

Wassenaar Arrangement
on
Export Controls for Conventional Arms and
Dual-Use Goods and Technologies



PUBLIC DOCUMENTS

Volume III

Compendium of Best Practice Documents

Compiled by the Wassenaar Arrangement Secretariat

February 2017

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I. Documents of General Use

WASSENAAR ARRANGEMENT

ELEMENTS FOR OBJECTIVE ANALYSIS AND ADVICE CONCERNING POTENTIALLY DESTABILISING ACCUMULATIONS OF CONVENTIONAL WEAPONS

(Adopted by the Plenary in 1998 and amended in 2004 and 2011)*

EXPLANATORY NOTE

The 1998 Wassenaar Arrangement (WA) Plenary approved 3 December 1998 the paper, “Elements for Objective Analysis and Advice Concerning Potentially Destabilising Accumulations of Conventional Weapons.”

The paper was produced to examine what scope there is for increasing the relevant categories for reporting pursuant to paragraph II.5 of the Initial Elements and its goals. The paper could be useful in assisting WA Participating States during the deliberation process associated with considering transfers or denials.

The paper is of a non binding character; decisions on export licensing remain under national control of each WA Participating State.

The paper does not imply a fixed order of priority among the elements to be taken into account. Indeed the priorities among those elements may change depending upon specific issues under consideration.

The elements of the paper, which are framed generally in the form of questions, are not considered exhaustive. Participating States understand the document as a work-in-progress, to be elaborated further as experience is gained through the exchange of information and discussions within the WA, and as a result of constantly changing international circumstances.

* 2011 amendments are shown in bold.

**ELEMENTS FOR OBJECTIVE ANALYSIS AND ADVICE CONCERNING
POTENTIALLY DESTABILISING ACCUMULATIONS OF
CONVENTIONAL WEAPONS**

1. Assessment of Motivation of the State under Study

- a. What is the state's military doctrine? How do its weapons and their deployment posture fit with the implementation of the doctrine and/or meet national security requirements?
- b. What do we believe to be the motivation of the state in accumulating conventional weapons beyond its current holdings, either through import or national production? How are such weapons likely to be used? Does the state believe its accumulation of conventional weapons is necessary in the exercise of its right to self-defence in accordance with the UN Charter? Does the state wish to gain a tactical or strategic advantage, status or national prestige, improved indigenous production capability, a capability to reverse-engineer or entrance to the export market? If conventional weapons or military technology are being acquired through import, does the state provide valid and credible end-use/end-user or re-transfer assurances? Are there risks of diversion to unauthorised end-use/end-users?
- c. What are the general directions of the state's foreign policy? Is there a clearly identifiable risk that the state would use its weapons offensively against another country or in a manner inconsistent with the UN Charter; assert by force a territorial claim; or otherwise project power in a region?
- d. Are the quantities involved in the state's accumulation of conventional weapons inconsistent with its likely requirements, suggesting possible diversion to an unauthorised end-user or efforts to reverse-engineer?
- e. Is there a clearly identifiable risk that the weapons might be used **to commit or facilitate** the violation and suppression of human rights and fundamental freedoms **or the laws of armed conflict**?

2. Regional Balance of Forces and the General Situation in the Region

- a. What is the nature of the relationship among the states of the region? Are there territorial claims or disputes among them, including questions of unlawful occupation with the intent of annexation? Are there economic, ethnic, religious or other disputes or conflicts among them? Are one or several states of the region prepared to use force or the threat of the use of force in a manner inconsistent with the UN Charter to resolve disputes with other states of the region?

- b. What are the state's national security requirements? Is the state's accumulation of conventional weapons greater than that required by its legitimate defence and security interests? Does it represent an appropriate and proportionate response to a threat? Consider the balance of forces and relative capabilities (offensive and defensive) between and among neighbouring and regional states and their relative expenditure on defence. The following factors, *inter alia*, might be considered, both individually for each state and comparatively: Size of the armed forces of the state, including trained reserves; quantity of weapons and related military equipment in service and in store; technical characteristics of weapons; their level of performance and maintenance; level of combat-readiness of the troops, including the quality of training of military personnel and their morale; and whether the deployment and training of forces is best suited for offensive or defensive action.
- c. What would be the perception of the state's accumulation of conventional weapons by other states in the region? Would political, historical, territorial, geographic or logistic considerations cause the accumulation to be perceived as a direct threat or to be otherwise intimidating? Does the actual balance of forces in the region provide a sound basis for such a perception?
- d. Could the accumulation of conventional weapons lead to an increase in tension or instability in the region or to the exacerbation of an existing conflict? Would potential adversaries perceive a need to prepare, deploy, or use additional forces or countermeasures? In a crisis, would they perceive a need to risk using force first? Is the accumulation of conventional weapons difficult or impossible to counter by forces in the region? Given the relative capabilities of states in the region, would the accumulation of conventional weapons provide sufficient protection or defence to offensive assets in such a manner as to be perceived as destabilising?
- e. Would other states in the region wish to acquire (including through national production, if possible) similar quantitative or qualitative capabilities, or acquire offsetting capabilities? Could the accumulation of conventional weapons contribute to a destabilising regional arms race or to an accelerating process of competitive production or procurement?
- f. Is there an UN Security Council arms embargo or any other UN Security Council restrictions against the state or other states in the region? Is the balance of forces in the region affected by arms transfers in contravention of these arms embargoes and restrictions? Does the importing State comply with its international obligations?**
- g. Are there existing UNSC sanctions against the state which would affect the supply of arms under the Wassenaar Arrangement? Is the supply permissible under the sanctions and are all relevant preconditions provided for in the sanctions met?**
- h. Has a WA Participating State provided relevant information including submitting documents within the framework of the general information exchange or in any other form or format about inter alia: multilateral and unilateral arms embargoes; bans on supply, or a set of conditions on supply; the state of concern's foreign and military policy; the accumulation of conventional weapons in a particular state; or the intention of the state's leadership to use force to resolve disputes with other states in the region?**

3. Political/Economic Standing/Status of the State

- a. Has the state signed and/or ratified relevant international or regional agreements and treaties pertaining to arms control and limitation, non-proliferation, and confidence and security building? What is its record of compliance with those agreements and treaties? Does the state participate in the UN Register of Conventional Arms? Does the state comply with internationally-recognised human rights, anti-terrorism and non-proliferation norms? Does the state have the intention to develop weapons of mass destruction (WMD); does it possess WMD; what are its views on the use of WMD? What is the general nature of the state's political system and what is the level of internal stability? Is there a civil armed conflict? **How can arms transfers influence this conflict?**
- b. What is the state's military expenditure? What percentage of GDP does it spend on the military? Is the information it gives on its military expenditures open and accurate, or does it seek to conceal the true costs?
- c. Does the accumulation of conventional weapons by the state exacerbate an already economically insupportable burden of defence? Does it risk economic or social destabilisation, either nationally or regionally?

4. Operational Capability

Equipment

- a. How would the accumulation of conventional weapons by the state affect the regional balance of forces and the situation in the region? A particular import or procurement through national production of an individual weapon, weapon system or sub-system may not be destabilising *per se*, but it may have a potentially destabilising character in combination with other equipment.
- b. Would an additional conventional weapons acquisition, whether by import or through national production, introduce a new capability to the region?
- c. Would an additional conventional weapons acquisition, whether by import or through national production, supplement or replace existing equipment? Would it substitute for current forces? If an import, are construction and maintenance (equipment support/spares) deals included? What is the operational life of the equipment with and without provision of maintenance?
- d. Would an additional conventional weapons acquisition, whether by import or through national production, provide the state with an additional strategic capability? Consider weapon system characteristics that have greater inherent potential to be destabilising (e.g., because they enhance power projection; there are few or no countermeasures; they contribute to the infliction of strategic harm).
- e. Would an additional conventional weapons acquisition, whether by import or through national production, provide the state with new or otherwise increased quantitative or qualitative operational capabilities, or increased sustainability? Would it allow more effective operational use of existing military assets or a bypass of force weakness? If ammunition or missiles, will the quantities significantly enhance operational sustainability?

Manpower

- f. Is the additional conventional weapons acquisition, whether by import or through national production, appropriate given the manpower capabilities of the state? Consider equipment/manpower levels, training, combat experience and leadership/ morale.
- g. If acquired by import, is a training package being provided in conjunction with the import?
- h. Will the equipment itself enhance manpower effectiveness (e.g., simulators)?

5. Acquisition of Military Technology

- a. Would the acquisition of particular technology, whether by tangible or intangible means or by indigenous development, provide a substantial technological advantage to the state's military capability? How will it affect the regional balance of forces and overall regional situation?
- b. If by import, would the acquisition itself, or the terms of the deal, such as offset agreements, lead to an indigenous production capability?
- c. If by import, is a design or technology package being provided in conjunction with the acquisition?
- d. If by import, is there a possibility of reverse engineering, *inter alia*, does the acquisition involve components, spares or prototypes that can be reverse-engineered?

6. Other Factors

- a. Would an additional conventional weapons system, if acquired by import, put the exporter's national forces or those of its friends and allies or of a UNSC-approved operation at risk?
- b. Does the method used to import the additional conventional weapons raise concerns about how the weapons are likely to be used?
- c. Would the equipment or technology (including any training) be at risk of diversion to terrorist groups and organisations, as well as individual terrorists? **Is there a risk of diversion of exported weapons to illicit trade?**
- d. **Does the state have an effective national export control system? Does the state have an effective system of physical security for its weapons storage facilities, stockpile inventory?**
- e. **Does the state follow in its national arms trade policy principles secured in the WA best practice guidelines relevant to arms transfers?**

* The first sentence of this paragraph was added by the Plenary of December 2004

BEST PRACTICES FOR EFFECTIVE EXPORT CONTROL ENFORCEMENT

(Adopted by the Plenary in 2000 and amended in 2016)

The following list of Best Practices for effective export control enforcement was adopted by the Wassenaar Plenary as a non-binding compilation of the enforcement practices followed by different Wassenaar Arrangement Participating States. These Best Practices encompass enforcement actions for export control activities.¹ The following list of Best Practices is illustrative of an effective export control enforcement programme.

I. PREVENTIVE ENFORCEMENT

1. Use threat assessment techniques and procedures for evaluating parties involved in a proposed export transaction, paying particular attention to those considered to be suspicious, unreliable, or presenting a high risk of diversion.
2. Maintain a list of consignees, end-users, and other parties of concern to identify export transactions and related activities deserving closer scrutiny.
3. Confirm the stated consignee, end-user and end-use of items to be exported prior to issuing an export licence. As appropriate, this can be accomplished by several means, ranging from documentation to on-premise checks of the consignee, end-user and end-use.
4. Obtain assurances regarding the end-use and the non-transfer/re-export of licenced items, as appropriate.
5. Examine the items and the relevant documentation that is required to be presented at point of export, using risk assessment techniques to aid selection. Detain suspect shipments and seize unauthorized or illegal exports, which may also include items that are passing in-transit or being transshipped.
6. As necessary, confirm that exported items have reached their intended destinations using appropriate means, ranging from documentation to on-site verification.
7. Conduct educational outreach programmes for export controls.
8. Promote compliance by all relevant parties in export and related transactions. As appropriate, encourage implementation of internal compliance programmes² and voluntary self-disclosures of violations discovered.
9. Keep all relevant parties apprised of penalties for failure to comply, using, as appropriate, cases of successful criminal prosecution or other civil or administrative enforcement actions, as examples.

¹ Export control activities may include related brokering, transit and transshipment.

² In accordance with WA 2011 *Best Practice Guidelines on Internal Compliance Programmes for Dual-Use Goods and Technologies*.

10. Ensure all relevant parties, utilizing digital methods to store and transmit controlled data provide adequate levels of information and cryptographic security according to national laws, regulations and policies to prevent unauthorized access or disclosure of sensitive data.

11. Take into account the role of brokers or other intermediaries in transactions and address the risks that may be associated with their activities.

