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-
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**


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.


Explores definitions of weapons of mass destruction.

**Useful background**


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 treaties

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.

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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  

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


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)**


The Export Administration Regulations (EAR) is administered by the US Department of Commerce and regulates the export of dual-use goods and technologies.


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

\(^3\) 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).
United States (specific lists of goods subject to control)


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.


Provides details of the commodities that fall under the US Nuclear Regulatory Commission’s 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


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 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**


Joint Comprehensive Plan of Action (JCPOA)  

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)**

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

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

**United States**

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

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


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*


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**


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


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.

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


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

**Freight forwarders**


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.


Sets out guidance for members of the international freight forwarding community and their compliance responsibilities under the US EAR.

**Proliferation finance**


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)


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


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.


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.


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

Red flags and watchlists


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

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


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.


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


Provides a check list to discover possible violations of the US EAR.


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

**Transit and trans-shipment**


Supports compliance and good practice as it relates to transit and trans-shipment.
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Set of ‘best practices’ developed in cooperation with US industry to help guard against the diversion of dual-use items shipped to a transshipment ‘hub’, or to any intermediate country before being shipped to the country of ultimate destination.

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