

Presentation to 21st Asian Export Control Seminar

“The Wassenaar Arrangement and the ATT”

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It is a pleasure to join the Asian Export Control Seminar again this year in Tokyo. This event provides a valuable opportunity to deepen understanding and cooperation on export control issues among countries in the Asian region. I would like to express my appreciation to the Japanese Centre for Information on Security Trade Control, the Japanese Ministry of Foreign Affairs, the Ministry of Economy, Trade and Industry, and the team involved in organizing this 21st event. I am honoured to be invited.

I will begin today by providing some background on the Wassenaar Arrangement (WA) and the undertakings Participating States make when they join. Then I will turn to how the goals of the UN Arms Trade Treaty (ATT) align with those of the Wassenaar Arrangement, and share my personal views on opportunities for the Wassenaar Arrangement and its Participating States to contribute towards effective implementation of the ATT.

The Wassenaar Arrangement

The Wassenaar Arrangement has been working to strengthen international controls and cooperation on transfers of conventional weapons and related dual-use goods and technologies since 1996, when it was established with 33 founding members. The membership has now expanded to 41 countries from across the regions, Mexico being the most recent addition in 2012. There are currently a number of countries at varying stages of applying to join, while even more countries are on the Wassenaar Arrangement’s list of outreach partners. Several countries have opted to apply the Wassenaar Arrangement’s control lists without becoming a member.

The 1996 *Initial Elements* document, which outlines the Arrangement’s purposes and scope, states that 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.”

States participating in the Wassenaar Arrangement have committed to maintain effective national export control systems, meaning that a valid licence must be issued by the competent authorities prior to the export of a controlled item. The Wassenaar Arrangement is the only international export control regime dealing with conventional weapons and related dual-use goods and technologies. It complements and reinforces, without seeking to duplicate, other export control regimes concerned with weapons of mass destruction and their means of delivery.

It is important to note that the WA is not directed at a particular state or group of states, and that, like the ATT, it does not seek to impede legitimate trade.

As I see it, three “pillars” make up the WA’s work. They include:

- The agreed export control lists which identify the items that should be subject to national export licensing.
- The exchange of information of both a general nature (such as on risks associated with arms transfers to regions of conflict or concern), and a specific nature (members’ detailed reporting on their exports and denials).
- The “Best Practices” documents developed as guidance for both governments and industry in respect of national export control regulations and practices.

Export Control Lists

There are two Wassenaar Arrangement export control lists - the *Munitions List* and the *Dual-Use List*. Maintaining these lists is an ongoing priority, a task which involves highly technical work by Participating States’ experts who from time to time seek assistance from their industry.

The WA Dual-Use List comprises about 1,000 items, including 170 items on the Sensitive List and 80 items on the Very Sensitive List.

The Munitions List has close to 300 entries in 22 categories.

Both the complete Dual-Use List and the Munitions List are publicly available on the Wassenaar Arrangement website.

A "catch all" principle agreed in 2003 provides for the control of non-listed dual-use items when they are intended for destinations subject to UN arms embargoes or other binding embargoes and are for military end-use. Catch-all applies when licensing authorities inform the exporter, or when the exporter is aware, that items in question are intended for military end-use, e.g. for the manufacture or repair of military equipment.

Each year the WA Experts Group updates the Control Lists on the basis of national proposals. Last year there were 267 such proposals, counter-proposals and other papers relating to 96 different topics. WA Participating States reached agreement on approximately 80 percent of the topics considered in 2013.

The 2013 Plenary agreed to new Control List entries in technically challenging areas, such as surveillance and law enforcement/intelligence gathering tools, and Internet Protocol (IP) network surveillance systems or equipment, which, under certain conditions, may be detrimental to international and regional security and stability.

Further clarifications were adopted on existing controls in respect of inertial measurement equipment or systems; while some controls were relaxed, such as for instrumentation tape recorders and digital computers.