II. EFFECTIVE PENALTIES

1. Establish effective penalties sufficient to deter and/or punish violations of export control and applicable brokering, transit, and transshipment laws. Such deterrents may include, as appropriate, fines, civil or administrative actions, criminal sanctions, and restriction or denial of export privileges, along with making public the outcomes of violation proceedings.

2. Designate administrative, civil, and/or criminal enforcement responsibilities for detection, prevention, and punishment of violations of export control laws, including related laws.

III. INVESTIGATIONS

1. Provide adequate resources and training for enforcement officers.

2. Ensure that national laws, regulations, and policies have statutes of limitations sufficiently long to enable effective detection and prosecution of export control and related violations.

3. Coordinate, as appropriate, with other regulatory authorities to identify suspicious transactions, such as attempts at trade-based money laundering, irregularities in business registration or licencing, or other commercial frauds involving exporters, consignees, or end-users.

4. Consistent with national laws, regulations, and policies, governments may cooperate in the investigation and prosecution of export control violations, by:

- a. Furnishing documents and relevant information;
- b. Facilitating the availability of witnesses; and
- c. Providing for extradition, consistent with international agreement obligations.

IV. INTERNATIONAL COOPERATION/INFORMATION EXCHANGES

1. Consistent with national laws, regulations, and policies, governments may, as appropriate, share information bilaterally on entities considered to present a high risk of diversion. Examples of information that may be shared include:

- a. Information obtained in the course of pre-licence and post-shipment verifications; and
- b. Information about export control and related civil or administrative actions, prosecutions, convictions, and restrictions or denials of export privileges.

2. Consistent with national laws, regulations, and policies, governments may, as appropriate, share information in the context of multilateral export control arrangements. Examples of information that may be shared include:

- a. General information on risks associated with destinations of concern;
- b. Information on licence denials; and
- c. Information on networks, agents, brokers, consignees and end-users of concern.

3. Enforcement officials are encouraged to maintain, as appropriate, formal and informal information exchanges with their counterparts in other countries.

4. Consistent with national laws, regulations, and policies, licencing and enforcement officials should respect the confidentiality of information received from international sources and should ensure that access is restricted to those officials who have been duly authorized.

ELEMENTS FOR THE EFFECTIVE FULFILMENT OF NATIONAL REPORTING REQUIREMENTS

(Adopted by the Plenary in 2015)

The fulfilment of national reporting requirements for the import and export of conventional arms is featured in a number of international agreements. One way of responding to these requirements is by creating and maintaining stable procedures that simplify the task of reporting. The elements described herein are illustrative of processes and procedures already utilized by some in fulfilling their reporting requirements.

However, it should also be noted that not all of the described elements are necessarily applicable in all cases, due to differences in national legal and administrative frameworks.

In general, these elements focus on the systematization of reporting practices through the development of documented procedures. Such procedures can improve the ability to make accurate reports within required deadlines while at the same time cutting down on the resources required for the task. In addition, these practices may help to safeguard against the efficiency losses associated with the rotation of experienced personnel familiar with reporting practices.

1. Establish and maintain, if appropriate by national legislation or governmental decision, a procedures document which would contain, but not be limited to, the following elements:
 - i) An enumeration of the different types of national reports required to be submitted.
 - ii) Critical deadlines in the process of preparing reports and a mechanism by which these can be brought to the attention of relevant information providers, for instance through paper or electronic reminders, in order to improve compliance.
 - iii) A clearly defined method by which relevant reporting information is collected by licensing/permit officers or other individuals or systems and is provided, periodically or on an ongoing basis, to the individual or individuals responsible for compiling/ submitting the national reports.
 - iv) A coordinated collection process that ensures that when the same information is needed for several reports it is collected only once. This saves resources and ensures consistency between reports.
 - v) A clear explanation of the contents and requirements for each type of report, including e.g. the specific categories of items.
 - vi) When appropriate and for additional transparency, nations may wish to record, inter alia, whether the data submitted in a report is made based on actual transfers (exports or imports) or on licences issued, and if the export or import is temporary.
 - vii) Clear assignment of specific reporting tasks to specific positions or divisions.

- viii) Where Licensing Officers are not responsible for identifying the technical nature of goods or technology against Control Lists, i.e. are not those who assess the classification of goods or technology, it is important that the review/writing of item descriptions for reporting purposes be conducted as a team effort. The involvement of both groups ensures that the information is accurate, consistent and complete.
2. The classification of permit applications as either reportable or non-reportable should be documented in such a way that the compilation of reporting information is facilitated.
 3. Maintain some form of repository, electronic or otherwise, of reporting data.
 4. Where possible, provide training to additional staff to ensure some level of redundancy and allow for the continued fulfilment of reporting obligations in the event of the temporary absence or permanent departure of a given person from their position.
 5. With a view to achieving consistent implementation of reporting commitments, utilize opportunities, when available, for the sharing of national experiences and further clarifying interpretations of specific aspects of the reporting requirements.

BEST PRACTICES FOR IMPLEMENTING INTANGIBLE TRANSFER OF TECHNOLOGY CONTROLS

(Adopted by the Plenary in 2006)

Ensuring that control is exercised over intangible transfers of both dual-use and conventional weapons technology¹ (ITT) and is recognized by Participating States of the Wassenaar Arrangement as critical to the credibility and effectiveness of their domestic export control regime. As clear and precise control requirements facilitate effective export control implementation, the Participating States have adopted the following “best practices” for the implementation of export controls over intangible transfers of WA-controlled technology.

- A. Recognizing the inherent complexities of export control regulation for ITT, Participating States of the Wassenaar Arrangement support:
1. Designing national laws and regulations with clear definitions of ITT via both oral and electronic means of transmission; including,
 - a) Determination of what constitutes an ITT export; and,
 - b) Determination of when an ITT export occurs;
 2. Specifying in national laws and regulations the intangible technology transfers which are subject to export control;
 3. Specifying in national laws and regulations that controls on transfers do not apply to information in the public domain or to basic scientific research; and,
- B. Recognizing that national export control authorities benefit from the cooperation of industry, academia, and individuals in the regulation of ITT, Participating States of the Wassenaar Arrangement support:
1. Promoting awareness of ITT controls by such means as publication of regulatory handbooks and other guidance material, posting such items on the internet, and by arranging or taking part in seminars to inform industry and academia;
 2. Identifying industry, academic institutions, and individuals in possession of controlled technology for targeted outreach efforts and,

¹ “Technology”

Specific information necessary for the “development,” “production” or “use” of a product. The information takes the form of technical data or technical assistance. Controlled “technology” for the Dual-Use List is defined in the General Technology Note and in the Dual-Use List. Controlled “technology” for the Munitions List is specified in ML22.

Technical Notes

1. ‘Technical data’ may take forms such as blueprints, plans, diagrams, models, formulae, tables, engineering designs and specifications, manuals and instructions written or recorded on other media or devices such as disk, tape, read-only memories.
2. ‘Technical assistance’ may take forms such as instruction, skills, training, working knowledge, consulting services. ‘Technical assistance’ may involved transfer of ‘technical data.’

3. Promoting self-regulation by industry and academic institutions that possess controlled technology, including by assisting them in designing and implementing internal compliance programs and encouraging them to appoint export control officers.
- C. Recognizing the importance of post-export monitoring and proportionate and dissuasive penalties to deter non-compliance with national ITT laws and regulations, Participating States support:
1. The imposition of a requirement on industry, academia, and individuals to keep records, for an appropriate period of time, that clearly identify all controlled technology transferred, the dates between which it was transferred, and the identity of the end-user of all intangible transfers of technology for which licenses have been issued that may be inspected by, or otherwise provided to, export control authorities upon request;
 2. Regular compliance checks of those that transfer controlled technology by intangible means and,
 3. The provision of training to export control enforcement authorities on appropriate investigative techniques to uncover violations of national controls on ITT exports or access to such specialist expertise;
 4. Appropriate surveillance or monitoring, pursuant to national laws and regulations, of entities that are suspected by national export control or other relevant national government authorities of making unauthorized intangible transfers of controlled technology.
 5. The sanctioning by national authorities of those under their jurisdiction that have transferred controlled technology by intangible means in violation of export controls.
- D. Participating States also support:
1. The exchange of information on a voluntary basis concerning suspicious attempts to acquire controlled technologies, with appropriate authorities in other Participating States.

II. Arms Transfers

BEST PRACTICE GUIDELINES FOR EXPORTS OF SMALL ARMS AND LIGHT WEAPONS (SALW)

(Adopted by the Plenary in 2002 and amended in 2007)*

I. 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 destabilising accumulations of such arms; and
- (iii) the need to prevent the acquisition of conventional arms by terrorist groups and organisations, as well as by individual terrorists;

Bearing in mind the 2001 UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in SALW in All Its Aspects (UNPOA), and, where appropriate, the relevant provisions of the 2000 OSCE Document and other regional initiatives that Participating States are party to,

Affirm that they apply strict national controls on the export of SALW, as well as on transfers of technology related to their design, production, testing and upgrading,

And agree that:

SALW exports will be evaluated carefully against the Wassenaar Arrangement Initial Elements and the Wassenaar document 'Elements for Objective Analysis and Advice Concerning Potentially Destabilising Accumulations of Conventional Weapons' and any subsequent amendments thereto. In particular:

1. Each Participating State will, in considering proposed exports of SALW, take into account:
 - (a) The need to avoid destabilising accumulations of arms, bearing in mind the particular circumstances of the recipient country and its region;
 - (b) The internal and regional situation in and around the recipient country, in the light of existing tensions or armed conflicts and details of the recipient within that country;
 - (c) The record of compliance of the recipient country with regard to international obligations and commitments, in particular on the suppression of terrorism, and on the non-use of force, and in the field of non-proliferation, or in other areas of arms control and disarmament, and the record of respect for international law governing the conduct of armed conflict;
 - (d) The nature and cost of the arms to be transferred in relation to the circumstances of the recipient country, including its legitimate security and defence needs and to the objective of the least diversion of human and economic resources to armaments;

* 2007 amendments are shown in bold.

- (e) The requirements of the recipient country to enable it to exercise its right to individual or collective self-defence in accordance with Article 51 of the Charter of the United Nations;
 - (f) Whether the transfers would contribute to an appropriate and proportionate response by the recipient country to the military and security threats confronting it;
 - (g) The legitimate domestic security needs of the recipient country;
 - (h) The requirements of the recipient country to enable it to participate in peacekeeping or other measures in accordance with decisions of the United Nations, OSCE or other relevant regional organisations with a peacekeeping mandate;
 - (i) The respect for human rights and fundamental freedoms in the recipient country;
 - (j) The risk of diversion or re-export in conditions incompatible with these Guidelines, particularly to terrorists.
2. Each Participating State will avoid issuing licences for exports of SALW where it deems that there is a clear risk that the small arms in question might:
- (a) Support or encourage terrorism;
 - (b) Threaten the national security of other States;
 - (c) Be diverted to territories whose external relations are the internationally acknowledged responsibility of another State;
 - (d) Contravene its international commitments, in particular in relation to sanctions adopted by the Security Council of the United Nations, agreements on non-proliferation, small arms, or other arms control and disarmament agreements;
 - (e) Prolong or aggravate an existing armed conflict, taking into account the legitimate requirement for self-defence, or threaten compliance with international law governing the conduct of armed conflict;
 - (f) Endanger peace, create an excessive and destabilising accumulation of small arms, or otherwise contribute to regional instability;
 - (g) Contrary to the aims of this document, be either re-sold (or otherwise diverted) within the recipient country, re-produced without licence, or be re-exported;
 - (h) Be used for the purpose of repression;
 - (i) Be used for the violation or suppression of human rights and fundamental freedoms;
 - (j) Facilitate organised crime;

- (k) Be used other than for the legitimate defence and security needs of the recipient country.

