**VI. Industry Sector Specific Tools**

**“Catch-all” Control Guidance**

The general effectiveness of strategic trade controls has made it harder for proliferators and countries of proliferation concern to acquire strategic items. This has sometimes forced these entities to seek equivalent non-controlled items, which often fall just below the technical parameters of control that are identified on the national control list.[[1]](#endnote-1) Thus, many governments have chosen to adopt "catch-all” controls as a means of regulating non-listed goods and technology that can potentially be used for WMD or military purposes.[[2]](#endnote-2)

The resources in this section are intended to enhance your enterprise’s understanding of the “catch-all” control concept and to assist you in determining when catch-all controls might apply to your enterprise’s transactions and activities.

**The resources in this section are organized as follows:**

* **What are catch-all controls?**
* **What is the rationale for catch-all controls?**
* **What goods are subject to catch-all controls?**
* **What conditions invoke the catch-all control?**
* **What is the role of industry in implementing catch-all controls?**
* **EXAMPLE: Commodity Watch List for WMD Catch-all Control**
* **EXAMPLE: Guideline for Judging “When Apparent”**
* **EXAMPLE: Catch-all Control Flowchart**

**To download the entire “Catch-all Control Guidance” section document,** **click here**

**What are “catch-all” controls?**

A **“catch-all” control** is a legal instrument enabling the government to regulate items not included on the National Control List (NCL), when the trader is informed, has ‘knowledge’, or reason to believe such items are intended for a WMD (or conventional weapon) end-use or end-user.

There are essentially **two types of catch-all controls** that may be employed by national governments (**WMD and military**):

1. **WMD catch-all:** Controls on non-listed goods or technology for use in connection with the development, production, handling, operation, maintenance, storage, detection, identification or dissemination of chemical, biological or nuclear weapons or other their means of delivery.
2. **Military catch-all:** Controls on non-listed goods or technology for use in connection with the development, production, handling, operation, maintenance, storage, detection, identification or dissemination conventional weapons.

**Your government may control non-listed items that are or may be intended for:**

* a WMD end-use;
* a possible military end-use, if exported to an embargoed destination;
* use as parts or components of listed military items that have been exported without authorization; and
* use in the commission of human rights abuses or acts of terrorism.

Depending on the catch-all legislation in place in your country, catch-all controls may invoke license requirements or special procedural or documentation requirements for cases in which a non-listed item is going to a restricted **end-use**, **end-user**, or **destination**.

* *End-use controls* are item and use-based controls.
* EXAMPLE: A non-listed titanium valve will be used for nuclear weapons development purposes.
* *End-user controls* are person/entity-based controls.
* EXAMPLE: The end-user of non-listed electronic equipment is designated on several restricted party lists, including the EU Consolidated List.
* *Destination controls* are location-based controls.
* EXAMPLE: Non-listed machine tools are destined for a country under UN arms embargo for previous arms proliferation activities and human rights abuses.

Note: *Please consult your country’s STC legislation to determine whether catch-all controls are in place and if so, the precise scope of these controls.*

**What is the rationale for catch-all controls?**

There are many goods and technologies that are not found on the national control list(s) but which can still make meaningful contribution to the development of a WMD or conventional weapon.[[3]](#endnote-3) In fact, countries of proliferation concern, proliferation networks, non-state actors and terrorists are actively seeking to procure non-listed items that can be used as substitutes for more stringently controlled listed items.

**Proliferators increasingly seek these items due to the fact that non-listed items**:

* Receive less regulatory scrutiny and are easier to acquire (as compared to listed items);
* Maintain performance levels slightly below that of similar listed items but are an acceptable substitute that can be easily adapted for WMD/military applications;
* May be suitable for the indigenous production of listed items that cannot otherwise be easily obtained from foreign suppliers; and
* May be modified (or combined/commingled with other non-listed items) to generate a capability equivalent to that of listed items.[[4]](#endnote-4)

There are many lower-level dual-use items (such as common test equipment, machine tools, certain steels and **metals,** and countless electronics-related items) that are not found on the national control list(s) but can still make meaningful contributions to the development of a WMD or conventional weapon.[[5]](#endnote-5) As such, catch-all controls are an essential component of a comprehensive and effective STC system. Catch all controls for nonproliferation purposes have also been included as part of international sanctions adopted by the United Nations Security Council.[[6]](#endnote-6)

Industry should attempt to implement measures that account for catch-all controls by **carefully screening transactions** in an effort to prevent the illicit procurement of non-listed items.

**What goods are subject to catch-all controls?**

**Catch-all controls potentially apply to all types of goods and technologies**, but are only triggered for those individual transactions where an end-use, end-user, or destination of proliferation concern is suspected.