WA Participating States also continued work to make the WA Control Lists more easily understood and user-friendly for licensing authorities and exporters. And progress was made on a comprehensive and systematic review of the WA Lists to ensure their continued relevance.

Further work is already under way in 2014 to address new challenges, including emerging technologies of concern, in order to keep pace with advances in technology, research and innovation.

Information Exchange

Transparency and information-sharing underpin the Wassenaar Arrangement's work. Under the Specific Information Exchange, Participating States notify one another of their decisions to approve or deny exports of controlled goods and technologies to non-members in accordance with agreed reporting parameters. Notifications of arms exports, currently covering eight categories, are mandatory. Seven of the categories are derived from the UN Register of Conventional Arms. In 2003, small arms and light weapons (SALW), including Man-Portable Air Defence Systems (MANPADs), were added as an eighth category.

Wassenaar arms transfer notifications are submitted more frequently (i.e. twice a year) and include more information than is required under the UN reporting system, including under the ATT when it enters into force. However, WA notifications do not include imports and are circulated only among WA Participating States.

WA Participating States also notify transfers of sensitive dual-use goods and technologies, and licence denials of all dual-use exports. Denial reporting helps to bring to the attention of other members efforts to gain access to controlled items that in the view of a denying Participating State may undermine the objectives of the Arrangement. It is also anticipated that such information might prevent inadvertent undercuts.

Through these notifications, decisions by one Participating State on transfers of arms and dual-use goods and technologies are open to scrutiny by all WA partners. Should they wish, other Participating States may follow up and seek further discussion as to the rationale behind a particular national decision. Export and denial notifications are shared via the WA's dedicated secure electronic network, the Wassenaar Arrangement Information System, to which all Participating States have 24-hour access.

The General Information Exchange enables Participating States to share their assessment of the risks associated with transfers of arms and controlled dual-use items, to develop common understandings and to assess the scope for coordinating national export control policies to counter these risks. It includes a Regional Views exercise which focuses discussion on destinations where the risks of destabilising

accumulations are judged to be the greatest. It also covers activities of concern from a diversion or terrorism point of view. Information shared collectively helps national licensing officers to make well-informed decisions on export licence applications.

Best Practices Documents

Another pillar of the Wassenaar Arrangement is the solid body of “Best Practices Guidelines” which have been developed by consensus over the years as guidance for both governments and industry in respect of national legislation and practice. Many of these documents are of direct relevance to the purposes of the ATT. I will return to them later.

In 2013, WA Participating States continued their work on topics such as end-use(r) assurances, controls on transit and trans-shipment, brokering and re-export, as well as catch-all provisions. Information was also shared on engagement with industry and academia and Internal Compliance Programmes (ICPs).

Export controls are most effective when they are applied widely. The Wassenaar Arrangement undertakes a variety of outreach activities to promote effective national export controls and systems and to help interested non-WA states regulate transfers of arms and sensitive dual-use goods so that they do not end up in the wrong hands, including terrorists. Non-WA states are encouraged to use the Arrangement’s best practices guidelines which, like the Control Lists, are publicly available on the WA website to enhance their own export control programmes.

Arms Trade Treaty (ATT)

I believe that the adoption by the United Nations General Assembly on 2 April 2013 of the Arms Trade Treaty signals a significant shift in the international debate on arms controls. Most countries now accept the need to regulate trade in conventional arms to ensure that international transfers are conducted in a responsible and legal manner and do not undermine international peace and stability. Most countries also recognise the security benefits that can flow from greater transparency and strengthened international cooperation in this area. UNSC Resolution 1540 required all UN members to establish national controls for transfers of WMD and related materials. The ATT moves beyond this requirement and seeks to require national controls on the

international trade in conventional arms. For States Parties to the ATT, this codifies as international law the principles of efficient export controls underpinning the Wassenaar Arrangement.

