

ADDRESS TO 7TH ANNUAL INTERNATIONAL EXPORT
CONTROL CONFERENCE

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WASSENAAR ARRANGEMENT ON EXPORT CONTROLS FOR
CONVENTIONAL ARMS AND DUAL-USE GOODS AND TECHNOLOGIES

(Check against delivery)

I would like to thank the governments of Sweden and of the United States for inviting me home to present an update on the latest developments at the Wassenaar Arrangement to the Seventh Annual International Export Control Conference. Before I touch on the most recent developments with Wassenaar, I would like to go over some basic facts about the Arrangement.

To put Wassenaar activities in context, I would like to recall that the WA is one of five export control arrangements. It complements the other four major export control regimes:

- 1 The Australia Group, which deals with chemicals, biological agents and production equipment that can be used for the production of chemical or biological weapons;
- 2 The Missile Technology Control Regime or MTCR, which aims at preventing the proliferation of missiles and rocket systems intended for the delivery of weapons of mass destruction (WMD);
- 3 The Nuclear Suppliers Group or NSG, which was set up to ensure that transfers of nuclear material would not be diverted to un-safeguarded nuclear fuel cycle or nuclear explosive activities; and
- 4 The Zangger Committee, which formed to harmonize the interpretation of nuclear export control policies for the Parties of the Nuclear Non-proliferation Treaty.

All five entities use control lists to identify items to be controlled and exchange information on a number of matters of importance to their participating states. These are common features.

The four regimes I just mentioned focus on non-proliferation of weapons of mass destruction (WMD).

The Wassenaar Arrangement is the only export control forum which deals with conventional weapons and related dual use goods and technologies. It is this focus on these broadly available weapons which makes it so valuable. We have heard from some participating states that participate in all five fora that the largest portion of licence applications they receive are for goods and technologies controlled by the Wassenaar Arrangement.

The full name of the Arrangement is the "Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies".

The name comes from a suburb of The Hague, where agreement was reached in 1995 to start a new type of multilateral co-operation to counter threats to regional or international security and stability caused by excessive accumulations of arms and sensitive technologies.

The WA has established a Secretariat in Vienna, Austria, where the meetings are held. The decision-making body is the Plenary, which takes decisions by consensus and normally meets every December. Our most recent plenary was held 8-9 December 2004. You can find more details on our website at www.wassenaar.org.

The WA Secretariat provides support to the meetings of the Plenary and its sub-groups, and assists the Participating States with their information exchange process.

The purpose of the WA is to promote transparency and greater responsibility in the transfer of conventional weapons and Dual-Use goods and technologies, thus preventing destabilising accumulations. The Participating States seek through their national policies to ensure that such transfers do not contribute to undermining regional or international stability. After the tragic events on 11 September 2001, the Participating States amended the purposes of the WA to explicitly affirm the importance of export controls in preventing the acquisition of conventional arms and dual-use goods and technologies by terrorist groups and organisations.

The WA Participating States have made two commitments. Their first commitment is to impose effective national export controls on conventional weapons and on certain goods and technologies that can be used for both military and civilian purposes, as set out in the WA lists.

Their second commitment is to report to other Participating States on transfers and denials of certain controlled items.

Within the Wassenaar context, **export control** means that a Participating State has issued a valid export license prior to the export of items on the control lists.

The WA is not directed against any state or group of states and will not impede bona fide civil transactions. Decisions to grant a license or deny a transfer **remain at national discretion**. Yet, because Participating States must **notify** their partners about certain types of transfers, these decisions are open to scrutiny. Should they wish, Participating States may follow up a notification with further discussion as to the rationale behind it.

As I have already alluded to, the key to the Wassenaar export controls is the agreement, among the Participating States, on the goods to be included in the Munitions List and in the List of Dual-Use Goods and Technologies. These lists are incorporated by Wassenaar Arrangement Participating States in their national legislation. You can find the up-to-date versions of the WA Lists on our web site. To give you an idea of how extensive the lists are I can mention that all together the lists

comprise some 200 pages in hard copy version.

The Munitions List defines conventional arms as well as goods and technologies specially designed for military application that should be subject to national export controls. It is divided into 22 different categories starting with the most basic, such as small arms and light weapons, moving on to ammunition, bombs, naval vessels, up to software and technology. All in all, the Munitions List covers close to 300 different items.

The Dual-Use List covers goods and technologies which have **civilian** applications but could **also** be used for the **production** of arms or for other military purposes. It has **9 different categories** and covers close to **1,000 items**.

