

26th ASIAN EXPORT CONTROL SEMINAR

(Tokyo, 26-28 February 2019)

“Multilateral Export Control Regimes - The Wassenaar Arrangement”

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Conventional Arms and Dual-Use Goods and Technologies

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 of Japan for inviting me back for this year's Asian Export Control Seminar, which is a key event for the regional and international export control community.

I'd like to give an overview of the Wassenaar Arrangement (WA) and highlight some recent outcomes as well as challenges.

The WA is an inter-governmental information-sharing and standard-setting forum focused on export controls for conventional arms and dual-use goods and technologies.

When it became operational in 1996, after the end of the Cold War, it 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.

Over the last more than 22 years it has become a reference point or bench-mark in this sector, developing control lists and setting standards for effective export control regulation and implementation. International interest in its work has continued to grow in the face of diversifying and more sophisticated diversion risks. As we have heard this morning, proliferators are constantly looking for the weakest link, including in terms of the effectiveness of a country's export control system.

In this regard the WA can be seen as a repository of collective experience and expertise. A lot of useful information is available on its public website for any country or company to draw on.

In terms of its mode of operation, the WA relies on a political commitment by each of its Participating States to cooperate in promoting transparency and responsibility in transfers of relevant items, thus preventing destabilising accumulations. Every Participating State undertakes, through its national policies, to ensure that transfers of these items do not contribute to the development or enhancement of military capabilities that undermine regional and international security and stability, and are not diverted to support such capabilities. The Participating States 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.

Having welcomed India as the newest Participating State just over a year ago, the WA has grown from 33 founding members to currently 42 countries from every continent, among them major producers and exporters of the items in question.

According to data published by the Stockholm International Peace Research Institute (SIPRI), in 2017 WA Participating States comprised 17 out of the 20 leading conventional arms exporters and were responsible for 91% of world arms exports.

Several applications for WA membership are currently under consideration, while the number of regular outreach partners has grown to 46 in the last few years. More and more countries are basing their export controls on the WA Munitions and Dual-Use Lists and taking a close interest in the WA's work, with

or without seeking to become a member. They may apply the WA Lists directly, or by means of following the EU Control Lists, which consolidate the work of the WA and other multilateral export control regimes.

The WA complements and reinforces, without seeking to duplicate, other export control regimes concerned with weapons of mass destruction and their means of delivery, including those represented in this session. More recently the Arms Trade Treaty (ATT) has joined the WA in its part of the international architecture, reflecting wider international recognition of the need to regulate global trade in conventional arms.

As is increasingly widely recognised, export controls have an economic as well as security dimension. Having an effective export control system in place can be seen to facilitate trade, build confidence and enhance a country's access to sensitive imports, as well as to foreign direct investment. WA Participating States go to considerable lengths to ensure that their work does not impede *bona fide* civil transactions.

WA Commitments

On joining, WA members make two main commitments: to apply fully effective export controls at the national level based on the WA Control Lists; secondly, to exchange information and views about the risks associated with transfers of these items, as well as reporting of their own transfers and 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, which is important to exporters.

The WA does not attempt to introduce collective decision-making into national export licensing. 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. As I see it, the WA's role is to "set the standard" against which Participating States manage and measure their national export control systems.

There are accordingly no verification or enforcement mechanisms in the WA. Reliance is placed on frank exchanges in a diplomatic setting and on an element of "peer review" - any Participating State may, if it wishes, follow up by seeking further discussion with a WA partner, within the WA forum or bilaterally, as to the rationale behind a particular national transfer decision.

This balance between collective agreement on key principles and standards and the preservation of national discretion in implementing them is an essential feature of the WA's work, and a common thread in the fabric of each of the multilateral export control regimes.

Structure

Chairing of the WA Plenary and the main subsidiary bodies rotates alphabetically. This year's Plenary Chair is Greece, following the United Kingdom last year. In 2019, Turkey is chairing the General Working Group which addresses policy and procedural matters; Latvia is chairing the Experts Group which has responsibility for maintaining 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 technical - 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 key selection criterion is whether the item is a major or key component for a

military capability.

The WA List of Dual-Use Goods and Technologies 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. Controlled dual-use goods and technologies are those produced for commercial purposes but which are also major or key elements for the indigenous development, production, use or enhancement of military capabilities.

It is worth noting that for most countries the WA Control Lists, especially the Dual-Use List, account for the majority of export licence applications.

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 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 – whether additions to, modifications of, or deletions from existing controls - in order to stay in step with advances in technology, changes in the international security environment and market trends. They may also involve their industry experts in the highly specialised work of updating the Lists. It is important to set the Control List specifications precisely so as to focus export licensing decisions on items of security concern, while allowing other items to be traded freely.

One of the benefits that countries derive from participation in the WA is this access to knowledge about latest technological developments and their security implications, including from partners which are in the forefront of innovation.

Once the Control List changes are approved by the annual WA Plenary in early December, they are published on the WA website and WA Participating States, and an increasing number of other countries, incorporate them into their national regulations and procedures as appropriate.

