WORLD TRADE ORGANIZATION

International export regulations and controls

Navigating the global framework beyond WTO rules

About the WTO

The World Trade Organization (WTO) is the international body dealing with the global rules of trade between nations. Its main function is to ensure that trade flows as smoothly, predictably and freely as possible, with a level playing field for all its members.

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Foreword

The world has been confronted by multiple challenges in recent years. From the devastating health and economic consequences caused by the COVID-19 pandemic to the growing impact of climate change, these crises have risen alongside longstanding global concerns, such as alleviating poverty and fostering sustainable development. International trade has a pivotal role to play in addressing these pressing issues. However, the trading of certain products can entail risks, necessitating the need for measures such as export licences and restrictions in certain circumstances to manage these risks.

Global cooperation has led to international agreements and conventions in a variety of areas, ranging from protecting the environment to safeguarding public health, and promoting peace and security. Many WTO members are party to conventions and agreements with these objectives, leading to a wide range of export regulations and controls for the trading of controlled and sensitive goods. The publication examines how these international agreements co-exist with WTO rules such as the General Agreement on Tariffs and Trade (GATT) 1994 and the transparency requirements regarding the procedures for the notification of quantitative restrictions.

While these international agreements have traditionally focused on regulations governing the importation of controlled and sensitive goods, an increasing number include rules governing exports. Examples of such agreements include the Convention on International Trade in Endangered Species of Wild Fauna and Flora, more commonly known as CITES, the Basel, Rotterdam and Stockholm Conventions on hazardous chemicals and wastes, and the United Nations International Drugs Control Conventions.

This publication provides insights into some of the international agreements covering export regulations aimed at environmental protection, hazardous waste management, weapons control and combating the spread of illicit drugs, and would not have been possible without valuable contributions from the secretariats and implementing bodies of the international agreements and conventions included in this book.

The book is intended to serve as a guide for policymakers, government officials, academia and members of the public with an interest in the areas covered. By fostering a better understanding of the existing international agreements regulating exports and how they link to the multilateral trading system, the WTO can help to strengthen global cooperation, promote transparency and perhaps even inspire future agreements seeking to strike a balance between advancing international trade and protecting the global community against potential risks.

Suja Rishikesh Mavroidis

Director
WTO Market Access Division

Introduction

WTO members utilize a wide range of measures, such as prohibitions, export licences, regulations and other controls, to assist in risk management and regulating trade in controlled and sensitive goods. Examples include measures for fulfilling specific environmental objectives, the management of hazardous wastes and chemicals, combating illicit drugs and harmful substances, contributing to international peace and weapons controls, and regulating trade in cultural property. Many of these export licences and controls are established pursuant to international agreements and conventions focused on these specific areas and are the result of many years of international cooperation in the respective fields.

While some of these measures might be considered to be quantitative restrictions (QRs), which are generally prohibited within WTO rules, members are permitted to apply them in a limited number of situations. These can include exemptions from, and exceptions to, the rules pursuant to Articles XI:2 and XII (Balance of Payments) of the General Agreement on Tariffs and Trade (GATT) 1994, respectively, as well as the general exceptions in Article XX and the national security exceptions in Article XXI of the GATT 1994. In addition, QRs may also be applied in accordance with certain specific exceptions provided under other WTO agreements, such as the Agreement on Agriculture.

To ensure transparency, WTO members are required to notify every two years all QRs in force pursuant to the WTO Decision on Notification Procedures for Quantitative Restrictions[1], which is administered by the Committee on Market Access. For example, several WTO members have notified that they maintain export restrictions in one form or the other, including export controls such as prohibitions, restrictions or licences for trade in nuclear materials, narcotic drugs and weapons, and several measures to protect the environment. Members also have the possibility to indicate whether these prohibitions or restrictions stem from international obligations undertaken outside the WTO framework. In practice, several members have notified measures introduced pursuant to these agreements, including *inter alia* the Montreal Protocol on Substances that Deplete the Ozone Layer or the Convention on International Trade in Endangered Species of Wild Fauna and Flora to protect certain plants and animals against over-exploitation through international trade.