Furthermore,

3. Participating States agree to ensure, as far as possible, without prejudice to the rights of States to re-export SALW that they have previously imported, that the original exporting Participating State, in accordance with bilateral agreements, will be notified before re-export/re-transfer of those weapons.
4. Participating States agree that unlicensed manufacture of foreign-origin SALW is inconsistent with these Best Practice Guidelines.
5. Participating States will take especial care when considering exports of SALW other than to governments or their authorised agents.

II. In addition, The Participating States of the Wassenaar Arrangement,

Recognising that uncontrolled flows of illicit SALW pose a serious threat to peace and security, especially in areas beset by conflicts and tensions;

And noting that poorly managed stocks of SALW, which are particularly liable to loss through theft, corruption or negligence, pose a similar threat;

Agree that:

1. Participating States will take into account, as far as possible, the stockpile management and security procedures of a potential recipient, including the recipient's ability and willingness to protect against unauthorised re-transfers, loss, theft and diversion.
2. **Participating States will fully implement their commitments under the United Nations' International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons, adopted by the 60th Session of the UN General Assembly on 8 December 2005 (A/RES/60/81 of 11 January 2006).**
3. Further, each Participating State will:
 - (a) Ensure that these principles are reflected, as appropriate, in their national legislation and/or in their national policy documents governing the export of conventional arms and related technology.
 - (b) Consider assisting other Participating States in the establishment of effective national mechanisms for controlling the export of SALW.
 - (c) Put in place and implement adequate laws or administrative procedures to control strictly the activities of those that engage in the brokering of SALW and ensure appropriate penalties for those who deal illegally in SALW.

BEST PRACTICES TO PREVENT DESTABILISING TRANSFERS OF SMALL ARMS AND LIGHT WEAPONS (SALW) THROUGH AIR TRANSPORT

(Adopted by the Plenary in 2007)

Participating States of the Wassenaar Arrangement

Having regard to the Guidelines and Procedures including the Initial Elements of the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies, and in particular:

- the Best Practice Guidelines for Exports of Small Arms and Light Weapons (SALW) adopted December 2002;
- the “Elements for Export Controls of Man-Portable Air Defence Systems (MANPADS)” adopted December 2003 and as amended in 2007.

Recognising that air transport is one of the main channels for the illicit spread of SALW, particularly to destinations subject to a United Nations arms embargo or involved in armed conflict;

Considering that some transport companies or agents and their associated intermediaries employ a range of techniques and strategies to avoid official scrutiny and legal regulations, such as falsifying transport documentation, concealing information on the origin of weapons, including cases when they are produced illegally, or when the origin is not known or questionable, concealing actual flight plans, routes, and destinations, as well as falsification of aircraft registration or quick change of registration numbers;

Bearing in mind the 2001 UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects, and, where appropriate, the relevant provisions of the 2000 OSCE documents and other regional initiatives Participating States are party to;

Taking into account existing international standards applicable to air transport, *inter alia*, Article 35 and Annex 18 of the Chicago Convention on International Civil Aviation;

Taking into account existing national legislation regulating the transport by air of weapons;

Recognising governments’ right to transport by air SALW, including through private companies, as well as the existing regulations and the economic demands relating to the air transport of goods;

Affirm that they are fully committed to preventing destabilising accumulations of SALW through air transport *and thus agree to the following Best Practices*:

1. Scope

These Best Practices cover air transport of SALW, excluding those that are transported by government, military or Government-chartered aircraft.

Participating States recognise that they assume full responsibility for transport by their government, military, or Government-chartered aircraft and that they encourage other States to assume the same responsibility.

2. Measures

Non-governmental air transport of SALW, if not forbidden by the Participating States' law, will be submitted, as appropriate to the following measures:

- 2.1. When issuing an export licence for SALW, each Participating State may require additional information on air transport to be provided by the exporter to the relevant authorities prior to the actual export taking place.

Such additional information on transport may include the following elements:

- air carrier and freight forwarding agent involved in the transportation;
- aircraft registration and flag;
- flight route to be used and planned stopovers;
- records of previous similar transfers by air;
- compliance with existing national legislation or international agreements relating to air transport of weapons.

Thus, although details about air transport and route are usually not known when applying for an export licence, a Participating State may issue such an export licence subject to the condition that this information shall be provided to Government authorities before the goods are actually exported; it will then be clear for enforcement officers controlling the actual export that such a licence is not valid without evidence that the requested additional information has been provided.

- 2.2. When a Participating State knows about an exporter, air carrier or agent that failed to comply with the requirements mentioned in 2.1 when requested to do so, or about an identified destabilising attempt to export SALW by air, and if the planned export of SALW is assessed by it to contribute to a destabilising accumulation or to be a potential threat to security and stability in the region of destination, the related relevant information shall be shared with other Participating States as appropriate.
- 2.3. Each Participating State's relevant authorities may require the exporter to submit a copy of the certificate of unloading or of any other relevant document confirming the delivery of SALW, if they have been exported from or landed on or departed from an airport/airfield on their national territory or if they have been transported by their flag aircraft.
- 2.4. Participating States may take appropriate action to prevent circumvention of national controls and scrutiny, including exchange of information on a voluntary basis about exporters, air carriers and agents that failed to comply with the requirements of 2.1 and 2.3 above when requested to do so, and about cases of transit or transshipment by air of SALW that may contribute to a destabilising accumulation or be a potential threat to security and stability in the region of destination.
- 2.5. Whenever a Participating State has information indicating that an aircraft's cargo includes SALW, and that its flight plan includes a destination subject to a UN arms embargo or located in a conflict zone, or that the exporter, the air carrier or agent concerned is suspected of being involved in destabilising transfers of SALW by air or has failed to comply with the requirements in 2.1 or 2.3 when requested to do so, the case should be referred to the relevant national enforcement authorities.

3. Public-private dialogue

Participating States are committed to keeping air carriers informed, whether on a national basis or within relevant international bodies, about implementation of these measures.

ELEMENTS FOR EXPORT CONTROLS OF MAN-PORTABLE AIR DEFENCE SYSTEMS (MANPADS)

(Adopted by the Plenary in 2000 and amended in 2003 and 2007)*

Recognising the threats posed by unauthorised proliferation and use of Man-Portable Air Defence Systems, especially to civil aviation, peace-keeping, crisis management and anti-terrorist operations, Participating States affirm that they apply strict national controls on the export of MANPADS.

1. Scope

1.1 These Elements cover:

- a) surface-to-air missile systems designed to be man-portable and carried and fired by a single individual; and
- b) other surface-to-air missile systems designed to be operated and fired by more than one individual acting as a crew and portable by several individuals.

1.2 National export controls apply to the international transfer or retransfer of MANPADS, including complete systems, components, spare parts, models, training systems, and simulators, for any purpose, by any means, including licensed export, sale, grant, loan, lease, co-production or licensing arrangement for production (hereafter “exports”). The scope of export regulation and associated controls includes research, design, development, engineering, manufacture, production, assembly, testing, repair, maintenance, servicing, modification, upgrade, modernisation, operation, use, replacement or refurbishment, demilitarisation, and destruction of MANPADS; technical data, software, technical assistance, demonstration, and training associated with these functions; and secure transportation, storage. This scope according to national legislation may also refer to investment, marketing, advertising and other related activity.

1.3 Any activity related to MANPADS within the territory of the producing country is subject to national laws and regulations.

2. Participating States will exercise maximum restraint in transfers of MANPADS production technologies and, while taking decision on such transfers, will take into account elements, stipulated in paragraphs 3.7, 3.8, 3.9 and 3.11.

3. Control Conditions and Evaluation Criteria

3.1 Decisions to permit MANPADS exports will be made by the exporting government by competent authorities at senior policy level and only to foreign governments or to agents specifically authorised to act on behalf of a government after presentation of an official EUC certified by the Government of the receiving country.

3.2 General licences are inapplicable for exports of MANPADS; each transfer is subject to an individual licensing decision.

3.3 Exporting governments will not make use of non-governmental brokers or brokering services when transferring MANPADS, unless specifically authorised to on behalf of the government.

* 2007 amendments are shown in bold.

- 3.4 In order to prevent unauthorised use, producer countries will implement technical performance and/or launch control features for newly designed MANPADS as such technologies become available to them. Such features should not adversely affect the operational effectiveness of MANPADS for the legal user.
- 3.5 Exporting governments in the Wassenaar Arrangement will report transfers of MANPADS as part of the Arrangement's Specific Information Exchange reporting requirements.
- 3.6 MANPADS exports will be evaluated in the light of the Wassenaar Arrangement Initial Elements and the Wassenaar document "Elements for Objective Analysis and Advice Concerning Potentially Destabilising Accumulations of Conventional Weapons" and any subsequent amendments thereto.
- 3.7 Decisions to authorise MANPADS exports will take into account:
- Potential for diversion or misuse in the recipient country;
 - The recipient government's ability and willingness to protect against unauthorised re-transfers, loss, theft and diversion; and
 - The adequacy and effectiveness of the physical security arrangements of the recipient government for the protection of military property, facilities, holdings, and inventories.
- 3.8 Prior to authorising MANPADS exports (**as indicated in paragraph 1.2**), the exporting government will assure itself of the recipient government's guarantees:
- not to re-export MANPADS except with the prior consent of the exporting government;
 - **to transfer MANPADS and their components to any third country only in a manner consistent with the terms of the formal government to government agreements, including co-production or licensing agreements for production, and contractual documents, concluded and implemented after the adoption of this document at the 2007 Plenary, as well as end-use assurances and/or extant export licences;**
 - **to ensure that the exporting State has the opportunity to confirm, when and as appropriate, fulfilment by the importing State of its end-use assurances with regard to MANPADS and their components¹ (this may include on-site inspections of storage conditions and stockpile management or other measures, as agreed between the parties);**
 - to afford requisite security to classified material and information in accordance with applicable bilateral agreements, to prevent unauthorised access or compromise; **and**
 - to inform promptly the exporting government of any instance of compromise, unauthorised use, loss, or theft of any MANPADS material.
- 3.9 In addition, the exporting government will satisfy itself of the recipient government's willingness and ability to implement effective measures for secure storage, handling, transportation, use of MANPADS material, and disposal or destruction of excess stocks to prevent unauthorised access and use. The recipient government's national procedure designed to attain the requisite security include, but are not limited to, the following set of practices, or others that will achieve comparable levels of protection and accountability:

¹ "End-use assurances with regard to MANPADS and their components" should be understood as their use only for purposes stipulated in the end-user certificate or any other document containing the obligations of the importing State.

- Written verification of receipt of MANPADS shipments.
 - Inventory by serial number of the initial shipments of all transferred firing mechanisms and missiles, if physically possible; and maintenance of written records of inventories.
 - Physical inventory of all MANPADS subject to transfer, at least once a month; account by serial number for MANPADS components expended or damaged during peacetime.
 - Ensure storage conditions are sufficient to provide for the highest standards of security and access control. These may include:
 - Where the design of MANPADS permits, storing missiles and firing mechanisms in locations sufficiently separate so that a penetration of the security at one site will not place the second site at risk. Ensuring continuous (24-hour per day) surveillance. Establishing safeguards under which entry to storage sites requires the presence of at least two authorised persons.
 - Transport MANPADS in a manner that provides for the highest standards and practices for safeguarding sensitive munitions in transit. When possible, transport missiles and firing mechanisms in separate containers.
 - Where applicable, bring together and assemble the principal components - typically the gripstock and the missile in a launch tube -only in the event of hostilities or imminent hostilities; for firing as part of regularly scheduled training, or for lot testing, for which only those rounds intended to be fired will be withdrawn from storage and assembled; when systems are deployed as part of the point defences of high priority installations or sites; and in any other circumstances which might be agreed between the receiving and transferring governments.
 - Access to hardware and any related classified information, **including training, technical and technological documentation (e.g. MANPADS operation manuals)**, will be limited to military and civilian personnel of the receiving government who have the proper security clearance and who have an established need to know the information in order to perform their duties. Any information released will be limited to that necessary to perform assigned responsibilities and, where possible, will be oral and visual only.
 - Adopt prudent stockpile management practices that include effective and secure disposal or destruction of MANPADS stocks that are or become excess to national requirements.
- 3.10 Participating States will, when and as appropriate, assist recipient governments not capable of executing prudent control over MANPADS to dispose of excess stockpiles, including buying back previously exported weapons. Such measures are subject to a voluntary consent of the exporting government and the recipient state.
- 3.11 Exporting governments will share information regarding potential receiving governments that are proven to fail to meet the above export control guarantees and practices outlined in paragraphs 3.8 and 3.9 above.
- 3.12 To enhance efforts to prevent diversion, exporting governments will share information regarding non-state entities that are or may be attempting to acquire MANPADS.