On 3 June 2013, the day the ATT opened for signature in New York, WA Participating States issued a Public Statement welcoming the Treaty's adoption and affirming their readiness to share their experience and expertise with other states, as suggested in the ATT. WA Participating States also recognised that the goals of the ATT align with those of the Wassenaar Arrangement, and that effective implementation of the ATT "will contribute to international peace, security and stability, saving lives, reducing human suffering, protecting human rights, preventing the diversion of conventional arms to the illicit market and combating terrorism, while upholding the legitimate trade in conventional arms".

When the ATT enters into force, it will require each State Party to take measures necessary to have an effective and transparent national control system regulating the transfer of conventional arms covered by the Treaty. It will also establish obligations for exporting, importing and transit/trans-shipment states in order to prevent the diversion of arms from legal to illicit markets. Requirements include the establishment and maintenance of an appropriate national control list, a national point of contact, licensing and enforcement procedures, transit and trans-shipment and brokering regulations, as well as record-keeping and reporting mechanisms.

WA Participating States have already undertaken a number of the requisite steps and have developed a body of practice that is relevant to the goals and requirements of the ATT. For instance:

- WA Participating States have established export controls on a broader spectrum of conventional weapons and ammunition than is envisaged in the ATT. The WA Munitions List includes, for example, related production equipment, software and technologies. WA controls also cover parts and components.

- WA Participating States also control dual-use goods and technologies. When, in the WA, we speak about dual-use goods and technologies, we

mean those that are primarily designed for civil use but that can be used for military applications. These are not covered by the ATT.

- Both WA Control Lists are developed by consensus and are updated to keep pace with advances in technology, new security challenges and market trends. Article 5 of the ATT requires each State Party to establish and maintain a national control list regulating the transfer of conventional arms. While the ATT does not specify how to do so, it sets minimum requirements for a national control list.
- In terms of transparency measures, both the WA and the ATT notification requirements are based on the UN Register, although there are certain differences in scope of coverage and frequency of reporting. The Wassenaar Arrangement requires six-monthly reports only on exports to non-WA Participating States. The ATT requires annual reporting on both exports and imports on a global basis.
- The WA also provides a venue for collective information exchange and discussion of transfer risks and concerns about destabilising accumulations of arms which, at the moment, is not envisaged by the ATT. WA Participating States regularly share information on other matters of mutual interest, including emerging trends, national measures taken and case studies related to licensing and enforcement issues.

Wassenaar Arrangement and the ATT

In preparation for the ATT entry into force, and during the initial years of ATT implementation, the Wassenaar Arrangement could be a useful resource of experience and expertise for non-WA States Parties to the ATT, as well as for the envisaged ATT Secretariat. Some WA Participating States are already undertaking, nationally or regionally, technical assistance and capacity-building activities to raise awareness and help prospective ATT States Parties prepare to meet their ATT obligations.

The ATT encourages international cooperation in support of its effective implementation, including sharing experience and information on lessons learned, as well as offers of and requests for assistance.

Upon request, WA Participating States could be of assistance to the ATT process in a number of ways, recognising different circumstances and needs and drawing on a flexible set of tools:

- The WA Munitions List can serve as a useful basis for states to assist them in establishing and maintaining a national control list as required by the ATT. The WA has a well-established system to keep its List relevant and publishes annual updates.
- The WA *“Elements for Objective Analysis and Advice concerning Potentially Destabilizing Accumulations of Conventional Arms”* can also assist states in developing the export risk assessment process required in Article 7 of the ATT. This WA document, adopted in 1998 and amended in 2004 and 2011, is a check-list with a series of questions that WA Participating States take into account when considering exports or denials of conventional arms. It covers similar considerations as the prohibitions and other relevant factors listed in the ATT.
- Some other WA guidelines, elements and procedures, which are generally called WA Best Practices, may also assist states in meeting ATT requirements. One example is the WA *“Best Practice Guidelines for Exports of Small Arms and Light Weapons (SALW)”*, agreed in 2002 and amended in 2007, which set out a series of risk and other factors to be taken into account when considering export applications. WA Participating States have undertaken to: ensure that such standards are reflected as appropriate in their national legislation; to consider assisting one another in establishing effective national export control mechanisms; and to put in place and implement adequate laws or administrative procedures to control brokering and ensure penalties for illegal dealing in SALW.
- *“Elements for Export Controls of MANPADS”*, adopted in 2003 and amended in 2007, provide guidance on establishing and implementing national controls on the export of MANPADS. They also cover issues such as secure storage, stockpile management and secure disposal.

