

## 25th ASIAN EXPORT CONTROL SEMINAR

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### *“The Wassenaar Arrangement: Recent Developments”*

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#### Introduction

Thank you to the Centre for Information on Security Trade Control (CISTEC), the Ministry of Economy, Trade and Industry (METI) and the Ministry of Foreign Affairs (MOFA) of Japan for inviting me back for the 25<sup>th</sup> anniversary of the Asian Export Control Seminar, and congratulations on achieving this impressive milestone.

I would like to give an overview of the Wassenaar Arrangement (WA) and its work, highlighting some recent outcomes, as well as challenges.

When it became operational in 1996, with 33 founding Participating States, the WA was the first global multilateral arrangement to address the risks to international peace and security associated with the spread of conventional arms and related items.

The WA is an inter-governmental information-sharing and standard-setting forum.

Its Participating States make a political commitment to cooperate in promoting transparency and responsibility in transfers of conventional arms and sensitive dual-use goods and technologies, thus preventing destabilising accumulations. They undertake, through their national policies, to ensure that transfers of these items do not contribute to the development or enhancement of military capabilities which undermine regional and international security and stability, and are not diverted to support such capabilities. They also seek to prevent the acquisition of these items by terrorists.

The WA works by consensus and is open on a non-discriminatory basis to new members who meet the agreed criteria and whose admission is approved by the WA Plenary.

### Background

Having welcomed India as the newest Participating State last December, the WA has now expanded to 42 countries from across the continents, among them major producers and exporters of the items in question. Several applications for membership are currently pending, while an increasing number of countries are among the WA's regular outreach partners, including many in the Asian region. More and more countries are opting to apply the WA Control Lists without seeking to become a member. They may have done this directly, or by means of voluntarily following the consolidated European Union (EU) Control Lists, which are based on, inter alia, the work of the WA.

The WA complements, without seeking to duplicate, other export control regimes represented in this session that are dealing with weapons of mass destruction and their means of delivery. While the specific focus of each regime differs, the underlying principle is similar. Multilateral cooperation in promoting effective export controls, based on vigilance and restraint, contributes to peace and security by helping to prevent sensitive items from falling into the wrong hands, including those of terrorists.

There is also an economic dimension. As is increasingly widely recognised, and has been highlighted by other speakers, effective export controls can be seen as facilitating trade, building confidence and enhancing a country's access to sensitive imports, as well as to foreign direct investment. WA members go to considerable lengths to ensure that their work does not impede *bona fide* civil transactions.

Conventional arms, as is well known, are the weapons that are currently used with the most devastating consequences around the world, especially small arms and light weapons (SALW), which are also the weapons of choice of terrorists.

Increasing recognition of the need to regulate world trade in these arms is reflected in broad-based international support for the Arms Trade Treaty (ATT).

Interest in the WA and its work continues to grow in this context. The WA's outputs may be seen as a useful reference or resource for countries which are building or strengthening their export control systems.

### WA Commitments

Upon joining, WA members make two main commitments: firstly to apply fully effective export controls at the national level based on the collectively agreed WA Control Lists; secondly, to exchange information about the risks associated with transfers of these items, as well as details of their own transfers and export denials in certain cases. This transparency helps to build common understandings and to assess the scope for coordinating national export control policy and practice. It also serves to promote greater consistency in transfers of these items.

It should be stressed that the WA does not seek to introduce collective decision-making into national export licence procedures. On the contrary, all decisions, whether to grant an export licence for a particular item to a particular destination, or to deny an export licence application, are taken by each WA Participating State in accordance with its national legislation and policies.

This balance between collective agreement on key principles and standards and the preservation of national discretion in implementing them is a fundamental feature of the WA's work.

### Structure

A word about structure. Chairing of the WA Plenary and the main subsidiary bodies rotates alphabetically. This year's Plenary Chair is the United Kingdom,

following France last year. In 2017, Slovakia is chairing the General Working Group which addresses policy and procedural matters; Luxembourg is continuing to chair the Experts Group which has responsibility for the WA Control Lists; and the UK is continuing to provide the Chair of the Licensing and Enforcement Officers Meeting.

### Control Lists

A key part of the WA's work is collectively agreeing on the items that should require an export licence at the national level.

The WA Munitions List has close to 300 entries in 22 categories, covering all types of conventional arms, as well as ammunition, parts and components, related production equipment, technology and software.

