



COUNTERPROLIFERATION-RELATED INFORMATION SOURCES FOR THE TRANSPORT SECTOR

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INTRODUCTION

By the nature of its business, the transport sector is well placed to counter the proliferation of weapons of mass destruction (WMD): its potential for contributing to global counterproliferation efforts should not be underestimated. All parties in the international supply chain have a responsibility to ensure that a transaction complies with the numerous requirements captured under the general description of ‘export controls’ or ‘strategic trade management’. This may include the fulfilment of export, transit and trans-shipment licence requirements; and end-use, dual-use and restricted-party screening. Complying with export control regulations can be particularly complex for the transport sector since transactions involve multiple jurisdictions and, in some situations, have extraterritorial implications.

The SIPRI Good Practice Guides on the transport sector as counterproliferation partner have been developed to support partnerships between the transport sector and government authorities to counter proliferation and to implement proliferation-related United Nations Security Council resolutions. The series identifies and explores various aspects of the transport sector as a counterproliferation partner, with the aim of strengthening the sector’s contribution in this area.

This guide presents a concise overview of counterproliferation information sources most relevant to the transportation sector. It aims to provide a compendium of useful resources that give context to or elaborate on issues and concepts discussed in the series.

BACKGROUND

The paper is structured around three basic questions: what is counterproliferation; what are the associated legal bases and obligations; and how can the transportation sector contribute to counterproliferation efforts?

The sources have been chosen purely on the basis of their availability and utility for supporting the transportation sector. The legal bases and implementation sections focus primarily on US and European Union (EU) sources as they reflect some of the more comprehensive regulatory requirements; offer the most accessible and transportation sector-relevant information; and, in some cases, are the only source of information targeting the trans-

SERIES SUMMARY

● The SIPRI series of good practice guides on the transport sector as counterproliferation partner is the culmination of a MacArthur-funded research project that recognizes the importance of the transport sector to counterproliferation efforts and seeks to encourage the sector’s enhanced activity and partnerships with government authorities.

Throughout 2015 the project team engaged with a broad range of transport sector stakeholders in Asia, Europe, the Middle East and the United States to better understand their compliance challenges; to explore risks and obligations; and to identify, share and test good practice. In doing so, the team also hosted regional good practice workshops that brought together government officials, experts and transport sector representatives and provided a rare opportunity for a spectrum of stakeholders to engage directly on counterproliferation issues.

The guides reflect the main findings of the project’s research, engagement and workshops. They explore an array of counterproliferation activities and can be used individually or combined to support training, awareness raising or the development of internal compliance programmes. The format and focus have been developed in consultation with the transport sector.



portation sector. Information sources intended as guidance for states rather than private sector entities are also included. These have been included where more general guidance targeting the transportation sector does not exist or to provide more generic guidance mindful that the modalities of implementation will differ between states.

This paper is intended as a primer and not a comprehensive compliance guide. It is best used in parallel with the other papers in this SIPRI Good Practice Guide series. While it covers most of the key international obligations it cannot incorporate all obligations for all states and all transportation sector actors. Ultimately consideration will need to be given to the legal frameworks and compliance obligations of all the states in which a transportation actor operates. The transportation sector should also take into consideration the far-reaching extra-territorial controls some states have implemented.¹

WHAT IS COUNTERPROLIFERATION?

Key definitions

Federation of Atomic Scientists (FAS), 'Nonproliferation & counterproliferation', <<https://fas.org/issues/nonproliferation-counterproliferation/>>.

Defines counterproliferation as methods 'designed to interdict the transfer of WMD or the materials and knowhow to make WMD'. The FAS website also hosts a range of proliferation-related resources.

Carus, W., *Defining 'Weapons of Mass Destruction'*, Occasional Paper no. 8, National Defense University Center for the Study of Weapons of Mass Destruction, (National Defense University Press: Washington, DC, 2012), <http://ndupress.ndu.edu/Portals/68/Documents/occasional/cswmd/CSWMD_OccationalPaper-8.pdf>.

Explores definitions of weapons of mass destruction.

Useful background

US Office of Technology Assessment (OTA), *Proliferation of Weapons of Mass Destruction: Assessing the Risk*, OTA-ISC-559 (US Congress/OTA: Washington, DC, Aug. 1993), <<http://www.au.af.mil/au/awc/awcgate/ota/9341.pdf>>.

US Office of Technology Assessment (OTA), *Technologies Underlying Weapons of Mass Destruction*, OTA-BP-ISC-115, (US Congress/OTA: Washington, DC, Dec. 1993), <<http://www.au.af.mil/au/awc/awcgate/ota/9344.pdf>>.