This publication is unique in exploring how this particular set of international agreements and conventions operate in practice and how it is linked to the multilateral trading system. Moreover, it is often difficult to find information on export-related measures. To bridge this gap, this publication presents some of the international rules for export-related controls in selected international agreements and explores the main ways such restrictions co-exist with WTO rules. The aim of the publication is also to assist WTO members and the general public in gaining a better understanding of the different mechanisms through which the export of high-risk or controlled products is regulated pursuant to the international agreements

and conventions beyond WTO rules. It will also aid delegates and capital-based officials in preparing their notifications and will help them understand more clearly the type of information that should be considered, thus increasing transparency.

The agreements and conventions included in the publication were selected based on the presence of concrete provisions that seek to regulate exports, the extent to which WTO members are party to them, and how often members refer to them in their QR notifications. The publication begins with an overview of export restrictions and regulations under WTO agreements, describing the relevant legal disciplines and notification requirements. The chapters on the selected international agreements and conventions focus on how the export regulations and controls under those instruments operate in practice in the following areas: environmental protection; drugs control; and weapons and disarmament.

The chapters contained in Parts 1-3 were prepared or reviewed by the secretariats and implementing bodies of the respective arrangements, agreements and conventions and are attributable to them.[2] They reflect the language and terminology used in the respective agreements, which may be different from that used in context of the WTO agreements. Accordingly, the use of such terms in those chapters does not reflect an endorsement by the WTO Secretariat, and is without prejudice to WTO members' status, or their rights and obligations.

Endnotes

1 *Decision on Notification Procedures for Quantitative Restrictions*, WTO document G/L/59/Rev.1, 3 July 2012.

2 The chapters "Vienna Convention for the Protection of the Ozone Layer and Montreal Protocol on Substances that Deplete the Ozone Layer" and "United Nations Security Council resolutions and export controls" were prepared by the WTO Secretariat and reviewed by the respective organizations.

Export restrictions and regulations under WTO agreements

The first section of this chapter explores the relevant provisions in WTO agreements regulating export restrictions on goods. It begins by setting out the rules that address the application or maintenance of such export restrictions by members, followed by an examination of the flexibilities available to members under specific circumstances. The second section discusses the procedures and practices for the notification of export restrictions at the WTO, in particular under the Decision on Notification Procedures that was adopted by the Council for Trade in Goods in 2012.

Prepared by the WTO Secretariat.

Legal disciplines regulating export restrictions under WTO agreements

WTO rules governing export restrictions on goods are not set out in a dedicated treaty or agreement.[1] Rather, the relevant legal disciplines are contained in several multilateral treaties on trade in goods negotiated by WTO members and annexed to the Agreement Establishing the World Trade Organization (WTO Agreement).[2] The present chapter discusses these disciplines with reference to the specific terms used in WTO agreements, which may not be identical to terms used in other non-WTO legal instruments and frameworks discussed in this publication. Where useful, the chapter also refers to the interpretation of the relevant terms in WTO dispute settlement.

Obligation to Eliminate Export Prohibitions and Restrictions under the General Agreement on Tariffs and Trade (GATT 1994)

Through General Agreement on Tariffs and Trade (GATT) 1994 Article XI (General Elimination of Quantitative Restrictions), WTO members have agreed to pursue the elimination of export restrictions. Paragraph 1 of Article XI provides (*emphasis added*):

> "1. *No prohibitions or restrictions* other than duties, taxes or other charges, whether made effective through quotas, import or export licences or other measures, shall be instituted or maintained by any contracting party on the importation of any product of the territory of any other contracting party or on the *exportation or sale for export of any product destined for the territory of any other contracting party*."

