitarian operations, training or competitions.⁶⁷ These transfers are exempt from licensing because they are initiated under the jurisdiction of international law and are subject to ratification by the National Assembly.

⁶¹ NATO Press Release, *Lord Robertson Visits Bulgaria*, (Brussels, NATO, 17 February 2003).

⁶² Interviews with Bulgarian government officials, 17 September 2003.

⁶³ Alexandrova G *et al*, 'How an International Arms Dealer Involved Bulgaria in Arms Smuggling: Victor Bout's Brother Owns a Company in Bulgaria and a Network of Brokers', [in Bulgarian] *Capital*, 2 March 2001.

⁶⁴ EU Joint Action of 17 December 1998 on the EU's contribution to combating the destabilizing accumulation and spread of small arms and light weapons (1999/34/CFSP).

⁶⁵ FSC.DOC/1/00, 24 November 2000.

⁶⁶ When the amendments to the Law were being discussed, a suggestion was made to change the structure of the export control system by establishing a State Commission within the Council of Ministers that would exert control over arms exports. The government and the opposition did not agree on its format and it was decided that the amendments would be enacted before the NATO Summit in Prague without creating a State Commission.

⁶⁷ LCFTADGT, SG No. 75/2002, Art 1.

The export control system applies to all types of weapons in the export control regime lists. These lists include all arms and dual-use goods and technologies (ADUGT) that are part of the unified and annually updated EU List.⁶⁸ In compliance with the policy of EU member states, a catch-all clause is applied providing for the control of non-listed dual-use goods and technologies.⁶⁹

2.3. STRUCTURE OF THE EXPORT CONTROL SYSTEM

Bulgaria's export control system consists of a system of laws, regulations, administrative procedures and enforcement institutions and mechanisms designed to achieve the following four objectives:

- Observance of Bulgaria's international obligations;
- Control over the manufacture, storage, transfer and possession of ADUGT;
- Prevention, combat and eradication of illicit manufacturing and transfer of SALW;
- Providing a favorable economic climate for the defense industry.

The control system has a three-level structure (see Chart 1):

(1) Companies are first required to obtain a license to trade in arms and dual-use goods and technologies. This license is issued by the Interdepartmental Council on the Issues of Military Industrial Complex and Mobilization Preparedness of the Country (the Council) within the Council of Ministers.

(2) Once a company has the trading license, it needs to obtain a permit for every single transaction that entails export, import, transit, and re-export of arms or dual-use goods. The permit is issued by the Interdepartmental Commission on Export Control and Non-Proliferation of Weapons of Mass Destruction (the Commission) within the Ministry of Economy.

(3) The company is subject to a number of additional controls and permits that include:

- A permit from the Control of Hazardous Devices Office of the National Police Service.
- Inspection by the Customs Agency and National Security Service at specific border crossings.
- Monitoring by the intelligence agencies within the MoI and the MoD.
- Monitoring of the export by the export control specialist within each licensed company.

⁶⁸ Bulgaria has brought its list of dual-use goods in accordance with the EU List: European Union, 'Council Regulation (EC) No 149/2003 of 27 January 2003', *EU Official Journal*, L30/1 (5 February 2003).

⁶⁹ LCFTADGT, Art 13.

- The cargo shipping company also needs to be licensed by the Interdepartmental Council to transport arms to and from the territory of Bulgaria.
- Defense and arms trade companies under the MoD are obliged to obtain personal approval for all transactions from the Minister of Defense.

The stringent implementation of such a system of arms export controls is a task requiring significant administrative and financial resources, in addition to skilled and experienced personnel. The low pay in the government administration and the lack of personnel development policies in most government departments often result in a brain drain towards the private sector. This is one of the greatest challenges for the relevant institutions. It takes years to create an expert in export control. When such an expert departs it is difficult to find a skilled and experienced replacement. Most of the relevant institutions lack sufficient administrative capacity in terms of the number of staff, their qualifications and skills (professional, linguistic, etc) and the overall unit structure. When the limited financial resources of state institutions are added to the picture, it becomes clear that the application of the highest standards in this field is not an easy task.

Controls on arms trade companies and brokers⁷⁰

All companies that import and export arms, those that *export* (but not import) dual-use goods and technologies (DUGT), those that ship arms, and brokers trading in ADUGT need to obtain licenses from the Interdepartmental Council. At the first level, the control concerns the reliability and solvency of the licensed agents⁷¹.

To grant the license the Council checks the reliability of the company by examining:

- The reliability of storage facilities for ADUGT;
- The adequacy of organizational mechanisms for protecting classified information;⁷²
- Compliance of foreign companies with the laws of the country of their registration.⁷³

The Ministries of Economy, Defense, Interior, Foreign Affairs, Finance and Justice combine to co-ordinate the assessment of the reliability and solvency of the license applicants, including foreign companies. The main advantage of this procedure is that preliminary control and licensing of all dealers, shippers and brokers is carried out even before the preparation for a specific transaction begins.

