

STRATEGIC TRADE CONTROLS IN THE UNITED ARAB EMIRATES: KEY CONSIDERATIONS FOR THE EUROPEAN UNION

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I. INTRODUCTION

The United Arab Emirates (UAE) has enjoyed close diplomatic, economic and defence ties with the United States and European Union (EU) member states since its establishment in 1971. In contrast, UAE relations with pre-revolutionary Iran began with the Iranian occupation of three Gulf islands on 30 November 1971—two days before the formal establishment of the UAE and signing of the constitution—and concerns about Iran's pursuit of regional hegemony and increasing conventional military capability.¹ Since the Iranian Revolution of 1979 the islands have remained occupied by Iran and UAE concerns about Iran's continued pursuit of regional hegemony remain, while concerns about the former Shah's Imperial Iranian Armed Forces have been replaced by Iran's nuclear and missile programmes, its strategic and asymmetric warfare capabilities and its propensity to support 'subversive terrorist elements' in the member states of the Gulf Cooperation Council (GCC).²

Nevertheless, the UAE continues to maintain strong economic ties with Iran. It has been used for the procurement and movement of dual-goods to over half a dozen nuclear programmes in the past four decades, including in Iran, in what a recent Congressional Research Service report somewhat unfairly attributes to 'a pattern of lax UAE enforcement of export controls'.³

¹ Abu Musa, Greater Tunb and Lesser Tunb. An indication of the importance given to the islands by the UAE is the naming of three conference halls at the Armed Forces Officers Club in Abu Dhabi after them.

² The Imperial Iranian Armed Forces were widely considered to be the fifth largest in the world by 1979. 'The GCC is expanding its army, but for what?', Al Jazeera, 2 July 2011, <<http://www.aljazeera.com/indepth/features/2011/06/2011626112649845386.html>>.

³ As well as Iran, this included programmes in Argentina, India, Iraq, Libya, North Korea and Pakistan. Katzman, K., 'The United Arab

SUMMARY

Since its inception in 1971 the United Arab Emirates (UAE) has been repeatedly used for the procurement and movement of dual-use goods destined for weapons of mass destruction (WMD) and missile programmes of concern. To counter this activity the UAE has come under intense international pressure to introduce comprehensive strategic trade controls and enforce United Nations Security Council resolutions.

The UAE first enacted strategic trade control legislation in 2007 but it was not until 2008, when the UAE initiated an ambitious nuclear energy programme, that significant legislative and institutional progress was made. This progress was driven primarily by the recognition that it must do more to allay concerns that dual-use goods destined for its nuclear energy programme may be diverted to WMD programmes in neighbouring states.

Recognizing that the UAE strategic trade control system is a system under development, there is much the EU and its member states can do to support progress, including enhancing cooperation and assistance; linking EU and UAE licensing systems; encouraging the adoption of common strategic trade control legislation by the Gulf Cooperation Council (GCC); and developing a comprehensive EU strategy for the UAE and the GCC.

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However, the pressure on the UAE to introduce comprehensive strategic trade controls and fully enforce United Nations Security Council resolutions has built up steadily over the past decade. Contributory factors include: (a) the terrorist attacks on the USA of 11 September 2001, which stoked fears about the acquisition and use of weapons of mass destruction (WMD) by terrorists; (b) the exposure in early 2004 of the A. Q. Khan network and revelations about the use of Dubai as a base for procurement; (c) the unanimous adoption in 2004 of UN Security Council Resolution 1540, obliging ‘all States to establish domestic controls to prevent the proliferation of [WMD] and their means of delivery, including by establishing appropriate controls over related materials’; and (d) the adoption since 2006 of four UN Security Council resolutions, calling on Iran to ‘suspend its enrichment activities and peacefully resolve outstanding concerns over the nature of its nuclear programme’.⁴

Much of this pressure has come from the USA, which has consistently encouraged and, on occasion, even threatened the UAE to introduce ‘appropriate effective’ strategic trade controls.⁵ Considering the strategic threats faced by the UAE, the limited progress (until recently) on introducing strategic trade control legislation would appear to be something of a paradox.

This paper investigates aspects of this perceived paradox by exploring in more detail the UAE’s implementation of strategic trade controls, the challenges it faces and the progress it has made. The paper aims to provide enough detail, insights and analysis to not just enhance our understanding of UAE controls but to also provide an objective basis for policy analysis and formulation.⁶

Emirates (UAE): Issues for U.S. Policy’, Congressional Research Service, 10 Mar. 2011, <<http://fpc.state.gov/documents/organization/159348.pdf>>.

⁴ UN Security Council Resolution 1540, 28 Apr. 2004. On 27 Dec. 2006 the UN Security Council adopted Resolution 1737 imposing sanctions on Iran in response to the proliferation risks presented by the Iranian nuclear programme and Iran’s continuing failure to meet the requirements of the International Atomic Energy Agency Board of Governors and to comply with the provisions of UN Security Council Resolution 1696. The sanctions were extended by resolutions 1747, 1803 and 1929 in 2007, 2008 and 2010 respectively. UN News Service, ‘Citing Iran’s failure to clarify nuclear ambitions, UN imposes additional sanctions’, 9 June 2010, <<http://www.un.org/apps/news/story.asp?NewsID=34970>>.

⁵ The phrase ‘appropriate effective’ is used to describe the standard required when implementing Resolution 1540.

⁶ Two articles that take a similar approach to UAE strategic trade controls up to 2009 are: McGovern, E., ‘Export Controls in the United Arab Emirates: A Practical Manifestation of a Strategic Dilemma’,

Section II covers the context, drivers and risks encountered by the UAE, and surveys recent developments in the UAE’s implementation of strategic trade controls. Although strategic trade controls encompass a wide range of activities, the paper focuses on the movement of dual-use goods—but the findings also apply to the trade in military goods.⁷ Section III assesses the UAE’s implementation and enforcement of these controls and wider international obligations. Section IV further explores the UAE’s strategic objectives and some of the innovative approaches being implemented and considered. Section V raises a number of resulting policy considerations for the EU.

II. CONTEXT

The UAE’s use as a proliferation hub is well documented in a number of studies that explore the nuclear programmes in Iran, Iraq, Libya and Pakistan and can be traced as far back as 1982 to a shipment of heavy water from China that ultimately found its way to India’s established, and Argentina’s short-lived, nuclear weapon programmes.⁸

These studies reveal a number of factors that account for why the UAE has been used so persistently, including: (a) its relative stability and developed infrastructure; (b) its proximity to, and long established trading links with, states of proliferation concern; (c) the absence of strategic trade control legislation before 2007; (d) the relatively unregulated business environment and ease of establishing a company

WMD Insights, Feb. 2009, <<http://www.hsdl.org/?view&did=38296>>; and Early, B. R., ‘Export Control Development in the United Arab Emirates: From Commitments to Compliance’, Policy Brief, Dubai Initiative, 6 July 2009, <http://belfercenter.ksg.harvard.edu/files/Early_-_Policy_Brief_-_FINAL.pdf>.

⁷ Dual-use goods are ‘items, including software and technology, which can be used for both civil and military purposes, and shall include all goods which can be used for both non-explosive uses and assisting in any way in the manufacture of nuclear weapons or other nuclear explosive devices’. Council Regulation (EC) no. 428/2009 of 5 May 2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items, Article 2.1, <http://trade.ec.europa.eu/doclib/docs/2009/june/tradoc_143390.pdf>.

⁸ Recent studies of particular note are Albright, D., *Peddling Peril: How the Secret Nuclear Trade Arms America’s Enemies* (Free Press: New York, 2010); and Fitzpatrick, M., *Nuclear black markets: Pakistan, A. Q. Khan and the rise of proliferation networks* (The International Institute for Strategic Studies: London, 2007). For reference to the shipment of heavy water see the Wisconsin Project on Nuclear Arms Control, ‘United Arab Emirates Transshipment Milestones: 1971–2009’, the Risk Report, vol. 15, no. 4, July–Aug. 2009, <<http://www.wisconsinproject.org/countries/dubai/transshipment-milestones.html>>. India carried out its first nuclear weapon test in 1974.

in one of the UAE's free trade zones; and (e) its evolution into the biggest transit and trans-shipment hub in the Middle East.⁹ All these factors have contributed to making the UAE an attractive base for illegal procurement activities and a transit and trans-shipment stop for illicit goods, including goods destined for WMD and missile programmes of concern.

In terms of UAE infrastructure, the 1970s saw the opening of the first container terminals: Port Khalid, Sharjah, in 1976 and Jebel Ali Port, Dubai, in 1979. This was followed in 1985 by the establishment of the Jebel Ali Free Zone, which allowed foreign entities the opportunity to establish themselves in the country and avoid domestic ownership requirements and import duties on goods for re-export.¹⁰

Additionally, the UAE has a long history of strong trade links with Iran, a large expatriate Iranian community—based mainly in Dubai, where they have made a significant contribution to Dubai's prosperity—and a smaller number of UAE citizens who can trace their ancestry to Iran.¹¹ Iranians have long been attracted to the UAE to escape political and economic instability at home and to take advantage of the business-friendly policies and infrastructure described above.

