

**Wassenaar Arrangement
on
Export Controls for Conventional Arms and
Dual-Use Goods and Technologies**

**Guidelines & Procedures,
including the
Initial Elements^(A)**

December 2011

Note: Amendments made to the Initial Elements since their adoption on 12 July 1996 are indicated by lettered endnotes following Appendix 5 of the Initial Elements.

Initial Elements

I. Purposes

As originally established in the Initial Elements adopted by the Plenary of 11-12 July 1996 and as exceptionally amended by the Plenary of 6-7 December 2001.^(B)

1. The *Wassenaar Arrangement* has been established in order to contribute to regional and international security and stability, by promoting transparency and greater responsibility in transfers of conventional arms and dual-use goods and technologies, thus preventing destabilising accumulations. Participating States will seek, through their national policies, to ensure that transfers of these items do not contribute to the development or enhancement of military capabilities which undermine these goals, and are not diverted to support such capabilities.
2. It will complement and reinforce, without duplication, the existing control regimes for weapons of mass destruction and their delivery systems, as well as other internationally recognised measures designed to promote transparency and greater responsibility, by focusing on the threats to international and regional peace and security which may arise from transfers of armaments and sensitive dual-use goods and technologies where the risks are judged greatest.
3. This Arrangement is also intended to enhance co-operation to prevent the acquisition of armaments and sensitive dual-use items for military end-uses, if the situation in a region or the behaviour of a state is, or becomes, a cause for serious concern to the Participating States.
4. This Arrangement will not be directed against any state or group of states and will not impede bona fide civil transactions. Nor will it interfere with the rights of states to acquire legitimate means with which to defend themselves pursuant to Article 51 of the Charter of the United Nations.
5. In line with the paragraphs above, Participating States will continue to prevent the acquisition of conventional arms and dual-use goods and technologies by terrorist groups and organisations, as well as by individual terrorists. Such efforts are an integral part of the global fight against terrorism.^(C)

II. Scope

1. Participating States will meet on a regular basis to ensure that transfers of conventional arms and transfers in dual-use goods and technologies are carried out responsibly and in furtherance of international and regional peace and security.
2. To this end, Participating States will exchange, on a voluntary basis, information that will enhance transparency, will lead to discussions among all Participating States on arms transfers, as well as on sensitive dual-use goods and technologies, and will assist in developing common understandings of the risks associated with the transfer of these items. On the basis of this information they will assess the scope for co-ordinating national control policies to combat these risks. The information to be exchanged will include any matters which individual Participating States wish to bring to the attention of others, including, for those wishing to do so, notifications which go beyond those agreed upon.
3. The decision to transfer or deny transfer of any item will be the sole responsibility of each Participating State. All measures undertaken with respect to the Arrangement will be in accordance with national legislation and policies and will be implemented on the basis of national discretion.
4. In accordance with the provisions of this Arrangement, Participating States agree to notify transfers and denials. These notifications will apply to all non-participating states. However, in the light of the general and specific information exchange, the scope of these notifications, as well as their relevance for the purposes of the Arrangement, will be reviewed. Notification of a denial will not impose an obligation on other Participating States to deny similar transfers. However, a Participating State will notify, preferably within 30 days, but no later than within 60 days, all other Participating States of an approval of a licence which has been denied by another Participating State for an essentially identical transaction during the last three years.¹
5. Participating States agree to work expeditiously on guidelines and procedures that take into account experience acquired. This work continues and will include, in particular, a continuing review^(D) of the scope of conventional arms to be covered with a view to extending information and notifications beyond the categories described in Appendix 3. Participating States agree to discuss further how to deal with any areas of overlap between the various lists.
6. Participating States agree to assess, on a regular basis, the overall functioning of this Arrangement.^(E)

¹ This notification is applicable to items in the Sensitive List and the Very Sensitive List.

- **Scope (contd.)**

7. ^(F)In fulfilling the purposes of this Arrangement as defined in Section I, Participating States have, *inter alia*, agreed to the following guidelines, elements and procedures as a basis for decision making through the application of their own national legislation and policies:
 - “Elements for Objective Analysis and Advice Concerning Potentially Destabilising Accumulations of Conventional Weapons” - adopted December 1998 and amended in 2004 and 2011;
 - “Best Practice Guidelines for Exports of Small Arms and Light Weapons (SALW)” - adopted December 2002 and amended December 2007;
 - “Elements for Export Controls of Man-Portable Air Defence Systems (MANPADS)” - adopted December 2003 and amended December 2007;
 - “Elements for Effective Legislation on Arms Brokering” – adopted December 2003;
 - “Statement of Understanding on Control of Non-Listed Dual-Use Items” – adopted December 2003;
 - “Best Practices for Implementing Intangible Transfers of Technology Controls” - adopted December 2006;
 - “Best Practices to Prevent Destabilising Transfers of Small Arms and Light Weapons (SALW) through Air Transport” – adopted December 2007;
 - “Best Practice Guidelines on Internal Compliance Programmes for Dual-Use Goods and Technologies” – adopted December 2011;
 - “Best Practice Guidelines on Subsequent Transfer (Re-export) Controls for Conventional Weapons Systems contained in Appendix 3 to the WA Initial Elements” – adopted December 2011;
 - “Elements for Controlling Transportation of Conventional Arms Between Third Countries” – adopted December 2011. ^(G)

III. Control Lists

1. Participating States will control all items set forth in the Lists of Dual-Use Goods and Technologies and in the Munitions List ^{2 (H)}(see [Appendix 5](#)), with the objective of preventing unauthorised transfers or re-transfers of those items.
2. The List of Dual-Use Goods and Technologies (Dual-Use List) has two annexes: 1) sensitive items (Sensitive List) and 2) very sensitive items (Very Sensitive List)^(I)
3. The lists will be reviewed regularly to reflect technological developments and experience gained by Participating States, including in the field of dual-use goods and technologies which are critical for indigenous military capabilities. In this respect, studies shall be completed to coincide with the first revision to the lists to establish an appropriate level of transparency for pertinent items.

² The Russian Federation and Ukraine view this list as a reference list drawn up to help in the selection of dual-use goods which could contribute to the indigenous development, production or enhancement of conventional munitions capabilities.

IV. Procedures for the General Information Exchange

1. Participating States agree to exchange general information on risks associated with transfers of conventional arms and dual-use goods and technologies in order to consider, where necessary, the scope for co-ordinating national control policies to combat these risks.
2. In furtherance of this objective, and in keeping with the commitment to maximum restraint as a matter of national policy when considering applications for the export of arms and sensitive dual-use goods to all destinations where the risks are judged greatest, in particular to regions where conflict is occurring, Participating States also agree to exchange information on regions they consider relevant to the purposes of the Arrangement. These Regional Views should be based on, but not limited to, Section 2 of the “Elements for Objective Analysis and Advice Concerning Potentially Destabilising Accumulations of Conventional Weapons” (adopted by the 1998 Plenary).^(j)
3. A list of possible elements of the general information exchange on non-participating states is contained in Appendix 1.

V. Procedures for the Exchange of Information on Dual-Use Goods and Technology

1. Participating States will notify licences denied to non-participants with respect to items on the List of Dual-Use Goods and Technologies, where the reasons for denial are relevant to the purposes of the Arrangement.
2. For the Dual-Use List, Participating States will notify all licences denied relevant to the purposes of the Arrangement to non-participating states, on an aggregate basis, twice per year. The indicative content of these denial notifications is described in Appendix 2.
3. For items in the Sensitive List and Very Sensitive List, Participating States will notify, on an individual basis, all licences denied pursuant to the purposes of the Arrangement to non-participating states. Participating States agree that notification shall be made on an early and timely basis, that is, preferably within 30 days but no later than within 60 days, of the date of the denial. The indicative content of these denial notifications is described in Appendix 2.
4. For items in the Sensitive List and Very Sensitive List, Participating States will notify licences issued or transfers made relevant to the purposes of the Arrangement to non-participants, on an aggregate basis, twice per year. The indicative content of these licence/transfer notifications is described in Appendix 2.
5. Participating States will exert extreme vigilance for items included in the Very Sensitive List by applying to those exports national conditions and criteria. They will discuss and compare national practices at a later stage.
6. Participating States agree that any information on specific transfers, in addition to that specified above, may be requested *inter alia* through normal diplomatic channels.

VI. Procedures for the Exchange of Information on Arms

1. Participating States agree that the information to be exchanged on arms will include any matters which individual Participating States wish to bring to the attention of others, such as emerging trends in weapons programmes and the accumulation of particular weapons systems, where they are of concern, for achieving the objectives of the Arrangement.
2. As an initial stage in the evolution of the new Arrangement, Participating States will exchange information every six months on deliveries to non-participating states of conventional arms set forth in Appendix 3, derived from the categories of the UN Register of Conventional Arms. The information should include the quantity and the name of the recipient state and, except in the category of missiles and missile launchers, details of model and type.
3. Participating States agree that any information on specific transfers, in addition to that specified above, may be requested *inter alia* through normal diplomatic channels.

