

Turkey

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Turkey's export control regime for both dual-use and military goods demonstrates a somewhat fragmented structure, building as it does on a number of pieces of legislation implemented by various public authorities. At present, there is no comprehensive law in place and the attempts of the government back in 2008 to enact a major piece of legislation seem to have failed. This article focuses on the export control regime in Turkey on dual-use goods with a glance at the 'Draft Law'.

The Dual-use Export Control Communiqué

The Communiqué on the Export Control of Dual-use Goods and Sensitive Goods (the 'Communiqué')¹ is the major piece of legislation as there is no general law in existence as yet. Under the Communiqué, the export of goods and technologies listed in (i) the Wassenaar Arrangement Lists of Dual-Use goods and Technologies, and (ii) the Australia Group Chemical Weapons Precursors List are subject to the control of the General Directorate of Export of the Undersecretariat of Foreign Trade ('UFT')². However, the exporter must first apply to the General Secretariat of the Istanbul Mine and Metal Exporter Unions ('MMEU') with the end-use certificate

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obtained from the importer plus other documents demonstrating the technical features and fields of use of the particular good. Following the preliminary review by MMEU, UFT reviews the request for permission and the result is notified to MMEU.



The Communiqué also broadens the scope of control of UFT for dual-use goods and technologies which are not listed in the Wassenaar Arrangement or Australia Group lists but which raise concerns that they may be used for the development of weapons of mass destruction. The export of such goods is also subject to permission of the UFT if:

- the good or technology is exported to an end-user suspected to be developing weapons of mass destruction, or
- the exporter declares that it has suspicions that all or part of the exported good might be used for developing weapons of mass destruction, or
- there are situations which may threaten national or international security and breach human rights.

It is also noteworthy that the Communiqué does not apply to goods that are in transit or that are stored in free zones. However, a circular issued by the Central Bank of Turkey specifies which sales must be registered or approved by MMEU in order to be able to conduct the banking/financial arrangements related to such transit.

The Draft Law

The government prepared a draft law on the 'export control of dual-use goods and sensitive goods' (the 'Draft Law') in 2008. The Draft Law was designed to provide a framework for the export control of dual-use goods

that harmonizes the Turkish legislation with that of the European Union. At the same time, it was intended to facilitate cooperation among the various public authorities and so make the control system easier for exporters: the Draft Law intended to establish an Export Control Council which would consist of the representatives of, among others, Ministry of National Defence, Ministry of Foreign Affairs, UFT and TAEA. The Draft Law granted extensive powers to the Export Control Council, including decisions

- on the content of dual-use good lists
- on the allocation of competence between public authorities
- outlining the principles for general export permissions and collective export permissions
- permitting the export of sensitive goods in accordance with the conditions set forth in the Draft Law, and
- applying sanctions.

The Draft Law would facilitate export procedures by introducing comprehensive permissions for multi-export transactions. For instance, different permission types (such as a general export permission or a collective export permission) would cover all exports made by a single exporter or all exports to a specific country.

The Draft Law also envisaged that transit, which is not subject to control under the current control legislation, would be included within the scope of the export control regime and that the relevant permission requirements be regulated by a specific regulation to be issued later on.

The Draft Law also aimed to provide strict enforcement of the controls through serious penalty provisions currently lacking in the existing legislation. Under the Draft Law, exporters who fail to comply with the provisions of the Draft Law would face significant administrative penalties, including being prohibited

from exporting for a period between three months and five years, as well as monetary fines ranging from TL 500 (approximately EUR 200) to TL 5,000,000 (approximately EUR 2,000,000), depending on the gravity of the breach.

Nuclear export control

The export control of nuclear goods and nuclear dual-use goods is governed by the Regulation on Export of Nuclear Goods and Nuclear Dual-use Goods (the 'Nuclear Exports Regulation')³. Under the Nuclear Exports Regulation, the Turkish Atomic Energy Authority ('TAEA') is the competent authority to issue a preliminary permission, which is a pre-requisite for UFT issuing a final export permission. TAEA issued a list of nuclear dual-use goods along with a nuclear transfer warning list in 2007.⁴

In preliminary permission applications for the goods on the nuclear dual-use goods list, the exporter must submit an end-use certificate including an undertaking which states that the exported good or the equipment or technology that will be produced with the exported good shall not be used for producing a nuclear weapon or explosive nor for a nuclear fuel cycle activity that is not monitored by the International Atomic Energy Agency. Additionally, TAEA may also request a separate guarantee certificate from the governmental authorities of the buyer country if:

- the exporter declares that it has suspicions that all or part of the exported good might be used for an activity that has the risk of



spreading or developing nuclear weapons

- following consultations with other authorities, the good or technology is suspected to be used for an activity that has the risk of spreading or developing nuclear weapons
- there are findings demonstrating that such export may threaten national or international security or breach human rights or have negative impacts on Turkey's bilateral or multilateral relations
- there are exports to countries, firms or persons which are stated

in Turkey's list of countries/firms considered to be risks.

The following conditions must be satisfied for exporting listed dual-use goods:

- the purchaser country must be a signatory to the Non-Proliferation Treaty and it must also have a security monitoring agreement with the International Atomic Energy Agency
- the material, equipment or technology that is subject to export must be suitable for the declared end use and end-user
- the material, equipment or technology that is subject to export must not be used for reprocessing or enriching the fuel or for the design, construction, operation, repair or development of a heavy water generation facility; and
- the purchaser and the end-user must not have breached the Nuclear Exports Regulation with a previous permitted export.

Summary

The export control regime for dual-use goods in Turkey is currently decentralized with powers allocated to several public authorities. The proposed Draft Law intended to cure the fragmented structure and envisaged a clearer and smoother regime which would be headed by a single dedicated authority; however, it has yet to become effective. As a draft law to such effect currently does not appear to be in the agenda of the Turkish Parliament, no major structural changes are expected in the near future.

Links and footnotes

- 1 Published in the Official Gazette No. 25304 dated 2 December 2003.
- 2 Please note that due to a recent administrative reorganization in Turkey, the duties of the Undersecretariat of Foreign Trade are now assumed by the Ministry of Economy.
- 3 Published in the Official Gazette No. 26642 dated 13 September 2007.
- 4 Communiqué on Nuclear Transfer Warning List and Nuclear Dual-use Goods List (TAEK/NGD:2007/1), published in the Official Gazette No. 26723 dated 7 December 2007.

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