

Statement of Understanding on Implementation of End-Use Controls for Dual-Use Items

(Agreed at the 2007 Plenary)

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-licence 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 misuse 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.