- 3.13 Participating States will, when and as appropriate, provide to non-participating States, upon their request, technical and expert support in developing and implementing legislative basis for control over transfers of MANPADS and their components.**
- 3.14 Participating States will, when and as appropriate, provide to non-participating States, upon their request, technical and expert assistance in physical security, stockpile management and control over transportation of MANPADS and their components.**
4. Participating States will ensure that any infringement of export control legislation, related to MANPADS, is subject to adequate penalty provisions, i.e. involving criminal sanctions.
 5. The Participating States will exchange information and review progress related to the implementation of these steps regularly.
 6. Participating States agree to promote the application of the principles defined in these Elements to non-**Participating States**.

**BEST PRACTICE GUIDELINES
ON SUBSEQUENT TRANSFER (RE-EXPORT) CONTROLS FOR
CONVENTIONAL WEAPONS SYSTEMS CONTAINED IN APPENDIX 3 TO
THE WA INITIAL ELEMENTS**

(Adopted by the Plenary in 2011)

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.

STATEMENT OF UNDERSTANDING ON ARMS BROKERAGE

(Adopted by the Plenary in 2002)

Taking into account the objectives of the WA as contained in the Initial Elements, Participating States recognize the importance of comprehensive controls on transfers of conventional arms, sensitive dual use goods and technologies. In order to accomplish these objectives, Participating States recognize the value of regulating the activities of arms brokers.

For the purpose of developing a WA policy on international arms brokering, Participating States will, in addition to continuing the elaboration and refining of criteria for effective arms brokering legislation and discuss enforcement measures, consider, *inter alia*, such measures as:

- Requiring registration of arms brokers;
- Limiting the number of licensed brokers;
- Requiring licensing or authorization of brokering; or
- Requiring disclosure of import and export licenses or authorizations, or of accompanying documents and of the names and locations of brokers involved in transactions.

BEST PRACTICES FOR EFFECTIVE LEGISLATION ON ARMS BROKERING

(Adopted by the Plenary in 2003 and amended in 2016)

Taking into account the objectives of the Wassenaar Arrangement as contained in the Initial Elements, Participating States recognize the value of regulating the activities of arms brokers.

With reference to the Initial Elements and Participating States' fulfilment of the objectives and intentions of the Wassenaar Arrangement, in particular the objectives of:

- greater responsibility in transfers of conventional arms;
- the prevention of destabilizing accumulations of conventional arms;
- the need to prevent the acquisition of conventional arms by terrorist groups and organisations, as well as by individual terrorists;

Bearing in mind the “Best Practice Guidelines for Exports of Small Arms and Light Weapons” as adopted by the 2002 Plenary Meeting and the “Elements for Export Controls of Man-Portable Air Defence Systems (MANPADS)” as adopted by the 2003 Plenary Meeting and amended by the 2007 Plenary Meeting;

Recognising international commitments such as the 2001 “UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in SALW in All its Aspects”; **and**

international efforts to prevent and combat illicit arms brokering, in particular in small arms and light weapons, and the entry into force in 2005 of the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the UN Convention against Transnational Organized Crime; **and**

the relevant provisions of the 2000 OSCE Document and other regional initiatives that Participating States are party to; **and**

the statement of the President of the UN Security Council of 31 October 2002 (on behalf of the Council) stressing the importance of further steps to enhance co-operation on the regulation of brokering activities; **and**

the purpose of the UN Register of Conventional Arms established in 1991 primarily to build confidence and security among States as well as, *inter alia*, to facilitate the timely identification of trends in international arms transfers and prevent diversion and the illicit trade in arms; **and**

UNGA Resolution 63/67 of 2 December 2008 which, *inter alia*, recognizes the need for UN Member States to prevent and combat illicit arms brokering activities;

Recalling also relevant resolutions adopted in previous years, including UNGA resolutions 62/40 and 62/47 of 5 December 2007, which include calls for the control of arms brokering activities; **and**

Taking note, that, according to the UN Arms Trade Treaty, ATT State Parties shall take measures, pursuant to their national laws, to regulate brokering activities taking place under their jurisdiction for conventional arms;

Affirming that the purpose of these efforts is to avoid circumvention of the objectives of the Wassenaar Arrangement by creating a clear framework for lawful brokering activities, and to enhance co-operation and transparency between Participating States;

Affirming also that they apply strict and comprehensive national controls to the transfer of conventional arms relevant to the Wassenaar Arrangement in order to contribute to regional and international security and stability;

agree to

1. Strictly control the activities of those who engage in the brokering of conventional arms by introducing and implementing adequate laws and regulations. In order to ensure a common Wassenaar Arrangement policy on arms brokering, each Participating State should include, consistent with its national legislation and practices, the following measures in its national legislation:

- (a) Definition of brokering activities, taking into account activities of negotiating or arranging contracts, selling, trading or arranging the transfer of arms and related military equipment controlled by Wassenaar Arrangement Participating States from one third country to another third country. Participating States may also define activities and circumstances that constitute a broker.

Participating States may, also, define brokering activities as cases where the arms and military equipment are exported from their own territory.

Participating States may also implement a licence requirement for brokering of dual-use goods and technologies, as controlled by the Wassenaar Arrangement dual-use list, for military end-uses in accordance with the Initial Elements Chapter I.

- (b) Establishment of a licensing system or other control mechanism by the competent authorities of the Participating State where these activities take place whether the broker is a citizen, resident or otherwise subject to the jurisdiction of the Participating State.

Similarly, a licence may also be required regardless of where the brokering activities take place.

Grant or refuse licences in accordance with the principles and objectives of the Wassenaar Arrangement Guidelines and Procedures including the Initial Elements, the Wassenaar Arrangement document "Elements for Objective Analysis and Advice concerning Potentially Destabilising Accumulations of Conventional Weapons" and any subsequent amendments thereto and, where applicable, the "Best Practice Guidelines for Exports of Small Arms and Light Weapons" and the "Elements for Export Controls of Man-Portable Air Defence Systems (MANPADS)".

Restricting the number of brokers may be a way to effectively control arms brokering activities.

- (c) Record keeping: Records should be kept of individuals and companies which have obtained a licence in accordance with paragraph 1.(b) Participating States may in addition establish a register of brokers.
- (d) Adequate penalty provisions and administrative measures, i.e. involving criminal sanctions, should be established in order to ensure that controls of arms brokering are effectively enforced.

2. Enhance co-operation and transparency through:

- (a) Exchanging relevant information on arms brokering activities within the framework of the General Information Exchange;
- (b) Exchanging information on a timely basis on arms brokering considered to be of particular relevance; and
- (c) Assisting other Participating States on request in the implementation of effective national mechanisms for controlling arms brokering activities.³

3. Continue the elaboration and refining of criteria for effective arms brokering legislation and discuss enforcement matters.

4. Review periodically progress made in meeting the objectives of these best practices. Licensing and enforcement experts are encouraged to exchange implementation experiences on a regular basis.

ELEMENTS FOR CONTROLLING TRANSPORTATION OF CONVENTIONAL ARMS BETWEEN THIRD COUNTRIES

(Adopted by the Plenary in 2011)

Participating States of the Wassenaar Arrangement,

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

- greater responsibility in transfers of conventional arms;
- the prevention of destabilizing accumulations of conventional arms; and
- the need to prevent the acquisition of conventional arms by terrorist groups and organisations, as well as by individual terrorists;

Affirming 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;

Determined to explore available tools to achieve these objectives;

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;

Noting that arms brokering activities may include i.a. arms transportation but that this is often not the case, leaving controls on transportation of arms to separate regulation;

Recalling relevant UN Security Council Resolutions imposing an embargo on the export and delivery of arms to particular destinations and similar bans on importing arms from particular destinations;

Recalling the commitments of all Wassenaar Participating States to implement the 2001 UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects;

Mindful of the importance of avoiding duplication of controls;

Recognizing the right to legitimate transportation of arms;

Determined to prevent destabilizing accumulations of arms resulting from transfers that violate UN arms embargoes or relevant national arms export and import controls;

Agree to the following elements:

1. The scope of these elements is limited to the transportation of arms between third countries. As such they do not apply to export, transit, trans-shipment or brokering activities unless such activities are defined to include transportation related to the arms transfer in question.

2. Participating States may apply these Elements within the limits of their national policies and legal practices including any restraints on their ability to exercise extraterritorial controls.

3. Participating States are encouraged to consider the need for measures, including legislative measures if appropriate, to prevent their nationals and entities registered in their territory from transporting arms in violation of UN Security Council embargoes.

4. Participating States are similarly encouraged to consider the need for measures, including legislative measures if appropriate, to prevent their nationals and entities registered in their territory from transporting arms in violation of licensing requirements for arms exports and imports in the exporting and importing countries.

5. When considering possible regulatory measures with reference to these Elements it is assumed that the responsibility of transporters will be limited to transportation of arms with genuine manifests and/or valid export/import licenses unless the transporter is aware or should have been aware that the manifest and/or the export or import licence is falsified.

6. Participating States may consider at their own discretion operating a licensing system for the transportation of arms between third states similar to the licensing of exports and brokering activities.

7. Participating States may similarly at their own discretion consider limiting transportation of arms to be carried out solely by licensed individuals or entities, analogous to the registration of brokers or exporters in some States.

8. In order to avoid duplication of controls Participating States may choose not to control transportation of arms between third states in cases where they consider such transfers to be adequately controlled by those third States, for example through export or brokering controls.

III. Transit/Trans-shipment

BEST PRACTICE GUIDELINES FOR TRANSIT OR TRANS-SHIPMENT

(Adopted by the Plenary in 2015)

The diversion of items in transit or trans-shipment to unauthorized end-uses or end-users can pose significant risks to international trade and security. Participating States of the Wassenaar Arrangement share a responsibility for preventing the abuse of legitimate transit and trans-shipment trade through our territories.

The following Best Practices provide tools that Participating States may choose to adopt to identify and to mitigate the risk of illicit diversion of items in transit or trans-shipment. These Best Practices are designed to be consistent with the purposes of the Wassenaar Arrangement and may be used by Participating States to assist in meeting international obligations and commitments.

Participating States should:

- Establish and apply a transparent legal and regulatory system that allows, where appropriate, the authority to control items in transit or trans-shipment, including the authority to, where necessary and appropriate, stop, inspect and seize a shipment, as well as legal grounds to dispose of a seized shipment¹ when law enforcement activities are completed.² This authority should extend fully to activities taking place in special Customs areas located within a sovereign state's territory, such as free-trade zones, foreign trade zones and export processing zones.
- Require, where appropriate, authorizations in accordance with national law for the transit or trans-shipment of listed munitions and dual-use items, as well as for unlisted items (*i.e.*, catch-all authority controls), where there is reliable information that the items are intended to be used in prohibited military or terrorist uses, or that otherwise pose a security concern. Coordination and communication with exporting and importing countries may be required, as appropriate, to ensure that listed items intended for transit or trans-shipment have been properly authorized for export or import.
- Utilise an intelligence-led, risk based approach to identifying cargoes and known end-users of concern, including through the use of internationally endorsed requirements for manifest collections in advance of the arrival of all controlled goods. This approach should enable the identification of inconsistencies that raise suspicion, in time to stop and seize items where necessary and appropriate, while taking into account increasing trade volumes and complexities of supply chains, so that available resources can be deployed in an efficient and targeted manner.³

¹ For example, by administrative proceeding or court order.