A decision on whether to place an item on the Dual-Use List is based on the following criteria (as revised and authorised for publication by the 2004 Plenary):

- 1 The item should be a major or key element for the indigenous development, production, use or enhancement of conventional military capabilities.
- 2 The item should not be widely available from suppliers outside the WA.
- 3 It should be possible to both effectively control the item and to provide a clear and objective description of the item.
- 4 Finally, the Dual-List List should not duplicate controls of other regimes (e.g. the MTCR, NSG or Australia Group) unless the objectives and concerns are different.

Experts from the Arrangement's Participating States consider if any changes to the WA Lists are needed, e.g., because of technological development. This is done through a process that starts early in the year and ends with the adoption by the Plenary of the changes to the Lists that have been agreed.

If you take a closer look at the Dual-Use List you will see that its nine different categories, as in the Munitions List, start with the most basic and progress to the most complicated. Category 1 deals with "Advanced Materials." Other categories are "Materials Processing," "Electronics," "Computers," "Telecommunications," "Information Security," "Sensors and Lasers," "Navigation and Avionics," "Marine," and concludes with Category 9 -- "Propulsion." Each successive category might be seen as representing Dual-Use Items and Technologies of increasing complexity.

For example, Unmanned Aerial Vehicles (UAVs), Category 9, would rely upon navigation and avionic systems, e.g. an Inertial Navigation System, controlled in Category 7, which in turn would depend on electronic components manufactured with specialized production equipment controlled by Category 3, and so on.

Another example drawn from Category 1, Advanced Materials, would be carbon composites. As I said earlier, the items contained in the Dual-Use List have civilian applications, but could also be used for the production of arms. A carbon composite could be used in the manufacture of a high-quality bicycle, a tennis racquet, or a fishing rod, but it could also be used in the production of a weapons platform, such as the airframe structure of a combat aircraft.

You might ask, why not simply impose export controls on the combat aircraft and its related engines and eliminate export controls on carbon composites? In practice, there would be little sense in having export controls on military jets, if key elements and components, such as advanced material required to give the airframe structure its required military characteristics, were not controlled as well.

Thus, this comprehensive approach is required to ensure the effectiveness of export controls over supply of conventional weapon systems and to limit the possibility of indigenous development or manufacturing of such weapons as well as reverse engineering.

I would like to add that in 2003, as a result of the overall assessment of the Arrangement's functioning, the Participating States also agreed to introduce a "catch all" principle. This provision allows Participating States to also control non-listed dual-use items when they are intended to destinations subject to UN arms embargoes or other binding embargoes for military end-use.

It applies when licensing authorities inform the exporter or, when the exporter is aware, that items in question are intended for military use, e.g. for the manufacture or repair of military equipment.

To assist Exporters, the Arrangement has elaborated a list of advisory questions. For instance, exporters are advised to look at whether their customers are tied to the military or the defence industry. They should be alerted if the requested product does not fit their clients' business profile. Or if the customer is reluctant to provide an end-use statement. Is unusual packaging and labelling required? Is the shipping route unusual? Is the customer offering unusually profitable payment terms, such as a much higher price? Is the customer offering to pay in cash? The answers to these questions will give guidance to when suspicion should be raised and a contact with national licensing authorities would be advisable.

Returning to the Dual-use List, as I said earlier, Participating States must notify their partners about certain types of transfers or denials.

(Denials of licenses for export of items on the basic portion of the Dual-Use List are reported by Participating States every six months.

There are some specific dual-use items and technologies which the Experts have identified as sensitive or very sensitive. These items are grouped within two subsets of the Dual-Use List: the Sensitive and the Very Sensitive List.

They have also agreed on more enhanced reporting requirements for these items. In particular, unlike items on the basic list, transfers of sensitive and very sensitive items are to be reported on an aggregate basis every six months. Furthermore, each denial of license for these items is to be notified within 60 days. Although notifications of a denial do not impose an obligation on other Participating States to deny similar transfers, they are treated seriously by WA partners. Should a Participating State nevertheless approve a transfer of sensitive and very sensitive dual-use goods previously denied by a WA partner – a so called "undercut", it must notify all other Participating States within 60 days of such a decision.)

Participating States have also agreed to notify every six month transfers of arms in accordance with agreed reporting requirement. Through these mandatory notifications Participating States, for instance, report transfers of missiles, tanks,

battle ships, military air- crafts, and so on including Small Arms and Light Weapons.

