

**Best Practice Guidelines
on Subsequent Transfer (Re-export) Controls for Conventional
Weapons Systems contained in Appendix 3 to the WA Initial Elements**

(Agreed at the 2011 Plenary)

Participating States of the Wassenaar Arrangement,

Having regard to the Initial Elements of the Wassenaar Arrangement, and in particular the objectives of:

- (i) greater responsibility in transfers of conventional arms;
- (ii) the prevention of destabilizing accumulations of such arms; and
- (iii) the need to prevent the acquisition of conventional arms by terrorist groups and organizations, as well as by individual terrorists;

Bearing in mind the “Elements for Objective Analysis and Advice Concerning Potentially Destabilizing Accumulations of Conventional Weapons”, adopted by the 1998 WA Plenary and amended in 2004, “Statement of Understanding on Arms Brokerage” and the “Best Practice Guidelines for Exports of Small Arms and Light Weapons”, adopted in 2002, the “Elements for Export Controls of Man-Portable Air Defence Systems (MANPADS)” and the “Elements for Effective Legislation on Arms Brokering”, adopted in 2003;

Affirming also that they apply strict and comprehensive national controls on the transfer of conventional weapons systems in order to contribute to regional and international security and stability;

Recognizing that end-use/user guarantees play a significant role in exercising effective control over exports and particularly subsequent transfer (re-export) of conventional weapons systems and when properly applied they minimize the risk of diversion of weapons systems to illegal or unauthorized end-user;

Acknowledging that the use of above-mentioned measures/assurances should be consistent with each Participating State’s national legislation, practice and experience and should be subject to negotiations between importing and exporting governments. These Best Practice Guidelines should not be applied to any contractual arrangements/agreements which have been concluded before the adoption of this document.

have agreed to the following Best Practice Guidelines:

In order to ensure a harmonized WA Participating States approach to subsequent transfer (re-export) controls for conventional weapons systems, each Participating State should, consistent with its national legislation and practices, pursue the following measures in its national policies:

1. To ensure that formal government - to - government agreements, end-use/user assurances, and / or export licenses for transfers of conventional weapons systems and their production technology will include, as appropriate, a provision that subsequent transfer (re-export) of those conventional weapons systems to third governments will be made in accordance with the terms of these documents and that importing governments provide the appropriate assurances.

2. To include on a case by case basis the following elements in the end-use/user assurances:

- a. a general clause not allowing for subsequent transfer (re-export) without the prior authorization of the original exporting government,
- b. an undertaking, that the goods, which are being exported, will not be used for purposes other than declared,
- c. a general clause that the exported goods will not be transferred to an unauthorized internal end-user.

The form and scope of the end-use/user guarantees is subject to negotiations between exporting and importing governments and such guarantees may be included in the end-user's statement or certificate or other documents.

3. To review requests for subsequent transfer (re-export) permission as expeditiously as possible and on a non-discriminatory basis taking into account in the review process the following:

- a. consistency of the transfer with the reviewing state's national security and national policy concerns;
- b. legitimacy of the end-use, end-user, end-use certificate and bona fides of all parties concerned and authenticity of the documents presented;
- c. legitimate defence requirements of the importing country;
- d. effect on regional stability;
- e. effectiveness of the exports control system of the recipient country, in view of its performance as a future potential exporter.

4. To disclose, to the extent possible, to the applying government reasons for denial of subsequent transfer (re-export) permission.

5. To ensure that subsequent transfer (re-export) to third parties of conventional weapons systems produced under license from another country is consistent with all relevant provisions of the formal government-to-government agreements, end-use/user assurances and/or export licenses pursuant to which the production technology was transferred.

6. To exercise, in accordance with their national legal authorities and legislation, particular restraint so as to avoid subsequent transfer (re-export) to entities not authorized by states directly involved in the transaction.

7. Participating States may, consistent with their national policy, take measures to limit the number of brokers involved in subsequent transfers (re-export) of conventional weapons systems.

Participating States agree to apply these controls to all export activities, related to subsequent transfer (re-export) of conventional weapons systems acquired or manufactured under foreign license production contractual arrangements/agreements concluded after the adoption of this document.