In WTO dispute settlement, the scope of GATT 1994 Article XI:1 has been understood to be "broad" in that it envisages the elimination of *all* export prohibitions or restrictions, which may be made operative through quotas, licences or any "other measures".[3] The requirement in Article XI:1 to eliminate both "prohibitions" and "restrictions" has been interpreted to constrain not only bans on the exportation of a good but also measures that have a "limiting" effect on exportation.[4] According to WTO panels and the Appellate Body, such a limiting effect may result from measures that create uncertainties around exportation, create undue delays or make exportation prohibitively costly, therefore modifying the competitive situation of the exporter.[5] They have further observed that the limiting effect of these measures need not be quantified, and the potential to limit trade may be sufficient for a measure to constitute a restriction on the exportation of a product within the meaning of Article XI:1.[6]

While export quotas are one possible example of measures with such limiting effect, the scope of GATT 1994 Article XI:1 also extends to other measures. For instance, GATT and WTO dispute settlement panels have found discretionary export licensing regimes and minimum export price requirements to be inconsistent with Article XI:1.[7] These panels have further

stated that although export licensing regimes may not be *per se* in violation of Article XI:1, they can amount to a restriction inconsistent with Article XI:1, where licensing agencies have unfettered or undefined discretion to reject a licence application, or when export licensing practices lead to excessive delays.[8]

The *Ad* note to GATT 1994 Article XI clarifies that the term "export restrictions" includes "restrictions made effective through state-trading operations".[9] According to the interpretation of this *Ad* note in WTO dispute settlement, operations of a state-trading entity that result in restrictions on exports may be inconsistent with the obligation under GATT 1994 Article XI:1.[10]

Export prohibitions and restrictions under other WTO agreements

One specific application of the rule in GATT 1994 Article XI:1 can be found in the WTO's Agreement on Trade-Related Investment Measures (TRIMs Agreement), which recognizes that certain investment measures can have trade-restrictive and distorting effects. It prohibits members from applying such measures insofar as they are inconsistent with GATT 1994 Article XI.[11] To this end, the Agreement contains an illustrative list of trade-related investment measures (TRIMs) that are considered inconsistent with GATT 1994 Article XI:1.[12] With respect to export restrictions, this illustrative list in the annex to the TRIMs Agreement states:

> "2. TRIMs that are inconsistent with the obligation of general elimination of quantitative restrictions provided for in paragraph 1 of Article XI of GATT 1994 include those which are mandatory or enforceable under domestic law or under administrative rulings, or compliance with which is necessary to obtain an advantage, and which restrict:
>
> …….
>
> (c) the exportation or sale for export by an enterprise of products, whether specified in terms of particular products, in terms of volume or value of products, or in terms of a proportion of volume or value of its local production."

The WTO's Agreement on Safeguards also disciplines a specific category of export restrictions. Article 11.1(b) prohibits members from seeking, taking or maintaining any "voluntary export restraints, orderly marketing arrangements or any other similar measures" on the export side.[13] Examples of other measures which afford protection in a manner similar to voluntary export restraints and orderly market arrangements include export moderation, export-price monitoring systems, export surveillance and discretionary export licensing schemes.[14] Article 11.1(b) further clarifies that export measures prohibited under this provision include both "actions taken by a single Member" and "actions under agreements, arrangements and understandings entered into by two or more Members".

Under Article 4 (and footnote 1) of the WTO's Agreement on Agriculture, WTO members are also precluded from resorting to or maintaining voluntary export restraints and similar border measures other than ordinary customs duties in respect of agricultural products.

Export restrictions under terms of accession

Any state or separate customs territory possessing full autonomy in the conduct of its external commercial relations may accede to the WTO as a member.[15] The terms of such accession are contained in the accession protocol agreed upon by the applicant and WTO members, as well as the report of the accession working party.