VII. Meetings and Administration

1. Participating States will meet periodically to take decisions regarding this Arrangement, its purposes and its further elaboration, to review the lists of controlled items, to consider ways of co-ordinating efforts to promote the development of effective export control systems, and to discuss other relevant matters of mutual interest, including information to be made public.
2. Plenary meetings will be held at least once a year and chaired by a Participating State on the basis of annual rotation. Financial needs of the Arrangement will be covered under annual budgets, to be adopted by Plenary Meetings.
3. Working Groups may be established, if the Plenary meeting so decides.
4. There will be a secretariat with a staff necessary to undertake the tasks entrusted to it.
5. All decisions in the framework of this Arrangement will be reached by consensus of the Participating States.

VIII. Participation

The new Arrangement will be open, on a global and non-discriminatory basis, to prospective adherents that comply with the agreed criteria in Appendix 4. Admission of new participants will be based on consensus.

IX. Confidentiality

Information exchanged will remain confidential and be treated as privileged diplomatic communications. This confidentiality will extend to any use made of the information and any discussion among Participating States.

General Information Exchange

Indicative Contents

The following is a list of possible principal elements of the general information exchange on non-participating states, pursuant to the purposes of the agreement (not all elements necessarily applying to both arms and dual-use goods and technology):

1. Acquisition activities

- Companies/organisations
- Routes and methods of acquisition
- Acquisition networks inside/outside the country
- Use of foreign expertise
- Sensitive end-users
- Acquisition patterns
- Conclusions.

2. Export policy

- Export control policy
- Trade in critical goods and technology
- Conclusions.

3. Projects of Concern

- Description of the project
- Level of technology
- Present status of development
- Future plans
- Missing technology (development and production)
- Companies/organisations involved, including end-user(s)
- Diversion activities
- Conclusions.

4. Other matters

Specific Information Exchange on Dual-Use Goods and Technologies

Indicative Content of Notifications

The content of denial notifications for the Dual-Use List will be based on, but not be limited to, the following indicative or illustrative list:

- From (country)
- Country of destination
- Item number on the Control List
- Short description
- Number of licences denied
- Number of units (quantity)
- Reason for denial.

Denial notification for items in the Sensitive List and the Very Sensitive List will be on the basis of, but not be limited to, the following indicative or illustrative list:

- From (country)
- Item number on the Control List
- Short description
- Number of units (quantity)
- Consignee(s)
 - Intermediate consignee(s) and/or agent(s):
 - Name
 - Address
 - Country
 - Ultimate consignee(s) and/or end-user(s):
 - Name
 - Address
 - Country
- Stated end-use
- Reason for the denial
- Other relevant information.

The content of notifications for licences/transfers in the Sensitive List and the Very Sensitive List^(K) will be based on, but not be limited to, the following indicative or illustrative list:

- From (country)
- Item number on the Control List
- Short description
- Number of units (quantity)
- Destination (country).

Specific Information Exchange on Arms
Content by Category

1. Battle Tanks

Tracked or wheeled self-propelled armoured fighting vehicles with high cross-country mobility and a high level of self-protection, weighing at least 16.5 metric tonnes unladen weight, with a high muzzle velocity direct fire main gun of at least 75 mm calibre.

2. Armoured Combat Vehicles

2.1 Tracked, semi-tracked or wheeled self-propelled vehicles, with armoured protection and cross-country capability designed, or modified and equipped:

2.1.1 to transport a squad of four or more infantrymen, or

2.1.2 with an integral or organic weapon of at least 12.5 mm calibre, or

2.1.3 with a missile launcher.

2.2 Tracked, semi-tracked or wheeled self-propelled vehicles, with armoured protection and cross-country capability specially designed, or modified and equipped:

2.2.1 with organic technical means for observation, reconnaissance, target indication, and designed to perform reconnaissance missions, or

2.2.2 with integral organic technical means for command of troops, or

2.2.3 with integral organic electronic and technical means designed for electronic warfare.

2.3 Armoured bridge-launching vehicles.^(M)

3. Large Calibre Artillery Systems^(N)

3.1 Guns, howitzers, mortars, and artillery pieces combining the characteristics of a gun or a howitzer capable of engaging surface targets by delivering primarily indirect fire, with a calibre of 75 mm to 155 mm, inclusive.

3.2 Guns, howitzers, mortars, and artillery pieces combining the characteristics of a gun or a howitzer capable of engaging surface targets by delivering primarily indirect fire, with a calibre above 155 mm.

3.3 Multiple-launch rocket systems capable of engaging surface targets, including armour, by delivering primarily indirect fire with the calibre of 75 mm and above.

3.4 Gun-carriers specifically designed for towing artillery.^(O)

4. Military Aircraft/Unmanned Aerial Vehicles

4.1 Military Aircraft:

Fixed-wing or variable-geometry wing aircraft which are designed, equipped or modified:

4.1.1 to engage targets by employing guided missiles, unguided rockets, bombs, guns, machine guns, cannons or other weapons of destruction.

4.1.2. to perform reconnaissance, command of troops, electronic warfare, electronic and fire suppression of air defence systems, refuelling or airdrop missions.

4.2 Unmanned Aerial Vehicles:

Unmanned aerial vehicles, specially designed, modified, or equipped for military use including electronic warfare, suppression of air defence systems, or reconnaissance missions, as well as systems for the control and receiving of information from the unmanned aerial vehicles.

"Military Aircraft" does not include primary trainer aircraft, unless designed, equipped or modified as described above.

5. Military and Attack Helicopters

Rotary-wing aircraft which are designed, equipped or modified to:

5.1 engage targets by employing guided or unguided, air-to-surface, anti-armour weapons, air to sub-surface or air-to-air weapons, and equipped with an integrated fire-control and aiming system for these weapons.

5.2 perform reconnaissance, target acquisition (including anti-submarine warfare), communications, command of troops, or electronic warfare, or mine laying missions.

6. Warships^(P)

Vessel or submarines armed and equipped for military use with a standard displacement of 150 metric tonnes or above, and those with a standard displacement of less than 150 metric tonnes equipped for launching missiles with a range of at least 25 km or torpedoes with a similar range.

7. Missiles or Missile Systems

Guided or unguided rockets, ballistic or cruise missiles capable of delivering a warhead or weapon of destruction to a range of at least 25 km, and means designed or modified specifically for launching such missiles or rockets, if not covered by categories 1 to 6.

This category:

- 7.1 also includes remotely piloted vehicles with the characteristics for missiles as defined above;
- 7.2 does not include ground-to-air missiles.

8. Small Arms and Light Weapons – Man-Portable Weapons made or modified to military specification for use as lethal instruments of war^(Q)

- 8.1 Small Arms – broadly categorised for reporting purposes as: those weapons intended for use by individual members of armed forces or security forces, including revolvers and self-loading pistols; rifles and carbines; sub-machine guns; assault rifles; and light machine guns.
- 8.2 Light Weapons – broadly categorised for reporting purposes as: those weapons intended for use by individual or several members of armed or security forces serving as a crew and delivering primarily direct fire. They include heavy machine guns; hand-held under-barrel and mounted grenade launchers; portable anti-tank guns; recoilless rifles; portable launchers of anti-tank missile and rocket systems; and mortars of calibre less than 75 mm.
- 8.3 Man-Portable Air-Defence Systems – broadly categorised for reporting purposes as: surface-to-air missile systems intended for use by an individual or several members of armed forces serving as a crew.

Participation

Criteria

When deciding on the eligibility of a state for participation, the following factors, *inter alia*, will be taken into consideration, as an index of its ability to contribute to the purposes of the new Arrangement:

- Whether it is a producer/exporter of arms or industrial equipment respectively;
- Whether it has taken the WA Control lists as a reference in its national export controls;^(R)
- Its non-proliferation policies and appropriate national policies, including:
Adherence to non-proliferation policies, control lists and, where applicable, guidelines of the Nuclear Suppliers Group, the Zangger Committee,^(S) the Missile Technology Control Regime and the Australia Group; and through adherence to the Nuclear Non-Proliferation Treaty, the Biological and Toxicological Weapons Convention, the Chemical Weapons Convention and (where applicable) START I, including the Lisbon Protocol;
- Its adherence to fully effective export controls.

