



# Strategic trade control lists

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preventing WMD proliferation and safeguarding borders

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# Overview

- Importance of having a strategic trade control list(s)
- The EU Dual-Use Goods List
- Relevant resolution, treaties and regimes
  - Chemical Weapons Convention (CWC)
  - Other relevant treaties
  - Wassenaar Arrangement
  - Missile Technology Control Regime (MTCR)
  - Nuclear Suppliers Group (NSG)
  - Australia Group (AG)
- Control List Construct: following discussions this session

## Importance of having control list(s)

- Strategic trade control lists are a key component for securing trade in dual-use items – goods and intangible technology for civilian or military purposes – that may pose a risk to international, regional and national security
- Incorporating control lists into national regulatory frameworks facilitates a State's compliance with obligations under UNSCR 1540 (e.g., OP 6), the Chemical Weapons Convention, and other multilateral treaties to which it is a party, as well as the implementation of export control regimes in which it participates



# The EU Dual-Use Goods List

- Reference documents: Council Regulation 428/2009 and Commission delegated regulation 2015/2420
- Set up a EU regime for the control of exports, transfer, brokering and transit of dual-use items \*items, including software and technology, which can be used for both civil and military purposes, and shall include all goods which can be used for both non-explosive uses and assisting in any way in the manufacture of nuclear weapons or other nuclear explosive devices
- The list implements internationally agreed dual-use controls including the Wassenaar Arrangement, the Missile Technology Control Regime (MTCR), the Nuclear Suppliers' Group (NSG), the Australia Group and the Chemical Weapons Convention (CWC). Regulation 428/2009 also refers to UNSCR 1540

## Relevant resolution: UNSCR 1540

- OP 3: “Decides also that all States shall take and enforce effective measures to establish domestic controls to prevent the proliferation of nuclear, chemical, or biological weapons and their means of delivery, including by establishing appropriate controls over related materials and to this end shall (...) (d) Establish, develop, review and maintain appropriate effective national export and trans-shipment controls over such items (...)”
- “Related materials: materials, equipment and technology covered by relevant multilateral treaties and arrangements, or **included on national control lists**, which could be used for the design, development, production or use of nuclear, chemical and biological weapons and their means of delivery”
- OP. 6: “Recognizes the utility in implementing this resolution of effective national control lists and calls upon all Member States, when necessary, to pursue at the earliest opportunity the development of such lists”

## Relevant treaties: Chemical Weapons Convention (CWC)

- Opened for signature on 13 January 1993 and entered into force on 29 April 1997
- 192 States Parties (including all CARICOM countries)
- Technical Secretariat of the Organisation for the Prohibition of Chemical Weapons is based in The Hague, the Netherlands
- Mission of the OPCW is to “...is to implement the provisions of the CWC in order to achieve the OPCW’s vision of a world that is free of chemical weapons and of the threat of their use, and in which co-operation in chemistry for peaceful purposes for all is fostered”.
- Under Article VI, 2 of the CWC: States Parties undertake to adopt the necessary measures to ensure that toxic chemicals and their precursors are only, *inter alia*, transferred for purposes not prohibited by the Convention



# The CWC

Schedules of chemicals subject to varying transfer controls under Article VI and Parts VI, VII and VII of the Verification Annex:

- *Schedule 1 chemicals:*
  - They have been developed, produced, stockpiled or used as a chemical weapon
  - They pose otherwise a high risk to the object and purpose of this Convention by virtue of their high potential for use in activities prohibited under the CWC
  - They have little or no use for purposes not prohibited under this Convention



# The CWC

## Schedules of chemicals subject to varying transfer controls under Article VI and Parts VI, VII and VII of the Verification Annex:

- *Schedule 2 chemicals:*
  - They pose a significant risk to the object and purpose of CWC because they possess such lethal or incapacitating toxicity as well as other properties that could enable them to be used as chemical weapons;
  - They may be used as a precursor in one of the chemical reactions at the final stage of formation of a chemical listed in Schedule 1 or Schedule 2, part A;
  - They pose a significant risk to the object and purpose of the CWC by virtue of their importance in the production of a chemical listed in Schedule 1 or Schedule 2, part A;
  - They are not produced in large commercial quantities for purposes not prohibited under the CWC



# The CWC

## Schedules of chemicals subject to varying transfer controls under Article VI and Parts VI, VII and VII of the Verification Annex:

- *Schedule 3 chemicals:*
  - They have been produced, stockpiled or used as a chemical weapon;
  - They pose otherwise a risk to the object and purpose of the CWC because they possess such lethal or incapacitating toxicity as well as other properties that might enable them to be used as a chemical weapon;
  - They pose a risk to the object and purpose of the CWC by virtue of their importance in the production of one or more chemicals listed in Schedule 1 or Schedule 2, part B;
  - They may be produced in large commercial quantities for purposes not prohibited under the CWC.