Terms of accession often include obligations of acceding members with respect to export regulation, such as general and specific commitments in respect of export licensing. For example, Tajikistan and Ukraine have committed to apply export licensing requirements in conformity with WTO rules, including GATT 1994 Article XI.[16] China's Accession Protocol provides for the publication and notification of export licensing requirements[17], as well as non-discrimination of foreign individuals and enterprises in the distribution of export licences.[18] The Russian Federation has committed itself to eliminating such export authorization and licensing requirements which cannot be justified under WTO provisions, as well as measures having an "equivalent effect". In addition, the Russian Federation specifically undertook to ensure the WTO-consistency of its export licensing regime for precious stones and metals, semi-precious stones, objects made thereof, certain alloys, semi-fabricates, ores, concentrates and wastes.[19]

Exceptions and other provisions relating to the obligation to eliminate export prohibitions and restrictions

The requirement under GATT 1994 Article XI:1 to eliminate export prohibitions and restrictions co-exists with various provisions in the GATT 1994 and other WTO agreements that members have relied upon to justify introducing or maintaining export restrictions.[20] Below, some of these provisions are explored. As will be further elaborated in the next section, the Decision on Notification Procedures for Quantitative Restrictions (QR Decision) adopted by the Council for Trade in Goods in 2012 requires members to notify all export restrictions in force and the justification under the WTO rules for maintaining them.[21]

The text of GATT 1994 Article XI:1 indicates that the obligation to eliminate export restrictions does not prevent members from levying export duties, export taxes or other export charges.[22] These duties, taxes or charges may nevertheless be subject to other rules in the WTO covered agreements, such as GATT 1994 Article X:3(a) requiring uniform, impartial and reasonable administration of laws and regulations.[23]

GATT 1994 Article XI:2 also sets out limitations on the scope of Article XI:1 by excluding specified export prohibitions or restrictions from the general rule on the elimination of quantitative restrictions. It provides in relevant parts:

> "2. The provisions of [Article XI:1] shall not extend to the following:
> (a) export prohibitions or restrictions temporarily applied to prevent or relieve critical shortages of foodstuffs or other products essential to the exporting contracting party;
> (b) import and export prohibitions or restrictions necessary to the application of standards or regulations for the classification, grading or marketing of commodities in international trade; ..."

According to the interpretation of GATT 1994 Article XI:2(a) in WTO dispute settlement, members may restrict or prohibit exports temporarily, that is for "a limited time" or on an "interim" basis, to address critical shortages of foodstuffs or other essential products. Specific WTO panels and the Appellate Body have considered an "essential" product within the meaning of GATT 1994 Article XI:2(a) as one that is necessary or absolutely indispensable to a particular member, taking into account the circumstances faced by that member at the time it imposes the export restrictions. A "critical shortage" has been understood as referring to deficiencies in quantity that are crucial or that reach a vitally important or decisive stage. The phrase "prevent or relieve" in Article XI:2(a) has been interpreted to mean that members may apply export restrictions to alleviate an existing critical shortage as well as in anticipation of a critical shortage.[24]

With respect to agricultural products, the WTO's Agreement on Agriculture further elaborates the exemption in GATT 1994 Article XI:2(a). In particular, Article 12(1) of the Agreement on Agriculture recognizes that members may restrict exports of foodstuffs in accordance with GATT 1994 Article XI:2(a)[25], and sets out procedural requirements to be observed by a member instituting such a restriction.[26] First, the acting member "shall give due consideration" to the effects of such restriction on the food security of importing members. Second, the acting member should notify the Committee on Agriculture in writing as far in advance as practicable, with information as to the nature and duration of the restriction envisaged.[27] Upon request, the acting member shall also consult with any other member having a substantial interest as an importer and provide necessary information to such member.

Additionally, GATT 1994 Article XI:2(b) permits WTO members to restrict or prohibit exports to the extent "necessary" to apply standards or regulations for the classification, grading or marketing of commodities. Whether an export restriction is "necessary" within the meaning of Article XI:2(b) is a case-specific determination. For instance, the GATT panel in *Canada – Herring and Salmon* noted that Canada applied quality standards to fish and prohibited the export of fish not meeting these standards. The panel further noted, however, that Canada prohibited exports of unprocessed salmon and herring even if they could meet the standards generally applied to fish exports. The panel therefore found that these export prohibitions could not be considered as "necessary" to the application of standards within the meaning of Article XI:2(b).[28]