A growing number of private brokers conduct transfers and play a crucial part in determining the amount of arms legally exported. One of the most significant developments in the amended law was the introduction of controls on brokering

⁷⁰ See Appendix 3 for a list of licensed companies and brokers

⁷¹ LCFTADGT, Art 6.

⁷² No mechanism has been specified to determine what constitutes classified information.

⁷³ Zakov D, Ivanov L, *Strengthening of the Arms Export Control System in the Context of Bulgaria's Membership of NATO* (Sofia, NATO Information Centre Sofia, September 2003), p 7.

activities. The introduction of the Law revealed that most brokers that had to be licensed were registered abroad, particularly in offshore zones. Such zones, in addition to being tax havens, often have lax legal environments. The Law, thus, allows the law-enforcement agencies to seek and obtain information about the owners of off-shore companies before granting licenses.

Article 53 (2) of the Regulation of the LCFTADGT covers the licensing of foreign individuals or legal entities engaged in brokerage. Currently, a document, issued by the relevant authority in the applicant's country of registration must be submitted to the Council to confirm the applicant's right to conduct arms brokerage under the applicable national legislation. One difficulty here is that under some countries' legislation, such as that of the US, the UK, Israel, or Cyprus, companies registered in offshore zones are not required to obtain an arms brokerage license in the country of residence. Brokers operating from these countries sometimes submit to the Council documents which present them, for instance, as US or UK brokers, without revealing that their primary operations are in offshore zones. As the UK or US government cannot provide the Council with information clarifying the real status of these brokers, the result is that the Council is misled. The practice so far shows that the Bulgarian authorities, in implementing arms controls, are not able to establish clearly whether foreign licensees are solvent and free from liabilities.

Another problem relates to the penalties applied to illicit brokering activities. The current provisions of the Penal Code on violation and evasion of the control measures are not sufficient. Following Article 51 of the Regulation on Implementation of the LCFTADGT,⁷⁴ additional provisions could be added to the Penal Code penalizing the illegal brokering of arms (Article 237) or of dual-use goods and technologies (Article 337) between third parties in violation of international law. Currently such activities are not criminalized, although the National Assembly is considering a draft amendment to the Penal Code.

Companies in Bulgaria importing dual-use goods and technologies are exempt from licensing. However, they need to obtain permits for individual import transactions. The license exemption aims to provide at least some degree of freedom for companies using such products, as well as a general stimulus to the country's economy.

The LCFTADGT also amended the length of the trading license. The new law stipulates that such trading licenses are initially issued for one year and then extended for three more years. Currently, transaction permits are valid for six months and can be extended only once, for an additional six months.⁷⁵

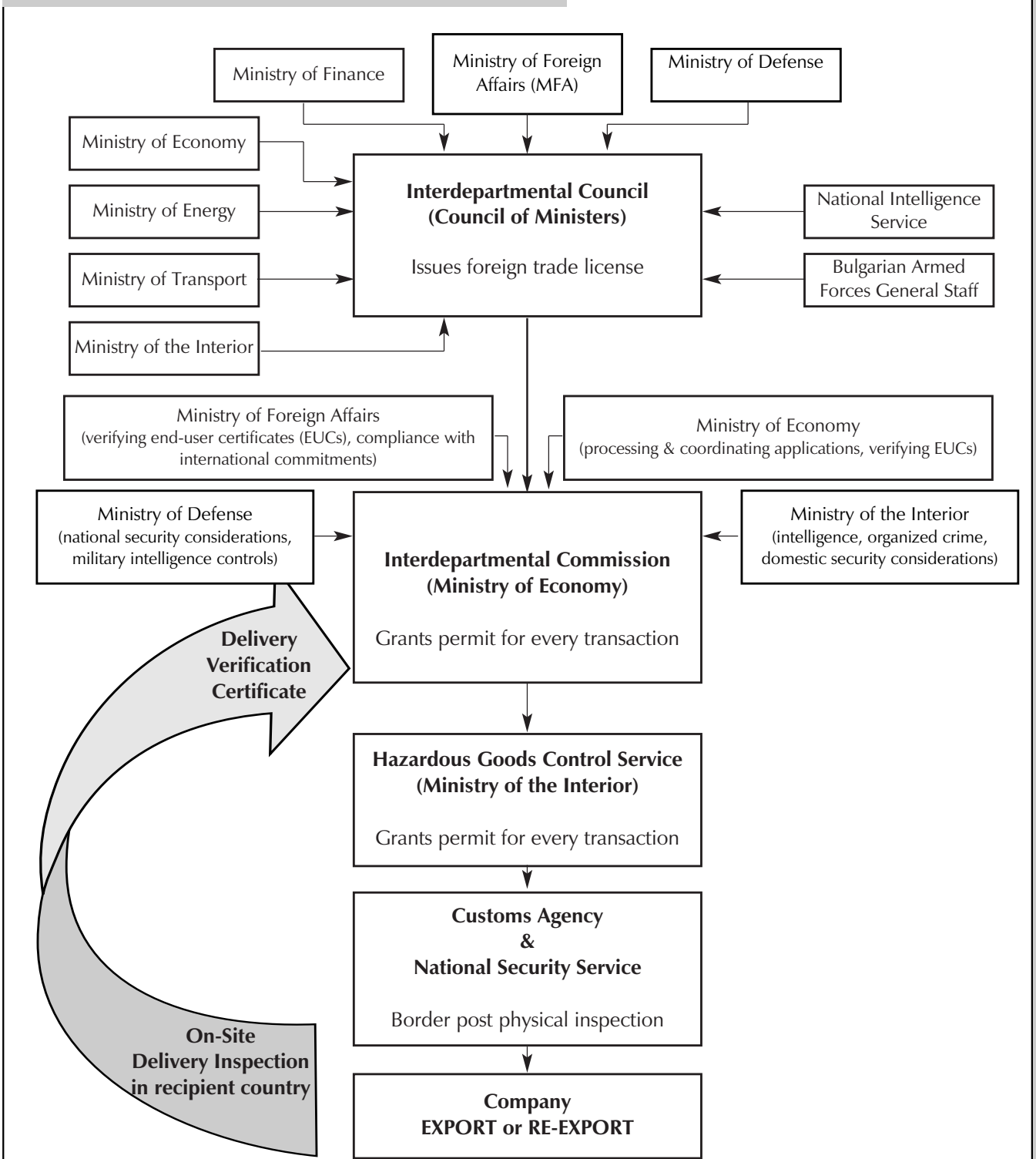
Issuing permits for individual transactions