Lists of Dual-Use Goods and Technologies and Munitions List*

* For the most recent version of the Lists of Dual-Use Goods and Technologies and the Munitions List, see the Wassenaar Arrangement's website: www.wassenaar.org

Endnotes indicating the amendments made to the Initial Elements since their adoption on 12 July 1996

- (A) Title amended by the December 2003 Plenary.
- (B) Section I, Purposes - first sentence added by the December 2003 Plenary.
- (C) Section I, Purposes – new paragraph 5 added by the December 2001 Plenary.
- (D) Section II, Scope - first part of paragraph 5 added by the December 2003 Plenary.
- (E) Section II, Scope – new paragraph 6 added by the December 2003 Plenary.
- (F) Section II, Scope – new paragraph 7 added by the December 2003 Plenary.
- (G) Section II, Scope – list of documents referenced in paragraph 7 amended in 2007 and expanded to include 2006 ITT and 2007 Air Transport of SALW documents. The list was amended again in 2011 to include documents concerning ICP, Re-export, and Transportation Between Third Countries, all adopted in 2011.
- (H) Reference to France removed from the footnote at its request – December 2009 Plenary.
- (I) The 2003 Plenary agreed to make the following changes in terminology throughout the Initial Elements:
- Tier 1 is now called the Dual-Use List
 - Tier 2 is now called the Sensitive List
 - Sub-set of tier 2 is now called the Very Sensitive List
- (J) Section IV, Procedures for the General Information Exchange – new paragraph 2 added by the December 2003 Plenary.
- (K) Appendix 2 – reference to the Very Sensitive List added through silence procedure in 2004.
- (L) Appendix 3 expanded to include sub-categories under Categories 2, 3, 4, 5 and 7 by the December 1999 Plenary.
- (M) Appendix 3, sub-category 2.3 added by the December 2001 Plenary.
- (N) Appendix 3, sub-categories 3.1 and 3.3 – the threshold calibre parameter modified from 100 mm to 75 mm by the December 2003 Plenary.
- (O) Appendix 3, sub-category 3.4 added by the December 2001 Plenary.
- (P) Appendix 3, Category 6 - the standard displacement parameter modified from 750 to 150 metric tonnes by the December 2002 Plenary.
- (Q) Appendix 3, Category 8 added by the December 2003 Plenary.
- (R) Appendix 4, Participation Criteria, additional criterion added by the December 2003 Plenary.
- (S) Appendix 4, Participation Criteria, reference to the Zangger Committee added by the December 2003 Plenary.

WASSENAAR ARRANGEMENT

ELEMENTS FOR OBJECTIVE ANALYSIS AND ADVICE CONCERNING POTENTIALLY DESTABILISING ACCUMULATIONS OF CONVENTIONAL WEAPONS

EXPLANATORY NOTE*

The 1998 Wassenaar Arrangement (WA) Plenary approved 3 December 1998 the paper, “Elements for Objective Analysis and Advice Concerning Potentially Destabilising Accumulations of Conventional Weapons.”

The paper was produced to examine what scope there is for increasing the relevant categories for reporting pursuant to paragraph II.5 of the Initial Elements and its goals. The paper could be useful in assisting WA Participating States during the deliberation process associated with considering transfers or denials.

The paper is of a non binding character; decisions on export licensing remain under national control of each WA Participating State.

The paper does not imply a fixed order of priority among the elements to be taken into account. Indeed the priorities among those elements may change depending upon specific issues under consideration.

The elements of the paper, which are framed generally in the form of questions, are not considered exhaustive. Participating States understand the document as a work-in-progress, to be elaborated further as experience is gained through the exchange of information and discussions within the WA, and as a result of constantly changing international circumstances.

* As amended by the Plenary in 2004 and 2011

**ELEMENTS FOR OBJECTIVE ANALYSIS AND ADVICE CONCERNING
POTENTIALLY DESTABILISING ACCUMULATIONS OF
CONVENTIONAL WEAPONS***

1. Assessment of Motivation of the State under Study

- a. What is the state's military doctrine? How do its weapons and their deployment posture fit with the implementation of the doctrine and/or meet national security requirements?
- b. What do we believe to be the motivation of the state in accumulating conventional weapons beyond its current holdings, either through import or national production? How are such weapons likely to be used? Does the state believe its accumulation of conventional weapons is necessary in the exercise of its right to self-defence in accordance with the UN Charter? Does the state wish to gain a tactical or strategic advantage, status or national prestige, improved indigenous production capability, a capability to reverse-engineer or entrance to the export market? If conventional weapons or military technology are being acquired through import, does the state provide valid and credible end-use/end-user or re-transfer assurances? Are there risks of diversion to unauthorised end-use/end-users?
- c. What are the general directions of the state's foreign policy? Is there a clearly identifiable risk that the state would use its weapons offensively against another country or in a manner inconsistent with the UN Charter; assert by force a territorial claim; or otherwise project power in a region?
- d. Are the quantities involved in the state's accumulation of conventional weapons inconsistent with its likely requirements, suggesting possible diversion to an unauthorised end-user or efforts to reverse-engineer?
- e. Is there a clearly identifiable risk that the weapons might be used **to commit or facilitate** the violation and suppression of human rights and fundamental freedoms **or the laws of armed conflict**?

2. Regional Balance of Forces and the General Situation in the Region

- a. What is the nature of the relationship among the states of the region? Are there territorial claims or disputes among them, including questions of unlawful occupation with the intent of annexation? Are there economic, ethnic, religious or other disputes or conflicts among them? Are one or several states of the region prepared to use force or the threat of the use of force in a manner inconsistent with the UN Charter to resolve disputes with other states of the region?

* As amended by the Plenary in 2004 and 2011.

- b. What are the state's national security requirements? Is the state's accumulation of conventional weapons greater than that required by its legitimate defence and security interests? Does it represent an appropriate and proportionate response to a threat? Consider the balance of forces and relative capabilities (offensive and defensive) between and among neighbouring and regional states and their relative expenditure on defence. The following factors, *inter alia*, might be considered, both individually for each state and comparatively: Size of the armed forces of the state, including trained reserves; quantity of weapons and related military equipment in service and in store; technical characteristics of weapons; their level of performance and maintenance; level of combat-readiness of the troops, including the quality of training of military personnel and their morale; and whether the deployment and training of forces is best suited for offensive or defensive action.
- c. What would be the perception of the state's accumulation of conventional weapons by other states in the region? Would political, historical, territorial, geographic or logistic considerations cause the accumulation to be perceived as a direct threat or to be otherwise intimidating? Does the actual balance of forces in the region provide a sound basis for such a perception?
- d. Could the accumulation of conventional weapons lead to an increase in tension or instability in the region or to the exacerbation of an existing conflict? Would potential adversaries perceive a need to prepare, deploy, or use additional forces or countermeasures? In a crisis, would they perceive a need to risk using force first? Is the accumulation of conventional weapons difficult or impossible to counter by forces in the region? Given the relative capabilities of states in the region, would the accumulation of conventional weapons provide sufficient protection or defence to offensive assets in such a manner as to be perceived as destabilising?
- e. Would other states in the region wish to acquire (including through national production, if possible) similar quantitative or qualitative capabilities, or acquire offsetting capabilities? Could the accumulation of conventional weapons contribute to a destabilising regional arms race or to an accelerating process of competitive production or procurement?
- f. Is there an UN Security Council arms embargo or any other UN Security Council restrictions against the state or other states in the region? Is the balance of forces in the region affected by arms transfers in contravention of these arms embargoes and restrictions? Does the importing State comply with its international obligations?**
- g. Are there existing UNSC sanctions against the state which would affect the supply of arms under the Wassenaar Arrangement? Is the supply permissible under the sanctions and are all relevant preconditions provided for in the sanctions met?**
- h. Has a WA Participating State provided relevant information including submitting documents within the framework of the general information exchange or in any other form or format about inter alia: multilateral and unilateral arms embargoes; bans on supply, or a set of conditions on supply; the state of concern's foreign and military policy; the accumulation of conventional weapons in a particular state; or the intention of the state's leadership to use force to resolve disputes with other states in the region?**

3. Political/Economic Standing/Status of the State

- a. Has the state signed and/or ratified relevant international or regional agreements and treaties pertaining to arms control and limitation, non-proliferation, and confidence and security building? What is its record of compliance with those agreements and treaties? Does the state participate in the UN Register of Conventional Arms? Does the state comply with internationally-recognised human rights, anti-terrorism and non-proliferation norms? Does the state have the intention to develop weapons of mass destruction (WMD); does it possess WMD; what are its views on the use of WMD? What is the general nature of the state's political system and what is the level of internal stability? Is there a civil armed conflict? **How can arms transfers influence this conflict?**
- b. What is the state's military expenditure? What percentage of GDP does it spend on the military? Is the information it gives on its military expenditures open and accurate, or does it seek to conceal the true costs?
- c. Does the accumulation of conventional weapons by the state exacerbate an already economically insupportable burden of defence? Does it risk economic or social destabilisation, either nationally or regionally?