WTO members have also agreed that they may, on an exceptional basis and subject to certain conditions, take measures that would otherwise be inconsistent with their obligations. For instance, members may rely on the "General Exceptions" in GATT 1994 Article XX to justify export restrictions that violate Article XI:1. GATT 1994 Article XX provides a closed list of general exceptions, under which members may adopt or enforce export restrictions that are *inter alia:*

> "(a) necessary to protect public morals;
> (b) necessary to protect human, animal or plant life or health;
> …….
> (d) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Agreement, including those relating to

> customs enforcement, the enforcement of monopolies operated under paragraph 4 of Article II and Article XVII, the protection of patents, trade marks and copyrights, and the prevention of deceptive practices;
> …….
> (f) imposed for the protection of national treasures of artistic, historic or archaeological value;
> (g) relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption; …"

To be justified under GATT 1994 Article XX, an export restriction inconsistent with Article XI:1 should pursue the objective(s) set out in the subparagraphs of Article XX. The export restriction should also have the requisite nexus to the objective that it pursues (described in the various subparagraphs of Article XX with terms such as "necessary to", "relating to", "imposed for" and "essential to"). Some subparagraphs of Article XX contain additional requirements. For instance, under GATT 1994 Article XX(g), members may adopt or enforce an export restriction relating to the conservation of exhaustible natural resources "if such measures are made effective in conjunction with restrictions on domestic production or consumption".[29] Finally, the availability of the general exceptions in GATT 1994 Article XX is, according to the opening clause of that provision: "[s]ubject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade".

In addition to these "General Exceptions" under Article XX, members may also seek to justify export restrictions under the "Security Exceptions" in the GATT 1994. In particular, GATT 1994 Article XXI provides:

> "Nothing in this Agreement shall be construed
> …….
> (b) to prevent any contracting party from taking any action which it considers necessary for the protection of its essential security interests
> (i) relating to fissionable materials or the materials from which they are derived;
> (ii) relating to the traffic in arms, ammunition and implements of war and to such traffic in other goods and materials as is carried on directly or indirectly for the purpose of supplying a military establishment;
> (iii) taken in time of war or other emergency in international relations; or
> (c) to prevent any contracting party from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security."

Finally, the WTO Agreement envisages that in exceptional circumstances, the WTO Ministerial Conference may waive an obligation imposed on a member by that agreement.[30] In granting such a waiver, the Ministerial Conference must state the circumstances justifying its decision, the terms and conditions governing the application of the waiver, and the date

on which the waiver shall terminate. A waiver granted for a period of more than one year must be reviewed annually until it expires, including for whether the exceptional circumstances justifying the waiver continue to exist, and whether the terms and conditions attached to the waiver have been met.[31] These procedures have previously been utilized for providing a waiver from the obligation in GATT 1994 Article XI:1 to eliminate export restrictions, such as in respect of domestic measures to regulate the international trade in rough diamonds consistent with the Kimberley Process Certification Scheme.[32]

Export prohibitions and restrictions under the WTO: practice and notification procedures

To increase transparency on export restrictive measures, WTO members have agreed to regularly notify all their prohibitions and restrictions on trade in goods under the QR Decision, as adopted by the Council for Trade in Goods on 22 June 2012.[33] Information contained in members' notifications is included in the WTO's Quantitative Restrictions (QR) Database (QR Database).[34]

This section discusses the treatment of QRs under GATT and the WTO Agreement and their notification requirements, in particular under the 2012 QR Decision. It also provides an overview of the contents of QR notifications based on the Secretariat's factual analysis, focusing on: (i) an overview of the QRs in force by notifying member; (ii) the trade flows (i.e. imports or exports) affected and types of measure used; (iii) the categories of products most affected; and (iv) the legal justifications provided by members. The discussion below is based on measures that members have raised before official bodies of the WTO and have considered relevant to WTO legal provisions on export restrictions.