At the second level, companies and brokers have to receive a permit from the Commission for each relevant transaction. A permit is required for imports, exports, or transits of ADUGT. All specific elements of the transaction are examined to ensure the implementation of the law. These include the validity of presented documents, the type of goods, the broker, the shipper, the end-user, political considerations, the

⁷⁴ Regulation on Implementation of the LCFTADGT, SG 115/2002, (see Appendix 6).

⁷⁵ LCFTADGT, Art 4 §4

Chart 1. Institutional System for Arms Export Control



This chart is based on a chart in Ministry of Foreign Affairs and NATO Information Center, *Strengthening of the Arms Export Control System in the Context of Bulgaria's Membership in NATO*, Sofia: 2003, p11

impact on regional peace and security, notified denials from members of the EU or the Wassenaar Arrangement, and Bulgaria's international obligations and interests.⁷⁶ If required, the Commission may solicit the opinion of experts from other institutions, especially to determine or analyze dual-use goods and technologies. In 2002 the Commission refused to grant permits for over 20 arms and dual-use good transactions, probably directed to countries of concern.⁷⁷

End-use(r) control

Stringent control over the declared end-user is of crucial importance when authorizing an export transaction. The main ways for arms to circumvent the law and reach proscribed end-users is by using false documentation, or through the unauthorized re-transfer of legally acquired arms. The 2002 amendments to the Law included new provisions to improve identification of end-users. Every transaction requires end-use(r) certificates. The exporting company or broker needs to provide a certificate that the end-user has obtained from its own national authorities. This certificate is verified by the Ministry of Economy (in consultation with the recipient country's import control authorities), the MFA (through diplomatic means), and the Mol and the MoD. The end-use(r) could be changed only with the agreement of the Commission.⁷⁸ The same applies if the end-user changes its broker.⁷⁹

Control on the origin of goods

The companies importing, re-exporting, or transiting goods are required to submit evidence to the Commission of the origin of the goods. These documents are examined by the Ministry of Economy, the MFA, the Mol and the MoD.

Control over the parties to the transaction

Table 2. Permits Issued or Denied by the Commission

	2001	2002	2003 ⁸⁰
Export Permits	178	282	248
Import Permits	296	135	169
Denied Permits	6	7	N/A

All companies that are parties to the export, import, re-export, or transiting transactions need to submit a number of documents to the Commission, so that the above mentioned ministries may examine them and verify the legitimacy of all such companies and their personnel.

Source: Interdepartmental Commission on Export Control and Non-Proliferation of Weapons of Mass Destruction

⁷⁶ Zakov D, Ivanov L, *op cit*, p 8.

⁷⁷ 'Interview with the Commission's Secretary,' [in Bulgarian] *Banker*, 23 November 2002.

⁷⁸ LCFTADGT, Art 15.

⁷⁹ *Ibid*, Art 14.

⁸⁰ The data for 2003 is as of 13 October 2003.