4. Operational Capability

Equipment

- a. How would the accumulation of conventional weapons by the state affect the regional balance of forces and the situation in the region? A particular import or procurement through national production of an individual weapon, weapon system or sub-system may not be destabilising *per se*, but it may have a potentially destabilising character in combination with other equipment.
- b. Would an additional conventional weapons acquisition, whether by import or through national production, introduce a new capability to the region?
- c. Would an additional conventional weapons acquisition, whether by import or through national production, supplement or replace existing equipment? Would it substitute for current forces? If an import, are construction and maintenance (equipment support/spares) deals included? What is the operational life of the equipment with and without provision of maintenance?
- d. Would an additional conventional weapons acquisition, whether by import or through national production, provide the state with an additional strategic capability? Consider weapon system characteristics that have greater inherent potential to be destabilising (e.g., because they enhance power projection; there are few or no countermeasures; they contribute to the infliction of strategic harm).
- e. Would an additional conventional weapons acquisition, whether by import or through national production, provide the state with new or otherwise increased quantitative or qualitative operational capabilities, or increased sustainability? Would it allow more effective operational use of existing military assets or a bypass of force weakness? If ammunition or missiles, will the quantities significantly enhance operational sustainability?

Manpower

- f. Is the additional conventional weapons acquisition, whether by import or through national production, appropriate given the manpower capabilities of the state? Consider equipment/manpower levels, training, combat experience and leadership/morale.
- g. If acquired by import, is a training package being provided in conjunction with the import?
- h. Will the equipment itself enhance manpower effectiveness (e.g., simulators)?

5. Acquisition of Military Technology

- a. Would the acquisition of particular technology, whether by tangible or intangible means or by indigenous development, provide a substantial technological advantage to the state's military capability? How will it affect the regional balance of forces and overall regional situation?
- b. If by import, would the acquisition itself, or the terms of the deal, such as offset agreements, lead to an indigenous production capability?
- c. If by import, is a design or technology package being provided in conjunction with the acquisition?
- d. If by import, is there a possibility of reverse engineering, *inter alia*, does the acquisition involve components, spares or prototypes that can be reverse-engineered?

6. Other Factors

- a. Would an additional conventional weapons system, if acquired by import, put the exporter's national forces or those of its friends and allies or of a UNSC-approved operation at risk?
- b. Does the method used to import the additional conventional weapons raise concerns about how the weapons are likely to be used?
- c. Would the equipment or technology (including any training) be at risk of diversion to terrorist groups and organisations, as well as individual terrorists? **Is there a risk of diversion of exported weapons to illicit trade?**
- d. **Does the state have an effective national export control system? Does the state have an effective system of physical security for its weapons storage facilities, stockpile inventory?**
- e. **Does the state follow in its national arms trade policy principles secured in the WA best practice guidelines relevant to arms transfers?**

* The first sentence of this paragraph was added by the Plenary of December 2004

Best Practice Guidelines for Exports of Small Arms and Light Weapons (SALW)

(Agreed at the 2002 Plenary and amended at the 2007 Plenary)*

I. Participating States of the Wassenaar Arrangement,

Having regard to the Initial Elements of the Wassenaar Arrangement; and in particular the objectives of:

- (i) greater responsibility in transfers of conventional arms;
- (ii) the prevention of destabilising accumulations of such arms; and
- (iii) the need to prevent the acquisition of conventional arms by terrorist groups and organisations, as well as by individual terrorists;

Bearing in mind the 2001 UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in SALW in All Its Aspects (UNPOA), and, where appropriate, the relevant provisions of the 2000 OSCE Document and other regional initiatives that Participating States are party to,

Affirm that they apply strict national controls on the export of SALW, as well as on transfers of technology related to their design, production, testing and upgrading,

And agree that:

SALW exports will be evaluated carefully against the Wassenaar Arrangement Initial Elements and the Wassenaar document 'Elements for Objective Analysis and Advice Concerning Potentially Destabilising Accumulations of Conventional Weapons' and any subsequent amendments thereto. In particular:

1. Each Participating State will, in considering proposed exports of SALW, take into account:
 - (a) The need to avoid destabilising accumulations of arms, bearing in mind the particular circumstances of the recipient country and its region;
 - (b) The internal and regional situation in and around the recipient country, in the light of existing tensions or armed conflicts and details of the recipient within that country;
 - (c) The record of compliance of the recipient country with regard to international obligations and commitments, in particular on the suppression of terrorism, and on the non-use of force, and in the field of non-proliferation, or in other areas of arms control and disarmament, and the record of respect for international law governing the conduct of armed conflict;
 - (d) The nature and cost of the arms to be transferred in relation to the circumstances of the recipient country, including its legitimate security and defence needs and to the objective of the least diversion of human and economic resources to armaments;

* 2007 revisions are shown in bold.

- (e) The requirements of the recipient country to enable it to exercise its right to individual or collective self-defence in accordance with Article 51 of the Charter of the United Nations;
 - (f) Whether the transfers would contribute to an appropriate and proportionate response by the recipient country to the military and security threats confronting it;
 - (g) The legitimate domestic security needs of the recipient country;
 - (h) The requirements of the recipient country to enable it to participate in peacekeeping or other measures in accordance with decisions of the United Nations, OSCE or other relevant regional organisations with a peacekeeping mandate;
 - (i) The respect for human rights and fundamental freedoms in the recipient country;
 - (j) The risk of diversion or re-export in conditions incompatible with these Guidelines, particularly to terrorists.
2. Each Participating State will avoid issuing licences for exports of SALW where it deems that there is a clear risk that the small arms in question might:
- (a) Support or encourage terrorism;
 - (b) Threaten the national security of other States;
 - (c) Be diverted to territories whose external relations are the internationally acknowledged responsibility of another State;
 - (d) Contravene its international commitments, in particular in relation to sanctions adopted by the Security Council of the United Nations, agreements on non-proliferation, small arms, or other arms control and disarmament agreements;
 - (e) Prolong or aggravate an existing armed conflict, taking into account the legitimate requirement for self-defence, or threaten compliance with international law governing the conduct of armed conflict;
 - (f) Endanger peace, create an excessive and destabilising accumulation of small arms, or otherwise contribute to regional instability;
 - (g) Contrary to the aims of this document, be either re-sold (or otherwise diverted) within the recipient country, re-produced without licence, or be re-exported;
 - (h) Be used for the purpose of repression;
 - (i) Be used for the violation or suppression of human rights and fundamental freedoms;
 - (j) Facilitate organised crime;
 - (k) Be used other than for the legitimate defence and security needs of the recipient country.

Furthermore,

3. Participating States agree to ensure, as far as possible, without prejudice to the rights of States to re-export SALW that they have previously imported, that the original exporting Participating State, in accordance with bilateral agreements, will be notified before re-export/re-transfer of those weapons.
4. Participating States agree that unlicensed manufacture of foreign-origin SALW is inconsistent with these Best Practice Guidelines.
5. Participating States will take especial care when considering exports of SALW other than to governments or their authorised agents.

II. In addition, The Participating States of the Wassenaar Arrangement,

Recognising that uncontrolled flows of illicit SALW pose a serious threat to peace and security, especially in areas beset by conflicts and tensions;

And noting that poorly managed stocks of SALW, which are particularly liable to loss through theft, corruption or negligence, pose a similar threat;

Agree that:

1. Participating States will take into account, as far as possible, the stockpile management and security procedures of a potential recipient, including the recipient's ability and willingness to protect against unauthorised re-transfers, loss, theft and diversion.
2. **Participating States will fully implement their commitments under the United Nations' International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons, adopted by the 60th Session of the UN General Assembly on 8 December 2005 (A/RES/60/81 of 11 January 2006).**
3. Further, each Participating State will:
 - (a) Ensure that these principles are reflected, as appropriate, in their national legislation and/or in their national policy documents governing the export of conventional arms and related technology.
 - (b) Consider assisting other Participating States in the establishment of effective national mechanisms for controlling the export of SALW.
 - (c) Put in place and implement adequate laws or administrative procedures to control strictly the activities of those that engage in the brokering of SALW and ensure appropriate penalties for those who deal illegally in SALW.

Elements for Export Controls of Man-Portable Air Defence Systems (MANPADS)

(Agreed at the 2003 Plenary and amended at the 2007 Plenary)*

Recognising the threats posed by unauthorised proliferation and use of Man-Portable Air Defence Systems, especially to civil aviation, peace-keeping, crisis management and anti-terrorist operations, Participating States affirm that they apply strict national controls on the export of MANPADS.

1. Scope

1.1 These Elements cover:

- a) surface-to-air missile systems designed to be man-portable and carried and fired by a single individual; and
- b) other surface-to-air missile systems designed to be operated and fired by more than one individual acting as a crew and portable by several individuals.