The table below provides further insight into some of the types of commodities that could potentially trigger catch-all controls (The list is derived from the UK Government’s Department of Trade & Industry’s (DTI) experience and licenses they have denied due to end-use concerns since 2002).[[7]](#endnote-7)

|  |  |  |
| --- | --- | --- |
| **Nuclear** | **Missile** | **Chemical and Biological** |
| Ceramic materialsChemical processing equipmentCryogenic equipmentDimensional measurement and inspection equipmentElectrical/electronic componentsEnvironmental test equipmentFlow measurement equipmentGas purification equipmentGeneral laboratory equipmentImage intensifying tubesIndustrial generatorsM/C tools and fabrication equipmentMaterials processing equipmentMaterials test and analysis equipmentNon-ferrous metalsParticle countersProcess control equipmentPumpsVacuum equipmentValves | AccelerometersAnalogue to digital convertersAero enginesAircraft naval equipmentAir data test systemCeramic materialsChemicalsCranesDesign and manufacturing softwareDimensional measurement & inspection equipmentElectric motorsElectrical/electronic componentsElectronic test equipmentExplosives and propellantsFerrous metalsFibrous/filamentary materialsFlow measurement equipmentGas purification equipmentGeneral laboratory equipmentGyrosHydraulic fluidsICs/computersM/C tools and fabrication equipmentMaterials processing equipmentMaterials test and analysis equipmentMicrowave equipmentNon-ferrous metalsPneumatic systemsPressure test equipmentProcess control equipmentRecording equipmentVacuum equipmentValvesVibration test equipmentWind tunnels | Biotechnology equipmentChemical agent detectionElectrical switching equipmentEnvironmental test equipmentFiltration equipmentChemical processing pilot plant |

**What types of conditions/circumstances invoke the catch-all control?**

In some countries, when an individual or trader: **1)** knows or is aware[[8]](#endnote-8); **2)** suspects or has reason to believe; or **3)** is informed by the authorities that an item may be intended for WMD or military purposes, they are legally obligated to apply for a license.

Catch-all controls may be invoked based on **informed conditions or objective conditions**.

***Informed Conditions***

* Cases where the national government notifies the trader that they must apply for a license in order to export the goods or technologies in question, based on the risk that such goods or technologies will be used in the development, manufacture, use, or storage of nuclear, biological or chemical weapons, missiles (or conventional weapons). Governments will often inform traders of such concerns based on intelligence inputs or information exchanges with allied governments and international bodies (e.g. INTERPOL).

***Objective Conditions***

Objective conditions comprise the following two conditions:

* End-Use conditions: cases where the trader has information that the goods or technologies in question may be used in connection with WMD or conventional weapons proliferation activities. Under such conditions, the trader should apply for a license with the appropriate licensing authority.
* End-user conditions:cases where the trader has information that the end-user of the goods or technologies in question will be involved in, is involved in or has been involved in the development, manufacture, use or storage of WMD or conventional weapons, or the end-user has ties to terrorism or human rights abuses. Under such conditions, the trader should apply for a license with the appropriate licensing authority.

Note: *Please consult your country’s STC legislation to determine whether catch-all controls are in place and if so, the precise scope of these controls. Your enterprise should determine what types of conditions may invoke catch-all requirements.* *If any questions arise, the competent national authority and relevant legislation should always be consulted.*[[9]](#endnote-9)

**What is the role of industry in implementing catch-all controls?**

**Effective “catch-all” implementation requires your enterprise to:**

* Know your customers and your products
* Understand possible end-uses and users of your goods/technologies
* Understand the technical capabilities and the potential WMD and military applications of your enterprise’s products (e.g. resistance to high pressures and temperatures or having anti-corrosive properties)
* Become familiar with the market (suppliers and buyers) for your enterprise’s products
* Maintain careful records of all transactions, including stated end-use and end-user record for individual items in your product inventory
* Conduct due diligence measures to establish the legitimacy of the end-use and the entity bona fides
* Screen records of previous transactions with the end-user and previously stated end-uses for the item (reliant on effective recordkeeping)
* Determine whether the item corresponds with the type and technological sophistication of the business and destination
* Be mindful of abnormal circumstances or “red flag” indicators in a transaction that indicate the item may be destined for an inappropriate end-use, end-user, or destination
* Enact procedures that allow your enterprise to easily call upon licensing authorities for advice, consultation, or assistance.