The establishment of Jebel Ali Port as the dominant transit and trans-shipment hub in the region has also inadvertently resulted in its use for the illicit transfer of dual-use goods. The UAE's use as a proliferation hub is therefore as much a result of geography and the prominence of Jebel Ali Port in regional supply chains as it is a consequence of a historic reluctance to implement or enforce strategic trade controls.

Drivers and risks

Decision-making processes in the UAE are relatively opaque, but it is possible to discern a number of key drivers behind the recent developments in the implementation of strategic trade controls in the UAE.

⁹ 'DP World will invest Dh3.12b to expand capacity at Jebel Ali port', Gulf News, 6 Dec. 2011, <<http://gulfnews.com/business/shipping/dp-world-will-invest-dh3-12b-to-expand-capacity-at-jebel-ali-port-1.944339>>.

¹⁰ Wisconsin Project on Nuclear Arms Control (note 8). Outside of a free trade zone, a UAE national normally needs to own 51% of a company.

¹¹ In 2010 Iran accounted for 17% of UAE re-exports, 5.1% of UAE foreign trade and 3.1% of UAE non-oil exports. United Arab Emirates Ministry of Foreign Trade, UAE Trade Statistics in Figures 2011, <<http://www.moft.gov.ae/images/releasesen/220.pdf>>.

Until 2007 the most significant driver was external pressure from the USA to counter the threat of WMD acquisition and use by state and non-state actors. Since 2007 the UAE has shown a greater determination to fully abide by UN Security Council resolutions and its other multilateral obligations. In parallel, it has become increasingly apparent to UAE authorities that the absence of strategic trade control legislation imposes constraints on the UAE's ability to take enforcement action.

More recently, the most significant driver has been the UAE's nuclear energy programme and the associated objectives and commitments that the UAE has calculated are required to realize the programme. These are reflected in the Policy of the United Arab Emirates on the Evaluation and Potential Development of Peaceful Nuclear Energy released in April 2008 and by the adoption of UAE Federal Law No. 6 Regarding the Peaceful Uses of Nuclear Energy in October 2009.¹²

The policy statement clearly expresses the UAE's ambitious objective of establishing 'a new model via which non-nuclear states may explore and potentially deploy nuclear energy with the full support and confidence of the international community'.¹³ The statement includes six strategic intentions to reinforce the peaceful nature of the programme and allay concerns about the risk of dual-use goods intended for the UAE programme being diverted to WMD programmes in neighbouring states. Consequently, the first and second intentions commit the UAE to 'complete operational transparency' and 'to pursuing the highest standards of non-proliferation'.¹⁴ Associated legislative and institutional developments are outlined in section III.

The nature and impact of the risks faced by the UAE in relation to the implementation of strategic trade control legislation and the enforcement of UN Security Council resolutions differ significantly from those faced by the USA and EU member states. For most EU states the risk emanates from an export or an intra-community transfer followed by an export. With a few minor exceptions—Malta, for instance, is an important

¹² Policy of the United Arab Emirates on the Evaluation and Potential Development of Peaceful Nuclear Energy, <<http://enec.gov.ae/uploads/media/uae-peaceful-nuclear-energy-policy.pdf>>.

¹³ Policy of the United Arab Emirates (note 12), p. 1.

¹⁴ Policy of the United Arab Emirates (note 12), p. 1. The Emirates Nuclear Energy Corporation (ENEC) website defines non-proliferation as 'preventing the spread of technology, materials and equipment used for nuclear weapons', <<http://enec.gov.ae/nuclear-energy-in-the-uae/international-support/#non-proliferation>>.

transit and trans-shipment hub for container traffic entering or exiting the Suez Canal—relatively few EU ports and airports have a significant amount of transit or trans-shipment cargo. In addition, no EU state has such a proportionately high volume of trade with Iran. The UAE is aware of the high-level risks it faces; managing these risks, therefore, requires a different approach and a different scheme of control.

III. STRATEGIC TRADE CONTROLS

This paper consciously uses the term ‘strategic trade controls’ rather than the more common term ‘export controls’, as the nature of controls has expanded considerably since UN Security Council Resolution 1540 was unanimously adopted in 2004.¹⁵

Strategic trade controls now encompass far more than just exports and include controls on transit, trans-shipment, intangible transfers of technology (ITT), financial services, brokering and, in some cases, even imports.¹⁶ To better describe the expanded scope of the controls, this paper defines the term ‘trade’, for all these purposes, as any act associated with the transfer of ownership or the movement of goods or services between two entities in different states. The term ‘controls’ is retained although it is one of a number of associated activities and objectives. Increasingly, the focus is on managing risk, promoting compliance, enhancing international communication

¹⁵ For contrasting examples, see McGovern and Early (note 6), both of whom use the term ‘export controls’.

¹⁶ The exportation of goods is ‘The Customs procedure applicable to goods which, being in free circulation, leave the Customs territory and are intended to remain permanently outside the territory’, <http://www.sice.oas.org/dictionary/CSP_e.asp>. Transit is the movement of goods through a country where the goods remain on the same means of transport. Trans-shipment is the ‘Customs procedure under which goods are transferred under customs control from the importing means of transport to the exporting means of transport within the area of one customs office which is the office of both importation and exportation’, <http://www.exportbureau.com/trade_shipping_terms/T.html>. ITT refers to the ‘intangible transfers of both dual-use and conventional weapons technology’ where technology is defined as ‘Specific information necessary for the “development,” “production” or “use” of a product [and] takes the form of technical data or technical assistance’, <http://www.wassenaar.org/guidelines/docs/ITT_Best_Practices_for_public_statement.pdf>, p. 1 and footnote 1. A financial service includes the provision of finance, a letter of credit insurance etc. Brokering is the act of arranging a transaction between a buyer and a seller. Importation of goods is ‘The Customs procedure which provides that imported goods enter into free circulation in the Customs territory upon the payment of any import duties and taxes chargeable and the accomplishment of all the necessary Customs formalities’, <http://www.exportbureau.com/trade_shipping_terms/T.html>.

and cooperation, and developing strategies that, while not controls themselves, are ultimately undertaken in support of the controls. Strategic trade control systems are widely considered to require four fundamental components.

1. A comprehensive legal and regulatory framework. UN Security Council Resolution 1540 has become the international normative reference.

2. Licence procedures and practices for the movement of dual-use goods and technology. These are based on a list (or lists) of goods requiring licences produced by the multilateral control regimes, or incorporated into UN Security Council resolutions, and a catch-all control.¹⁷

3. Robust enforcement to maintain the integrity of the licensing system, encompassing risk management, detection, investigation and prosecution.

4. Industry outreach and partnership to raise awareness and promote voluntary compliance.¹⁸

Treaties, initiatives and regimes

The UAE has signed up to a wide range of treaties and initiatives that impact on its strategic trade controls and their enforcement.¹⁹ These include the following.

¹⁷ In this paper, the term ‘licence’ refers to an authorization to import, export, transit or trans-ship controlled goods. In the UAE, the term ‘licence’ usually refers to an authorization given to an entity to operate and the term ‘permit’ to an authorization to import, export, transit or trans-ship controlled goods. In this paper and more generally ‘dual-use’ refers to goods and technologies that can be used for both civil and military purposes, and ‘catch-all’ or ‘end-use’ control refers to ‘An instrument whereby state authorities may impose [a] licence requirement for an export of an item or items not currently on a control list. For such a requirement to be valid, an appropriate catch-all warning (or catch-all notification) must have been received by the exporter before the export has taken place. Some catch-all clauses also impose a licence requirement if the potential exporter knows (in some legislation, suspects or has reason to believe) that the intended end-use is related to WMD proliferation’, Wetter, A., *Enforcing European Union Law on Exports of Dual-use Goods*, SIPRI Research Report no. 24 (Oxford University Press: Oxford, Apr. 2009), p. xiii.

¹⁸ For more details on the basic components see the exportcontrol.org website, which is sponsored by the Export Control and Related Border Security Assistance (EXBS) Program and dedicated to strategic trade control issues, <<http://exportcontrol.org/links/1364c.aspx>>.

¹⁹ The following section draws membership information from Santoro, D., ‘Status of non-proliferation treaties, agreements, and other related instruments in the Middle East’, Background paper, EU Seminar to promote confidence building and in support of a process aimed at establishing a zone free of WMD and means of delivery in the Middle East, Brussels, 6–7 July 2011, <<http://www.nonproliferation.eu/documents/backgroundpapers/santoro.pdf>>; and the Embassy of

1. *Nuclear*. The UAE joined the Non-Proliferation Treaty in 1996 and the Comprehensive Nuclear-Test-Ban Treaty in 2000. It joined the International Atomic Energy Agency in 1976, with a Comprehensive Safeguard Agreement in place from October 2003 and an Additional Protocol in force from December 2010.

2. *Chemical and biological*. The UAE ratified the Chemical Weapons Convention (CWC) in 2000 and the Biological and Toxin Weapons Convention (BTWC) in 2008.