Provide excellent introductions on issues relating to the proliferation of weapons of mass destruction, the risks they pose and associated technologies.

¹ The United States has what is probably the most far-reaching range of proliferation-related extraterritorial controls.



WHAT ARE THE ASSOCIATED OBLIGATIONS AND LEGAL BASES?

Multilateral regimes, initiative and treaties²

A series of multilateral regimes, initiatives and treaties and have been established in response to specific proliferation threats. While their purpose and membership differ the obligations, guidance and control lists they have established constitute a framework for participating states to counter proliferation.

Multilateral regimes and initiatives

Multilateral regimes and initiatives are made-up of informal groups of states that establish guidance and lists of goods that should be controlled because of their utility in programmes to develop weapons of mass destruction or their means of delivery.

Australia Group (AG)

<<http://www.australiagroup.net/en/>>

The AG is an informal forum of countries that, through the harmonization of export controls, seeks to ensure that exports do not contribute to the development of chemical or biological weapons.

Missile Technology Control Regime (MTCR)

<<http://www.mtcr.info>>

The MTCR is an informal and voluntary association of countries which shares the goals of non-proliferation of unmanned delivery systems capable of delivering weapons of mass destruction, and which seeks to coordinate national export licencing efforts aimed at preventing their proliferation.

Nuclear Suppliers Group (NSG)

<<http://www.nuclearsuppliersgroup.org/en/>>

The NSG is a group of nuclear supplier countries that seeks to contribute to the non-proliferation of nuclear weapons through the implementation of guidelines for nuclear exports and nuclear-related exports.

Wassenaar Arrangement (WA)

<<http://www.wassenaar.org/>>

The WA was established 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.

² We use the term multilateral regimes here to refer to the four regimes subsequently outlined. These regimes are sometimes referred to as the Multilateral Nonproliferation Export Control Regimes.



Proliferation Security Initiative (PSI)

<<http://www.psi-online.info/>>

The PSI is a means to secure the political commitment of states, to promote their practical cooperation and to counter proliferation.

Treaties

Treaties are legally binding instruments established to counter specific proliferation threats.

Chemical Weapons Convention (CWC)

<<https://www.opcw.org>>

The CWC aims to eliminate an entire category of weapons of mass destruction by prohibiting the development, production, acquisition, stockpiling, retention, transfer or use of chemical weapons by states parties.

Treaty on the Non-Proliferation of Nuclear Weapons (NPT)

<<https://www.iaea.org/publications/documents/treaties/npt>>

The NPT aims to prevent the spread of nuclear weapons and weapons technology, to foster the peaceful uses of nuclear energy, and to further the goal of disarmament. The Treaty establishes a safeguards system under the responsibility of the International Atomic Energy Agency (IAEA), which also plays a central role under the Treaty in areas of technology transfer for peaceful purposes.

Biological and Toxin Weapons Convention (BTWC)

<<http://www.opbw.org>>

The BTWC bans the development, production, stockpiling, acquisition and retention of microbial or other biological agents or toxins, in types and in quantities that have no justification for prophylactic, protective or other peaceful purposes. It also bans weapons, equipment or means of delivery designed to use such agents or toxins for hostile purposes or in armed conflict.

Trade controls

United Nations Security Council Resolution 1540

United Nations Security Council Resolution 1540 and subsequent resolutions

<<http://www.un.org/en/sc/1540/resolutions-and-presidential-statements/sc-resolutions.shtml>>

Security Council Committee established pursuant to Resolution 1540 (1540 Committee)

<<http://www.un.org/en/sc/1540/>>



Resolution 1540 imposes binding obligations on all states to adopt legislation to prevent the proliferation of nuclear, chemical or biological weapons (weapons and mass destruction) and their means of delivery, establish appropriate domestic controls over related materials (dual-use goods), and encourages enhanced international cooperation.³ The resolution defines related materials as ‘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.’⁴

The European Union

Council Regulation (EC) No 428/2009 of 5 May 2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items, <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:134:0001:0269:en:PDF>>.

Regulation (EC) No 428/2009 provides a common legal basis for dual-use export controls across the EU and includes a list of dual-use items in Annex 1 that ‘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)’. An authorization (export licence) is required for the export of the items listed in Annex I.

United States (general trade controls)

US Department of Commerce, Bureau of Industry and Security (BIS), ‘Export Administration Regulation downloadable files’, <<https://www.bis.doc.gov/index.php/regulations/export-administration-regulations-ear>>.