1.2 National export controls apply to the international transfer or retransfer of MANPADS, including complete systems, components, spare parts, models, training systems, and simulators, for any purpose, by any means, including licensed export, sale, grant, loan, lease, co-production or licensing arrangement for production (hereafter “exports”). The scope of export regulation and associated controls includes research, design, development, engineering, manufacture, production, assembly, testing, repair, maintenance, servicing, modification, upgrade, modernisation, operation, use, replacement or refurbishment, demilitarisation, and destruction of MANPADS; technical data, software, technical assistance, demonstration, and training associated with these functions; and secure transportation, storage. This scope according to national legislation may also refer to investment, marketing, advertising and other related activity.

1.3 Any activity related to MANPADS within the territory of the producing country is subject to national laws and regulations.

2. Participating States will exercise maximum restraint in transfers of MANPADS production technologies and, while taking decision on such transfers, will take into account elements, stipulated in paragraphs 3.7, 3.8, 3.9 and 3.11.

3. Control Conditions and Evaluation Criteria

3.1 Decisions to permit MANPADS exports will be made by the exporting government by competent authorities at senior policy level and only to foreign governments or to agents specifically authorised to act on behalf of a government after presentation of an official EUC certified by the Government of the receiving country.

* The text agreed in 2003 replaced the initial version of the Elements adopted in 2000. The revisions introduced in 2007 are shown in bold.

- 3.2 General licences are inapplicable for exports of MANPADS; each transfer is subject to an individual licensing decision.
- 3.3 Exporting governments will not make use of non-governmental brokers or brokering services when transferring MANPADS, unless specifically authorised to on behalf of the government.
- 3.4 In order to prevent unauthorised use, producer countries will implement technical performance and/or launch control features for newly designed MANPADS as such technologies become available to them. Such features should not adversely affect the operational effectiveness of MANPADS for the legal user.
- 3.5 Exporting governments in the Wassenaar Arrangement will report transfers of MANPADS as part of the Arrangement's Specific Information Exchange reporting requirements.
- 3.6 MANPADS exports will be evaluated in the light of the Wassenaar Arrangement Initial Elements and the Wassenaar document "Elements for Objective Analysis and Advice Concerning Potentially Destabilising Accumulations of Conventional Weapons" and any subsequent amendments thereto.
- 3.7 Decisions to authorise MANPADS exports will take into account:
- Potential for diversion or misuse in the recipient country;
 - The recipient government's ability and willingness to protect against unauthorised re-transfers, loss, theft and diversion; and
 - The adequacy and effectiveness of the physical security arrangements of the recipient government for the protection of military property, facilities, holdings, and inventories.
- 3.8 Prior to authorising MANPADS exports (**as indicated in paragraph 1.2**), the exporting government will assure itself of the recipient government's guarantees:
- not to re-export MANPADS except with the prior consent of the exporting government;
 - **to transfer MANPADS and their components to any third country only in a manner consistent with the terms of the formal government to government agreements, including co-production or licensing agreements for production, and contractual documents, concluded and implemented after the adoption of this document at the 2007 Plenary, as well as end-use assurances and/or extant export licences;**
 - **to ensure that the exporting State has the opportunity to confirm, when and as appropriate, fulfilment by the importing State of its end-use assurances with regard to MANPADS and their components¹ (this may include on-site inspections of storage conditions and stockpile management or other measures, as agreed between the parties);**
 - to afford requisite security to classified material and information in accordance with applicable bilateral agreements, to prevent unauthorised access or compromise; **and**
 - to inform promptly the exporting government of any instance of compromise, unauthorised use, loss, or theft of any MANPADS material.

¹ "End-use assurances with regard to MANPADS and their components" should be understood as their use only for purposes stipulated in the end-user certificate or any other document containing the obligations of the importing State.

3.9 In addition, the exporting government will satisfy itself of the recipient government's willingness and ability to implement effective measures for secure storage, handling, transportation, use of MANPADS material, and disposal or destruction of excess stocks to prevent unauthorised access and use. The recipient government's national procedure designed to attain the requisite security include, but are not limited to, the following set of practices, or others that will achieve comparable levels of protection and accountability:

- Written verification of receipt of MANPADS shipments.
- Inventory by serial number of the initial shipments of all transferred firing mechanisms and missiles, if physically possible; and maintenance of written records of inventories.
- Physical inventory of all MANPADS subject to transfer, at least once a month; account by serial number for MANPADS components expended or damaged during peacetime.
- Ensure storage conditions are sufficient to provide for the highest standards of security and access control. These may include:
- Where the design of MANPADS permits, storing missiles and firing mechanisms in locations sufficiently separate so that a penetration of the security at one site will not place the second site at risk. Ensuring continuous (24-hour per day) surveillance. Establishing safeguards under which entry to storage sites requires the presence of at least two authorised persons.
- Transport MANPADS in a manner that provides for the highest standards and practices for safeguarding sensitive munitions in transit. When possible, transport missiles and firing mechanisms in separate containers.
- Where applicable, bring together and assemble the principal components - typically the gripstock and the missile in a launch tube -only in the event of hostilities or imminent hostilities; for firing as part of regularly scheduled training, or for lot testing, for which only those rounds intended to be fired will be withdrawn from storage and assembled; when systems are deployed as part of the point defences of high priority installations or sites; and in any other circumstances which might be agreed between the receiving and transferring governments.
- Access to hardware and any related classified information, **including training, technical and technological documentation (e.g. MANPADS operation manuals)**, will be limited to military and civilian personnel of the receiving government who have the proper security clearance and who have an established need to know the information in order to perform their duties. Any information released will be limited to that necessary to perform assigned responsibilities and, where possible, will be oral and visual only.
- Adopt prudent stockpile management practices that include effective and secure disposal or destruction of MANPADS stocks that are or become excess to national requirements.

- 3.10 Participating States will, when and as appropriate, assist recipient governments not capable of executing prudent control over MANPADS to dispose of excess stockpiles, including buying back previously exported weapons. Such measures are subject to a voluntary consent of the exporting government and the recipient state.
 - 3.11 Exporting governments will share information regarding potential receiving governments that are proven to fail to meet the above export control guarantees and practices outlined in paragraphs 3.8 and 3.9 above.
 - 3.12 To enhance efforts to prevent diversion, exporting governments will share information regarding non-state entities that are or may be attempting to acquire MANPADS.
 - 3.13 **Participating States will, when and as appropriate, provide to non-participating States, upon their request, technical and expert support in developing and implementing legislative basis for control over transfers of MANPADS and their components.**
 - 3.14 **Participating States will, when and as appropriate, provide to non-participating States, upon their request, technical and expert assistance in physical security, stockpile management and control over transportation of MANPADS and their components.**
4. Participating States will ensure that any infringement of export control legislation, related to MANPADS, is subject to adequate penalty provisions, i.e. involving criminal sanctions.
 5. The Participating States will exchange information and review progress related to the implementation of these steps regularly.
 6. Participating States agree to promote the application of the principles defined in these Elements to non-**Participating States**.

Elements for Effective Legislation on Arms Brokering

(Agreed at the 2003 Plenary)

The Participating States of the Wassenaar Arrangement,

with reference to the Initial Elements and Participating States' fulfilment of the objectives and intentions of the Wassenaar Arrangement, in particular the objectives of:

- greater responsibility in transfers of conventional arms;
- the prevention of destabilising accumulations of conventional arms;
- the need to prevent the acquisition of conventional arms by terrorist groups and organisations, as well as by individual terrorists;

Bearing in mind the “Statement of Understanding on Arms Brokerage”, the “Best Practice Guidelines for Exports of Small Arms and Light Weapons” as adopted by the 2002 Wassenaar Plenary Meeting and the “Elements for Export Controls of Man-Portable Air Defence Systems (MANPADS)” as adopted by the 2003 Wassenaar Plenary Meeting;

Recognising international commitments such as the 2001 “UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in SALW in All its Aspects”, and the relevant provisions of the 2000 OSCE Document and other regional initiatives that Participating States are party to, **and**

the statement of the President of the UN Security Council of 31 October, 2002 (on behalf of the Council) stressing the importance of further steps to enhance co-operation on the regulation of brokering activities;

Affirming that the purpose of these efforts is to avoid circumvention of the objectives of the Wassenaar Arrangement and UNSC arms embargoes by creating a clear framework for lawful brokering activities, and to enhance co-operation and transparency between Participating States;

Affirming also that they apply strict and comprehensive national controls on the transfer of conventional arms in order to contribute to regional and international security and stability,

agree to

strictly control the activities of those who engage in the brokering of conventional arms by introducing and implementing adequate laws and regulations. Applications for licences or authorisations should be carefully assessed in accordance with the principles and objectives of the Wassenaar Arrangement Initial Elements, the Wassenaar document “Elements for Objective Analysis and Advice concerning Potentially Destabilising Accumulations of Conventional Weapons” and any subsequent amendments thereto and, where applicable, the “Best Practice Guidelines for Exports of Small Arms and Light Weapons” and the “Elements for Export Controls of Man-Portable Air Defence Systems (MANPADS)”. In order to ensure a common WA policy on arms brokering, each Participating State should include, consistent with its national legislation and practices, the following measures in its national legislation on arms brokering:

1. For activities of negotiating or arranging contracts, selling, trading or arranging the transfer of arms and related military equipment controlled by Wassenaar Participating States from one third country to another third country, a licence or written approval should be obtained from the competent authorities of the Participating State where these activities take place whether the broker is a citizen, resident or otherwise subject to the jurisdiction of the Participating State.