3. *Missile*. The UAE does not subscribe to the Hague Code of Conduct against Ballistic Missile Proliferation but does cooperate with the Missile Technology Control Regime (MTCR).²⁰

4. *Terrorism*. The UAE participates in a number of terrorism-related initiatives with strategic trade control components. These include the Container Security Initiative, the Megaports Initiative, the Secure Freight Initiative, the Global Initiative to Combat Nuclear Terrorism and the Customs–Trade Partnership Against Terrorism.²¹

5. *Proliferation*. The UAE has publicly endorsed the Proliferation Security Initiative (PSI) Statement of Interdiction Principles and co-hosted regional PSI exercises.²²

The UAE is not a member of the Nuclear Suppliers Group (NSG), the Australia Group (AG) or the MTCR; nor does it participate in the Wassenaar Arrangement (WA). These multilateral export control regimes collate and publish lists of dual-use items that are considered sufficiently sensitive and of significant relevance to WMD and missile programmes that their export

the UAE in Washington, DC, <<http://www.uae-embassy.org/business-trade/trade-export/export-control>>.

²⁰ For a list of subscribing states see the HCOC website, <<http://www.hcoc.at/>>.

²¹ For further information about the initiatives see the following brochures and websites: the Container Security Initiative, <http://www.cbp.gov/linkhandler/cgov/trade/cargo_security/csi/csi_brochure_2011.ctt/csi_brochure_2011.pdf>; the Megaports Initiative, <http://nnsa.energy.gov/sites/default/files/nnsa/inlinefiles/singlepages_9-15-2010.pdf>; the Secure Freight Initiative, <http://www.dhs.gov/files/programs/gc_1166037389664.shtm>; the Global Initiative to Combat Nuclear Terrorism, <<http://www.state.gov/documents/organization/145499.pdf>>; and the Customs–Trade Partnership Against Terrorism, <http://www.cbp.gov/xp/cgov/trade/cargo_security/ctpat/>.

²² For a short review of the PSI and reference to the UAE-hosted PSI exercise see Bauer, S., Dunne, A. and Mićić, I., ‘Strategic trade controls: countering the proliferation of weapons of mass destruction’, *SIPRI Yearbook 2011: Armaments, Disarmament and International Security* (Oxford University Press: Oxford, 2011), pp. 434–6.

should be controlled. It is possible that the UAE will only seek membership once these control lists are incorporated into its own fully operational strategic trade control system.

However, the UAE has pledged to implement ‘import and export control rules for nuclear and nuclear-related equipment and technology in strict accordance with NSG Guidelines for Nuclear Transfers’ and has also held meetings with NSG representatives ‘to discuss cooperation in the areas of export control for nuclear-related items and sensitive goods’.²³ The UAE’s relationship and compliance with the AG is less clear, although it has ratified the CWC and BTWC. The UAE has a relatively long history of engagement with the MTCR, and in 2004 made enquiries to the Chairman of the MTCR about membership terms and conditions.²⁴ The UAE has been an outreach target of the WA since 2008 but has made no public statement on current or future participation.²⁵

Control lists

A licensing system involves the collation and publication of a list (or lists) of goods requiring licences, usually referred to as the control list. Strategic trade control offences are then defined in terms of breaches of licensing requirements for goods included on the list. The UAE has yet to formally publish a control list, although reference is made to one in the original and amended versions of the UAE’s strategic trade legislation. The publication of a control list is necessary before the legislation can be fully implemented and enforced.

The EU approach is to combine the multilateral export control regime lists into a single consolidated list.²⁶ The list is applicable in all EU member states and has been adopted by a growing number of non-EU

²³ Policy of the United Arab Emirates (note 12), p. 3; and ‘Nuclear Suppliers Group Meets with UAE Officials’, *Khaleej Times*, 13 May 2009, <http://www.khaleejtimes.com/DisplayArticle08.asp?xfile=/data/theuae/2009/May/theuae_May316.xml§ion=theuae>.

²⁴ US Embassy in Abu Dhabi, ‘MTCR Regime Outreach Mission To The UAE’, Cable no. 05ABUDHABI3068, 12 July 2005, <<http://wikileaks.org/cable/2005/07/05ABUDHABI3068.html>>; and UAE Embassy in Washington DC, information on the UAE and non-proliferation, <<http://www.uae-embassy.org/uae/foreign-policy/non-proliferation>>.

²⁵ The United States Mission to International Organizations in Vienna, ‘Wassenaar Arrangement: Plenary Report’, Cable no. 08UNVIEVIENNA662, 19 Dec. 2008, <<http://wikileaks.org/cable/2008/12/08UNVIEVIENNA662.html>>.

²⁶ Council Regulation (EC) no. 428/2009 (note 7), Annex 1.

states due to its comprehensive nature, logical structure and relative ease of use.

Although the reasons behind the delay in publishing a UAE control list have not been made public, they are likely to include the absence of a final decision on whether to include all the multilateral regime lists; the question of whether or how to consolidate the lists and correlate them with commodity codes; the question of what nationally defined items should be added to the list; and the crucial absence of a licence application system.

The UAE has indirectly adopted the NSG list by pledging to implement NSG guidelines and most of the items on the AG lists, by virtue of its ratification of the CWC and the BTWC. It is not clear to what extent the UAE has, or will, adopt the MTCR, the WA and the remainder of the AG lists. There have been suggestions that it may adopt the consolidated list published and annually updated by the EU.²⁷

Legislative development

Although the UAE is now at the forefront of efforts in the region to introduce and implement strategic trade controls, it has been a lengthy and challenging process that began over a decade ago. However, despite the UAE's reputation as a proliferation hub, it should be kept in mind that prior to the adoption of UN Security Council Resolution 1540 in 2004—which placed a legal obligation on all states to implement comprehensive controls—few states had comprehensive strategic trade control legislation.²⁸ Therefore, until the adoption of Federal Law No. 13 of 2007 Regarding Commodities that are Subject to Import and Export Control Procedures, the UAE was one of many states without the legal foundation to control the movement of dual-use goods from, or through, its territory.

A comprehensive legal and regulatory strategic trade control framework needs to: (a) introduce controls and licence requirements for the export, transit and transshipment of dual-use goods; (b) introduce offences and penalties for breaches of the controls and licence conditions; (c) designate licensing and enforcement authorities and provide them with the powers to undertake their respective responsibilities; and (d) provide a list of items that require licences. Despite the UAE's willingness to take action by other means when

necessary, the absence of such a framework prior to 2007 was the most significant gap in the UAE's ability to counter proliferation.

Legislation was not adopted until late 2007, but work was underway as early as December 2004. The UAE's 2004 report to the Chairman of the Security Council Committee established to oversee the implementation of UN Security Council Resolution 1540 stated that work on a 'Draft law on monitoring exports' is 'expected to be completed in the very near future'.²⁹ The fact that it took another three years to adopt suggests that the challenge of drafting strategic trade control legislation should not be underestimated.

Federal Law No. 13 of 2007 was enacted in August 2007 and came into effect on 1 September 2007. It followed at least two years of sustained diplomatic pressure from the USA, which at times strained relations between the two states.³⁰ The tipping point is widely considered to be the US proposal in February 2007 to create a 'Country Group C for countries that are "Destinations of Diversion Concern" [and] establish license requirements for exports and reexports', making it clear that the UAE was the intended target of the proposal.³¹

Federal Law No. 13 of 2007 was amended within a year of adoption, suggesting it may have been rushed to alleviate pressure from the USA. Federal Decree No. 12 of 2008 amending certain provisions of Federal Law No. 13 of 2007 made 14 amendments, but no major changes, and came into effect on 25 September 2008.³² Article 1 defines terms; articles 2–7 set out

²⁹ United Nations, Security Council, Security Council Committee established pursuant to resolution 1540, Letter dated 9 December 2004 from the Permanent Representative of the United Arab Emirates to the United Nations addressed to the Chairman of the Committee, S/AC.44/2004/(02)/89, 17 Dec. 2004, <<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N05/219/07/PDF/N0521907.pdf?OpenElement>>.

³⁰ US Embassy in Abu Dhabi, 'Status of UAE Export Controls', Cable no. 05ABUDHABI3346, 31 July 2005, <<http://wikileaks.org/cable/2005/07/05ABUDHABI3346.html#>>; and US Embassy in Abu Dhabi, 'Deadline for Export Control Law "Interference in Internal Affairs"', Cable no. 06ABUDHABI2780, <<http://wikileaks.org/cable/2006/07/06ABUDHABI2780.html>>.

³¹ Industry and Security Bureau, 'Country Group C: Destinations of Diversion Concern', Proposed Rule, Federal Register, 26 Feb. 2007, <<https://www.federalregister.gov/articles/2007/02/26/E7-3252/country-group-c-destinations-of-diversion-concern>>.