Procedures for the notification of quantitative restrictions

With the establishment of the WTO in 1995, the Committee on Market Access was established with the mandate to conduct, *inter alia*, "the updating and analysis of the documentation on QRs and other non-tariff measures"[35]. On 1 December 1995, the Council for Trade in Goods adopted a Decision on Notification Procedures for Quantitative Restrictions[36], which had been approved by the Committee on Market Access on 31 October 1995, and in 1997 a format for the notification of QRs[37] was also adopted by this Committee. A series of consultations that were held in 2009 on the timeliness and completeness of notifications under the 1995 QR Decision revealed a number of aspects, including questions concerning the type of measures that should be notified pursuant to the QR Decision, whether such notifications should be circulated to all members, and how to deal with the duplication of notifications between the Committee on Market Access and other bodies. On 22 June 2012, the Council for Trade in Goods adopted a revised QR Decision[38], including a new format for notifications, to address the questions mentioned above, which fully replaced the previous notification procedures.

The QR Decision provides that members shall make "complete" notifications of all QRs in force beginning on 30 September 2012 and in two yearly intervals thereafter. Changes that take place between the complete notifications shall be notified "as soon as possible, but not later than six months from their entry into force". Although members have also the right to notify that another member is imposing a QR, no such "reverse" notification has been submitted so far.[39] QR notifications are circulated under document symbol G/MA/QR/N and are automatically included in the agenda of the Committee for review.

Scope of the 2012 QR Decision

The QR Decision requires members to notify *all* QRs in force, including import and export related measures, as well as seasonal ones. According to the definition in GATT 1994 Article XI:1, QRs refer to all "prohibitions or restrictions other than duties, taxes or other charges" applied by members on imports or exports of goods, which can be "made effective through quotas, import or export licences or other measures". However, as previously explained, the provision does not provide a more detailed definition of what constitutes a "quantitative restriction".

Annex 2 of the QR Decision provides an indicative list of ten measures that are covered by the notification requirements[40], including the symbols to be used to identify them. These are:

- prohibitions;
- prohibitions except under defined conditions;
- global quotas;
- global quotas allocated by member;
- bilateral quotas (i.e. anything less than a global quota);
- non-automatic licensing procedures;
- QRs made effective through state-trading operations;
- mixing regulations;
- minimum prices triggering a QR;
- "voluntary" export restraints.

The following measures are explicitly excluded from the QR Decision: (i) measures covered by the Agreement on Sanitary and Phytosanitary Measures; (ii) measures covered by the Agreement on Technical Barriers to Trade; (iii) automatic import licensing procedures; and (iv) tariff rate quotas.

Notification format

Notifications pursuant to the QR Decision shall be made in accordance with the format in annex 1 and submitted to the WTO Secretariat in electronic form. This annex requires members to provide the following information for each QR: (i) a general description of the QR; (ii) the type of restriction (based on the symbols in annex 2); (iii) the tariff line codes of the products covered, including the Harmonized System (HS) version used; (iv) the detailed product description for the corresponding tariff line(s); (v) the legal justification for

maintaining the measure; (vi) the national legal basis for the QR, including its entry into force and the date it ceased to be in force, if known; and (vii) member's comments, administration of the restriction or modification of a previously notified measure.[41]

The QR Decision also acknowledges that some of the relevant measures may have already been notified to other WTO bodies. To minimize duplication, the notification format allows for a cross-reference to notifications made pursuant to other WTO provisions, such as the Agreement on Agriculture, the Understanding on the Balance-of-Payments Provisions of the General Agreement on Tariffs and Trade 1994, the Agreement on Safeguards and the Agreement on Import Licensing Procedures. Since the other notifications require different types of information than that required by the QR Decision, the cross-references should also provide the missing information.

Overview of quantitative restrictions notified by WTO members

As mentioned earlier, the Committee on Market Access has the mandate to update and review the documentation on QRs and other non-tariff measures. Information on these discussions can be found in documents of this Committee, including in minutes of the meetings, yearly reports on the status of notifications, and factual reports analysing the content and information provided in the notifications received.[42] The information contained in the QR notifications is also compiled and analysed in the QR Database.