- The WA's *Elements for Effective Legislation on Arms Brokering* are also pertinent in the ATT context. Adopted in 2003, they contain measures that WA Participating States have agreed should be included, as appropriate, in their national legislation on arms brokering. Progress in meeting the objectives of the elements is reported at each WA Plenary meeting.
- There are a number of other relevant WA Best Practices documents, covering topics such as subsequent transfer (re-export) controls for conventional weapons systems, transportation of conventional arms between third countries, intangible transfers of technology (ITT) controls, end-use assurances, catch-all, and ICPs for industry.
- The Wassenaar Arrangement is currently discussing several new Best Practices documents, including in areas such as end use(r) controls and transit and trans-shipment. Prospective ATT States Parties may benefit not only from the Arrangement's published work, but also from interacting with and learning from WA Participating States that were involved in developing these guidelines and have experience with implementing them.
- WA Participating States have also accumulated experience in complying with reporting requirements and information-sharing that may be relevant in the ATT context. As I mentioned earlier, the WA notifications system is central to transparency and confidence-building and enables Participating States to seek further information as to the rationale behind transfers of arms and dual-use goods and technologies, should they wish. The WA has also learned from establishing and maintaining the dedicated on-line electronic network through which national reports and other information are shared.
- The organisation and work of the small WA Secretariat may be of interest in the context of the future establishment and operation of the ATT Secretariat "within a minimised structure".

In short, I believe that the WA and the ATT can be seen as mutually reinforcing.

The activities of the Wassenaar Arrangement focus on exports but contribute to good practices in other areas covered by the ATT, such as measures to prevent the diversion of arms, mitigation and confidence-building measures.

While a complementarity is evident between the WA and the ATT, for the foreseeable future the WA can be expected to retain its key role in satisfying its Participating States' needs in the following respects not covered by the ATT:

- Inclusion of export controls on a broader spectrum of conventional weapons and related production equipment and technologies, as well as on dual-use goods and technologies;
- Cooperation in keeping both the Munitions and Dual-Use Control Lists up-to-date with advances in technology, new security challenges and market trends;
- Providing greater transparency through more comprehensive and frequent notification requirements, including exports and denials of dual-use items;
- Providing a like-minded vehicle for exchange of information and discussion of transfer risks and concerns;
- Providing a forum for development of Best Practices guidelines;
- Providing a secure notifications database and means of communication.

WA Participating States can be expected to wish to continue using the Arrangement to further improve international export control standards and enhance their implementation, thereby leading by example for the broader ATT community.

Conclusion

Let me conclude by emphasizing that the Wassenaar Arrangement is open for membership to all states in compliance with the agreed criteria. The Arrangement runs an active outreach programme with interested non-members, including by providing a detailed technical briefing on the annual changes to the Control Lists and other implementation issues. The results of the WA's work are freely available for any country to access and utilise. And WA Participating States stand ready to "share their experience and expertise with other states, as suggested by the ATT".

In closing, let me say that the Wassenaar Arrangement is committed to playing its part, alongside other international instruments, including the ATT when it enters into

force, in global efforts to address the challenges to international and regional peace and security posed by the destabilizing accumulation, diversion and misuse of conventional arms. The ongoing commitment of the WA Participating States and their ability to attract new partners will ensure that the Wassenaar Arrangement keeps pace with advances in technology and changing security challenges, and thereby continues its contributions to international cooperation, confidence and peace.

Thank you.