³² Undated English translation of Federal Decree No. 12 of 2008 amending certain provisions of Federal Law No. 13 of 2007, published by the Executive Office and in the author's possession. Emirates News Agency (WAM), 'Mohammed bin Rashid chairs cabinet meeting', 5 Apr. 2009, <<http://www.wam.org.ae/servlet/Satellite?c=WamLocEnews&cid=1238851001097&p=1135099400124&pagename=WAM%2FWamLocEnews%2FW-T-LEN-FullNews>>.

²⁷ UAE officials, Discussions with author, Dubai, 2010–2011.

²⁸ UN Security Council Resolution 1540 (note 4).

the general provisions of the law; articles 8–15 create the prohibitions and exemptions; article 16 assigns penalties; and articles 17–22 are the closing provisions. The offences created are reasonably comprehensive, compliant with UN Security Council Resolution 1540 and comparable in scope to Council Regulation 428/2009.

However, there are some gaps: Article 1 makes reference to a ‘Strategic Commodities table annexed to this law’, although no strategic commodity table is attached; and Article 13 states the following:

[U]pon a resolution from the Committee, the Council of Ministers shall issue a regulation to set:

1. The classes of licences to exercise related activities, the classes of approvals that the Committee may grant, the validity period, the application form for each of the licence and approval classes, the conditions of approval, rejection, cancellation, replacement or renewal of the licence and the due charges.
2. The information and records that the applicant shall keep in relation to any action for which he/she was licensed.
3. The rules and regulations of inspection to ensure the application of the provisions of this section.³³

The implementing regulations referred to above have been drafted and are undergoing a process of consultation and agreement before being referred to the Council of Ministers of the Union for adoption.³⁴ In parallel, it is also necessary to develop the infrastructure required to operate an effective strategic trade control licence system, which takes time and a significant investment of resources. This includes identifying and fulfilling training requirements,

³³ Quote drawn from two translations of the Arabic text and modified to ensure consistency of terminology—an undated English translation of Federal Decree No. 12 of 2008 (note 32) and a commercially available translation from Arab Laws World, <http://arablawsworld.com/law_info.php?law_id=6181>. The terms licence, permit and approval are used interchangeably in the original translations; after modification, ‘licence to operate’ now refers to the approval issued by a competent authority to undertake one or more regulated activities granted to operate in the UAE and ‘licence’ now refers to the permission to import, export, transit or trans-ship a specific controlled good.

³⁴ The Council of Ministers of the Union is the ‘executive authority of the Union [and is] responsible for dealing with all domestic and foreign affairs’, UAE Constitution, Article 60, <http://www.mfnca.gov.ae/?lang=en&m=options&act=content_detail&content_id=443>.

implementing a programme of industry outreach to educate and promote compliance with the new controls, putting in place the information technology (IT) infrastructure and developing a broad range of technical expertise. The exact nature of the supporting infrastructure ultimately depends on the details of the regulations.

Institutional development

The UAE is a federation of seven emirates and its institutional structure, featuring both federal and emirate entities, is highly fragmented. Each emirate has its own customs administration under a Federal Customs Authority. The various customs administrations operate different export declaration systems and, although all apply the Common Customs Law of the GCC, reporting and declaration requirements differ between emirates and for the free trade zones. The Federal Ministry of Interior takes the lead on matters of internal security and undertakes the investigation of strategic trade control offences, except in Dubai where such investigation is undertaken by Dubai Police and the General Directorate of State Security. There are also numerous federal and emirate entities that issue licences to operate depending on the emirate, free trade zone or area of activity.

The institutional development of strategic trade controls in the UAE can be traced to the formation of the UAE Counterproliferation Task Force, comprised of representatives from a range of UAE stakeholders and created to participate in the February 2006 inaugural US–UAE Counterproliferation Task Force meeting to enhance US–UAE cooperation on counterproliferation issues.³⁵

A year later, in February 2007, the UAE created the ‘Executive Committee on Commodity Control Procedures [with] clear oversight and management responsibility [for] the United Arab Emirates’ export control procedures’.³⁶ The following month the Counterproliferation Task Force and the Executive Committee on Commodity Control Procedures were merged to ‘address export control issues as one’ with the objective of ‘preventing the exploitation of UAE

³⁵ US Embassy in Abu Dhabi, ‘Textbook Case: Dubai Customs; Re-delivery and Dual-use Issues’, Cable no. 06ABUDHABI176, 22 Jan. 2006, <<http://wikileaks.org/cable/2006/01/06ABUDHABI176.html>>.

³⁶ US Embassy in Abu Dhabi, ‘UAE Creates “Commodity Control Committee”’, Cable no. 07ABUDHABI275, 15 Feb. 2007, <<http://wikileaks.org/cable/2007/02/07ABUDHABI275.html>>.

territory for illegal shipping purposes, federal and local coordination, ensuring proper training and resources, and following international standards'.³⁷

The next major institutional development occurred in April 2009 when the Council of Ministers of the Union issued Decree No. 299/3 of 2009 approving the formation of the Committee for Goods and Materials Subject to Import and Export Control (the Committee), chaired by the Ministry of Foreign Affairs and including senior representatives from the Ministry of Interior, the Ministry of Economy, the Federal Customs Authority and the UAE Armed Forces.

The decree designated the Committee as the licensing authority but also gave it responsibilities not normally assigned to licensing authorities, including: (a) strategy and planning; (b) cooperation and coordination; (c) the preparation of 'proposals on the procedure, provisions and fees for import or export licenses for [listed] commodities'; and (d) the development of the implementing regulations.³⁸ The Committee is therefore both the licensing authority and central coordinating body for strategic trade controls in the UAE.

The Committee's strategic role is defined in its vision and mission statements: its vision is to 'create a zone free of any kind of dealing in, crossing of, or using mass destruction weapons'; and its mission is to 'cooperate with all the concerned international and local bodies to reduce the spread of mass destruction weapons, and ensure that the UAE is not a party in the spread of mass destruction weapons'.³⁹

The Executive Office of the Committee is comprised of a legal department and four directorates: services and support; communication and follow-up; inspection and investigation; and permits and censorship. It is tasked with supervising the implementation of UAE strategic trade control legislation and acts as 'a linking point between the federal and local bodies concerned with the execution of the provisions of laws . . . [and]

with the international organizations and authorities and other countries'.⁴⁰

Nuclear controls

Federal Law No. 6 of 2009 Regarding the Peaceful Uses of Nuclear Energy regulates the licensing, handling, use and control of nuclear materials, including penalties for violations, and establishes the Federal Authority for Nuclear Regulation (FANR).⁴¹

Article 25 gives FANR regulatory responsibility for the 'import or export of any Regulated Material into or from the State, subject to any consents pursuant to the provisions of Law No. 13 of 2007'. Article 1 defines regulated material as including 'any Radioactive Material, special materials and equipment, radioactive waste, nuclear spent fuel and any other material, product, service or asset whether tangible or intangible which, in the opinion of the Authority, is or may in the future be related to or connected with the Nuclear Sector and designated as such from time to time by implementing regulations'.⁴²

The FANR Annual Report 2010 clarifies this role and the goods to be licensed.

FANR has launched consultations with the Committee for Goods and Materials Subjected to Import and Export Control and other relevant government entities to develop licensing requirements and regulations. These licensing requirements give FANR the authority to license the import, export, transit and transshipment of all categories of nuclear material and dual-use items for the nuclear sector that come under the UAE's jurisdiction.⁴³

The Executive Office is responsible for issuing licences for the import, export, transit and trans-shipment of controlled goods, but it refers nuclear-related licence applications to FANR for a licence determination (referred to as a 'rating' in

³⁷ US Embassy in Abu Dhabi, 'March 1 US-UAE Counterproliferation Task Force', Cable no. 07ABUDHABI422, 13 Mar. 2007, <<http://wikileaks.org/cable/2007/03/07ABUDHABI422.html>>; and Cable no. 07ABUDHABI275 (note 36).

³⁸ Emirates News Agency (note 32).

³⁹ Presentation by Al Mehrezi, S., Committee for Goods and Materials Subject to Import and Export Control, UAE Ministry of Foreign Affairs, at the Eleventh Annual International Export Control Conference, Kyiv, Ukraine, 8-10 June 2010, <http://exportcontrol.org/library/conferences/2706/54a_Day_2-Enforcement-Ses_I-Pres_4-Almehrezi.pdf>.

⁴⁰ Al Mehrezi (note 39).

⁴¹ Unofficial translation of Federal Law No. 6 of 2009 Regarding the Peaceful Uses of Nuclear Energy available on the Federal Authority for Nuclear Regulation (FANR) website, <http://www.fanr.gov.ae/SiteAssets/PDF/20101024_nuclear-law-scan-eng.pdf>.

⁴² Unofficial translation (note 41).

⁴³ FANR Annual Report 2010 (24 Sep. 2009-31 Dec. 2010), p. 32, <http://www.fanr.gov.ae/En/Documents/FANR_AnnualReport.pdf>. See also Article 25:10 of Federal Law No. 6 of 2009, <http://www.fanr.gov.ae/SiteAssets/PDF/20101024_nuclear-law-scan-eng.pdf>.

the UK).⁴⁴ FANR also provides rating advice for goods detained or seized by the Executive Office or a customs administration if it is suspected that the goods breach UAE strategic trade controls. Similar licence determination relationships exist between the Executive Office and centres of expertise in the Ministry of Defence and the Ministry of Interior.