² Examples of legal instruments may be export control laws, Customs laws, national security laws, penal laws, general transportation laws, laws addressed to ground/aviation/seafaring transportation, laws addressed to freight forwarders/shipping companies, etc.

³ The World Customs Organization (WCO) SAFE Framework provides a multilaterally accepted data model to simplify for shippers how this information can be selected, formatted, and transmitted.

- Conduct focused outreach to manufacturers, distributors, brokers, and freight forwarders to raise awareness of export control obligations, as well as potential penalties for non-compliance, and encourage industry to develop internal compliance programs.⁴
- Provide training for Customs and enforcement officers, by competent authorities⁵ so that they can identify items of concern, and increase cooperation between enforcement agencies and licensing authorities.
- Adopt and deploy appropriate screening technologies and practices and other sources of technical assistance, such as risk-based evaluation of data.
- Exchange information on policies and practices with respect to transit and trans-shipment including, where appropriate, any enforcement actions taken, with WA partners.

⁴ See also 2011 Best Practice Guidelines on Internal Compliance Programmes for Dual-Use Goods and Technologies.

⁵ Usually by the agencies responsible for identification of controlled items.

IV. Demilitarised Military Equipment

BEST PRACTICES FOR DISPOSAL OF SURPLUS/DEMILITARISED MILITARY EQUIPMENT

(Adopted by the Plenary in 2000)

The following list of “best practices” for disposal of surplus military equipment (items that may or may not have been demilitarised) is drawn from the responses provided by Participating States on this subject and reflected in the matrix of national practices (WA-LEOM (99) SEC 10, Version 4.0, 23/05/2000). These practices are those actually followed or aspired to by Wassenaar Arrangement Participating States and are illustrative of effective export control over surplus/demilitarised military equipment.

1. Items of surplus military equipment (including small arms and light weapons), i.e., items designed for military use but no longer needed, remain subject to the same export controls as new equipment.
2. Safeguards are in place to prevent illicit resale and export of items of surplus military equipment that have been sold or otherwise transferred domestically.
3. Physical security measures and inventory controls are sufficient to prevent theft/diversion of items in storage.
4. Demilitarised equipment capable of being re-militarised is also subject to stringent export controls, in almost all cases identical to those controls applied to new military equipment.
5. The "Best Practices for Effective Enforcement", including preventive enforcement, investigation, effective penalties, and international cooperation, are applied to ensure effective control of surplus/demilitarised military equipment.

V. Dual-Use Goods and Technologies

CRITERIA FOR THE SELECTION OF DUAL-USE ITEMS

(Adopted in 1994^{*} and amended by the Plenary in 2004 and 2005)

Dual-use goods and technologies to be controlled are those which are major or key elements for the indigenous development, production, use¹ or enhancement of military capabilities². For selection purposes the dual-use items should also be evaluated against the following criteria:

- Foreign availability outside Participating States.
- The ability to control effectively the export of the goods.
- The ability to make a clear and objective specification of the item.
- Controlled by another regime³.

* The initial version of the Criteria for the Selection of Dual-Use Items was approved in 1994 at the High Level Meeting in the course of the "New Forum" negotiations (see document "Genesis of the Wassenaar Arrangement").

¹ Use means operation, installation (including on-site installation), maintenance (checking), repair, overhaul and refurbishing.

² Controlled by the Munitions List.

³ An item which is controlled by another regime should not normally qualify to be controlled by the Wassenaar Arrangement unless additional coverage proves to be necessary according to the purposes of the Wassenaar Arrangement, or when concerns and objectives are not identical.

CRITERIA FOR THE SELECTION OF DUAL-USE GOODS AND TECHNOLOGIES FOR THE SENSITIVE LIST^{*}

(Adopted by the Plenary in 1998 and amended in 2000 and 2004)

Those items from the Dual-use List which are key elements directly related to the indigenous development, production, use or enhancement of advanced conventional military capabilities whose proliferation would significantly undermine the objectives of the Wassenaar Arrangement.

- N.B.
1. *General commercially applied materials or components should not be included.*
 2. *As appropriate, the relevant threshold parameters should be developed on a case-by-case basis.*

* These criteria should not be construed as preventing Participating States from considering, in special circumstances, that controlled items warrant transparency for reasons associated with the objectives of the Wassenaar Arrangement.

**CRITERIA FOR THE SELECTION OF
DUAL-USE GOODS AND TECHNOLOGIES FOR THE VERY SENSITIVE
LIST***

(Adopted by the Plenary in 2000 and amended in 2004)

Those items from the Sensitive List which are key elements essential for the indigenous development, production, use or enhancement of the most advanced conventional military capabilities whose proliferation would significantly undermine the objectives of the Wassenaar Arrangement.

N.B. As appropriate, the relevant threshold parameters should be developed on a case-by-case basis.

* These criteria should not be construed as preventing Participating States from considering, in special circumstances, that controlled items warrant extreme vigilance for reasons associated with the objectives of the Wassenaar Arrangement.

EXTREME VIGILANCE: SUB-SET OF TIER 2 (VSL) ITEMS “BEST PRACTICES”

(Adopted by the Plenary in 2000)

Introduction

The Initial Elements (IE) called on Participating States to discuss and compare national practices concerning their commitment to exercise extreme vigilance for items included in the sub-set of Tier 2 (Very Sensitive List) by applying to those exports national conditions and criteria (IE V.5).

There follows a non-binding list of “best practices” with respect to export controls on VSL items.

“Best practices” does not necessarily imply “common practices.” Therefore, not all of the practices are presently followed by all Participating States. The list does represent, however, an amalgam of the export control practices followed with respect to VSL items by WA Participating States, consistent with national legislation and international law.

Extreme Vigilance for Sub-set of Tier 2 (VSL) items: “Best Practices”

1. Licences are granted on a case-by-case basis. Documentation required for the licence includes information concerning:
 - a. Identification/Description (type, quantity, value, weight)/ Specifications of item/Performance characteristics;
 - b. Applicant;
 - c. Purchaser; and
 - d. End-user (if different from purchaser) and end-use.
2. Consultations occur among relevant government agencies within the exporting country with respect to licence applications to export VSL items. During these consultations, the appropriateness of the quantity and technological level of the item to the stated end-use, and the bona fides of the end-user are among the criteria considered.
3. In order to determine, *inter alia*, the risk of diversion or unauthorized use, additional information on end-users may be gathered, as necessary, using appropriate means ranging from documentation to visitation (with the consent of the recipient country) prior to the licensing decision.
4. As a condition of any licence to export a VSL item, the following may be required:
 - a. Import Certification or end-user statement;
 - b. Assurance of no re-export without authorisation; and
 - c. Delivery Verification or other acknowledgement of delivery from the receiving Government.

As necessary, post-shipment verification may be carried out through appropriate means by the exporter, supplier or officials of the exporting country.

**BEST PRACTICE GUIDELINES
FOR THE LICENSING OF ITEMS ON THE BASIC LIST AND SENSITIVE
LIST OF DUAL-USE GOODS AND TECHNOLOGIES**

(Adopted by the Plenary in 2006)

The following non-binding list of “best practices” for the licensing of items on the Basic and Sensitive Lists have been agreed. “Best practices” does not necessarily imply “common practices”. Therefore, not all of the practices are presently followed by all Participating States. The list does represent an amalgam of export control practices followed by Participating States.

1. Global/general licences or licence exceptions may be granted for items on the Basic or Sensitive Lists where a Participating State considers that authorisation of exports by such means would not undermine the purposes of the Wassenaar Arrangement and would not be inconsistent with its export control laws and regulations or its other international commitments.
2. For all exports for which a global/general licence or licence exception is not applicable licences may be granted on a case-by-case basis to authorise exports of specified goods to named end-users in instances where a Participating State considers that authorisation would not be inconsistent with the purposes of the Wassenaar Arrangement or its other international commitments.
3. For global licences, where in general a named exporter may export unrestricted quantities of specified goods to a specified group of countries or to specified end-users in a specified country or group of countries the exporter should be required to keep documentary evidence, sufficient to enable the export licensing and/or enforcement authorities in the Participating State that issued the licence, to satisfy itself that the terms and conditions of the licence have been complied with. Such information should include:
 - A description of the goods that have been exported or the software or technology that has been transferred;
 - The date of the exportation or transfer;
 - The quantity of the goods;
 - The name and address of any consignee of the goods; and/or
 - The name and address of the end-user of the goods, software or technology;
 - A consignee or end user undertaking.

4. For general licences or licence exceptions which permit the export of unrestricted quantities of identified list entries or range of goods, software and technology to a specified group of countries, the exporter may be required to apply or register to use them. Participating States may impose reporting requirements on use of such means. The exporter should be expected to keep documentation sufficient to enable the export licensing and/or enforcement authorities in the Participating State that authorized the transaction to satisfy itself that the terms and conditions of the licence or exception have been complied with. Such information should include:

- A description of the goods that have been exported or the software or technology that has been transferred;
- The date of the exportation or transfer;
- The quantity of the goods;
- The name and address of any consignee of the goods; and/or
- The name and address of the end-user of the goods, software or technology;

5. Participating States may indicate in general licences/licence exceptions that they might not be used if the exporter has been informed that the items in question may be intended for a prohibited/military end-use.

6. Participating States may, subject to the provisions of their domestic legislation, revoke the right of an exporter to use global/general licences or licence exemptions

7. As the use of global/general licences and licence exceptions generally requires exporters to have a better understanding of export control regulations and procedures Participating States should encourage, and where possible assist, their exporters to introduce effective export control compliance programmes and further may wish to take the implementation of such programmes into account when making licensing decisions.

STATEMENT OF UNDERSTANDING ON CONTROL OF NON-LISTED DUAL-USE ITEMS⁽¹⁾

(Adopted by the Plenary in 2003)

Participating States will take appropriate measures to ensure that their regulations require authorisation for the transfer of non-listed dual-use items to destinations subject to a binding United Nations Security Council arms embargo, any relevant regional arms embargo either binding on a Participating State or to which a Participating State has voluntarily consented to adhere, when the authorities of the exporting country inform the exporter that the items in question are or may be intended, entirely or in part, for a military end-use.*

If the exporter is aware that items in question are intended, entirely or in part, for a military end-use,* the exporter must notify the authorities referred to above, which will decide whether or not it is expedient to make the export concerned subject to authorisation.

For the purpose of such control, each Participating State will determine at domestic level its own definition of the term “military end-use”.* Participating States are encouraged to share information on these definitions. The definition provided in the footnote will serve as a guide.

Participating States reserve the right to adopt and implement national measures to restrict exports for other reasons of public policy, taking into consideration the principles and objectives of the Wassenaar Arrangement. Participating States may share information on these measures as a regular part of the General Information Exchange.

Participating States decide to exchange information on this type of denials relevant for the purposes of the Wassenaar Arrangement.

⁽¹⁾ See also the List of Advisory Questions for Industry adopted by the 2003 Plenary in conjunction with this SOU.

* Definition of military end-use

In this context the phrase military end-use refers to use in conjunction with an item controlled on the military list of the respective Participating State.

