

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

(Agreed by the Plenary, 3 July 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.