Sanctions

The UAE has expressed its deep concerns about Iran's nuclear activities. . . . The UAE fully supports and enforces UN resolutions barring shipment of sensitive materials and technologies to Iran.⁴⁵

UN Security Council sanctions resolutions are designed 'to apply pressure on a State or entity to comply with the objectives set by the Security Council without resorting to the use of force' and Article 25 of the UN Charter makes it clear that, as members of the UN, states 'agree to accept and carry out the decisions of the Security Council'.⁴⁶ It is then, however, the responsibility of every state to implement the measures domestically.

[S]tates are faced with difficult problems of domestic implementation of what are effectively treaty obligations entailing, in most cases, adaptation of internal law. Only a handful of states at present have the necessary enabling legislation to automatically comply with UN Security Council decisions.⁴⁷

The UAE does not have the necessary enabling legislation to automatically comply with UN Security Council resolutions—and this is the norm rather

⁴⁴ For detailed guidance on rating in the UK see Business Link, 'How to determine if your goods need an export licence', <<http://www.businesslink.gov.uk/bdotg/action/layer?r.i=1086776489&r.l1=1079717544&r.l2=1084228483&r.l3=1086776459&r.s=m&r.t=RESOURCES&topicId=1086776459>>.

⁴⁵ UAE Embassy in Washington DC, <<http://www.uae-embassy.org/business-trade/trade-export/export-control>>.

⁴⁶ United Nations, 'Security Council Sanctions Committees: An Overview', <<http://www.un.org/sc/committees/>>; and United Nations, 'Chapter V: The Security Council', Charter of the UN, <<http://www.un.org/en/documents/charter/chapter5.shtml>>.

⁴⁷ United Nations University, 'Domestic Implementation of Security Council Decisions on Sanctions: A Comparative Approach', Graduate School of International Studies, Feb. 1999, <<http://archive.unu.edu/p&g/sc-sanctions.html>>.

than the exception. Implementation is, therefore, relatively ad hoc and based primarily on powers and/or authorities already present in existing legislation.

UN Security Council Resolution 1737 was adopted on 23 December 2006 and, for the first time, required all states to 'prevent the supply, sale or transfer directly or indirectly from their territories . . . of all items, materials, equipment, goods and technology which could contribute to Iran's enrichment-related, reprocessing or heavy water-related activities, or to the development of nuclear weapon delivery systems'.⁴⁸

This was followed relatively quickly by UN Security Council Resolution 1747 on 24 March 2007, which tightened existing sanctions and introduced a ban on arms sales. UN Security Council Resolution 1803 in 2008 and UN Security Council Resolution 1929 in 2010 tightened sanctions even further and introduced a number of new measures.

The prohibited 'items, materials, equipment, goods and technology' referred to in Resolution 1737 of 2006 are detailed in two lists originally annexed to UN Security Council Resolution 1718 of 2006 targeting the nuclear and missile programmes of the Democratic People's Republic of Korea.⁴⁹ The lists correspond to the NSG and MTCR lists from around 2006.⁵⁰ These lists have subsequently been superseded by updated NSG and MTCR lists and referred to in Resolution 1929 of 2010.⁵¹ Therefore, Resolution 1737 and subsequent

⁴⁸ UN Security Council Resolution 1737, 23 Dec. 2006, para. 3.

⁴⁹ UN Security Council Resolution 1718, 14 Oct. 2006.

⁵⁰ United Nations, Security Council, Letter dated 13 October 2006 from the Permanent Representative of France to the United Nations addressed to the President of the Security Council, S/2006/814, <http://www.un.org/ga/search/view_doc.asp?symbol=S/2006/814>; and United Nations, Security Council, Letter dated 13 October 2006 from the Permanent Representative of France to the United Nations addressed to the President of the Security Council, S/2006/815, <http://www.un.org/ga/search/view_doc.asp?symbol=S/2006/815>.

⁵¹ International Atomic Energy Agency (IAEA), Communications Received from Certain Member States Regarding Guidelines for Transfers of Nuclear-related Dual-use Equipment, Materials, Software and Related Technology, INFCIRC/254/Rev.7/Part 2a, 20 Mar. 2006, <http://www.un.org/sc/committees/1737/pdf/INFCIRC_254_Rev.7_Part2.pdf>; IAEA, Communication Received from the Permanent Mission of Brazil regarding Certain Member States' Guidelines for the Export of Nuclear Material, Equipment and Technology, INFCIRC/254/Rev.9/Part 1a, 7 Nov. 2007, <http://www.un.org/sc/committees/1737/pdf/INFCIRC_254_Rev.9_Part1.pdf>; United Nations, Security Council, Letter dated 27 May 2010 from the Permanent Representative of the United Kingdom of Great Britain and Northern Ireland to the United Nations addressed to the President of the Security Council, S/2010/263, 28 May 2010, <http://www.un.org/ga/search/view_doc.asp?symbol=S/2010/263>; and UN Security Council Resolution 1929, 9 June 2010.

resolutions effectively obligated all states to prohibit the transfer of NSG and MTCR listed items to Iran.

However, it was not until September 2007 that Federal Law No. 13 created the authority to prohibit such items. Article 2 states that ‘with consideration to the stipulations of the international agreements adhered by the State or ratified by it, the competent authorities shall be entitled to ban or restrict the importation or exportation or the re-exportation of any commodity or transiting . . . of commodities . . . in instances where a commodity constitutes a hazard to . . . national security or in case the foreign policy of the State so requires’.⁵²

It is not clear how the UAE has formally adopted the lists of prohibited items originally referred to in Resolution 1737 or how UAE entities are informed of these new prohibitions, but the UAE considers them applicable and regularly takes steps to enforce them. The Executive Office does not have a public website and no reference to the prohibitions can be found on the Dubai Customs, Abu Dhabi Customs or Federal Customs Authority websites. In contrast, the UAE Central Bank implemented the banking and finance-related measures of Resolution 1929, using powers contained within anti-money laundering and counterterrorism finance legislation, through a series of circulars and notices informing all financial institutions of the new requirements.⁵³

Enforcement

The UAE’s record on the enforcement of strategic trade controls and sanctions is usually characterized as mixed.⁵⁴ However, such assessments are often based on unrealistic expectations and neither adequately account for the challenges the UAE faces nor describe what baselines and measures are being used.

In a telling example from 2006, the UAE was put under significant pressure by the USA to inspect a container in transit to Iran suspected of containing aluminium sheeting of US origin that had potential dual-use but was not listed by the multilateral regimes. The UAE refused, noting that ‘since the container was in transit and not bound for the UAE, there were no

grounds under UAE or international law to allow the search’.⁵⁵

Following a further request, and consultations at the highest levels, the UAE responded that ‘if it is important material you can use your ships in the Gulf to intercept it—we will work closely with you to ensure that you have the information you need for the intercept [and that you should] work with the UN to get a Security Council resolution banning all such materials bound for Iran’s programs. That would give us, and every other port in the world, the justification we need for pulling containers off of Iranian ships in our ports’.⁵⁶

Although there may have been a legal basis for inspection under GCC Common Customs Law, the fact that the aluminium was not listed and the UAE was not given evidence of a WMD end-use meant that, even if found, the items could not have been seized. The case was described by US officials as ‘an example of the challenges we have faced with the UAEG in trying to tighten its export control efforts’, despite it actually being an attempt by the USA to apply pressure on the UAE to enforce unilateral US export controls.⁵⁷

The Dubai Police Chief, Lieutenant General Dahi Khalfan Tamim, has more recently stated that ‘we consider bilateral sanctions as illegal. Our stand is clear and thus Dubai will not enforce any kind of bilateral sanctions under any circumstance’.⁵⁸ In reality the UAE position is more nuanced and, although hesitant to take enforcement action associated with unilateral sanctions, there are exceptions. For example, when a consignment of US origin has been shipped directly to the UAE in contravention of unilateral US controls it is detained and returned. If the consignment is exported via a third country, the UAE will normally allow the consignment to proceed—a similar policy to that of a number of major EU member states.

Following the adoption of Resolution 1929 in June 2010, the UAE was reported to have moved quickly to ‘shut down more than 40 international and local companies as part of a crackdown on illegally dealing in strategic dual-use equipment and materials and money laundering’ in what was proclaimed to be the most high profile and public example of UAE enforcement

⁵² Undated English translation (note 32).

⁵³ The three principle parts of the anti-money laundering and counterterrorism finance legislation are Regulation No. 24/2000, Federal Law No. 4 of 2002 and Federal Law No. 1 of 2004. See the UAE Central Bank website, <<http://www.centralbank.ae/en/index.php>>.

⁵⁴ Katzman (note 3), p. 7.

⁵⁵ US Embassy in Abu Dhabi (note 35).

⁵⁶ US Embassy in Abu Dhabi (note 35).

⁵⁷ US Embassy in Abu Dhabi (note 35).