In 2018, the Experts Group considered some 81 national proposals and 231 papers. Around 75% of the proposals were agreed. Let me highlight some of the topics of focus in recent years.

These include specific emerging technologies, such as intrusion software and cyber warfare tools, electronic forensics equipment, lawful interception equipment, UAV jamming systems, 3-D printing and spacecraft. The intertwined development of both civilian and military applications of these technologies poses a significant challenge in crafting controls which take into account both the security and the economic and commercial interests of all the Participating States. It is a constant balancing act.

Among the main Control List changes agreed last year were new export controls related to quantum-resistant cryptography algorithms, air-launch platforms for space-launch vehicles, electromagnetic pulse (EMP)-resistant software, and explosives.

It is not always a case of adding to the Control Lists. For example, existing controls were further clarified regarding cryptographic activation, underwater sensors, pre-1946 aircraft and engines, non-magnetic diesel engines, water tunnels, naval nuclear equipment, and production items for integrated circuits.

And some controls were relaxed, such as for civil industrial uses of the Internet-of-Things, high-performance continuous-wave lasers, and infra-red cameras, where performance thresholds were updated taking into account the fast evolution of the civil market.

As the scope of these examples shows, WA Participating States are increasingly seeing the WA as an appropriate forum in which to address the trade and security issues arising from rapid technological advances.

Information Exchange

Turning to the WA's information-sharing, 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. They enable the Participating States to draw on a larger pool of information to better inform their national export licence decision-making.

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. six-monthly) 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.

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.

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.

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 readily accessible on the WA public website.

WA Best Practice Guidelines relate to, inter alia, export risk assessment, re-export controls for conventional weapons systems, end-user/end-use controls for military list equipment, catch-all controls, intangible technology transfer (ITT) controls, internal compliance programmes (ICPs) for industry and the research sector, and transit or trans-shipment.

Since 2016, WA Participating States have undertaken to ensure the regular review and where appropriate updating of existing guidance documents, given the passage of time since their original adoption and ongoing developments in many areas, such as ITT. Last year, for example, Participating States agreed on an update to the *List of Advisory Questions for Industry* originally issued in 2003.

Outreach

In terms of outreach, unlike some other export control regimes, the WA does not have a formal category of "adherents". It already shares its major outcomes in terms of the Control Lists and Best Practices as public documents on the WA website. In addition, considerable information is conveyed to interested non-

member countries through a structured outreach programme, with the objective of encouraging voluntary adherence to the WA Control Lists and WA standards, and a strengthening of export control systems generally.

Included among these outreach activities are a collective Post-Plenary Briefing and an Enhanced Technical Briefing at which WA experts discuss the latest Control List changes and other issues and answer specific questions. The Enhanced Technical Briefing has been regularly held in conjunction with the WA Experts Group and the WA Licensing and Enforcement Officers' Meeting in Vienna to facilitate capitals-based expert exchanges and the sharing of practical implementation experience. Whereas it has been held annually so far, there is an intention to hold it every two years in future with a consolidated content. The next one is therefore likely to be in mid-2020.

In recent years WA technical missions have visited, for example, India, Israel, Singapore and Malaysia by invitation.

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.

At the multilateral level, the WA Secretariat also maintains contacts with other international and regional organisations engaged in related activities, including relevant parts of the United Nations system and the ATT, as well as the Organisation for Security and Cooperation in Europe (OSCE).

The important task of keeping industry/academia informed about export control developments is primarily a national responsibility of each Participating State. The WA Secretariat also has a role in ongoing interaction with industry through participation in international events.

Arms Trade Treaty (ATT)

I am often asked about the current and future relationship between the WA and the ATT, given their alignment of purpose. The WA Secretariat has participated as an observer at each of the ATT Conferences of States Parties, including CSP4 here in Tokyo last August. I believe that the WA and the ATT will continue to be seen as complementary and mutually-reinforcing. The WA's collective expertise and experience, including the WA Munitions List and the guidelines and best practices, may be beneficial to other countries in meeting their obligations under the ATT and fulfilling the ATT's objectives as it evolves. For their part, WA Participating States can be expected to wish to continue using the WA to further develop international export control standards and enhance their implementation, thereby seeking to lead by example for the broader ATT community. At the same time, however, I should note that the WA and the ATT are separate entities. Not all WA Participating States are States Parties to the ATT, and vice versa.

Conclusion

In closing, the importance of having effective national export controls underpinned by multilateral cooperation continues to be reinforced by current security challenges.

These include destabilising accumulations of conventional arms, regional conflicts and the proliferation and diversion of increasingly sophisticated strategic goods and technologies to non-state actors, including terrorists.

Working together with one's partners sharing a similar commitment to vigilance and restraint builds confidence, supports security and facilitates international trade. Raising awareness in the private sector of increasingly sophisticated proliferation and diversion risks and promoting cooperation and self-regulation are integral to implementing robust export controls. Active outreach to other countries and relevant international and regional organisations is also key to achieving shared objectives.

I think it is fair to say that the trust and collaboration built up through the WA's work have been an important stabilising factor in the international trade and security environment over the last more than twenty-two years.

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

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.