**EXAMPLE: Commodity Watch List for WMD Catch-all Control (Japan)**[[10]](#endnote-10)

The following is a list of items that could possibly be used for the development, manufacture, use or storage of WMD (**N**: Nuclear weapons, **M**: Missile, **B**: Biological weapons, **C:** Chemical weapons)

(1) Tributyl phosphate (TBP) (N)

(2) Carbon/Glass/Aramid fiber (N, M)

(3) Titanium alloys (N, M)

(4) Maraging steel (N, M)

(5) Aluminum alloys tubes with a diameter of more than 75 mm (N)

(6) Flow-forming machines (N, M)

(7) N/C Machine tools (N, M)

(8) Isostatic presses (N, M)

(9) Filament winding machines (N, M)

(10) Frequency changers (N)

(11) Mass spectrometers and ion sources (N)

(12) Vibration test systems (N, M)

(13) Centrifugal multiplane balancing machines (N, M)

(14) Pressure transducers (N, M)

(15) Non-destructive inspection equipment (N, M)

(16) Oscilloscope or waveform digitizers and transient recorders (N)

(17) High power/voltage DC power supplies (N)

(18) Generators (N)

(19) Vacuum pumps (N)

(20) Radiation-hardened robots (N)

(21) TIG welding units, electron beam welding units (N, M)

(22) Radiation monitoring and detection equipment (N)

(23) Mill for fine powder (M)

(24) Karl Fischer moisture equipment (M)

(25) Equipment designed for producing prepregs (M)

(26) Artificial graphite (N, M)

(27) Gyroscopes (M)

(28) Rotary encoders (M)

(29) Trucks (Tractors, Trailers, Dump trucks) (M)

(30) Crane trucks (M)

(31) Chambers for fermentation (B)

(32) Centrifugal separators (B)

(33) Freeze dryers (B)

(34) Reactors (C, M)

(35) Agitators (C, M)

(36) Heat exchangers or condensers (C, M)

(37) Distillation or absorption columns (C, M)

(38) Filling equipment (C, M)

(39) UAVs that are specially designed for incorporating spray machines (M, B, C, M)

(40) Spray machines that are specially designed for installing in UAVs (M, B, C, M)

***SYRIA***

**The following 12 items apply specifically to exports destined for Syria:**

(1) Draft chamber (C)

(2) Protective equipment for respiration attached to full-face mask (B, C)

(3) Aluminum chloride (CAS 7446-70-0), dichloromethane (75-09-2), N, N – dimethylaniline (121-69-7), isopropyl bromide (75-26-3), isopropyl ether (108-20-3), mono-isopropylamine (75-31-0), kalium bromide (7758-02-3), pyridine (110-86-1), sodium bromide (7647-15-6), sodium metal (7440-23-5), tributylamine (102-82-9), triethylamine 8121-44-8), trimethylamine (75-50-3) (C)

(4) Diethylene triamine (111-40-0) (C)

(5) Butyrycholinestrase, pyridostigmine bromide (101-26-8), obidoxime chloride (114-90-9) (C)

(6) Bio safety cabinet, globe box (B)

(7) Batch-type centrifugal machine (B)

(8) Fermentation tank (B)

(9) Reactor, agitator, heat exchanger, condenser, pump (excluding item 11 below), valve, container, distiller, absorption tower (C)

(10) Clean room, fan equipped with HEPA filter (B)

(11) Vacuum pump or its attachments (C)

(12) Equipment for analyzing and detecting chemical substances, their parts and attachments (C)

**EXAMPLE: Guideline for Judging “When Apparent” (Japan)**[[11]](#endnote-11)

This guideline is designed to assist traders in making the proper judgment about whether an item will be used for a civil end-use

[*The items’ end-use and specifications*]

(1) The importer, end-user, or their agent has clearly explained about the end-use.

(2) The customer’s need for the items is reasonable for their business and technological capabilities.

[*Place of installation*]

(3) The customer has clearly identified the place of the items’ installation or use.

(4) No such information is given that the place of installation or use is inside or vicinity of military facilities or a classified area with limited access, or that the stated end-use is suspicious.

(5) The customer has made no excessive requirements for security measures for transportation, installation, etc.

[*Related facilities and equipment*]

(6) The customer has sufficiently explained about the facilities where the items will be used, and about the raw materials to be brought in to the facilities.

(7) The combination of the items, the facilities where the items will be used, and the raw materials to be brought in to the facilities is rational, matching each other appropriately in view of the end-use of the items.

(8) The requirements for spare parts are not excessive.

(9) The customer has demanded equipment reasonably required in association with the items.

[*Packing, shipping mark, shipping method, and shipping route*]

(10) The requirements for shipping mark, shipping method, etc. are not extraordinary.

(11) The shipping route is reasonable for the export items and destination.

(12) The required packing method and shipping mark match the shipping method or the destination.

[*Payment conditions and warranty*]

(13) The amount, conditions, or method of payment is not too favorable.