⁵⁸ ‘Dubai police chief expects influx of investors’, Gulf News, 30 Aug. 2010, <<http://gulfnews.com/business/economy/dubai-police-chief-expects-influx-of-investors-1.675524>>.

activity. Quoting official sources, an article in Gulf News reported that ‘any company in the UAE proved to have connections with the Iranian Revolutionary Guard Corps (IRGC) [or] subject to the UN asset freeze will immediately be shut down [and] the UAE is committed to meet its obligations towards the global effort for non-proliferation’.⁵⁹

Despite references to ‘dual-use equipment and materials’, the above media reports actually refer to the closing of 41 bank accounts associated with entities designated in Resolution 1929 of 2010 rather than as a direct result of UAE strategic trade control breaches. Action was, therefore, taken under anti-money laundering and counterterrorism finance legislation rather than Federal Law No. 13 of 2007.

This example reflects, in part, the UAE enforcement approach over the past decade. In 2006 a US official noted that the UAE ‘has been willing to work with us to stop shipments of internationally banned components bound for Iran, even when doing so has required extra-judicial measures’.⁶⁰ It is questionable to what extent the measures mentioned are truly extra-judicial, particularly if the shipments are internationally banned. In reality, there are a range of indirect powers and offences that UAE enforcement authorities can draw on in addition to anti-money laundering and counterterrorism financing. Operating licences can be withdrawn, individuals can have their visas cancelled or be refused re-entry and, outside of the free trade zones, approaches can also be made to UAE company partners to annul a partnership and effectively close down a company.⁶¹

IV. A SYSTEM UNDER DEVELOPMENT

[T]he UAE could be a model. . . . they are doing it very logically step-wise, and they understand that it’s not a one-year program, it will take

years to get their laws, regulations, their people trained and implemented.⁶²

The UAE strategic trade control system is clearly undergoing a process of development. The fundamentals are in place, but the regulations required to fully implement Federal Decree No. 12 of 2008 are still to be adopted; and the UAE control list still needs to be agreed and annexed to the law. There are also important infrastructural dependencies and a number of institutional weaknesses that could hinder the speed at which Federal Decree No. 12 is implemented and, ultimately, the effectiveness of its implementation. However, discussions with UAE officials and international stakeholders in late 2011 indicated that there will be significant progress in 2012. It should be noted that although gaps exist in the system these have not adversely affected the ability of the UAE to enforce UN Security Council resolutions against Iran.

Strategic objectives

The UAE is pursuing a number of interdependent strategic objectives relating to the implementation of its strategic trade control system and the enforcement of UN Security Council resolutions. These can be summarized as: (a) a public commitment ‘to pursuing the highest standards of non-proliferation’; (b) full compliance with UN Security Council resolutions, including Resolution 1540 and all sanctions resolutions; (c) making it as easy as possible to comply with UAE strategic trade control regulations; and (d) minimizing the impact on legitimate trade, and on the wider economic and political interests of the UAE, when implementing and enforcing the regulations.⁶³

None of these differ significantly from the strategic objectives of the EU or the USA. The difference is that the UAE is attempting to implement a system of a comparatively high standard in a fraction of the time that it has taken the EU or the USA, while facing particularly acute challenges in relation to transit, trans-shipment and the volume of trade with states subject to UN Security Council sanctions. The UAE recognizes that the required ‘institutional and

⁵⁹ ‘UAE tightens noose on front companies’, Gulf News, 21 June 2010, <<http://gulfnews.com/news/gulf/uae/government/uae-tightens-noose-on-front-companies-1.643960>>.

⁶⁰ US Embassy in Abu Dhabi (note 35).

⁶¹ As a general rule, companies established in the UAE require 51% ownership by a UAE national. While on paper such joint venture companies have 51% national ownership and 49% foreign ownership, the degree to which investment, profit and loss is shared is contained within a separate agreement and the involvement of UAE nationals in company operations is often minimal.

⁶² Klein, D., Former Chairman, US Nuclear Regulatory Commission, <<http://www.enec.gov.ae/nuclear-energy-in-the-uae/international-support/>>.

⁶³ Emirates Nuclear Energy Corporation (ENEC), ‘UAE Nuclear Energy Policy’, <<http://enec.gov.ae/nuclear-energy-in-the-uae/uae-nuclear-energy-policy/>>.

technical skills [are] not readily available in the UAE. Therefore, the UAE [will need to] rely extensively on assistance at the Government-to-Government level' to implement a system of the highest standards and overcome these challenges.⁶⁴

International support

The UAE has benefited from international assistance and cooperation in the field of strategic trade controls for at least a decade. Initially, the most significant support came from the USA and was institutionalized in the US-UAE Counterproliferation Task Force. The website of the Permanent Mission of the UAE to the UN notes that 'the US Department of State, through its Export Control and Related Border Security Assistance program, is helping the UAE improve its enforcement and licensing capabilities aimed at curbing the transshipment of illicit materials'.⁶⁵

More recently the EU has begun assisting and cooperating with the UAE, beginning with an initial visit of EU experts in November 2006 under Pilot Project 05.⁶⁶ In 2008 this was followed up with a study visit to Germany by UAE officials under Pilot Project 06, which covered a wide range of strategic trade control issues including licensing, enforcement and outreach to industry.⁶⁷ There was then a pause of a few years before a significant increase in activity from September 2010 when the EU Cooperation in Dual-Use Export Controls project, in cooperation with the Executive Office, undertook a licensing and customs workshop in Dubai.

During 2011 there were four significant events: an online licensing workshop in the UAE; a legal seminar in the UAE; an EU study visit to the UK and Germany; and a risk management workshop in the UAE.⁶⁸ In

⁶⁴ Policy of the United Arab Emirates (note 12), p. 12.

⁶⁵ Permanent Mission of the United Arab Emirate to the United Nations, Non-Proliferation, <<http://www.un.int/wcm/content/site/uae/home/pid/19816>>; and for a comprehensive presentation of the Export Control and Related Border Security (EXBS) program see <<http://www.exportcontrol.org/library/1073/EXBSslideShow.pdf>>.

⁶⁶ Federal Office of Economics and Export Control (BAFA), 'EU outreach activities', <http://www.bafa.de/eu_outreach/partner_countries/middle_east/united_arab_emirates/agendas/index.html>.

⁶⁷ For the study visit agenda see <http://www.bafa.de/eu_outreach/partner_countries/middle_east/united_arab_emirates/agendas/2008_july_study_visit_united_arab_emirates_eschborn.pdf>.

⁶⁸ Federal Office of Economics and Export Control (BAFA), <http://www.bafa.de/eu_outreach/partner_countries/middle_east/united_arab_emirates/agendas/index.html> and <http://www.eu-outreach.info/eu_outreach/activities_calendar/activities_calendar_2011.pdf>.

addition, there were other 'project activities such as initial visits, coordination and working meetings, and legal reviews'.⁶⁹ This increase in cooperation is directly related to the establishment of the Executive Office in 2009 and the ability of the EU Cooperation in Dual-Use Export Controls project to meet the evolving needs of partner countries.⁷⁰ A similar range and number of events are planned for 2012.

Innovative approaches

In order to make it as easy as possible to comply with strategic trade control regulations, and to minimize the impact on legitimate trade, the UAE needs to go beyond the standard approaches prevalent in the EU and the USA. It needs to develop and introduce new and innovative approaches together with the required supporting infrastructure. The time it takes to develop this supporting infrastructure is likely to be a key factor influencing ongoing delays in adopting the implementing regulations.

The following subsections explore two of the innovative approaches being considered by UAE authorities: the use of import licences for listed dual-use items; and systems integration to effectively minimize the impact on trade and optimize the UAE's risk management capabilities.

Import licences

The EU and the USA do not require import licences for listed dual-use items, and neither does UN Security Council Resolution 1540. Further, the multilateral export control regimes do not make reference to import controls in their guidance. The assumption and rationale is that the risks—particularly for the EU, the USA and other industrialized states with established strategic trade control systems—lie with the export of dual-use goods manufactured by the exporting state. However, the risks are increasingly associated with the trade of listed dual-use items with, or through, states that proliferators perceive to have limited or ineffective export control systems.⁷¹ Often these items originate from the EU or the USA and either transit or trans-ship

⁶⁹ BAFA (note 66).

⁷⁰ BAFA (note 66).

⁷¹ Other increasingly prominent and challenging risks include the procurement of non-listed dual-use items intended for a WMD or missile programme and listed dual-use goods produced and exported by states with limited or ineffective strategic trade controls. Proliferators increasingly circumvent EU member states' strategic trade controls by including one or more intra-community transfers before exporting

through the UAE, or else are imported directly into the UAE or its free trade zones and subsequently exported or re-exported to a UN Security Council sanctioned state.

Having identified these as the main risks, it was therefore necessary for the UAE to develop 'appropriate effective' controls to mitigate them. The UAE's first approach to these risks concerns licensing on imports as well as exports.