## Other relevant treaties

- The Treaty on the non-proliferation of nuclear weapons
  - Article III. 2: Each State Party to the Treaty undertakes not to provide: (a) source or special fissionable material, or (b) equipment or material especially designed or prepared for the processing, use or production of special fissionable material, to any non-nuclear-weapon State for peaceful purposes, unless the source or special fissionable material shall be subject to the safeguards required by this Article.
  - No list in the treaty
  
- The Biological Weapons Convention
  - Article III: “Each State Party to this Convention undertakes not to transfer to any recipient whatsoever, directly or indirectly (...) the agents, toxins, weapons, equipment or means of delivery specified in article I of the Convention”
  - No list in the Convention



## Wassenaar Arrangement

- Established by agreement in 1995
- 41 Participating States (no CARICOM membership)
- Small secretariat in Vienna
- 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 each enact legislation and decide whether to authorise or deny the transfer of an item on the Wassenaar lists



# Wassenaar Arrangement

## List of Dual-Use Goods and Technologies:

- General Software and General Information Security Notes followed by →
- Category 1 – Special Materials and Related Equipment
- Category 2 – Material Processing
- Category 3 – Electronics
- Category 4 – Computers
- Category 5 – Part 1 – Telecommunications
- Category 5 – Part 2 – Information Security
- Category 6 – Sensors and Lasers
- Category 7 – Navigation and Avionics
- Category 8 – Marine
- Category 9 – Propulsion

# Wassenaar Arrangement

## List of Dual-Use Goods and Technologies

- Annex 1 – (Sensitive items) - items from the Dual-use List which are key elements directly related to the indigenous development, production, use or enhancement of advanced conventional military capabilities whose proliferation would significantly undermine the objectives of the Wassenaar Arrangement.
- Annex 2 – (Very sensitive items) - items from the Sensitive List which are key elements essential for the indigenous development, production, use or enhancement of the most advanced conventional military capabilities whose proliferation would significantly undermine the objectives of the Wassenaar Arrangement.

Followed by a Munitions List → !! Set 7 (ML7) includes biological agents or radioactive materials, "adapted for use in war" to produce casualties in humans or animals, degrade equipment or damage crops or the environment; chemical warfare agents



# Missile Technology Control Regime

- Formed in 1987 by the G-7
- 35 member countries (no CARICOM membership)
- No secretariat; France serves as POC
- Mission is to “...co-ordinate national export licensing efforts aimed at preventing proliferation of unmanned delivery systems capable of delivering **weapons of mass destruction.**”
- Member countries each enact legislation requiring license authorization requirements prior to export of items listed in the MTCR Annex



# Missile Technology Control Regime

MTCR Guidelines: define the purpose of the Regime and provide overall structure and rules to guide member countries (and adherents)

MTCR Annex – Equipment, Software and Technology:

- *Category 1 items* (**presumption of denial for export license**): complete rocket systems (including ballistic missiles, space launch vehicles and sounding rockets) and unmanned air vehicle systems (including cruise missiles systems, target and reconnaissance drones) with capabilities exceeding 300km/500kg range/payload threshold; production facilities; major sub-systems; related software and technology
- *Category 2 items* (presumption of denial for export license **if item(s) intended for WMD delivery**): rocket and unmanned air vehicle systems not covered in Category 1 capable of a maximum range equal to or greater than 300km (regardless of payload); equipment; material; technology



## Nuclear Suppliers Group

- Created in 1974 in response to Indian nuclear test
- 48 participating governments (no CARICOM membership)
- No secretariat; Japan's Permanent Mission in Vienna is POC
- NSG is a "...group of nuclear supplier countries that seeks to contribute to **the non-proliferation of nuclear weapons** through the implementation of two sets of Guidelines for nuclear exports and nuclear-related exports..."
- Participating governments implement Guidelines in accordance with national legislation, and decide export applications under national export licensing requirements

# Nuclear Suppliers Group

## 1) Guidelines for nuclear transfers (INFCIRC/254, Part 1):

- Prohibition on nuclear explosives: “Suppliers should authorize transfer of items or related technology identified in the trigger list only upon formal governmental assurances from recipients explicitly excluding uses which would result in any nuclear explosive device”
- Guidelines cover: physical protection, safeguards, special controls on sensitive exports, special arrangements for export of enrichment facilities, controls on material usable for nuclear weapons, controls on retransfers as well as supporting activities
- Two annexes:
  - Annex A: technology; software; and material and equipment, including source and special fissionable material
  - Annex B: clarification of the equipment and non-nuclear materials listed in Annex A

# Nuclear Suppliers Group

## 2) Guidelines for transfers of nuclear-related dual-use equipment, materials, software, and related technology (INFCIRC/254, Part 2):

- Have the objective of “...averting the **proliferation of nuclear weapons and preventing acts of nuclear terrorism...**”
- Govern export of nuclear related dual-use items and technologies which can make a major contribution to an unsafeguarded nuclear fuel cycle or nuclear explosive activity, but which have non-nuclear, for example, industrial, uses
- Include Annex with list of nuclear-related dual-use equipment, materials, software and related technology

## Australia Group

- First meeting in Brussels in 1985 at Australia's initiative, in response to need for harmonisation of chemicals trade
- 41 participating countries plus EU (no CARICOM membership)
- No secretariat; Government of Australia is informal chair
- Principal objective: "...to use licensing measures to ensure that exports of certain chemicals, biological agents, and dual-use chemical and biological manufacturing facilities and equipment, **do not contribute to the spread of chemical and biological weapons**".
- Participating governments implement AG Guidelines in accordance with national legislation, and each ultimately decides whether to approve transfers of any item in the AG control lists



# Australia Group

## Common control lists:

- Chemical Weapons Precursors
- Dual-use chemical manufacturing facilities and equipment and related technology and software
- Dual-use biological equipment and related technology and software
- Human and Animal Pathogens and Toxins
- Plant pathogens



## Control List Construct: following discussions this session

- How adopting controls would not necessarily preclude countries from effectively participating in the global supply chain and therefore gaining economically
- The EU's dual-use goods list in practice; pros of adopting the list and the cons of not adopting the list
- Addressing items that should populate a CARICOM control list and how to implement it in the Caribbean context, taking into account the reality of regional trade patterns



Thank you!