Transit shipments

In Bulgaria transit shipments of arms are also subject to regulation. Each shipment passing through Bulgaria's territory needs an authorization by the Commission. The company or the broker must provide the Commission with export permits from the country exporting the arms, as well as permits for the import and further transit of the arms. The Commission has only ten days to check the validity of the presented documents and to provide an answer to the applicant.⁸¹

Additional control mechanisms

The export control system provides for an additional three sub-levels of control. Firstly, the Commission has issued a decree⁸² requiring the licensed companies to establish an internal control system to ensure compliance with the law. Designated employees will be responsible for each transaction's compliance with the export control regime. They must be members of the management boards, owners or partners. This is to counteract the practice of appointing short-term officeholders whose lack of experience could be used as an excuse for illegal transactions, or who could become the scapegoat when a crime is detected. Secondly, upon obtaining the arms export permit, the exporting company must obtain a permit from the Control of Hazardous Devices Office (CHDO) within the National Police Directorate. Thirdly, the cargo can only be transported through shipping companies licensed by the Council to transport arms to and from the territory of Bulgaria.⁸³

A new 'Tracker'⁸⁴ system, facilitating the government's work in issuing licenses and permits is already fully operational. The system, which complies with the requirements of classified information laws, has contributed to a more modern and effective arms export control system. Currently a register of licensed brokers is being prepared for the Council's approval. It will be updated on a quarterly basis or at the first session of the Council thereafter, as appropriate. The government is preparing to train customs officers in order to improve the capacity of the customs authorities to intercept illegal exports and imports of ADUGT. Special customs checkpoints and border posts have been designated for customs clearance of ADUGT.

Other considerations

When reviewing the applications of licensed companies to export arms, the competent Bulgarian institutions must consider the sanctions imposed by the resolutions of the UN Security Council, the decisions of the EU, OSCE, the Wassenaar Arrangement and other multilateral and regional instruments for non-proliferation

⁸¹ Regulation on Implementation of the LCFTADGT (SG 102/95), Art 30b.

⁸² The exact number of the decree and its text are classified.

⁸³ *Ibid*, Art 30a.

⁸⁴ "The 'Tracker' Export Control Information System is a generic export control communication and information network software package designed to assist a government export control agency and other relevant ministries in making licensing decisions on dual-use and arms exports. The system can be customized to fit the export control needs of a given country, creating the framework for links among relevant ministries within recipient countries and also enable officials in one state to directly consult with experts in other states." Nonproliferation and Disarmament Fund <<http://www.ndf.org/html/projects/096.html>> , 25 September 2003.

and export control. (See Appendix 3 for a list of Bulgaria's commitments). In April 2001, the Council of Ministers approved a list of countries and organizations towards which Bulgaria applies prohibitions or restrictions on the sale and supply of arms and related equipment in accordance with resolutions and decisions adopted by the UNSC, the EU and the OSCE.⁸⁵ Since its adoption, the List has been updated twice, the second time in the spring of 2003. (See Appendix 4 for the latest List)

When the Commission considers applications, or when Customs authorities inspect goods at the borders, they are supposed to refer to an extensive list of ADUGT. The checklist of ADUGT used by Bulgarian authorities includes the lists of the Wassenaar Arrangement and, as stated above, the EU List of ADUGT.

In addition, money laundering legislation provides that, alongside another 20 institutions, organizations, companies, and government authorities, the arms dealers should collect, store and disclose information on transactions that exceed 30,000 leva (€15,000) and identify all private individuals or legal entities involved. They should also identify the persons with whom they establish permanent commercial relations.⁸⁶

Along with the development of the legal basis for arms export controls and the structures responsible for their implementation and enforcement, Bulgaria is trying to strengthen awareness of the regulatory framework amongst producers and exporters of defense goods. The government has undertaken to organize regular workshops to inform and educate licensed companies on arms export control issues and the implementation of the law. Greater awareness of export control measures will help companies plan their activities and avoid situations where a company will engage in negotiations with potential customers only to realize at a later stage that the deal would be in breach of the national export control system and could not be authorized.

The government has announced plans to maintain a list of the companies, persons and brokers of concern or who have violated the export control regime, and to hold regular meetings in which the representatives of law enforcement agencies and investigative bodies can exchange information on violations of the arms export control system.

Control over the execution of the transaction

The LCFTADGT stipulates that control over the implementation of the law falls upon the Council, the Commission, the Ministry of the Economy, the Mol and the Customs Agency (which is part of the Ministry of Finance). At this level, the main emphasis is on the physical control of goods throughout the various phases of the export transaction, from Bulgaria's border crossings to the final destination. The first responsibility falls on the customs authorities at border posts. As regards control on deliveries to the intended end-user, the Commission requires a certificate to confirm that each delivery has taken place. The certificate is issued by the respective authority of the end-user country. When deemed necessary, the Commission is authorized to do on-the-spot delivery verifications in the end-user country.⁸⁷ Although they have taken place in the past, such

⁸⁵ List of countries and organizations towards which the Republic of Bulgaria applies prohibitions or restrictions on the sale and supply of arms and related equipment in accordance with UNSC resolutions and decisions of the EU and the OSCE, SG 37/2001.