By controlling imports, as well as exports, UAE authorities would have a significantly enhanced scheme of control. An importer from the UAE would only be able to secure an import (or export) licence if they were first licensed to trade in such commodities. Authorities would be aware that a controlled good was being imported into the UAE and would be able to monitor and control its import and/or subsequent export. The risk of goods being diverted to a WMD or missile programme in a UN Security Council sanctioned state or other state of proliferation concern would thus be significantly reduced.⁷²

The EU can support these enhanced UAE import controls, and in doing so enhance their own export controls, by linking the issuing of export licences by the EU with the issuing of import licences by the UAE. A decision to refuse an export licence by EU licensing authorities may have to withstand judicial review if challenged. Consequently, the issuing of export licences in the EU is normally done on an assumption of approval if the UAE importing entity is not on a denials list or has not been identified as an entity of concern for other reasons.

If EU member states provide UAE authorities with details of the prospective UAE importing entity when a EU exporter applies for an export licence, the UAE can undertake end-use or end-user checks before an export licence is granted. In parallel, the UAE is made aware of UAE entities requiring import licences and can take action to ensure that they comply with UAE import licence requirements. However, the granting of a licence does not mean the contract is fulfilled or the goods exported. It is also necessary to provide UAE authorities with pre-arrival information for licensed exports, to further minimize the risk of diversion to a WMD or missile programme.

through an EU member state with comparatively weak controls. Both risks are beyond the scope of this paper.

⁷² A potential flaw in such a system is that the licensed goods could be transferred to another UAE entity and then exported or re-exported. Some form of internal transfer control will therefore be required.

Despite UAE requests for the sharing of such information, no EU member state is currently doing so on a regular and systematic basis.⁷³

Systems integration

The UAE's second innovative approach is a programme of integrating the customs import, export and re-export declaration systems of all seven emirates with the still-to-be-developed licensing system of the Executive Office, as well as with the numerous systems containing licence-to-operate information for all UAE-based economic entities and security-related information. Sitting on top of this integrated system will be a sophisticated risk management and profiling tool.

In early 2007 the UAE set itself the objective of establishing a 'data base with direct access to security apparatuses nation-wide in order to check data on company, individuals and items imported, exported or re-exported [to] ensure easy and quick access of information and support [the] decision-making process'.⁷⁴ More recently the decision to include the UAE licensing system has been made and responsibility for delivering the system appears to have fallen to the Federal Customs Authority.

By integrating these systems and databases, the UAE can optimize its use of electronic risk management: the greater the amount of information available to profile against, the more effective the use of electronic risk management tools will be. Electronic risk profiles can then be created that better target the greatest risks, thereby reducing the number of false positives disrupting legitimate trade.

No other state has integrated licensing, export declaration and company registration systems. A number of states have an electronic import declaration system. Some of these states also have an electronic export declaration system. Most of these export declaration systems include a risk engine—that sets electronic profiles (based on risk analysis or intelligence) to identify consignments of concern on the basis of the information provided in the declaration—but few use it for targeting possible breaches of strategic trade controls. The author is not aware of any state that publishes information on either the number

⁷³ EU member state and UAE enforcement and licensing officials, Discussions with author, late 2011.

⁷⁴ US Embassy in Abu Dhabi (note 36).

or effectiveness of its strategic trade control risk profiles.

A comparatively small number of states have moved towards integrating their licensing and export declaration systems to automatically cross-check export declarations with a declared licence.⁷⁵ Integration adds a further degree of control, and if a permit is declared it may also add further data fields that are possible to profile. Other benefits may include: immediate access to licence and export histories, licence applications and supporting documents; and the automatic decrementing of licences. These measures significantly enhance the capabilities of customs and other enforcement authorities to identify consignments of concern and, more importantly, allow for rapid decision making on the need to detain consignments for further enquiries or to release them.

The UAE also intends to incorporate company-licensing information to allow automatic cross-checks with export declaration and licence information, thereby adding another layer of control with minimal impact on legitimate trade. This will allow the use of even more sophisticated profiles and should result in a better hit-rate than profiling against just one or two systems.

Nevertheless, even with the integration of these systems, the UAE's risk management system and its ability to identify consignments of concern will only be as good as the risk and intelligence information that feeds it. There are a number of ways through which the EU could support the UAE's risk management system, including: sharing the denial information referred to in Article 13 of Council Regulation 428/2009 and the EU's common risk criteria; and closer information and intelligence sharing between the EU, its member states and the UAE.⁷⁶

V. CONCLUSIONS AND POLICY CONSIDERATIONS

The previous section explored two of the innovative approaches towards strategic trade controls being developed by the UAE and concluded each with specific suggestions about how the EU and its member states could support their successful implementation. This section looks more broadly at some of the issues raised by the paper and concludes the discussion of each with

a number of associated policy issues, questions and suggestions for consideration by the EU.

Cooperation and assistance

The absence of strategic trade control legislation has not prevented UAE authorities from taking action to stop shipments or shut down proliferating entities, but it is the 2008 decision to pursue nuclear energy that has defined the strategic objectives and driven the implementation of strategic trade control legislation. The EU needs to use this opportunity to support the UAE in the mutual interest of both parties.

The UAE has committed itself to pursuing the highest standards of non-proliferation and is seeking to develop an innovative system that includes import licences, systems integration and a sophisticated risk management system. The challenges this presents, the time required to develop such a system, and the expertise and resources required to administer it, should not be underestimated. It has taken many years for the US and EU systems to develop—the experience and associated expertise of which could be effectively shared with the UAE.⁷⁷

The EU's long experience of balancing 'appropriate effective' strategic trade controls with a policy of facilitating legitimate trade, its development and implementation of a range of licence types, and its development of the most widely used consolidated list of controlled goods, are all of significant value to the UAE in developing its own system. Through the EU Cooperation in Dual-Use Export Controls project, the EU has been cooperating closely with the UAE. It is important that the UAE system is relatively effective when it goes live, as significant problems could have serious implications for national security and trade relations. However, one must recognize that no system is perfect and that a period of adaption and modification will be required. Priorities for the coming months will need to include cooperating on the development and administration of different licences and encouraging the UAE to adopt a consolidated

⁷⁵ These include Germany, Sweden and the UK.

⁷⁶ Council Regulation (EC) no. 428/2009 (note 7).

⁷⁷ The UK recently estimated that the 'cost of staff directly involved in implementing export licensing policy and processing export licence applications in 2010' was approximately €10 million. Foreign and Commonwealth Office, *United Kingdom Strategic Export Controls Annual Report 2010* (Stationary Office: London, July 2011), p. 4, <<http://www.fco.gov.uk/resources/en/pdf/publications/annual-reports/strategic-export-controls-annual-report-10>>.

list that combines all the multilateral export control regimes lists.

Although the EU project is cooperating closely and effectively with the Executive Office, the UAE has indicated that it would welcome the equivalent of ‘consultancy services’ in relation to aspects of strategic trade controls that are currently outside the scope of the project. Representatives from FANR have also expressed a desire for more capacity building and assistance relating to nuclear regulatory and safeguards issues. It is becoming increasingly evident that the UAE will require, is seeking, and can absorb, more capacity building and assistance than the EU is currently providing or structured to provide. To meet UAE requirements, consideration should be given to better coordination within the EU, more resources and greater flexibility.

In support of the innovative approaches being pursued by the UAE, this paper proposes: (a) linking the issuing of export licences by the EU with the issuing of import licences by the UAE; (b) the provision of pre-arrival information; (c) the sharing of denial information and common risk criteria; and (d) more information and intelligence sharing. These could be done at both the EU and member state levels. However, a common EU-led approach may be preferable, which takes advantage of the IT infrastructure being developed that enables licence, pre-arrival and pre-departure information to be shared between EU states. The UAE may also prove to be a useful test case for extending these systems to third countries.

Nuclear energy and Iran

By forgoing the right to enrichment, pursuing a policy of operational transparency and seeking to meet the highest standards of non-proliferation, the UAE has made significant progress in allaying proliferation concerns about its nuclear energy aspirations. In doing so, it may well become the ‘gold standard’ for states wishing to develop nuclear energy.⁷⁸

The EU needs to fully support the UAE’s approach and objectives for two strategically important reasons.

1. As a model for developing nuclear energy, the UAE could prove to be a vehicle for strengthening global strategic trade controls.

2. As a contrasting example to Iran, the UAE could highlight the benefits of seeking nuclear energy in an open and cooperative manner.

Further, there is no indication, or expectation, that Iran is going to abide by UN Security Council resolutions targeting its nuclear and missile programmes and conventional arms exports, and begin cooperating fully with the International Atomic Energy Agency on all outstanding issues. Although another resolution is not considered likely in the short term, Iran is increasingly facing unilateral sanctions as evidence its alleged nuclear weapon programme comes to light. While the UAE is generally unwilling to enforce unilateral sanctions, it is a key partner in the enforcement of existing resolutions and often the last point at which consignments of concern can be detected and prevented from reaching Iran.

Despite relatively effective controls, dual-use goods from the EU have found their way to Iranian nuclear and missile programmes. In many cases, proliferators have evaded EU controls by taking advantage of the licence exemption for intra-community transfers or they have exported with licences to a non-EU state from where the goods are then diverted to Iran.