Similarly, a licence may also be required regardless of where the brokering activities take place.

Participating States may also define brokering activities to include cases where the arms and military equipment are exported from their own territory.

Participating States may also seek to limit the number of brokers.

2. Records should be kept of individuals and companies which have obtained a licence in accordance with paragraph 1. Participating States may in addition establish a register of brokers.
3. Adequate penalty provisions and administrative measures, i.e. involving criminal sanctions, should be established in order to ensure that controls of arms brokering are effectively enforced.
4. In addition, Participating States will enhance co-operation and transparency through:
 - (a) exchanging relevant information on arms brokering activities within the framework of the General Information exchange;
 - (b) assisting other Participating States on request in the establishment of effective national mechanisms for controlling arms brokering activities.
5. Where brokering provisions do not currently exist, Participating States will work without delay to introduce appropriate provisions to control arms brokering activities.
6. Participating States will report to the Plenary Meetings (first time in 2004) on the progress made in meeting the objectives of the Elements.

Statement of Understanding
on
Control of Non-Listed Dual-Use Items⁽¹⁾

(Agreed at the 2003 Plenary)

Participating States will take appropriate measures to ensure that their regulations require authorisation for the transfer of non-listed dual-use items to destinations subject to a binding United Nations Security Council arms embargo, any relevant regional arms embargo either binding on a Participating State or to which a Participating State has voluntarily consented to adhere, when the authorities of the exporting country inform the exporter that the items in question are or may be intended, entirely or in part, for a military end-use.*

If the exporter is aware that items in question are intended, entirely or in part, for a military end-use,* the exporter must notify the authorities referred to above, which will decide whether or not it is expedient to make the export concerned subject to authorisation.

For the purpose of such control, each Participating State will determine at domestic level its own definition of the term “military end-use”.* Participating States are encouraged to share information on these definitions. The definition provided in the footnote will serve as a guide.

Participating States reserve the right to adopt and implement national measures to restrict exports for other reasons of public policy, taking into consideration the principles and objectives of the Wassenaar Arrangement. Participating States may share information on these measures as a regular part of the General Information Exchange.

Participating States decide to exchange information on this type of denials relevant for the purposes of the Wassenaar Arrangement.

⁽¹⁾ See also the List of Advisory Questions for Industry (page 53) agreed at the 2003 Plenary in conjunction with this SOU.

* Definition of military end-use

In this context the phrase military end-use refers to use in conjunction with an item controlled on the military list of the respective Participating State.

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

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 involve transfer of ‘technical data.’

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.

Best Practices to Prevent Destabilising Transfers of Small Arms and Light Weapons (SALW) through Air Transport

(Agreed at the 2007 Plenary)

Participating States of the Wassenaar Arrangement

Having regard to the Guidelines and Procedures including the Initial Elements of the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies, and in particular:

- the Best Practice Guidelines for Exports of Small Arms and Light Weapons (SALW) adopted December 2002;
- the “Elements for Export Controls of Man-Portable Air Defence Systems (MANPADS)” adopted December 2003 and as amended in 2007.

Recognising that air transport is one of the main channels for the illicit spread of SALW, particularly to destinations subject to a United Nations arms embargo or involved in armed conflict;

Considering that some transport companies or agents and their associated intermediaries employ a range of techniques and strategies to avoid official scrutiny and legal regulations, such as falsifying transport documentation, concealing information on the origin of weapons, including cases when they are produced illegally, or when the origin is not known or questionable, concealing actual flight plans, routes, and destinations, as well as falsification of aircraft registration or quick change of registration numbers;

Bearing in mind the 2001 UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects, and, where appropriate, the relevant provisions of the 2000 OSCE documents and other regional initiatives Participating States are party to;

Taking into account existing international standards applicable to air transport, *inter alia*, Article 35 and Annex 18 of the Chicago Convention on International Civil Aviation;

Taking into account existing national legislation regulating the transport by air of weapons;

Recognising governments’ right to transport by air SALW, including through private companies, as well as the existing regulations and the economic demands relating to the air transport of goods;

Affirm that they are fully committed to preventing destabilising accumulations of SALW through air transport *and thus agree to the following Best Practices*:

1. Scope

These Best Practices cover air transport of SALW, excluding those that are transported by government, military or Government-chartered aircraft.

Participating States recognise that they assume full responsibility for transport by their government, military, or Government-chartered aircraft and that they encourage other States to assume the same responsibility.

2. Measures

Non-governmental air transport of SALW, if not forbidden by the Participating States’ law, will be submitted, as appropriate to the following measures:

- 2.1. When issuing an export licence for SALW, each Participating State may require additional information on air transport to be provided by the exporter to the relevant authorities prior to the actual export taking place.

Such additional information on transport may include the following elements:

- air carrier and freight forwarding agent involved in the transportation;
- aircraft registration and flag;
- flight route to be used and planned stopovers;
- records of previous similar transfers by air;
- compliance with existing national legislation or international agreements relating to air transport of weapons.

Thus, although details about air transport and route are usually not known when applying for an export licence, a Participating State may issue such an export licence subject to the condition that this information shall be provided to Government authorities before the goods are actually exported; it will then be clear for enforcement officers controlling the actual export that such a licence is not valid without evidence that the requested additional information has been provided.

- 2.2. When a Participating State knows about an exporter, air carrier or agent that failed to comply with the requirements mentioned in 2.1 when requested to do so, or about an identified destabilising attempt to export SALW by air, and if the planned export of SALW is assessed by it to contribute to a destabilising accumulation or to be a potential threat to security and stability in the region of destination, the related relevant information shall be shared with other Participating States as appropriate.
- 2.3. Each Participating State's relevant authorities may require the exporter to submit a copy of the certificate of unloading or of any other relevant document confirming the delivery of SALW, if they have been exported from or landed on or departed from an airport/airfield on their national territory or if they have been transported by their flag aircraft.
- 2.4. Participating States may take appropriate action to prevent circumvention of national controls and scrutiny, including exchange of information on a voluntary basis about exporters, air carriers and agents that failed to comply with the requirements of 2.1 and 2.3 above when requested to do so, and about cases of transit or transshipment by air of SALW that may contribute to a destabilising accumulation or be a potential threat to security and stability in the region of destination.
- 2.5. Whenever a Participating State has information indicating that an aircraft's cargo includes SALW, and that its flight plan includes a destination subject to a UN arms embargo or located in a conflict zone, or that the exporter, the air carrier or agent concerned is suspected of being involved in destabilising transfers of SALW by air or has failed to comply with the requirements in 2.1 or 2.3 when requested to do so, the case should be referred to the relevant national enforcement authorities.

3. Public-private dialogue

Participating States are committed to keeping air carriers informed, whether on a national basis or within relevant international bodies, about implementation of these measures.