VI. Industry and Academia

**BEST PRACTICE GUIDELINES ON INTERNAL COMPLIANCE
PROGRAMMES
FOR DUAL-USE GOODS AND TECHNOLOGIES**

(Adopted by the Plenary in 2011)

Participating States of the Wassenaar Arrangement,

Taking into account that development and implementation of Internal Compliance Programmes (ICP) by enterprises and academic institutions (hereinafter called “exporter”), though not legally binding, are recommended for their internal management of transfers of dual-use goods and technologies,

Recognizing that each Participating State has a national export control system that must be complied with, and in an effort to assist exporters to meet these controls,

Recognizing that export control on dual-use items is mainly implemented by the competent authorities of each Participating States, and cooperation between domestic export control authorities and exporters is essential for effective export control systems,

Bearing in mind the Initial Elements of the Wassenaar Arrangement (WA), in particular the overall aim of preventing destabilizing accumulations of conventional arms by, i.a. promoting greater responsibility in transfers of dual-use items, and recalling the following WA documents which refer to an ICP:

- the Best Practices for Effective Enforcement (agreed at the 2000 Plenary);
- the Best Practices for Implementing Intangible Transfer of Technology Controls (agreed at the 2006 Plenary);
- the Best Practice Guidelines for the Licensing of Items on the Basic List and Sensitive List of Dual-Use Goods and Technologies (agreed at the 2006 Plenary); and,
- the Statement of Understanding on Implementation of End-Use Controls for Dual-Use Items (agreed at the 2007 Plenary),

Affirming that establishment of ICPs can help exporters to understand and take full account of domestic export control legislation and procedures, and reduce the risks of their involvement in ineligible exports that contravene the purposes of the WA, by supplying to unauthorized end-users such as terrorists and countries of concern;

Bearing in mind that the method in which ICPs are developed and implemented will depend on the size, organizational structure, and other circumstances of exporters,

Agree that:

1. Each Participating State should encourage, where appropriate, its exporters to develop and implement ICPs, and may assist such endeavours by such means as providing expertise and guidance material on ICPs in any relevant form, including discussion of ICPs in export control seminars and providing exporters with opportunities to consult on the form and content of their ICPs;

2. Participating States may also consider, as far as their domestic laws and regulations permit, measures and stimuli that would encourage exporters to introduce ICPs (e.g. taking the development and implementation of an ICP into account when considering applications for licences and revoking existing licences, or making an ICP a condition for the granting of a general licence for an exporter.);
3. Elements for effective ICPs are as set out in the Reference List in the Annex. This is neither exhaustive nor binding. Exporters may combine basic and additional elements from the List as appropriate to develop an ICP which is most applicable to their circumstances;
4. The competent authorities of the Participating States should as appropriate, and in accordance with their domestic legislation and practice, encourage exporters to submit their draft ICPs for examination and comment, for example in the case where ICP is a precondition for any privileged licence procedures. They should also take steps to assess an exporter's compliance with domestic export control laws and regulations, as appropriate, which may involve face-to-face consultations and/or inspection visits.

Annex

**Elements of Internal Compliance Programmes
For Dual-Use Items
(Reference List)**

Domestic export control authorities should, where appropriate, encourage their exporters to develop and implement Internal Compliance Programme (ICP), which may include the following elements.

An exporter may combine, the following basic and additional elements, as appropriate, to develop an ICP applicable to its structure, size, and other specific circumstances.

Basic Elements	Additional Elements	Notes
<u>1.</u> Commitment to Compliance	<u>1.</u> Commitment to Compliance	
<u>1.1.</u> Written statement by a senior representative, such as the CEO, that the exporter is aware of all domestic Export control laws and regulations, and complies with them.		
<u>1.2.</u> To make all employees and officers aware of the statement provided in para 1.1.		
<u>2.</u> Structure and Responsibility	<u>2.</u> Structure and Responsibility	
<u>2.1.</u> Establish an internal organizational structure, responsible for export control, either as a stand-alone unit or as an additional task for an appropriate unit.	<u>2.1.</u> It should be independent from the sales department or any other export oriented units.	
<u>2.1.1.</u> Nomination of a senior representative director, or other individual of corresponding status, as the Chief Export Control Officer (CECO)	<u>2.1.1.</u> Competent authorities may establish a set of criteria for such nominations.	<ul style="list-style-type: none"> • CECO should acquire appropriate knowledge for his/her responsibility.
<u>2.1.2.</u> CECO's Duties - The CECO is responsible for: a. development and revision of the ICP; b. development and revision of operation procedures; c. staying up-to-date with changes to relevant regulations and with any directions or guidance issued by the competent authorities; d. classification/identification, screening and approval of business transactions;	<u>2.1.2.</u> CECO's Duties - The CECO is responsible for: h. guidance to subsidiaries and affiliates. - Distribution of an organizational chart to all employees that clearly shows the internal structures and responsibilities for export control within the exporter.	

Basic Elements	Additional Elements	Notes
<p>e. general export control management, throughout the exporter, including direction and communication;</p> <p>f. assignment of personnel in charge of auditing; and</p> <p>g. training.</p>		
	<p><u>2.2.</u> Appointment of an Export Control Manager (ECM) and establishment of an Export Control Unit reporting to the ECM.</p> <ul style="list-style-type: none"> - Making the ECM known within the organization - The ECM carries out the export control operations under the directions of the CECO. 	<ul style="list-style-type: none"> • The ECM and Export Control Unit are normally to be found in larger organizations. Their duties and responsibilities mirror those of the CECO.
	<p><u>2.3.</u> Appointment of an export control officer (ECO) in each business unit.</p> <ul style="list-style-type: none"> - An ECO is responsible for the following activities; <ul style="list-style-type: none"> a. making the instructions and requirements of the ECM known within the business unit b. promotion of export control operating procedures; and c. training 	
<p><u>3.</u> Export Screening Procedures</p>	<p><u>3.</u> Export Screening Procedures</p>	
<p><u>3.1.</u> Classification/Identification Procedure</p> <ul style="list-style-type: none"> - Establish whether the goods and/or technologies to be transferred require an export licence under applicable control lists. - Consult with competent authorities and other relevant bodies, where appropriate. 		<ul style="list-style-type: none"> • Where the items to be exported are designed and developed by the exporter, persons in charge of technical affairs and the CECO/ECM should be involved in the rating of items under applicable control lists. • Where items to be exported have been externally sourced the original supplier should be asked for technical specifications and an assessment of

Basic Elements	Additional Elements	Notes
		<p>classification/identification under applicable control lists.</p> <ul style="list-style-type: none"> • “Other relevant bodies” may include organizations approved or certified by the competent authorities for providing classification/identification services.
<p><u>3.2. End-Use Screening</u></p> <ul style="list-style-type: none"> - Verify that the items to be exported will not be used for purposes other than the declared use - Ensure that any non-listed dual-use items for a destination subject to a binding UN arms embargo, or any relevant regional arms embargo, are not intended for a “military end-use” 		<ul style="list-style-type: none"> • CECO/ECM should consult with the domestic authorities, when any question arises concerning export control. • cf. “End-User Assurances Commonly Used Consolidated Indicative List” (agreed at the 1999 Plenary, amended at the 2005 Plenary).
<p><u>3.3. Customer / End-user Screening</u></p> <ul style="list-style-type: none"> - Verify whether the end-users / customers are identified with “red-flags” or other early warning systems 		<ul style="list-style-type: none"> • cf. “Statement of Understanding on Implementation of End-Use Controls for Dual-Use Items” (agreed at the 2007 Plenary)
<p><u>3.4. Information by the competent authorities</u></p> <ul style="list-style-type: none"> - Verify whether the competent authorities inform that export or transfer of the non-listed items is subject to the submission of a licence application. 		<ul style="list-style-type: none"> • cf. “Statement of Understanding on Control of Non-Listed Dual-Use Items” (agreed at the 2003 Plenary) • List of Advisory Questions for Industry (agreed at the 2003 Plenary)
<p><u>3.5. Transaction Screening Procedures</u></p> <ul style="list-style-type: none"> - Implement procedures to help prevent diversion of the export/transfer to unauthorized end-users or end-uses. 		<ul style="list-style-type: none"> • Implementation of electronic data processing (EDP) supported by order processing systems may assist these endeavours. • In order to systematize and facilitate the implementation of procedures through 3.1 to 3.4, introduction of check list is recommended.

Basic Elements	Additional Elements	Notes
<p><u>3.6.</u> Where necessary ensure that licences are applied for according to domestic licence application procedures.</p>		<ul style="list-style-type: none"> The exporter needs to apply for licences, in cases where screening detects that non-listed items may be used for purposes covered by end-use oriented controls or where it is determined that the transfer of a listed item to a particular destination/end-user would not be covered by an existing individual, global or general licence or the conditions attached to the use of that licence.
<p><u>4.</u> Shipment Control</p>	<p><u>4.</u> Shipment Control</p>	
<p><u>4.1.</u> Confirm before shipment/ transfer that:</p> <ul style="list-style-type: none"> - Classification/Identification and Transaction Screenings are completed; - Goods and/or technologies and their quantities correspond to the descriptions set out in export instruction documents and/or export licences. 		
<p><u>5.</u> Performance review</p>	<p><u>5.</u> Performance review</p>	
<p><u>5.1.</u> Establish a regular performance review system to confirm that the export control operation is implemented appropriately according to the ICP and the operational procedures and is compliant with all relevant domestic laws and regulations</p>		<ul style="list-style-type: none"> It is recommended that a performance review is carried out by a unit separated from sales or by an outside specialist, as the structure, size and other circumstances of the exporter permit. Performance reviews could be carried out annually.
<p><u>6.</u> Training</p>	<p><u>6.</u> Training</p>	
<p><u>6.1.</u> Training and education of officers and employees</p> <ul style="list-style-type: none"> - Ensure that staffs are aware of all domestic export control laws, regulations, policies and control lists and all amendments to them as soon as they are made public. 	<p><u>6.1.</u> Training and education of officers and employees</p> <ul style="list-style-type: none"> - Archive internal training records including staff participation in external events. 	<ul style="list-style-type: none"> Training and continued education should be carried out for employees at all levels, especially new staff, persons who work in sales, export related units, or are involved in technology transfer. Provision of at desk training using electronic media, such as the internet and CD / DVDs, may be useful to supplement and reinforce formal training sessions.

Basic Elements	Additional Elements	Notes
<u>7.</u> Record Keeping	<u>7.</u> Record Keeping	
<u>7.1.</u> Archive export-related documents for an appropriate period according to the requirements of domestic export control regulations		<ul style="list-style-type: none"> Export-related documents may include export licences, end-use assurances, commercial invoices, clearance documents, product classification/identification sheets, and records of electronic transfers.
	<u>7.2.</u> The exporter's practices and procedures for archiving material should be known by all relevant staff.	<ul style="list-style-type: none"> Archived records should be traceable.
<u>8.</u> Reporting and Corrective Action	<u>8.</u> Reporting and Corrective Action	
<u>8.1.</u> A prompt report should be made to the CECO/ECM of any violations or suspected violations of export control regulations or ICP procedures.		
<u>8.2.</u> A prompt report should be made to the competent authorities if the CECO/ECM confirms a violation of export control laws and regulations.		Violations of export control laws and regulations should be investigated by competent domestic authorities. The violators could be punished according to domestic legal procedures.
<u>8.3.</u> Ensure any corrective actions necessary are implemented so that similar violations do not recur.		Implement, as appropriate, disciplinary procedures against any member of staff responsible for confirmed violations of export control regulations or ICP procedures.

LIST OF ADVISORY QUESTIONS FOR INDUSTRY

(Adopted by the Plenary in 2003)

The Wassenaar Arrangement Participating States decided at the Plenary 2003 to publish the following non-exhaustive list of questions on the WA website. The intended use for the list is to provide a guide for companies in any export situation. The answers to the questions below will give guidance to when suspicion should be raised and a contact with national export licensing authorities might be advisable.

1. Do you know your customer? If not, is it difficult to find information about him/her?
2. Is the customer or the end-user tied to the military or the defence industry?
3. Is the customer or the end-user tied to any military or governmental research body?
4. If you have done business with the customer before - is this a usual request for them to make? Does the product fit the business profile?
5. Does the customer seem familiar with the product and its performance characteristics or is there an obvious lack of technical knowledge?
6. Is the customer reluctant to provide an end-use statement or is the information insufficient compared to other negotiations?
7. Does the customer reject the customary installation, training or maintenance services provided?
8. Is unusual packaging and labelling required?
9. Is the shipping route unusual?
10. Does the customer order an excessive amount of spare parts or other items that are related to the product, but not to the stated end-use?
11. Is the customer offering unusually profitable payment terms, such as a much higher price?
12. Is the customer offering to pay in cash?