The Export Administration Regulations (EAR) is an important United States export control law that affects the manufacturing, sales and distribution of technology. The legislation seeks to control access to specific types of technology and the associated data. Its goal is to prevent the disclosure or transfer of sensitive information to a foreign national. EAR contains a Commerce Control List of regulated commercial items, including those items that have both commercial and military applications.

US Nuclear Regulatory Commission (NRC), NRC Regulations: Part 110—Export and Import of Nuclear Equipment and Material, <<http://www.nrc.gov/reading-rm/doc-collections/cfr/part110/full-text.html>>.

³ Resolution 1540 defines means of delivery as ‘missiles, rockets and other unmanned systems capable of delivering nuclear, chemical, or biological weapons, that are specially designed for such use’.

⁴ The ‘relevant multilateral treaties and arrangements’ include the Wassenaar Arrangement, Missile Technology Control Regime (MTCR), Nuclear Suppliers’ Group (NSG), Australia Group and Chemical Weapons Convention (CWC).



Prescribe licensing, enforcement, and rule-making procedures and criteria, under the US Atomic Energy Act, for the export and import of nuclear equipment.

United States (specific lists of goods subject to control)

US Department of Commerce, Bureau of Industry and Security (BIS), Commerce Control List (CCL), <<https://www.bis.doc.gov/index.php/regulations/commerce-control-list-ccl>>.

Contains all of the items subject to the export licensing authority of the US Department of Commerce's Bureau of Industry and Security (BIS). The items listed on the CCL are referred to as 'dual-use' items because they have both commercial and military or proliferation applications.

US Nuclear Regulatory Commission, 'Export-import', <<http://www.nrc.gov/about-nrc/ip/export-import.html>>.

Provides details of the commodities that fall under the US NRC export and import licensing authority.

Proliferation-related sanctions

The UN Security Council has adopted a series of proliferation-related sanctions measures that target specific states (primarily the Democratic People's Republic of Korea, or North Korea, and Iran). Their implementation is mandatory for all states. The European Union and the USA have also adopted additional proliferation-related sanctions measures – links to these have been included to the sanctions and associated guidance as a significant volume of international trade has a EU or US nexus, and/or are conducted in US dollars.

United Nations

United Nations, Security Council, Subsidiary Organs, Consolidated United Nations Security Council Sanctions List, <<https://www.un.org/sc/suborg/en/sanctions/un-sc-consolidated-list>>.

Includes all individuals and entities subject to sanctions measures (not just proliferation-related sanctions measures) imposed by the Security Council.

North Korea

UN Security Council Resolution 1718 and subsequent resolutions <<https://www.un.org/sc/suborg/en/sanctions/1718/resolutions>>

Security Council Committee Established Pursuant to Resolution 1718 (2006) <<https://www.un.org/sc/suborg/en/sanctions/1718>>



UN Security Council Resolution 1718 imposed a series of economic and commercial sanctions on the Democratic People's Republic of Korea (the DPRK, or North Korea) in the aftermath of that nation's claimed nuclear test in 2006. Additional sanctions were applied by subsequent resolutions after further nuclear tests and ballistic missile launches by North Korea. The Committee comprising all 15 members of the Security Council was established to oversee the relevant sanctions measures relating to North Korea.

Iran

United Nations Security Council Resolution 2231 (2015)
<[http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2231\(2015\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2231(2015))>

Background on United Nations Security Council Resolution 2231 (2015)
<<http://www.un.org/en/sc/2231/>>

Joint Comprehensive Plan of Action (JCPOA)
<http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2015/544>

The Joint Comprehensive Plan of Action (JCPOA) was concluded in July 2015 by China, France, Germany, Russia, the United Kingdom, the United States, the High Representative of the European Union (the E3/EU+3) and Iran. It represents the outcome of diplomatic efforts to reach a comprehensive and long-term solution to the Iranian nuclear issue. Resolution 2231 endorses the JCPOA and provides for the termination of the provisions of previous Security Council resolutions on the Iranian nuclear issue and establishes specific restrictions that apply to all States without exception.

The European External Action Service of the European Union (EEAS)

EEAS, 'Sanctions policy', <http://eeas.europa.eu/topics/sanctions-policy/423/sanctions-policy_en>.

European Union, 'Restrictive measures (sanctions) in force', <http://eeas.europa.eu/sites/eeas/files/measures_en.pdf>.

A regularly updated list of all EU sanctions (not just proliferation-related sanctions) in force at the time of publication listed by country.