⁸⁶ Art 3 §2.25, Measures Against Money Laundering Law, SG 1/2001

⁸⁷ LCFTADGT, Art 17.7.

inspections are rarely carried out as resources are quite limited. No specific ministry is responsible for these inspections. Responsibility is instead decided on *ad hoc* basis.⁸⁸

In implementing this level of control, the above-mentioned controlling institutions have the right to request from companies all necessary information that could help in exercising adequate export control. They can also do on-site inspections at the customs areas, seek the expert opinion of other state bodies and request information from relevant authorities in other countries.⁸⁹

2.4. SPECIFIC ROLES OF THE CONTROLLING BODIES

The Interdepartmental Council

The Interdepartmental Council was set up in 1993. Besides being a licensing body, it designs and implements the state's policy on manufacturing and trading in arms and dual-use goods. The Council is responsible for the mobilization preparedness of the country.⁹⁰ In this role it co-ordinates the management of mobilization reserves, and determines the level of preparedness of companies to convert to military production in case of mobilization. The Council carries out the following specific activities in controlling trade in ADUGT:

- Issuing licenses for manufacture and export of ADUGT.
- Maintaining a register of persons licensed to conduct foreign trade and transport arms.
- Acting as arbiter in those circumstances where consensus on an export permit application cannot be reached within the Commission and the case is referred to the Council.
- Coordinating nominations of members to the management and control authorities in the state-owned arms manufacturing and trading companies and submitting to the Council of Ministers recommendations for the restructuring of such companies.
- Advising on the inclusion of new products in the List of ADUGT.
- Advising on issues related to Bulgaria's membership of the Wassenaar Arrangement, the OSCE, the Nuclear Suppliers Group, as well as to its commitments within the Australian Group, and, among other control regimes, the Missile Technologies Control Regime.

The Council is chaired by the Deputy Prime Minister and Minister of Economy. Its members are the Deputy Ministers of Economy, Foreign Affairs, Defense, Finance, Interior, Transport and Telecommunications, Regional Development and Public Works, and Energy, as well as the Director of the National Intelligence Service and the Deputy of the General Staff of the Bulgarian Armed Forces. The Secretary of the

⁸⁸ Interviews with government officials, 10 October 2002.

⁸⁹ LCFTADGT, Art 17.3.

⁹⁰ Council of Ministers, Decree No.193 of 12 October 1993, SG 89/1993.

Council is appointed by the Prime Minister and is responsible for supervising the implementation of its decisions. Although the Council once employed a staff of around 20 people, nowadays it employs only three civil administrators.

The Interdepartmental Commission

The Commission is the most important body in the arms-export control structure. It is chaired by the Minister of Economy and includes two representatives from the Ministry of Economy, two representatives from the MoD, and one representative each from the MoI and the MFA. A fundamental principle of the Commission is to make all decisions by consensus.⁹¹

The main responsibility of the Commission, based at the Ministry of Economy, is to issue permits for: (a) exports and imports of arms; (b) exports of dual-use goods; (c) transit shipments of arms; and (d) transit of radioactive, explosive, flammable, oxidizing, corrosive, bacteriological (biological), toxic and pathogenic goods. It also provides for overall control of the implementation of the LCFTADGT.⁹²

The actual work of the Commission – the processing of the permit applications – is carried out by the Military-Economic Co-operation and International Trade Control Directorate, which is part of the Ministry of Economy. In addition to supporting the Commission's work, this directorate is responsible for formulating the government's policies on the development of Bulgaria's defense industry and arms trade. The ten-person staff of this directorate is comprised of defense industry experts, some of whom are former defense industry employees. Experts from the other ministries (MoI, MFA, MoD) come on a regular basis to the Ministry of Economy to examine the applications and form the opinion of their institution. The Commission meets about twice a month to review the applications.

The person with most discretionary power in the Commission is the Secretary, who simultaneously heads the Military-Economic Co-operation and International Trade Control Directorate.⁹³ Unlike other Commission members, the Secretary knows the details of most permit applications. The Secretary could choose to present a transaction application to the other Commission members in a way that strongly influences their opinion. This subjective element in the decision-making process introduces a danger that pressures could be placed on the Secretary to act in a corrupt way.⁹⁴ Moreover, it is at the Secretary's discretion to decide whether to present a submitted application to the Commission for consideration. Although the reasons not to present an application could be perfectly legitimate (such as extensive probing into

⁹¹ Art 66, § 2 of the Regulation on Implementation of the Law on Control of the Foreign Trade in Arms and Dual-Use Goods and Technologies, (SG 102/95).