Best Practice Guidelines on Internal Compliance Programmes for Dual-Use Goods and Technologies

(Agreed at the 2011 Plenary)

Participating States of the Wassenaar Arrangement,

Taking into account that development and implementation of Internal Compliance Programmes (ICP) by enterprises and academic institutions (hereinafter called “exporter”), though not legally binding, are recommended for their internal management of transfers of dual-use goods and technologies,

Recognizing that each Participating State has a national export control system that must be complied with, and in an effort to assist exporters to meet these controls,

Recognizing that export control on dual-use items is mainly implemented by the competent authorities of each Participating States, and cooperation between domestic export control authorities and exporters is essential for effective export control systems,

Bearing in mind the Initial Elements of the Wassenaar Arrangement (WA), in particular the overall aim of preventing destabilizing accumulations of conventional arms by, i.a. promoting greater responsibility in transfers of dual-use items, and recalling the following WA documents which refer to an ICP:

- the Best Practices for Effective Enforcement (agreed at the 2000 Plenary);
- the Best Practices for Implementing Intangible Transfer of Technology Controls (agreed at the 2006 Plenary);
- the Best Practice Guidelines for the Licensing of Items on the Basic List and Sensitive List of Dual-Use Goods and Technologies (agreed at the 2006 Plenary); and,
- the Statement of Understanding on Implementation of End-Use Controls for Dual-Use Items (agreed at the 2007 Plenary),

Affirming that establishment of ICPs can help exporters to understand and take full account of domestic export control legislation and procedures, and reduce the risks of their involvement in ineligible exports that contravene the purposes of the WA, by supplying to unauthorized end-users such as terrorists and countries of concern;

Bearing in mind that the method in which ICPs are developed and implemented will depend on the size, organizational structure, and other circumstances of exporters,

Agree that:

1. Each Participating State should encourage, where appropriate, its exporters to develop and implement ICPs, and may assist such endeavours by such means as providing expertise and guidance material on ICPs in any relevant form, including discussion of ICPs in export control seminars and providing exporters with opportunities to consult on the form and content of their ICPs;

2. Participating States may also consider, as far as their domestic laws and regulations permit, measures and stimuli that would encourage exporters to introduce ICPs (e.g. taking the development and implementation of an ICP into account when considering applications for licences and revoking existing licences, or making an ICP a condition for the granting of a general licence for an exporter.);
3. Elements for effective ICPs are as set out in the Reference List in the Annex. This is neither exhaustive nor binding. Exporters may combine basic and additional elements from the List as appropriate to develop an ICP which is most applicable to their circumstances;
4. The competent authorities of the Participating States should as appropriate, and in accordance with their domestic legislation and practice, encourage exporters to submit their draft ICPs for examination and comment, for example in the case where ICP is a precondition for any privileged licence procedures. They should also take steps to assess an exporter's compliance with domestic export control laws and regulations, as appropriate, which may involve face-to-face consultations and/or inspection visits.

Annex

**Elements of Internal Compliance Programmes
For Dual-Use Items
(Reference List)**

Domestic export control authorities should, where appropriate, encourage their exporters to develop and implement Internal Compliance Programme (ICP), which may include the following elements.

An exporter may combine, the following basic and additional elements, as appropriate, to develop an ICP applicable to its structure, size, and other specific circumstances.

Basic Elements	Additional Elements	Notes
<u>1.</u> Commitment to Compliance	<u>1.</u> Commitment to Compliance	
<u>1.1.</u> Written statement by a senior representative, such as the CEO, that the exporter is aware of all domestic Export control laws and regulations, and complies with them.		
<u>1.2.</u> To make all employees and officers aware of the statement provided in para 1.1.		
<u>2.</u> Structure and Responsibility	<u>2.</u> Structure and Responsibility	
<u>2.1.</u> Establish an internal organizational structure, responsible for export control, either as a stand-alone unit or as an additional task for an appropriate unit.	<u>2.1.</u> It should be independent from the sales department or any other export oriented units.	
<u>2.1.1.</u> Nomination of a senior representative director, or other individual of corresponding status, as the Chief Export Control Officer (CECO)	2.1.1. Competent authorities may establish a set of criteria for such nominations.	<ul style="list-style-type: none"> • CECO should acquire appropriate knowledge for his/her responsibility.
<u>2.1.2.</u> CECO's Duties - The CECO is responsible for: <ul style="list-style-type: none"> a. development and revision of the ICP; b. development and revision of operation procedures; c. staying up-to-date with changes to relevant regulations and with any directions or guidance issued by the competent authorities; d. classification/identification, screening and approval of business transactions; 	<u>2.1.2.</u> CECO's Duties - The CECO is responsible for: <ul style="list-style-type: none"> h. guidance to subsidiaries and affiliates. - Distribution of an organizational chart to all employees that clearly shows the internal structures and responsibilities for export control within the exporter.	

Basic Elements	Additional Elements	Notes
<p>e. general export control management, throughout the exporter, including direction and communication;</p> <p>f. assignment of personnel in charge of auditing; and</p> <p>g. training.</p>		
	<p><u>2.2.</u> Appointment of an Export Control Manager (ECM) and establishment of an Export Control Unit reporting to the ECM.</p> <ul style="list-style-type: none"> - Making the ECM known within the organization - The ECM carries out the export control operations under the directions of the CECO. 	<ul style="list-style-type: none"> • The ECM and Export Control Unit are normally to be found in larger organizations. Their duties and responsibilities mirror those of the CECO.
	<p><u>2.3.</u> Appointment of an export control officer (ECO) in each business unit.</p> <ul style="list-style-type: none"> - An ECO is responsible for the following activities; <ul style="list-style-type: none"> a. making the instructions and requirements of the ECM known within the business unit b. promotion of export control operating procedures; and c. training 	
<u>3.</u> Export Screening Procedures	<u>3.</u> Export Screening Procedures	
<p><u>3.1.</u> Classification/Identification Procedure</p> <ul style="list-style-type: none"> - Establish whether the goods and/or technologies to be transferred require an export licence under applicable control lists. - Consult with competent authorities and other relevant bodies, where appropriate. 		<ul style="list-style-type: none"> • Where the items to be exported are designed and developed by the exporter, persons in charge of technical affairs and the CECO/ECM should be involved in the rating of items under applicable control lists. • Where items to be exported have been externally sourced the original supplier should be asked for technical specifications and an assessment of classification/identification under applicable control lists.

Basic Elements	Additional Elements	Notes
		<ul style="list-style-type: none"> • “Other relevant bodies” may include organizations approved or certified by the competent authorities for providing classification/identification services.
<p><u>3.2.</u> End-Use Screening</p> <ul style="list-style-type: none"> - Verify that the items to be exported will not be used for purposes other than the declared use - Ensure that any non-listed dual-use items for a destination subject to a binding UN arms embargo, or any relevant regional arms embargo, are not intended for a “military end-use” 		<ul style="list-style-type: none"> • CECO/ECM should consult with the domestic authorities, when any question arises concerning export control. • cf. “End-User Assurances Commonly Used Consolidated Indicative List” (agreed at the 1999 Plenary, amended at the 2005 Plenary).
<p><u>3.3.</u> Customer / End-user Screening</p> <ul style="list-style-type: none"> - Verify whether the end-users / customers are identified with “red-flags” or other early warning systems 		<ul style="list-style-type: none"> • cf. “Statement of Understanding on Implementation of End-Use Controls for Dual-Use Items” (agreed at the 2007 Plenary)
<p><u>3.4.</u> Information by the competent authorities</p> <ul style="list-style-type: none"> - Verify whether the competent authorities inform that export or transfer of the non-listed items is subject to the submission of a licence application. 		<ul style="list-style-type: none"> • cf. “Statement of Understanding on Control of Non-Listed Dual-Use Items” (agreed at the 2003 Plenary) • List of Advisory Questions for Industry (agreed at the 2003 Plenary)
<p><u>3.5.</u> Transaction Screening Procedures</p> <ul style="list-style-type: none"> - Implement procedures to help prevent diversion of the export/transfer to unauthorized end-users or end-uses. 		<ul style="list-style-type: none"> • Implementation of electronic data processing (EDP) supported by order processing systems may assist these endeavours. • In order to systematize and facilitate the implementation of procedures through 3.1 to 3.4, introduction of check list is recommended.

Basic Elements	Additional Elements	Notes
<p><u>3.6.</u> Where necessary ensure that licences are applied for according to domestic licence application procedures.</p>		<ul style="list-style-type: none"> The exporter needs to apply for licences, in cases where screening detects that non-listed items may be used for purposes covered by end-use oriented controls or where it is determined that the transfer of a listed item to a particular destination/end-user would not be covered by existing individual, global or general licence or the conditions attached to the use of that licence.
<p><u>4.</u> Shipment Control</p>	<p><u>4.</u> Shipment Control</p>	
<p><u>4.1.</u> Confirm before shipment/ transfer that:</p> <ul style="list-style-type: none"> - Classification/Identification and Transaction Screenings are completed; - Goods and/or technologies and their quantities correspond to the descriptions set out in export instruction documents and/or export licences. 		
<p><u>5.</u> Performance review</p>	<p><u>5.</u> Performance review</p>	
<p><u>5.1.</u> Establish a regular performance review system to confirm that the export control operation is implemented appropriately according to the ICP and the operational procedures and is compliant with all relevant domestic laws and regulations</p>		<ul style="list-style-type: none"> It is recommended that a performance review is carried out by a unit separated from sales or by an outside specialist, as the structure, size and other circumstances of the exporter permit. Performance reviews could be carried out annually.
<p><u>6.</u> Training</p>	<p><u>6.</u> Training</p>	
<p><u>6.1.</u> Training and education of officers and employees</p> <ul style="list-style-type: none"> - Ensure that staffs are aware of all domestic export control laws, regulations, policies and control lists and all amendments to them as soon as they are made public. 	<p><u>6.1.</u> Training and education of officers and employees</p> <ul style="list-style-type: none"> - Archive internal training records including staff participation in external events. 	<ul style="list-style-type: none"> Training and continued education should be carried out for employees at all levels, especially new staff, persons who work in sales, export related units, or are involved in technology transfer. Provision of at desk training using electronic media, such as the internet and CD / DVDs, may be useful to supplement and reinforce formal training sessions.