EEAS, 'Consolidated list of persons, groups and entities subject to EU financial sanctions', <http://eeas.europa.eu/cfsp/sanctions/consol-list/index_en.htm>.

A regularly updated and consolidated list of persons, groups and entities subject to EU financial sanctions.

*United States*

US Department of State, 'Nonproliferation sanctions', <<http://www.state.gov/t/isn/226423.htm>>.

Provides a comprehensive list of all US Department of State-sanctioned entities.

US Department of the Treasury, Office of Foreign Assets Control (OFAC), 'Sanctions programs and information', <<https://www.treasury.gov/resource-center/sanctions/Pages/default.aspx>>.

The Office of Foreign Assets Control administers and enforces US economic and trade sanctions and publishes sanctions lists and guidance.

Export.gov, Consolidated Screening List, <http://export.gov/ecr/eg-main_023148.asp>.

A regularly updated list of parties for which the US maintains restrictions on certain exports, re-exports or transfers of items.

International maritime and aviation law

Dunne, A., *The Proliferation Security Initiative: Legal Considerations and Operational Realities*, SIPRI Policy Paper no. 36 (May 2013), <http://books.sipri.org/product_info?c_product_id=459>.

Explores the main international and national legal frameworks and considerations associated with the interdiction of consignments of proliferation concern at sea and in the air.

HOW CAN THE TRANSPORT SECTOR CONTRIBUTE TO COUNTERPROLIFERATION EFFORTS?

The following counterproliferation-related information sources offer information and guidance of particular interest to, or designed for, the transport sector. These include a selection of general information sources on export controls; information designed specifically for freight forwarders; guidance on proliferation finance-related sanctions measures; guidance on the use of auditing and internal compliance programmes to support counterproliferation; guidance on the use of red flags and watchlists; and transit and transshipment good practice.

General

Institute for Science and International Security, 'Key elements of an export control system', <http://exportcontrols.info/key_elements.htm>.

Discusses three distinct aspects of a good export control system, and offers some possible solutions to challenges that may arise.



US Department of State, 'A resource on strategic trade management and export controls', <<http://www.state.gov/strategictrade/resources/c43178.htm>>.

Lists and provides an overview of the regimes that constitute a framework for participating governments to combat multilaterally problems related to export control and WMD proliferation.

Singapore Customs, *Strategic Trade Scheme Handbook*, Oct. 2015, <<http://www.customs.gov.sg/businesses/strategic-goods-control/published-guidebooks>>.

Contains guidelines on implementing an effective internal compliance programme, as well as frequently asked questions on the trading of strategic goods.

German Federal Office of Economics and Export Control (BAFA), 'Export control', <http://www.bafa.de/bafa/en/export_control/>.

Provides guidance on the legal framework and administrative implementation of the German Government's export control system.

Freight forwarders

Jones, S., 'Counterproliferation good practice for freight forwarders', SIPRI Good Practice Guide: The Transport Sector as Counterproliferation Partner no. 4 (Sep. 2016), <www.sipri.org/publications/2016/freight-forwarders-good-practice-guide>.

Presents a range of good practice options for the freight forwarding community, particularly in light of a rapidly changing global supply chain landscape and overall proliferation threat environment.

US Department of Commerce, Bureau of Industry and Security (BIS), Office of Exporter Services Export Management and Compliance Division, *Freight Forwarder Guidance* (Feb. 2012), <www.bis.doc.gov/index.php/forms-documents/doc_view/620-new-freight-forwarder-guidance>.

Sets out guidance for members of the international forwarding community and their compliance responsibilities under the US Export Administration Regulations.

Proliferation finance

Financial Action Task Force (FATF), *The Implementation of Financial Provisions of United Nations Security Council Resolutions to Counter the Proliferation of Weapons of Mass Destruction* (June 2013), <www.fatf-gafi.org/media/fatf/documents/recommendations/Guidance-UNSCRS-Prolif-WMD.pdf>.



The Financial Action Task Force is an inter-governmental body established in 1989 to set standards and promote effective implementation of legal, regulatory and operational measures for combating threats to the integrity of the international financial system. It has developed a series of recommendations that are recognized as the international standard for combating of money laundering and the financing of terrorism and proliferation of weapons of mass destruction. Recommendation 7 requires countries to implement targeted financial sanctions to comply with proliferation-related UN Security Council resolutions. The June 2013 guidance consolidates and updates three previous FATF proliferation finance guidance papers.