⁹² *Ibid*, Art 57.

⁹³ Art 40a, Ministry of Economy Regulatory Act. (SG 33/2003). In an interview soon after assuming his post, the current Commission Secretary Vladimir Velichkov declared that in his other capacity, as leading the International Trade Control Directorate at the Ministry of the Economy, he is working hard to "stimulate the export of special production". ('Vladimir Velichkov: The Politics of the Union of Democratic Forces Put the Defense Industry on its Knees,' [in Bulgarian] *Sega*, 12 October 2003.) Two years later, he was able to announce that the number of export permits for 2002 was almost double the 2001 figure. ('Vladimir Velichkov, Secretary of the Export Control Commission: "SDS Sold *Beta* in an Insane Manner,'" [in Bulgarian] *Trud*, 19 October 2003.)

the authenticity of an end-user certificate), again such a system leaves room for corruption to emerge from competing business interests.

The Ministry of Economy has majority stakes in the biggest arms trade company, Kintex, in Teraton, a smaller arms broker, and in arms-producers VMZ, Dunarit, and NITI. In addition, the Ministry has minority shares in most other defense companies (See Appendix 2). The Ministry appoints the boards of the companies where it has majority stakes, and has representatives on the boards of the companies where it has minority stakes. In the past, members of the Commission have been known to be on defense company boards. The Ministry of Economy is simultaneously an owner of defense companies and a regulator of their exports. Structurally, this creates a conflict of interests. In the recommendations section, this report outlines some advantages that would follow from establishing an independent regulatory body.

The Mol

The Mol and four of its agencies (the National Security Service, the National Police Service, the National Service for Combating Organised Crime and the National Border Police Service) are also involved in enforcing arms controls. These bodies participate in co-ordination activities on licensing exporters, pre-transaction investigation, transaction monitoring and follow-up control. Representatives of the Mol visit the Commission's 'secretariat' at the Ministry of Economy on a regular basis to familiarize themselves with the permit applications.

National Police Service

After the Commission has granted an export permit companies must obtain additional permits from the National Police Service's Control of Hazardous Devices Office (CHDO).⁹⁵ The controlling activities of the National Police Service are established in the Law on Control of Explosives, Firearms and Ammunitions.⁹⁶ In its export-control role the CHDO examines end-user certificates so that arms are not exported to embargoed destinations or countries of concern. To receive the CHDO permit the exporting companies need to submit documents specifying the type and quantity of ADUGT produced for export, the country of origin/destination, the border post where the export or import will take place, the identification numbers of the individuals carrying out the transaction and the details of the security arrangements for the transportation of the materiel. At the border, the goods are checked by the National Border Police Service, while Customs Agency officers fill out the control slip of the police permit and with it notify the Police Directorate that the export has taken place.

⁹⁴ In April 2002, the newspaper *Banker* published an investigation explaining that Velichkov's spouse had been working for *Terem Engineering*, an arms trade company, owned by the sons of a former *Kintex* director. The newspaper reported that the company was known to have been favored by the Commission when applying for export permits. 'The Export Permit from Us, the Gratitude in "Green" from You,' [in Bulgarian] *Banker*, 13 April 2002.

⁹⁵ Regulation on Implementation of the Law on Control of Explosives, Firearms and Ammunitions, (SG 1/2002) Art 61, § 1.

⁹⁶ According to Art 1, § 2 of the Law on the Control of Explosives, Firearms and Ammunitions (SG 99/2002), the Law does not regulate the activities of the Mol or the Armed Forces.

In its role of controlling SALW domestically the CHDO also issues end-user certificates for arms purchased by the MoI or to dealers importing firearms and ammunition for civilian purposes. In addition, it issues permits for all imports, domestic production, transiting, usage, testing, and storage. CHDO is also in charge of the storage and destruction of illegal SALW that have been confiscated. There are no known cases of large-scale arms destruction by CHDO. Instead, in January 2003, the MoI decided to auction 1350 confiscated SALW.⁹⁷ Such actions contradict Bulgaria's commitment under the UN's Program of Action that calls for the destruction of all confiscated weapons.⁹⁸ Likewise, the OSCE Document on SALW stipulates that all surpluses are, by preference, to be destroyed.⁹⁹ The government has not reported violations of the Law on the Control of Explosives, Firearms and Ammunitions by companies trading with registered entities.

National Security Service

The MoI's National Security Service (NSS) has a leading role in the preliminary inspections of the preparation of transactions in arms and prospective dual-use goods and technologies. Its primary objectives are to prevent the acquisition of arms by embargoed countries or terrorist organizations as well as to prevent illicit international arms trade that constitutes a threat to national security. To achieve this, the NSS conducts counterintelligence, surveillance, detection, and counteraction.