In addition to the national export control of items on the Munitions List and the Dual-Use List and the reporting on transfers and denials of certain items, the Wassenaar Arrangement has developed a number of “best practices guidelines” which are intended to serve as a guide for national legislation, procedures and practices of the Participating States.

One such document is entitled "Elements for Objective Analysis and Advice concerning Potentially Destabilising Accumulations of Conventional Weapons". Under this rather cumbersome title, the Participating States have formulated a number of questions to serve as a basis for the consideration of a licence application relating to the situation in the recipient country or the surrounding region. Among these questions reference is made to the risk of diversion, the regional balance, non-proliferation, the political and economic situation in the recipient country, the risk for reverse engineering and of diversion to terrorist groups.

The control of end-use is central to any export control system. The Arrangement has developed a list of commonly used **end-use assurances** and work is going on to develop this aspect further.

Technology can be transferred in many ways, both by using tangible means but also by using intangible ones e.g. using transmission by electronic media, fax or telephone as well as by individuals. The Participating States recognize the importance of comprehensive controls of listed software and technology and the need to control also intangible transfers. The **intangible transfer of technology** is a complicated question and intensive work is going on to develop best practices in this area.

Participating States in the Wassenaar Arrangement have been active in promoting controls on **arms brokers**. In 2003, the Wassenaar Arrangement adopted a document entitled “Elements for Effective Legislation on Arms Brokering.” In this document Participating States agreed to implement laws and regulations to strictly control arms brokering activities and to require licenses when such activities take place on their territories. Participating States continue to work toward implementing these provisions.

Small Arms and Light Weapons have been called the "weapons of choice of terrorists". The Arrangement has adopted detailed "best practice" guidelines and criteria for SALW. The guidelines urge Participating States to consider more than 20 factors involving the internal situation in a prospective recipient country or its surrounding region before issuing an export license for these items.

These guidelines were adopted in 2002 and were followed in 2003 by another important step, namely adding SALW to the list of seven categories of arms to be reported by Participating States. This means that the scope of **mandatory notifications** of arms transfers now includes a new eighth category which covers (1) Small Arms, (2) Light Weapons, and (3) Man Portable Air Defence Systems, also called MANPADS. As with the other seven arms categories which are reported within the WA, this increased transparency has two principal results: transfer decisions are now open to scrutiny, and Participating States can consider exports of

these weapons by other partners when evaluating potential risks involved before taking their own decisions.

MANPADS deserve special mention as a particularly dangerous type of Small Arm/Light Weapon. Recognizing the continuing threat posed to civil aviation by unauthorised proliferation of these weapons, Participating States have adopted a document entitled "Elements for Export Controls of MANPADS" that include provisions for long-term measures to tighten security over these weapons. In this document the Wassenaar States have agreed i.a. that:

- 1 MANPADS should be exported only to governments.
- 2 The exporting states should be satisfied that military stocks are protected against theft or unauthorised access and use and the recipient governments should guarantee not to re-export MANPADS without the consent of the exporting government.
- 3 The Wassenaar States are called on to assist recipient governments to dispose of excess stockpiles, including buying back previously exported weapons.

The subsequent adoption of the same standards on MANPADS by the Organization for Security and Cooperation in Europe (OSCE) expanded the effect of this initiative to all 55 OSCE Participating States.

Looking at the developments within the WA since the start of the 2004 Plenary, the most significant change which has taken place is that six new countries have joined the WA. This brings the membership from the original 33 up to the present 39. The newest Participating States are: Slovenia, Estonia, Latvia, Lithuania, Malta, and, most recently, Croatia, admitted during a special Plenary meeting held in June of this year.

Outreach activities form an important part of the Wassenaar agenda. Last autumn the WA held its first seminar, intended to raise awareness of the positive contribution that the Wassenaar Arrangement makes to responsible transfers of conventional arms and dual-use goods and technologies. The event attracted more than 130 leading export control specialists and representatives from more than 35 countries. This seminar will be followed up with a new event, an outreach seminar focused on industry input and participation, in October. I believe this special focus on industry is a first for export control regimes. While the Arrangement's first seminar in 2004 focused on academic and governmental contributions, the 3 October seminar in Vienna will provide an opportunity for a dialogue between industry representatives and representatives of the Participating States.

Thank you for your attention. I am of course happy to respond to any comments or questions you may have regarding the WA.