(14) The contract is with a reasonable warranty condition.

[*Requirements for installation and confidentiality*]

(15) Customer has made a reasonable request for sending supervisors for installation, testing, etc.

(16) The customer has raised no excessive requirements for keeping secret of the information about the items, ultimate destination, etc.

[*Entities on the Restricted/Denied Parties Lists*]

(17) When exporting any item to any customer that is on a Restricted/Denied Parties List, the exporter must conduct an end-use checking carefully.

[*Others*]

(18) Are there other suspicions related to the transaction? For example, the customer has never given a clear answer to normal questions raised in the course of common business practice.

**EXAMPLE: Catch-all Control Flowchart**[[12]](#endnote-12)

**Inquiry**

Informed by the licensing authority?

**YES**

**NO**

**YES**

Is the end-use WMD-related?

**NO**

**NO**

Is the destination under UN embargo?

**YES**

**YES**

Is the end-use conventional weapons-related?

**NO**

**NO**

Is the end-user engaged in WMD-related activities, or found on denied/restricted parties lists?

**YES**

**NO**

Apparently used for a purpose other than any WMD-related activities??

**YES**

**License Required**

**No License Required**

Note: *Your enterprise should consult your country’s STC legislation and national licensing authorities to determine if there are exceptions/exemptions to catch-all control requirements (e.g. country exceptions).*

1. "Guidance Weapons of mass destruction: End-Use Control," United Kingdom Government portal, November 2013, <https://www.gov.uk/guidance/weapons-of-mass-destruction-wmd-end-use-control#checking-your-exports-for-weapons-of-mass-destruction-items>. [↑](#endnote-ref-1)
2. Many governments utilize catch-all controls because it takes a considerable amount of time to have new items added to the national control list and catch-all controls therefore afford governments the flexibility necessary to thwart illicit procurement efforts in real-time. [↑](#endnote-ref-2)
3. "Catch-All Controls," U.S. Department of State, 2016, <https://www.state.gov/strategictrade/practices/c43179.htm>. [↑](#endnote-ref-3)
4. “Implementing Catch-all Controls: A Risk Assessment-based Approach Toward Nonproliferation,” U.S. Department of Commerce, 2012, <https://www.state.gov/strategictrade/documents/organization/190331.pdf>. [↑](#endnote-ref-4)
5. "Catch-All Controls," U.S. Department of State, 2016, <https://www.state.gov/strategictrade/practices/c43179.htm>. [↑](#endnote-ref-5)
6. Article 8 of UNSCR 2270 (2016) obligates the adoption of catch all controls to transactions involving North Korea. The text of the resolution is available at: <http://www.un.org/en/ga/search/view\_doc.asp?symbol=S/RES/2270(2016)&referer=/english/&Lang=E>. [↑](#endnote-ref-6)
7. "Guidance Weapons of mass destruction: End-Use Control," United Kingdom Government portal, November 2013, <https://www.gov.uk/guidance/weapons-of-mass-destruction-wmd-end-use-control#checking-your-exports-for-weapons-of-mass-destruction-items>. [↑](#endnote-ref-7)
8. A person or legal entity would be considered to “know” that a transfer was intended for unauthorized end-use, if they had any direct knowledge that the recipient intended to use the technology for WMD or military purposes. “The Operation of the WMD End-Use Control: Guidance,” United Kingdom government, 2015, <https://www.gov.uk/government/uploads/system/uploads/attachment\_data/file/15213/Guidance\_on\_WMD\_End-Use\_and\_technical\_assistance\_-\_URN\_10-661\_-\_new\_logo\_-\_2012.pdf>. [↑](#endnote-ref-8)
9. Sevini, Filippo, "Strengthening Strategic Export Controls by Internal Compliance Programmes Second Revision, "EU Joint Research Centre, Second Edition, 2014, <http://publications.jrc.ec.europa.eu/repository/bitstream/JRC92964/sevini%20-%20online.pdf> [↑](#endnote-ref-9)
10. “Overview of Japan’s Export Controls (4th Edition), Appendix 4, Center for Information on Security Export Control (CISTEC), June 2015, <http://www.cistec.or.jp/english/export/index.html>. [↑](#endnote-ref-10)
11. “Overview of Japan’s Export Controls (4th Edition), Appendix 4, Center for Information on Security Export Control (CISTEC), June 2015, <http://www.cistec.or.jp/english/export/index.html>. [↑](#endnote-ref-11)
12. Adapted and modified from: “Overview of Japan’s Export Controls (4th Edition), Appendix 4, Center for Information on Security Export Control (CISTEC), June 2015, <http://www.cistec.or.jp/english/export/index.html>. [↑](#endnote-ref-12)