National Service for Combating Organised Crime

The National Service for Combating Organised Crime (NSCOC) is the agency involved in implementing arms controls in the country. Although NSCOC does not exercise control over exports it advises the Council on the approval of export license applications. Its main role is to uncover and neutralize local and transnational criminal structures involved in arms trafficking and operating on the territory of the country. The Smuggling in Weapons, Hazardous Materials and Proliferation unit within the NSCOC is responsible for gathering criminal intelligence information.¹⁰⁰ The unit is also expected to co-ordinate the activities of the regional units for combating organized crime and is engaged in direct operational police co-operation at the international level. Experts believe that the unit's lack of sufficient human resources hampers its effective operational capacity.¹⁰¹

Structurally, the Ministry of the Interior also faces issues of conflict of interest. Its company, *Contactless Multiplexing Systems* is involved in the small arms trade. In this regard, concerns may be raised that the neutrality that is required from the MoI in issuing permits for particular transactions is under threat.

⁹⁷ Kotzev N, 'The Police Sell Guns by the Kilo,' [in Bulgarian] *168 Chasa*, 31 January 2003.

⁹⁸ UN Program of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All its Aspects (UN Document A/CONF.192/15), Section II-16.

⁹⁹ OSCE Document on Small Arms and Light Weapons, 24 November 2000.

¹⁰⁰ Interview with MoI officials, 15 July 2003.

¹⁰¹ *Ibid.*

The Customs Agency

Arms export controls at the borders are mainly the responsibility of the Customs Agency, part of the Ministry of Finance.¹⁰² The Agency recently identified 23 particular customs posts through which ADUGT can be imported or exported. The preparation of Customs documents can be performed only at 16 specific customs posts.¹⁰³ The exporting company or a broker needs to present to the Customs officers all necessary export permits and licenses. Based on the customs declarations, the Customs Agency's Central Customs Headquarters maintains data files of all ADUGT exports. During the first half of 2003 the Agency had conducted five training courses and seminars for customs officers aiming to update its staff's knowledge of export controls on ADUGT.¹⁰⁴ The Customs Agency conducts follow-up control on ADUGT goods when they arrive at the Bulgarian border through its customs offices and officers at the border checkpoints.

The MoD

The MoD became more actively involved in regulating arms trading after it was revealed in October 2002 that *Terem*, a state-owned company with a trading license, which is accountable to the Ministry and monitored by the Deputy Minister of Defense, was caught violating export controls (See Box 1 on page 47). As a result of this latest scandal, the Minister of Defense ordered that every foreign export transaction of an MoD defense company would need his personal approval. Due to the low volume of export transactions, this measure provides an additional level of export control.

The MoD companies were required to keep a register of all deals and report weekly to the Minister of Defense for approval. The MoD was planning to organize a training course for the marketing departments of its firms to inform and educate them on the relevant national legislation on foreign trade in ADUGT and on the international control regimes. The MoD has also stated its intent to appoint export control specialists in all of its manufacturing and trading companies.¹⁰⁵

The Military Police and Military Counterintelligence Security Service at the MoD have the task of countering threats to the MoD's integrity and to national security. In particular, it prevents and counters illegal activities of military personnel, including involvement in arms theft, illicit arms trading, illicit manufacturing and distribution of hazardous devices, weapons of mass destruction or strategic raw materials.¹⁰⁶

Two members of the MoD also participate in the Interdepartmental Commission. Structurally, this could represent a conflict of interest because the MoD controls *Terem*

¹⁰² At the Agency's headquarters, it is the Customs Intelligence and Investigation Directorate and its Arms and Dual-Use Goods Unit that are responsible for coordinating the Agency's arms export control activities. (Tolev, D, 'Customs' Role in Preventing Illicit Arms Trafficking', [in Bulgarian] speech at the International Conference *Contemporary Control over Arms Exports in the Process of Bulgaria's NATO Accession* (Sofia, 9 September 2003).

¹⁰³ Decree no 51/15.04.2003 of the Director of the Customs Agency at the Ministry of Finance, first published SG 39/25.04.2003, amended SG 70/08.08.2003

¹⁰⁴ Tolev, op cit.

¹⁰⁵ Interviews with MoD officials, July 2003.

¹⁰⁶ Defense and Armed Forces Law, last amended SG 119/2002, Art 40.

and *Procurement & Trade* (responsible for selling MoD surpluses). In reality though, no specific cases have been detected where MoD company interests have taken precedence over export controls.

2.5. OVERSIGHT MECHANISMS AND TRANSPARENCY

In the past ten years, the international community has made important steps to introduce more transparency in the arms trade as a means of developing governmental accountability through the demonstration of compliance with laws, regulations and political commitments. Regional agreements, such as the EU Code of Conduct, have played an important role in preparing a favorable ground for countries to become more open and transparent with regard to the implementation of national arms controls. Currently, almost all EU member states publish annual reports on their arms exports, which include information on arms transfers and/or licensed transactions. The adoption of the OSCE Document on SALW has also contributed to greater information exchange. The Document requires that every year all participant states notify one another of their SALW transfers within the OSCE region.