Auditing and internal compliance programmes (ICPs)

Orzel, R., Pal, D. and Heine, P., 'Export control compliance and the transport sector: lessons for internal compliance programmes', SIPRI Good Practice Guide: The Transport Sector as Counterproliferation Partner no. 5 (Sep. 2016), <www.sipri.org/publications/2016/internal-compliance-programmes-good-practice-guide>.

Demonstrates how export control-related internal compliance programmes can be applied within the transport sector.

US Department of Commerce, Bureau of Industry and Security, Office of Exporter Services, 'Key element 7: export compliance, monitoring and auditing/assessing', *Compliance Guidelines: How to Develop an Effective Export Management and Compliance Program and Manual* (June 2011), <http://www.bis.doc.gov/index.php/forms-documents/doc_view/7-compliance-guidelines>.

Assists companies in establishing, or enhancing, an internal compliance programme. It promotes good export compliance practices and provides information, tools and templates to help companies develop an ICP.

German Federal Office of Economics and Export Control (BAFA), *Internal Compliance Programmes—ICP: Internal Export Control Systems* (June 2012), <http://www.bafa.de/bafa/en/export_control/publications/export_control_icp.pdf>.

Demonstrates why it benefits companies to establish an internal compliance programme, explains the legal basis for such a programme and sets out the criteria that must be fulfilled.

European Commission, *Strengthening Strategic Export Controls by Internal Compliance Programmes*, JRC Technical Report (2014), <<http://publications.jrc.ec.europa.eu/repository/bitstream/JRC92964/sevini%20-%20online.pdf>>.

Discusses the basic or key elements of an internal compliance programme.



Red flags and watchlists

Palmer, M., 'Restricted parties and the transport sector', SIPRI Good Practice Guide: The Transport Sector as Counterproliferation Partner no. 2 (Sep. 2016), <www.sipri.org/publications/2016/restricted-parties-good-practice-guide>.

Discusses the concepts of 'restricted party' and 'restricted-party lists' and their association with export control compliance.

Palmer, M., 'Proliferation red flags and the transport sector', SIPRI Good Practice Guide: The Transport Sector as Counterproliferation Partner no. 3 (Sep. 2016), <www.sipri.org/publications/2016/red-flags-good-practice-guide>.

Discusses the concept of 'red flags' as indicators of possible non-compliance and proliferation-related activity.

Trade.gov, Consolidated Screening List, <<http://internationaltradeadministration.github.io/explorer/#/consolidated-screening-list-entries>>.

Consolidates 11 export screening lists of the US Departments of Commerce, State and the Treasury into a single data feed as an aid to industry in conducting electronic screens of potential parties to regulated transactions.

Oracle Corporation, *A Guide to Effective Watchlist Screening*, Oracle White Paper (Sep. 2011), <<http://www.oracle.com/technetwork/middleware/ows/documentation/ows-screening-guide-wp-1864952.pdf>>.

Guides organizations choosing a system to meet their regulatory obligations to reduce financial crime and terrorism, while minimizing the impact and cost on their business

US Department of Commerce, Bureau of Industry and Security, Office of Export Enforcement, 'Red flag indicators', <<http://www.bis.doc.gov/index.php/enforcement/oeec/compliance/23-compliance-a-training/51-red-flag-indicators>>.

Provides a check list to discover possible violations of the US Export Administration Regulations.

Japanese Ministry of Economy, Trade and Industry, Security Export Control Policy Division, Trade Control Department, 'Japan, Foreign End User List' (Mar. 2016), <http://www.meti.go.jp/policy/anpo/law_document/tutatu/kaisei/20160329_3.pdf>.

Provides exporters with information on foreign entities of concern, especially regarding their potential involvement in the development of WMDs.

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Transit and trans-shipment

Dunne, A., 'The role of transit and trans-shipment in counterproliferation efforts', SIPRI Good Practice Guide: The Transport Sector as Counterproliferation Partner no. 6 (Sep. 2016), <www.sipri.org/publications/2016/transit-and-trans-shipment-good-practice-guide>.

Supports compliance and good practice as it relates to transit and trans-shipment.

US Department of Commerce, Bureau of Industry and Security (BIS), Office of Technology Evaluation, *BIS 'Best Practices' for Industry to Guard Against Unlawful Diversion through Transshipment Trade* (August 2011), <https://www.bis.doc.gov/index.php/forms-documents/doc_view/625-best-practices>.

Set of 'best practices' developed in cooperation with US industry to help guard against the diversion of dual-use items shipped to a trans-shipment 'hub', or to any intermediate country before being shipped to the country of ultimate destination.

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