Basic Elements	Additional Elements	Notes
<u>7.</u> Record Keeping	<u>7.</u> Record Keeping	
7.1. Archive export-related documents for an appropriate period according to the requirements of domestic export control regulations		<ul style="list-style-type: none"> Export-related documents may include export licences, end-use assurances, commercial invoices, clearance documents, product classification/identification sheets, and records of electronic transfers.
	7.2. The exporter's practices and procedures for archiving material should be known by all relevant staff.	<ul style="list-style-type: none"> Archived records should be traceable.
<u>8.</u> Reporting and Corrective Action	<u>8.</u> Reporting and Corrective Action	
8.1. A prompt report should be made to the CECO/ECM of any violations or suspected violations of export control regulations or ICP procedures.		
8.2. A prompt report should be made to the competent authorities if the CECO/ECM confirms a violation of export control laws and regulations.		Violations of export control laws and regulations should be investigated by competent domestic authorities. The violators could be punished according to domestic legal procedures.
8.3. Ensure any corrective actions necessary are implemented so that similar violations do not recur.		Implement, as appropriate, disciplinary procedures against any member of staff responsible for confirmed violations of export control regulations or ICP procedures.

**Best Practice Guidelines
on Subsequent Transfer (Re-export) Controls for Conventional Weapons
Systems contained in Appendix 3 to the WA Initial Elements**

(Agreed at the 2011 Plenary)

Participating States of the Wassenaar Arrangement,

Having regard to the Initial Elements of the Wassenaar Arrangement, and in particular the objectives of:

- (i) greater responsibility in transfers of conventional arms;
- (ii) the prevention of destabilizing accumulations of such arms; and
- (iii) the need to prevent the acquisition of conventional arms by terrorist groups and organizations, as well as by individual terrorists;

Bearing in mind the “Elements for Objective Analysis and Advice Concerning Potentially Destabilizing Accumulations of Conventional Weapons”, adopted by the 1998 WA Plenary and amended in 2004, “Statement of Understanding on Arms Brokerage” and the “Best Practice Guidelines for Exports of Small Arms and Light Weapons”, adopted in 2002, the “Elements for Export Controls of Man-Portable Air Defence Systems (MANPADS)” and the “Elements for Effective Legislation on Arms Brokering”, adopted in 2003;

Affirming also that they apply strict and comprehensive national controls on the transfer of conventional weapons systems in order to contribute to regional and international security and stability;

Recognizing that end-use/user guarantees play a significant role in exercising effective control over exports and particularly subsequent transfer (re-export) of conventional weapons systems and when properly applied they minimize the risk of diversion of weapons systems to illegal or unauthorized end-user;

Acknowledging that the use of above-mentioned measures/assurances should be consistent with each Participating State’s national legislation, practice and experience and should be subject to negotiations between importing and exporting governments. These Best Practice Guidelines should not be applied to any contractual arrangements/agreements which have been concluded before the adoption of this document.

have agreed to the following Best Practice Guidelines:

In order to ensure a harmonized WA Participating States approach to subsequent transfer (re-export) controls for conventional weapons systems, each Participating State should, consistent with its national legislation and practices, pursue the following measures in its national policies:

1. To ensure that formal government - to - government agreements, end-use/user assurances, and / or export licenses for transfers of conventional weapons systems and their production technology will include, as appropriate, a provision that subsequent transfer (re-export) of those conventional weapons systems to third governments will be made in accordance with the terms of these documents and that importing governments provide the appropriate assurances.

2. To include on a case by case basis the following elements in the end-use/user assurances:

- a. a general clause not allowing for subsequent transfer (re-export) without the prior authorization of the original exporting government,
- b. an undertaking, that the goods, which are being exported, will not be used for purposes other than declared,
- c. a general clause that the exported goods will not be transferred to an unauthorized internal end-user.

The form and scope of the end-use/user guarantees is subject to negotiations between exporting and importing governments and such guarantees may be included in the end-user's statement or certificate or other documents.

3. To review requests for subsequent transfer (re-export) permission as expeditiously as possible and on a non-discriminatory basis taking into account in the review process the following:

- a. consistency of the transfer with the reviewing state's national security and national policy concerns;
- b. legitimacy of the end-use, end-user, end-use certificate and bona fides of all parties concerned and authenticity of the documents presented;
- c. legitimate defence requirements of the importing country;
- d. effect on regional stability;
- e. effectiveness of the exports control system of the recipient country, in view of its performance as a future potential exporter.

4. To disclose, to the extent possible, to the applying government reasons for denial of subsequent transfer (re-export) permission.

5. To ensure that subsequent transfer (re-export) to third parties of conventional weapons systems produced under license from another country is consistent with all relevant provisions of the formal government-to-government agreements, end-use/user assurances and/or export licenses pursuant to which the production technology was transferred.

6. To exercise, in accordance with their national legal authorities and legislation, particular restraint so as to avoid subsequent transfer (re-export) to entities not authorized by states directly involved in the transaction.

7. Participating States may, consistent with their national policy, take measures to limit the number of brokers involved in subsequent transfers (re-export) of conventional weapons systems.

Participating States agree to apply these controls to all export activities, related to subsequent transfer (re-export) of conventional weapons systems acquired or manufactured under foreign license production contractual arrangements/agreements concluded after the adoption of this document.

Elements for Controlling Transportation of Conventional Arms Between Third Countries

(Agreed at the 2011 Plenary)

Participating States of the Wassenaar Arrangement,

Having regard to the Initial Elements of the Wassenaar Arrangement and in particular the objectives of:

- greater responsibility in transfers of conventional arms;
- the prevention of destabilizing accumulations of conventional arms; and
- the need to prevent the acquisition of conventional arms by terrorist groups and organisations, as well as by individual terrorists;

Affirming that they apply strict and comprehensive national controls on the transfer of conventional weapons systems in order to contribute to regional and international security and stability;

Determined to explore available tools to achieve these objectives;

Bearing in mind the “Elements for Objective Analysis and Advice Concerning Potentially Destabilizing Accumulations of Conventional Weapons”, adopted by the 1998 WA Plenary and amended in 2004, “Statement of Understanding on Arms Brokerage” and the “Best Practice Guidelines for Exports of Small Arms and Light Weapons”, adopted in 2002, the “Elements for Export Controls of Man-Portable Air Defence Systems (MANPADS)” and the “Elements for Effective Legislation on Arms Brokering”, adopted in 2003;

Noting that arms brokering activities may include i.a. arms transportation but that this is often not the case, leaving controls on transportation of arms to separate regulation;

Recalling relevant UN Security Council Resolutions imposing an embargo on the export and delivery of arms to particular destinations and similar bans on importing arms from particular destinations;

Recalling the commitments of all Wassenaar Participating States to implement the 2001 UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects;

Mindful of the importance of avoiding duplication of controls;

Recognizing the right to legitimate transportation of arms;

Determined to prevent destabilizing accumulations of arms resulting from transfers that violate UN arms embargoes or relevant national arms export and import controls;

Agree to the following elements:

1. The scope of these elements is limited to the transportation of arms between third countries. As such they do not apply to export, transit, trans-shipment or brokering activities unless such activities are defined to include transportation related to the arms transfer in question.

2. Participating States may apply these Elements within the limits of their national policies and legal practices including any restraints on their ability to exercise extraterritorial controls.

3. Participating States are encouraged to consider the need for measures, including legislative measures if appropriate, to prevent their nationals and entities registered in their territory from transporting arms in violation of UN Security Council embargoes.

4. Participating States are similarly encouraged to consider the need for measures, including legislative measures if appropriate, to prevent their nationals and entities registered in their territory from transporting arms in violation of licensing requirements for arms exports and imports in the exporting and importing countries.

5. When considering possible regulatory measures with reference to these Elements it is assumed that the responsibility of transporters will be limited to transportation of arms with genuine manifests and/or valid export/import licenses unless the transporter is aware or should have been aware that the manifest and/or the export or import licence is falsified.

6. Participating States may consider at their own discretion operating a licensing system for the transportation of arms between third states similar to the licensing of exports and brokering activities.

7. Participating States may similarly at their own discretion consider limiting transportation of arms to be carried out solely by licensed individuals or entities, analogous to the registration of brokers or exporters in some States.

8. In order to avoid duplication of controls Participating States may choose not to control transportation of arms between third states in cases where they consider such transfers to be adequately controlled by those third States, for example through export or brokering controls.