VII. End Use and End User Controls

INTRODUCTION TO END USER / END USE CONTROLS FOR EXPORTS OF MILITARY-LIST EQUIPMENT

(Adopted by the Plenary in 2014)

This document provides an overview of end user / end use controls employed in national export control systems. The description below collects different features from different national systems and does not represent any single current system. The aspects covered represent factors that could be considered when designing an end use / end user control component for a national system.

1. Purpose of controls

End User / End Use controls are put in place for exports of military equipment in order to ensure that exported equipment is not diverted to unintended end users or end uses, as the case may be. National systems for this purpose vary considerably, as does the terminology used.

2. Focus of controls

Whether controls should focus on the end user or on the end use is a national decision. In many national systems, both types of controls are deployed but in different situations. For instance, the focus may be on the end user when a final product is being exported, and on end use when a component is being exported for integration into another country's product. End use in the latter case would be the act of integration. There may also be cases where both types of controls are applied simultaneously.

3. The End User

The End User may be a national government, national military forces, or other national authorities such as police, customs or paramilitary forces. Some types of equipment may also be exported to private entities such as companies that provide security services. Industrial end-users are increasingly common when components or subsystems are exported. Depending on national system, some categories of buyers are not normally acceptable as end users for the purpose of obtaining assurances, for instance trading entities providing brokering services or other types of middlemen.

4. The End Use

'End Use' could be integration of a component or subsystem into a larger end product. While some national systems control components and subsystems in the same way as finished products, another approach often used is to require an assurance specifying integration as the end use. This signifies that the country controlling the export of the component is prepared to leave responsibility for onward export of the integrated component in the hands of the country controlling the final product. Alternatively, an agreed list of acceptable export destinations could be made part of the end-use assurance for a component/subsystem. End use controls may also be put in place to restrict the actual end use of an exported final product, either geographically or in some other manner.

5. Key elements of an Assurance

- A clear description of the materiel covered by the assurance, both quantity and type (sometimes including a reference to a commercial contract number or order number where sufficient detail is provided to definitively identify the materiel)
- A clear identification of the end user, end use, or both, whichever is relevant
- The exporting country government's limitation on end user and/or end use, expressed as a negative assurance (for example no transfer or re-export without the exporting country government's prior consent), or alternatively

- The exporting country government's limitation on end use and/or end user, expressed as a positive assurance (for example "for national military use", or "for integration" into a specified larger product. For production technology, a positive end user requirement could be linked to a location or legal entity)
- Date of signature and a clear description of the entity providing the assurance.

Note : For a more detailed description of possible elements in an Assurance, see the Wassenaar Arrangement public document 'End user assurances commonly used - Consolidated Indicative List' (2005).

6. Exceptions to assurance requirements

Not all instances of exports, in the narrow sense of goods being physically transported out of a national territory, generate a requirement for end user assurances even if a license is required. For instance if the transfer is temporary (e.g. for repairs abroad, or for demonstration and return), or for goods in transit. In the case of transit, some national systems may require a copy of the end use assurance provided to the exporting country by the final recipient of the goods.

7. Timing of Assurances

In many national systems, the receipt of an end use / end user assurance is a prerequisite for the issuing of an export license.

8. Format

Assurances may take the form of a bilateral Government-to-Government agreement or be included in commercial contracts enforceable under national law. In some national systems, however, such legal settings are not pursued. The assurances are viewed as political or commercial commitments tied to a broader long-term relationship. Perhaps the most common format remains an end use / end user certificate designed by the exporting country and completed and signed by the final recipient of the goods.

9. Anti-circumvention

Examples exist of forgery and fraud in the context of end user / end use assurances. Care therefore needs to be taken to include features in a national system to counter such malpractices. Examples of measures employed by some national systems are pre-licensing checks of the bona fide status of brokers/middlemen and/or the final recipient of the goods and/or of the individual signing an end use / end user undertaking; post-shipment inspection of the exported goods at their intended location; or an assessment of the track record of the final recipient and/or authorities providing the assurance. Measures can also be taken to ensure the integrity of the assurance document itself. If the final recipient providing an assurance is not a state entity, verifying that the entity is under effective legal control and that national authorities employ effective control practices that would preclude violation of the assurance given may be part of the measures taken to avoid circumvention.

10. Record-keeping

End-use / end user undertakings are not as a rule time limited. As long as the equipment is still in service or in usable condition, the undertaking should remain valid. In some national systems, records concerning undertakings given or received are kept until the equipment covered is scrapped, demilitarized or used up. This may be a longer period than that specified in general national record-keeping regulations.

11. Analogous situations

The description above is focused on situations where military equipment is physically exported. Increasingly common are situations where the final product is not exported from the country of origin, but manufactured or assembled in the country of destination under a licensing agreement. The exporting country may nevertheless wish to exercise a similar degree of control over the product's end use / end user as in an export situation, for example by requiring an assurance not to transfer or re-export the items produced under license without the originating country's prior consent. Such limitations on end use / end user may be incorporated in the commercial agreement forming the basis for licensed production, be included as an export license requirement, or in some cases take the form of a government-to-government agreement.

STATEMENT OF UNDERSTANDING ON IMPLEMENTATION OF END-USE CONTROLS FOR DUAL-USE ITEMS

(Adopted by the Plenary in 2007)

Participating States agree, while a system of end-use controls should always be applied, to maintain a flexible and effective system of end-use controls. The proper evaluation of each individual export licence application is important to minimise the risk of undesirable diversion. Based on an intelligent risk management the sensitivity of an export transaction should be analysed case by case. Participating States may, as appropriate, apply this Statement of Understanding also to exports of items other than dual-use items.

1. The underlying principle for end-use controls is that sensitive cases should be subject to a greater degree of scrutiny than less sensitive cases. Participating States therefore can combine basic and additional elements (as set out in the Reference List in the Annex, which is neither exhaustive nor binding) depending on the assessment of risk. In general, basic elements should always be applied.
2. Participating States agree that the evaluation of the degree of sensitivity remains entirely within national responsibility. The evaluation of sensitivity and the decisions made by Participating States in this context are not binding and do not constitute a prejudice for others.
3. There are three phases of an export to be considered when dealing with end-use controls: the pre-licence phase, the application procedure and the post-licence phase. There is a close inter-relationship between the phases.
4. When selecting which elements from the Annex to use, account must be taken of the different questions that will arise depending on the nature of the goods to be exported.
5. All elements of the end-use controls process need to be packaged together to form a coherent initiative. While end-use certificates are an essential element of end-use controls they are not a substitute for a full assessment of risk involving both licensing authorities and the exporter.
6. Participating States will review progress on the implementation of this Statement of Understanding on a regular basis.

Annex
to the Statement of Understanding on Implementation of End-Use Controls

Reference List

To control end-use, the following basic and additional elements within the three phases of an export can be applied.

1. Pre-Licence Phase

End-use controls need to be considered already in the run-up to the submission of an export licence application by the exporter.

The following basic and additional elements may be applied on a case-by-case basis in this phase:

Competent authority - Basic elements	Exporter - Basic elements
<ul style="list-style-type: none"> • Awareness-Raising, i. e. provide information on export control e.g.: <ul style="list-style-type: none"> - Web sites - participation in and/or organisation of training courses for industry, - written guidance provision of guidance material to explain laws, regulations and procedures • Establishment of Points of Contact (POC) to exchange information between competent authorities inside PS 	<ul style="list-style-type: none"> • Internal Compliance Programme (ICP), i. e. to establish export control compliance standards within a company, which may include, depending on the structure of the company as well as other specific circumstances <ul style="list-style-type: none"> - nomination of a person at senior management level (to be responsible for export control compliance) - selection of competent staff members to oversee day to day compliance with relevant export control regulations - sample quality checks of staff work - training, and periodic refresher training, of staff in export control law and procedures • Promote transparency as part of ICP by confirming as far as possible end-use/final destination through use of all available information particularly in sensitive or suspicious cases e.g.: <ul style="list-style-type: none"> - customer's identity or existence cannot be verified - customer reluctant to offer information about the end-use of items or of other relevant data - customer lacks skills and technical knowledge - significantly exceeding quantities - routine installation, training or maintenance services declined - unusual on-site security standards - any other unusual behaviour (e.g. in delivery or payment conditions) • Exporter's duty to keep relevant documentation for a set period of time, esp. on the points mentioned above

Competent authority - Additional elements	Exporter - Additional elements
<ul style="list-style-type: none"> • Maintenance of end-user “red-flags” or other early warning systems, profiles and destination country • Manuals for licensing officers on processing applications to sensitive countries • Outreach-programmes to non-WA-PS • Establishment of a Point of Contact where information can be exchanged among PS (e.g. on suspicious or unusual transactions) 	<ul style="list-style-type: none"> • Physical and technical security arrangements preventing diversion, e.g. ensuring adequate site and transport security • Seeking advice from and rendering information to competent authorities on business contacts, to sensitive end-users or in unclear or suspect cases

2. Application procedure

The licensing procedure itself covers all the measures taken to verify the data provided with an export licence application from an end-use controls perspective and ultimately to come to a final decision.

The following basic and additional elements may be applied on a case-by-case basis in this phase:

Competent authority - Basic elements	Exporter - Basic elements
<ul style="list-style-type: none"> • Plausibility check on the information provided, assessing the following: <ul style="list-style-type: none"> - technical aspects (e.g. data sheets, technical specifications and reference lists supplied, plausibility of quantities) - internal knowledge of and other information, esp. on, but not limited to, the end-use/end-user held by the authority - end-use and other documents submitted in support of the application - reliability of the persons involved in the transaction (exporter, consignee, end-user and others) - risk analysis • Consideration of Denial Notifications 	<ul style="list-style-type: none"> • Presentation of a factually complete licence application form, including all necessary supporting documentation. Minimum information: <ul style="list-style-type: none"> - exporter - consignee/end-user/purchaser/others involved in the transaction; - description and specification of goods - signature of applicant (verifiable), and other contact information • Submission of end-use certificates (governmental or private) containing minimum information. (cf. consolidated Indicative List of End-User Assurances commonly used as contained in WA-PLM (05) CHAIR 052 Annex B, “Essential Elements”)
Competent authority - Additional elements	Exporter - Additional elements
<ul style="list-style-type: none"> • Consult POC • Liaison with intelligence services • Including conditions to a licence (e.g. submission of governmental or private Delivery Verification Certificates /DVC’s) • Check authenticity of governmental or private EUCs • Inter-ministerial consultation on export transactions • Capability of importing country to exert effective export controls • Exchange of diplomatic notes, formal governmental declaration excluding certain uses and guaranteeing the final end-use and end-user location • Pre-license check to confirm existence of the end-user and bona fide need for controlled items 	<ul style="list-style-type: none"> • thorough explanation of facts; presentation of additional supporting documentation in support of export licence application: <ul style="list-style-type: none"> - company's profile with detailed information on consignee/end-user - project description - information on service contracts or acceptance reports - Letter of credit, L/C • Presentation of end-use certificate with additional elements as specified by the competent authority (cf. consolidated Indicative List of End-User Assurances commonly used as contained in WA-PLM (05) CHAIR 052 Annex B, “Optional Elements”) • Separate confirmation of specific data by person responsible for exports

3. Post-Licence Phase

This phase confirms that the rationale for granting an export licence was correctly based.