The WA Dual-Use List contains over 1,000 items in 9 categories, ranging from special materials and related equipment to electronics, computers, telecommunications, information security, sensors and lasers, navigation and avionics, marine, aerospace and propulsion.

Within the WA Dual-Use List, 170 items are classified as "sensitive" and 80 as "very sensitive", requiring a more vigilant approach.

It is worth noting that the WA Lists, especially the Dual-Use List, are more extensive than those of other export control regimes and for most countries account for the majority of export licence applications.

A "catch all" principle, agreed in 2003, provides for the control of non-listed dual-use items in certain circumstances - when they are intended for destinations that are subject to UN or other binding arms embargoes, and are for military end-use, including for the manufacture or repair of military equipment.

The key selection criterion for the Munitions List is whether the item is a major or key component for military capability.

The selection of dual-use items is more complex. "Dual-use" means a good or

technology that may have both civilian and military applications, including for the indigenous development, production, use or enhancement of military capabilities.

Factors to be taken into account in listing dual-use items include availability on the global market, the ability to control the item's export effectively, the ability to specify it clearly and objectively, and non-duplication with other export control regimes.

To remain relevant, export control lists need to be constantly updated. WA Participating States invest considerable resources in this ongoing work. The group of national technical experts meets for on average six weeks a year in Vienna, and also works intersessionally, to consider possible changes to the WA Control Lists – additions to, modifications of, or deletions from existing controls - in order to stay in step with technological advances, changes in the international security environment and market trends. Industry experts may be involved in the highly specialised work of updating the Lists. It is important to set the Control List specifications precisely so as to focus licensing decisions on items of security concern, while allowing other items to be traded freely.

To take a few recent Control List changes as examples. On the dual-use side, as some of you may know, in recent years the WA has intensively analysed the relevance of export controls on goods and technologies related to mobile communications interception, intrusion software and Internet network surveillance tools which, under certain conditions, may be detrimental to international and regional security and stability. New controls in these areas were introduced in 2012 and 2013. Work has continued since then on these and other entries in the light of implementation experience. Last year, additional *clarifications* were agreed in relation to intrusion software so as to exclude from the scope of controls software and technology intended for vulnerability management and cyber incident response. Further clarifications of controls were also achieved in 2017 in other areas, such as spacecraft equipment, gas turbine engines and equipment

incorporating information security, taking into account the increasing integration of once sensitive functionalities in mainstream consumer products.

In 2017, the WA also continued its focus on recent technologies of concern, for example lawful electronic interception devices, electronic forensic tools and systems for the jamming and interception of unmanned aerial vehicles (UAVs), which could have negative security consequences if diverted. In such areas, the challenge relates to establishing a clear distinction between equipment and technologies of concern and comparable items for legitimate civil use that are increasingly available on the global market.

Among the most significant *updated* controls agreed last year were those related to high-performance digital computers, specific electronic components able to withstand extreme environmental conditions, submarine diesel engines, optical wave-front sensors and additional military explosives.

Some controls were *relaxed*. For example, mechanical high-speed cameras were deleted from the Control Lists as they have now been replaced by digital high-speed cameras in all sensitive applications. The control of rifle-scopes having no electronic image processing, for example, was also relaxed to avoid unnecessary licensing of widely available sporting and hunting rifle-scopes.

As can be seen, it is not just a question of adding to controls, but also of amending or deleting existing controls to take account of obsolescence or to enhance common interpretation.

The WA can be expected to continue to provide a forum to address new technologies of concern, and to keep export control specifications up-to-date on sensitive items, including through further refining understandings, such as in relation to electronic forensics equipment, communications interception systems and robots having image-processing capabilities. Other ongoing challenges include further developing appropriate export controls in respect of Additive

Manufacturing (or 3-D printing), new generation sensors and the so-called "Internet of Things".

### Information Exchange

Turning to the WA's information-sharing role, what is called a *general information exchange* is designed to focus, at least three times a year, on transfer risks in specific regions, suspicious acquisition/brokering activities, projects and programmes of concern, as well as terrorism-related issues. These exchanges are a kind of collective risk assessment bringing together Participating State perspectives from different parts of the world.

In practice, an individual Participating State may draw the attention of its partners to any matter that it considers relevant to achieving the WA's purposes.