As a member of the OSCE¹⁰⁷ and an EU and NATO applicant, Bulgaria, whose arms trade was veiled in complete secrecy until ten years ago, was obliged to participate in this process. Since 1993, Bulgaria has provided information on arms exports to the UN Register of Conventional Arms. Currently, Bulgaria submits annual notifications of SALW transfers to the OSCE, and the Council and the Commission are due to start submitting annual reports on arms transfers to the National Assembly. However, these reports will not be made public, and so far there has been little evidence of any parliamentary oversight of the arms export control system, with the possible exception of the public debate on the July 2002 amendments to the LCFTADGT and the Foreign Affairs Committee's hearings on the illegal exports from the Terem factory in October 2002 (see the section on 'Illicit arms exports from Bulgaria' below). These arose mostly as a result of media pressure.

Even today the old 'secrecy mentality' is hard to erase, a well-known problem in all countries in transition. Under current secrecy laws, commercial arms trade information, including types and quantities of the equipment exported and final recipients, is considered confidential and is not available to the public. The Bulgarian arms export control field is too opaque, which creates favorable conditions for "grey" and "black" exports. Transparency and openness are democratic tools which are important in that they enable debate on public expenditure informed by well researched analysis and high-level political discussion. Likewise, a good level of transparency is required by the defense industry policy establishment. When information concerning the state of the defense industry and policy guidelines are not available, or remain unclear, the industry cannot be expected to develop in an optimal way.

Notwithstanding the progress achieved in publicizing the export control system and the introduction of reporting mechanisms, such as those of the UN and the OSCE, public transparency and accountability remain limited. Under the Law for Access to the Documents of the Former State Security and Former Intelligence Agency of the

¹⁰⁷ Bulgaria has assumed the chairmanship of the organization for 2004.

General Staff,¹⁰⁸ which was repealed in 2002 by the Law on Protection of Classified Information,¹⁰⁹ it was possible for information on illicit arms trading to be declassified. The Law for Access provided for a special committee which, in co-ordination with the directors of the National Intelligence Service, the National Security Service, the Military Information Service and the Military Counterintelligence Service, could decide to declassify documents containing data on the establishment of companies abroad by the former State Security and the former Military Intelligence, export of capital, illicit trade in arms and narcotics.¹¹⁰ Unfortunately, the brevity of the Law's existence did not allow the committee enough time to complete its investigations. No information was ever made public on the issue of illegal arms exports.

The new Law on Protection of Classified Information clearly classifies as a matter of state secret "summarized information regarding special production¹¹¹ of the defense industry, as well as forecasts about development, plans, production capacities, scientific and research units involved in fulfilling production orders for armaments, combat equipment, ammunition, and military equipment."¹¹² In addition, the law classifies "summarized information about the export and import of armament, combat equipment, and ammunition for the needs of the Bulgarian Armed Forces."¹¹³

A culture of secrecy continues to be prevalent among those involved in controlling the arms trade. There is little knowledge among policy makers, civil society, and even defense industry specialists about the reporting activities and the transparency records of other countries. Few are aware of the fact that at least 19 countries currently produce public annual reports on their arms exports.¹¹⁴ Some of the biggest arms-producing (and most business-conscious) countries in the world, such as the US and UK, reveal the destination, value, and type of products exported by their defense industries. Ironically, these reports reveal Bulgaria's imports from the US and the UK, which is considered classified information in Bulgaria.¹¹⁵

¹⁰⁸SG 69/1997, repealed SG 45/2002.

¹⁰⁹SG 45/2002, last amended SG 31/2003.

¹¹⁰Law for Access to the Documents of the Former State Security and Former Intelligence Agency of the General Staff, SG 69/1997, Art 9a, §2, repealed SG 45/2002.

¹¹¹"Special production" is a term used in Bulgarian to denote any type of arms and dual-use goods and technologies.

¹¹²Law on Protection of Classified Information, SG 45/2002, last amended SG 31/2003, Art 25, Addendum 1, §1.18

¹¹³*Ibid*, Art 25, Addendum 1, §1.22.

¹¹⁴Haug M, Langvandslien M, Lumpe L, Nicholas M, *Shining a Light on Small Arms Exports: The Record of State Transparency: Occasional Paper No 4*, (Geneva/Oslo, Small Arms Survey/Norwegian Initiative on Small Arms Transfers, January 2002).

¹¹⁵The 2002 US report, known as Section 655 Report 2002 is available at

< http://www.pmdtc.org/docs/rpt655_2002.pdf > .

The 2002 UK report, Strategic Export Controls Report 2002, is available at

< <http://www.fco.gov.uk/Files/kfile/Cm5819%20Full%20report.pdf> > , accessed on 3 October 2003.