The suggestions already made in relation to the UAE’s innovative approaches to strategic trade controls would help the UAE enforce UN Security Council resolutions, but could the EU do more to prevent these goods from leaving the EU in the first place? There may be scope for enhancing controls in relation to intra-community transfers and the effectiveness of EU licensing authorities in assessing the likelihood of diversion or re-export from non-EU states, as well as the overall effectiveness of the enforcement of strategic trade controls across the EU.

Displacement and the Gulf Cooperation Council

As the UAE’s strategic trade control system and enforcement of UN Security Council resolutions has developed and become more established, there has been a noticeable displacement of proliferation activity to other GCC states with limited or ineffective strategic trade controls.⁷⁹ In parallel, the development of free

⁷⁸ Constantine, Z., ‘UAE “meets nuclear gold standard”’, *The National*, 14 Feb. 2010, <<http://www.thenational.ae/news/uae-news/uae-meets-nuclear-gold-standard>>.

⁷⁹ EU and UAE officials, Discussions with author, 2010–2011.

trade zones in other GCC states means proliferators can effectively relocate if and when operating in the UAE becomes increasingly difficult. There are also an increasing number of transit and trans-shipment hubs through which dual-use goods can be shipped. For example, the Port of Sohar, Oman, has experienced significant growth since commencing operations in 2004, and between 2007 and 2009 container throughput went from 8225 to nearly 100 000 twenty-foot equivalent units (TEUs).⁸⁰

In addition to the displacement of proliferation activity, the UAE is also concerned about the loss of legitimate trade. Legitimate traders may perceive the UAE's implementation of a licensing system and enhanced enforcement activity as leading to an increase in the cost of doing business. The UAE is currently the second highest ranking GCC state in the World Bank's ease of doing business index: ranking at number 33, behind Saudi Arabia at number 12.⁸¹ The UAE is, therefore, keen to see all GCC states adopt 'appropriate effective' strategic trade controls to counter the problem of displacement and ensure that it is not at a competitive disadvantage.

The GCC adopted a Common Customs Law in 1999 for implementation by all GCC states by 2002, with the ultimate objective of establishing a GCC customs union.⁸² Despite limited progress in the past decade, the UAE Minister of State for Financial Affairs recently revealed that 'GCC leaders would end all the pending issues in the next three years, so that the [customs] union would be ready by January 2015'.⁸³

To what extent the proposed GCC customs union will require common strategic trade control legislation and a common list of controlled goods is not yet clear, but it is likely to result in the removal of customs barriers for the intra-GCC movement of goods. To ensure that controlled goods refused a licence in one GCC state are not transferred to another GCC state with a different interpretation of strategic trade controls or a different

⁸⁰ The twenty-foot equivalent unit (TEU) is the standard unit for measuring container, ship or port capacities and is equivalent to a standard 20-foot intermodal container. Port of Sohar Cargo Throughput Development, 'Facts & Figures', <<http://www.portofsohar.com/facts-figures>>.

⁸¹ World Bank Group, 'Economy Rankings', <<http://www.doingbusiness.org/rankings>>.

⁸² Common Customs Law of the GCC States, Rules of Implementation and Explanatory Notes Thereof January 2003, <<http://www.scribd.com/doc/60761460/GCC-Customs-Law>>.

⁸³ Middle East North Africa Financial Network (MENAFN), 'GCC's customs union ready by 2015', 9 May 2011, <http://www.menafn.com/qn_news_story_s.asp?storyid=1093411738>.

control list, the adoption of a common GCC strategic trade control legislative foundation and a common control list is likely to be necessary.

The EU's own experience of establishing a customs union—and the associated adoption of a common EU legislative and policy foundation for strategic trade controls to ensure common controls and standards in all EU member states—will be particularly useful to the UAE in its attempts to encourage the adoption and common application of strategic trade controls across the GCC. The EU can support the UAE by sharing its own experience, cooperating with other GCC states to introduce similar controls in the short term and encouraging the development of common GCC legislation in the longer term.

EU strategies

The UAE and the EU are pursuing similar objectives in terms of strategic trade controls and have a mutual interest in their effective implementation. In fact, there are a number of areas where both could benefit from initiating or enhancing existing levels of cooperation. Optimizing this cooperation will require a significant degree of coordination within, and between, EU institutions and stakeholders.

The EU has developed a number of non-proliferation strategies and actions but these tend to be thematic in nature and often do not focus on specific countries or regions. Nor do they incorporate all of the interrelated issues explored in this paper. There could be significant benefits in developing a comprehensive EU strategy to set objectives and guide activity in relation to the UAE and the region more broadly.

One option could be to develop country strategies for priority countries, under the more generic EU strategies. This would bring together a range of EU stakeholders to explore synergies, exchange knowledge and agree objectives. Regional strategies could also be developed that would complement the EU's establishment of chemical, biological, radiological and nuclear Centres of Excellence and help identify and define regional project objectives and funding priorities.⁸⁴

⁸⁴ European Commission, CBRN Centres of Excellence: an initiative of the European Union, <<http://www.cbrn-coe.eu/>>.

Beyond the EU

Sections IV and V make some specific suggestions and raise a number of important policy issues for consideration by the EU and its member states. However, despite this EU focus, the suggestions and issues are likely to apply to other states including China, India, Japan, South Korea and the USA, who together accounted for nearly 50 per cent of all UAE imports in 2010.⁸⁵ Many of the issues, for example, will be of interest to South Korea, given the Korea Electric Power Corporation's (KEPCO) successful bid to build four civil nuclear power reactors in the UAE—particularly as the scope of supply includes procurement.⁸⁶

ABBREVIATIONS

AG	Australia Group
BTWC	Biological and Toxin Weapons Convention
CWC	Chemical Weapons Convention
FANR	Federal Authority for Nuclear Regulation
GCC	Gulf Cooperation Council
MTCR	Missile Technology Control Regime
NSG	Nuclear Suppliers Group
UAE	United Arab Emirates
WA	Wassenaar Arrangement
WMD	Weapon(s) of mass destruction

⁸⁵ UAE Ministry of Foreign Trade, 'UAE Trade Statistics in Figures 2011', <<http://www.moft.gov.ae/images/releasesen/220.pdf>>.

⁸⁶ Nuclear Engineering International, 'KEPCO wins UAE civil nuclear bid', 4 Jan. 2010, <<http://www.neimagazine.com/story.asp?storyCode=2055052>>.

A EUROPEAN NETWORK

In July 2010 the Council of the European Union decided to create a network bringing together foreign policy institutions and research centres from across the EU to encourage political and security-related dialogue and the long-term discussion of measures to combat the proliferation of weapons of mass destruction (WMD) and their delivery systems.

STRUCTURE

The EU Non-Proliferation Consortium is managed jointly by four institutes entrusted with the project, in close cooperation with the representative of the High Representative of the Union for Foreign Affairs and Security Policy. The four institutes are the Fondation pour la recherche stratégique (FRS) in Paris, the Peace Research Institute in Frankfurt (PRIF), the International Institute for Strategic Studies (IISS) in London, and Stockholm International Peace Research Institute (SIPRI). The Consortium began its work in January 2011 and forms the core of a wider network of European non-proliferation think tanks and research centres which will be closely associated with the activities of the Consortium.

MISSION

The main aim of the network of independent non-proliferation think tanks is to encourage discussion of measures to combat the proliferation of weapons of mass destruction and their delivery systems within civil society, particularly among experts, researchers and academics. The scope of activities shall also cover issues related to conventional weapons. The fruits of the network discussions can be submitted in the form of reports and recommendations to the responsible officials within the European Union.

It is expected that this network will support EU action to counter proliferation. To that end, the network can also establish cooperation with specialized institutions and research centres in third countries, in particular in those with which the EU is conducting specific non-proliferation dialogues.

<http://www.nonproliferation.eu>



FOUNDATION FOR STRATEGIC RESEARCH

FRS is an independent research centre and the leading French think tank on defence and security issues. Its team of experts in a variety of fields contributes to the strategic debate in France and abroad, and provides unique expertise across the board of defence and security studies.

<http://www.frstrategie.org>



PEACE RESEARCH INSTITUTE IN FRANKFURT

PRIF is the largest as well as the oldest peace research institute in Germany. PRIF's work is directed towards carrying out research on peace and conflict, with a special emphasis on issues of arms control, non-proliferation and disarmament.

<http://www.hsfk.de>



INTERNATIONAL INSTITUTE FOR STRATEGIC STUDIES

IISS is an independent centre for research, information and debate on the problems of conflict, however caused, that have, or potentially have, an important military content. It aims to provide the best possible analysis on strategic trends and to facilitate contacts.

<http://www.iiss.org/>



STOCKHOLM INTERNATIONAL PEACE RESEARCH INSTITUTE

SIPRI is an independent international institute dedicated to research into conflict, armaments, arms control and disarmament. Established in 1966, SIPRI provides data, analysis and recommendations, based on open sources, to policymakers, researchers, media and the interested public.

<http://www.sipri.org/>