*Specific information exchange* in the WA involves regular national reporting of conventional arms transfers, as well as transfers and denials of certain dual-use goods and technologies, to destinations outside the WA, with the aim of promoting transparency and consistency. WA arms transfer notifications are submitted more frequently (i.e. twice per year) and include more information than is required under the UN reporting system and the Arms Trade Treaty (ATT).

Reporting of transfer denials brings to the attention of partners efforts to obtain access to a controlled item or technology that one Participating State considers to be contrary to the WA's purposes. Such reporting is therefore an important and timely warning mechanism that also helps to avoid inadvertent undercuts.

If it wishes, any Participating State may follow up, in the WA forum or bilaterally, by seeking further discussion as to the rationale behind a particular national transfer decision. In this way, the WA provides for an element of "peer review".

WA-information-sharing is facilitated through the WA's dedicated secure electronic network (WAIS), to which all Participating States have 24-hour access.

### Standard-Setting Work

The third focus of the WA, as I see it, lies in its standard-setting work. WA Participating States have agreed to collaborate in producing export control implementation guidance drawing on their practical experience.

Over the years the WA has built up a comprehensive library of some 25 non-binding Best Practices Guidelines, elements and procedures to assist both governments and industry in effective export control implementation. These documents are available on the WA public website.

Related to this work is the valuable sharing of national implementation experiences at the "practitioner" level. Licensing and enforcement officers from WA Participating States meet every year and network informally to share practical insights, including case studies and lessons learned.

Looking at some of the key WA documents, relevant to the export risk assessment process are the "Elements for Objective Analysis and Advice Concerning Potentially Destabilising Accumulations of Conventional Weapons", originally agreed in 1998 and since updated twice, listing factors to be taken into account when assessing an export licence application. Other WA Best Practice Guidelines relate to, inter alia, re-export controls for conventional weapons systems, end-user/end-use controls for exports of military list equipment, intangible transfer of technology controls and internal compliance programmes (ICPs) for industry and the academic/research sector.

Among recently agreed guidelines are Best Practices for Transit or Transshipment and Elements for the Effective Fulfilment of National Reporting Requirements. In 2016, updates were approved of earlier Best Practices for Effective Legislation on Arms Brokering and for Effective Export Control Enforcement, as part of a new procedure for the regular review and, where appropriate, updating of all existing WA guidance documents.

## Outreach

The WA attaches priority to outreach to non-member countries to encourage the establishment and maintenance of fully effective export controls. Current activities include annual collective briefings and bilateral dialogue (visits/meetings) with interested non-Participating States. In recent years WA missions have visited, for example, India, Israel, Singapore and Malaysia by invitation. The WA Secretariat is also mandated to participate in international events such as this one, and to stay in touch with other international and regional organisations working in similar areas. In addition, the WA is pursuing informal technical contacts with the Nuclear Suppliers Group (NSG) and the Missile Technology Control Regime (MTCR) on specific Control List issues to avoid duplication.

## Arms Trade Treaty (ATT)

A word about the ATT. Given the alignment of their goals, I am often asked about the current and future relationship between the ATT and the WA. I believe that the two can be seen as complementary and mutually-reinforcing. The WA's collective experience, including its Munitions List, and the expertise acquired in the application of its best practices and guidelines, may be useful to other countries seeking to fulfil their ATT commitments. This could save a lot of time and work. In addition, many WA members are active in their national and/or regional capacities in providing export control advice and assistance to other countries.

For the foreseeable future, I think that WA Participating States can be expected to continue using the Arrangement to further develop international export control standards and enhance their implementation, thereby seeking to lead by example for the broader international community.

## Conclusion

In closing, I believe that the collaborative work of the WA has been an important

stabilising factor in the international trade and security framework over the last more than twenty years.

The challenges facing export controls are becoming more ever complex – whether related to destabilising accumulations of conventional arms, regional conflicts, or proliferation risks associated with rapid technological advances, the increasing role of non-state actors (including terrorists), the accelerating globalisation of business, extensive movement of people, and ever-widening use of electronic communications.

The WA recognises that, to remain relevant, it needs to continue to be able to respond rapidly and coherently to the evolving international threat landscape, without impeding legitimate trade.

Let me recall that the WA public website contains all the key WA documents, including the Control Lists and the Best Practices Guidelines. I encourage you to visit it.

I would be happy to provide further information or answer any specific questions, either as part of this session or in informal contacts on the margins of the Seminar.

Thank you.