

BEST PRACTICES FOR IMPLEMENTING INTANGIBLE TRANSFER OF TECHNOLOGY CONTROLS

(Agreed at the 2006 Plenary)

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;

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.’

2. Identifying industry, academic institutions, and individuals in possession of controlled technology for targeted outreach efforts and,
 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.