The following basic and additional elements may be applied on a case-by-case basis in this phase:

Competent authority - Basic elements	Exporter - Basic elements
<ul style="list-style-type: none"> • Control of actual exports Annotate export licence to show actual exports made (by customs/exporter) • Information exchange about denied applications (denial exchange) • Co-operation and information exchange between authorities and with other PS (i.e. between the licensing and enforcement authorities; where appropriate with licensing and enforcement authorities in other PS) • Enforcement through regular compliance checks on exporters • Proportionate and dissuasive penalties to deter infringements of the regulations 	<ul style="list-style-type: none"> • Records associated with licence applications must be retained for a set minimum period • Duty to report suspicious activity or evidence of diversion or mis-use of item(s) to authorities

Competent authority - Additional elements	Exporter - Additional elements
<ul style="list-style-type: none"> • Monitoring end-user obligations and acting where they are in default of those obligations • Monitor actual use of export licences issued to detect/prevent fraud and or other abuse of the licence • Governmental Post Shipment Controls (PSC) • Export reports / import reports, i.e. exchange of information between the competent authorities of exporting country and the country of consignment to reveal unlicensed transfers or attempts of diversion. • Monitoring re-export conditions where resale by the consignee is subject to a reservation made by the original exporting state 	<ul style="list-style-type: none"> • Delivery Verification Certificate (DVC) Submission of government or private verification certificate of delivery or reception of the goods • Export notice A requirement sometimes placed on industry to report to their authorities on potential future exports • Private Post-Shipment Controls (PSC)¹ Provision of operational or maintenance services at the end-user's facilities or other verification mechanisms undertaken by the exporter • Publication of collateral clauses towards consignee The exporter has to inform the consignee about any legal or administrative conditions under which the licences were granted. This is a measure of transparency and compliance.

¹ A possible additional element is the so-called governmental or private post-shipment controls (PSC) at the final consignee, which may be applied on a mutually voluntary basis and cannot be enforced. Permanent end-use safeguards in accordance with the provisions can also not be guaranteed by regular on-site controls. Therefore, the benefit of PSC can only be to gain information for future licensing procedures.

**END-USER ASSURANCES COMMONLY USED
CONSOLIDATED INDICATIVE LIST**

(Adopted by the Plenary in 1999 and amended in 2005)

The following is a non-binding list of end-use assurances to be used by Participating States at their discretion.

Note: This Indicative List covers both the military pillar and the dual-use pillar

Essential elements	Optional elements
1. <u>Parties involved in the transaction</u>	1. <u>Parties involved in the transaction</u>
1.1. Exporter's details ¹ ;	1.2 Intermediate consignee's details;
1.4 End-user's details. In the case of an export to a firm which resells the goods on the local market, the firm will be regarded as the end-user	1.3 Final consignee's details;
2. <u>Goods</u>	2. <u>Goods</u>
2.1 A description of the goods being exported (type, characteristics) and/or reference to the contract number or order number concluded with the authorities of the final destination country	
2.2 Quantity and/or value of the exported goods	
3. <u>End-use</u>	3. <u>End-use</u>
3.1 Indication of the end-use of the goods;	
3.2 An undertaking, where appropriate, that the goods being exported will not be used for purposes other than the declared use; and/or	
3.4 An undertaking, where appropriate, that the goods will not be used in the development, production or use of the chemical, biological or nuclear weapons or for missiles capable of delivering such weapons.	3.3 Provide an undertaking that the goods will be use for civil-end use;

Essential elements	Optional elements
4. <u>Location</u>	4. <u>Location</u>
	4.1 Provide certification that the goods will be installed at the premises of the end-user or will be used only by the end-user;
	4.2 The final consignee/end-user agrees to allow on-site verification;

¹ Details of exporter/intermediate consignee/final consignee/end-user means name, business name, address, phone, fax, e-mail, website (if available)

- | | |
|---|---|
| <p>5. <u>Re-export / Diversion</u></p> | <p>5. <u>Re-export / Diversion</u></p> <p>5.1 The final consignee's/end-user's undertaking not to tranship or re-export the goods covered by the End-use Certificate/Statement; and/or</p> <p>5.2 No re-exports without approval from the government of the original exporting country; and/or</p> <p>5.3 The final consignee's/end-user's assurance that any re-exports will be done under the authority of the final consignee's/end-user's export licensing authorities;</p> <p>5.4 The final consignee's/end-user's undertaking not to divert or relocate the goods covered by the End-use Certificate/Statement to another destination or location in the importing country;</p> |
| <p>6. <u>Delivery Verification</u></p> | <p>6. <u>Delivery Verification</u></p> <p>6.1 Provide a commitment by the final consignee to provide the exporter or the exporting government with proof of importation, upon request (e.g., provide a Delivery Verification Certificate (DVC));</p> |
| <p>7. <u>Documentation</u></p> <p>7.1 Signature, name and title of final consignee's/end-user's representative;</p> <p>7.4 Original End-user Certificate/Statement or legally certified copies;</p> | <p>7. <u>Documentation</u></p> <p>7.2 Signature and end-use certification by the final consignee's/end-user's government or other authority as to the authenticity of the primary details provided in the document</p> <p>7.3 If issued by the government authority, a unique identifying Certificate/Statement number;</p> <p>7.5 Validity terms and date of issue</p> |

VIII. Applicant Countries

GUIDELINES FOR APPLICANT COUNTRIES

(Adopted by the Plenary in 2014)

The Wassenaar Arrangement plays a significant role in contributing to regional and international security and stability by promoting transparency and greater responsibility in transfers of conventional arms and dual use goods and technologies, thus preventing destabilizing accumulations.

There is increasing worldwide recognition of the importance of having effective national export control systems. The UN Arms Trade Treaty requires countries to create and enforce a national export control system. This Treaty highlights the importance of effectively regulating international trade of conventional weapons in order to successfully avert illicit trafficking and prevent proliferation.

The Participation Criteria cited in Appendix 4 of the Initial Elements refer to the ability of an Applicant Country to positively contribute to the purposes of the Arrangement in terms of, *inter alia*, the following factors:

- i) whether it is a producer or exporter of arms or industrial equipment respectively,
- ii) whether it has taken the Wassenaar Arrangement control lists as a reference in its national export controls,
- iii) its non-proliferation policies and appropriate national policies,
- iv) its adherence to fully effective export controls.

Due to the great diversity of legal and administrative systems worldwide, there is no single method to present the legal basis and operating structure of an export control system in order to be considered a potential Participating State to the Wassenaar Arrangement.

Therefore, the purpose of this document is to share with Applicant Countries concrete elements and aspects that may help guide them in their process of seeking admission to the Wassenaar Arrangement, as well as serve as a guide for Applicant Countries to conduct an internal review of current domestic capabilities and identify the strengths and weaknesses of all the activities and components encompassed by the national export control system, in order to target areas that might require further work.

Applicant Countries are encouraged to provide information regarding their capacity to fulfill the Wassenaar reporting obligations, their commitment to engage in transparent exchanges of information, and their willingness to abide by the confidentiality principles included in the Initial Elements. Transparency will allow Participating States to reach their own informed decisions, at their discretion, on the merit of each application.

Applicant Countries are encouraged to provide information in their candidacy dossier on the following non-exhaustive list of elements:

1. Industrial capacity and export/import profile

- Conventional arms and dual use goods potentially subject to Wassenaar controls that are produced by the country.
- Number of conventional arms and dual use export licenses that have been issued over the last few years.
- Countries of destination of the Applicant Country's exports subject to Wassenaar controls.
- Information regarding the role of the country as transit and transshipment country for trade of Wassenaar controlled items.

2. National export controls and non-proliferation laws and regulations

- Description of laws and regulations to control the transfer (exporting, importing, transit, transshipment, re-export and brokering) of conventional arms, dual use goods, munitions, software and technology based on the Wassenaar Arrangement Lists, including catch-all measures.
- Procedures to incorporate, and regularly update, the Wassenaar Arrangement Lists into the domestic legal framework.

3. National licensing policies, law enforcement and internal coordination

- Ability to ensure, through its national policies, that transfers of conventional arms and dual-use goods and technologies do not contribute to undermining international security and stability.
- Overview of the interagency coordination process, detailing the actors involved, and assignment of roles and responsibilities available to ensure compliance with the Wassenaar Arrangement objectives.
- Overview of the licencing process, how it operates and its requirements, as well as a description of the process to identify whether an item is controlled and of all the categories of licenses granted - including global or general licenses - documentation required for license applications and, if applicable, the provisions of end user / end use controls.
- Overview of the risk analysis and assessment process used in order to prevent the diversion or misuse of exported items.
- Overview of interaction strategies to national industry and academia, including through special programs – such as encouraging Internal Compliance Programmes (ICP), and promoting awareness of controls of Intangible Transfer of Technology (ITT) - to prevent illicit transfer of Wassenaar Arrangement controlled items. Information on outreach strategies may include the role of feedback channels.
- Overview of penalties in place for violations of export controls and capacity to fully comply, including through catch-all measures, with enforcement obligations to prevent the illicit transfer (exporting, importing, transit, transshipment, re-export and brokering) of Munitions List goods and dual-use items, materials and technology. Additionally, an overview of the law enforcement agency or agencies with authority to assess compliance with national laws regarding exports and imports and to carry out investigations of possible violations of relevant laws or regulations.

4. International Security and Non-proliferation Commitments

- International instruments in the field of disarmament and non-proliferation to which the State is Party, commitment to international non-proliferation efforts and willingness to continuously improve its compliance with multilateral control regimes, as appropriate.
- Participation in global and regional mechanisms that regulate transfers of conventional arms.
- Participation in multilateral or regional agreements or structures with special export control rules.

Finally, Applicant Countries could provide information regarding the ability to follow Wassenaar best practices, which can be found in the compilation of Basic Documents available in the Wassenaar Arrangement public webpage: <http://www.wassenaar.org/>.

Chronological Index of Compendium Documents

Document	Adoption	Revision(s)	Page
<i>Criteria for the Selection of Dual-Use Items</i>	1994	2004 2005	45
<i>Criteria for the Selection of Dual-Use Goods and Technologies for the Sensitive List</i>	1998	2000 2004	47
<i>Elements for Objective Analysis and Advice Concerning Potentially Destabilising Accumulations of Conventional Weapons</i>	1998	2004 2011	3
<i>Best Practice Guidelines for Exports of Small Arms and Light Weapons (SALW)</i>	2002	2007	17
<i>Best Practices to Prevent Destabilising Transfers of Small Arms and Light Weapons (SALW) through Air Transport</i>	2007		21
<i>End-User Assurances Commonly Used – Consolidated Indicative List</i>	1999	2005	81
<i>Best Practices for Effective Export Control Enforcement</i>	2000	2016	7
<i>Criteria for the Selection of Dual-Use Goods and Technologies for the Very Sensitive List</i>	2000	2004	49
<i>Best Practices regarding VSL items</i>	2000		51
<i>Best Practices for Disposal of Surplus/Demilitarised Military Equipment</i>	2000		41
<i>Statement of Understanding on Arms Brokerage</i>	2002		29
<i>Best Practices for Effective Legislation on Arms Brokering</i>	2003	2016	31
<i>Statement of Understanding on Control of Non-Listed Dual-Use Items ("Catch-all")</i>	2003		55
<i>List of Advisory Questions for Industry</i>	2003		67
<i>Elements for Export Controls of Man-Portable Air Defence Systems (MANPADS)</i>	2000	2003 2007	23
<i>Best Practice Guidelines for the Licensing of Items on the Basic List and Sensitive List of Dual-Use Goods and Technologies</i>	2006		53
<i>Best Practices for Implementing Intangible Transfers of Technology Controls</i>	2006		13
<i>Statement of Understanding on Implementation of End-Use Controls for Dual-Use Items</i>	2007		75
<i>Best Practice Guidelines on Subsequent Transfer (Re-export) Controls for Conventional Weapons Systems contained in Appendix 3 to the WA Initial Elements</i>	2011		27
<i>Elements for Controlling Transportation of Conventional Arms Between Third Countries</i>	2011		33
<i>Best Practice Guidelines on Internal Compliance Programmes for Dual-Use Goods and Technologies</i>	2011		59
<i>Introduction to End User/End Use Controls for Exports of Military-List Equipment</i>	2014		71
<i>Guidelines for Applicant Countries</i>	2014		85
<i>Best Practice Guidelines for Transit or Trans-shipment</i>	2015		37
<i>Elements for the Effective Fulfilment of National Reporting Requirements</i>	2015		11