Based on the WTO Secretariat's latest report[43], as of 14 April 2023, 85 members (counting the European Union as 27) had submitted notifications of QRs in force for some or all the biennial periods. A total of 42 members submitted notifications for all biennial periods, whereas 12 members had submitted information for one biennial period only. Thus far, 41 members have notified information for the current (2022-2024) biennial period. The QR Decision also allows members to notify changes to their measures, which are usually circulated as addenda to the initial notification. Changes may include modifications to existing QRs, as well as introduction of new measures. To date, 56 members have notified changes to their measures, that is almost 50 per cent of those that have at least notified once. It should be noted that many of these notifications of changes relate to measures adopted by members in response to the COVID-19 pandemic, especially in the biennial period 2020-2022.[44] As noted, no "reverse" notification has been received to date.[45]

According to the QR Database, the 85 members that have submitted QR notifications maintain a total of 1,926 QRs that account for 2,406 measures. The terms "QR" and "measure" are used in the relevant documentation and QR Database to identify two different concepts, because each notified QR may be enforced through more than one measure. For example, one QR could involve a conditional prohibition that is administered through a non-automatic licencing procedure. For purposes of the QR database and this publication, this QR is counted as two different measures.

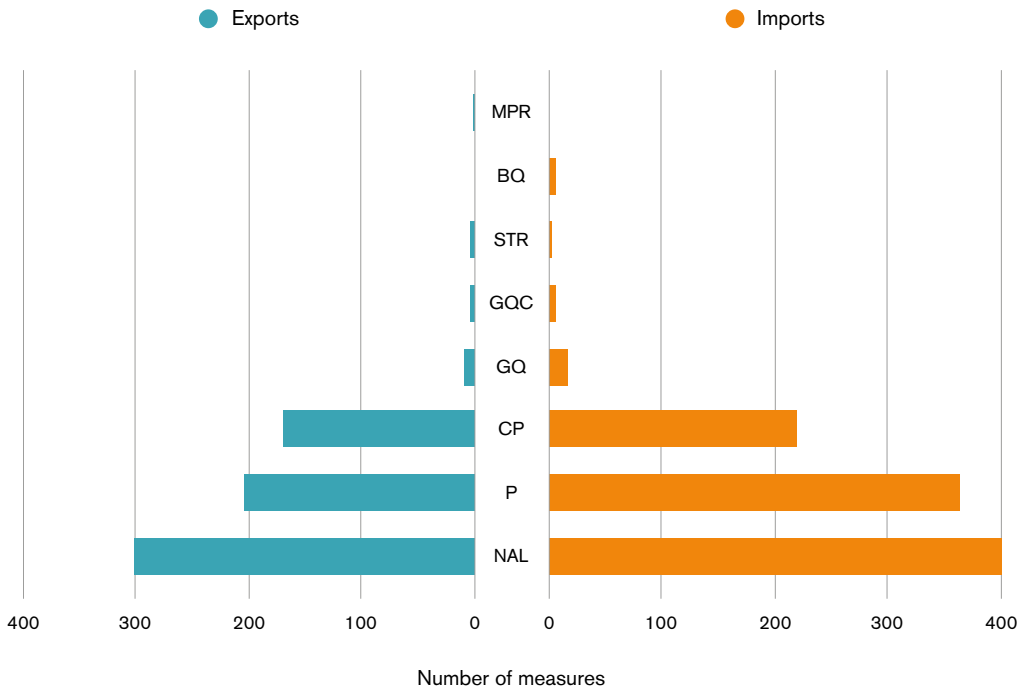
Type of restriction used and affected trade flows

Figure 1 shows that of the 1,702 measures currently in force, 59 per cent consist of import measures, while the remaining 41 per cent are export-related measures. In terms of the specific types of measure that have been notified overall, most of them are:

- non-automatic licensing procedures (NAL), of which 300 measures apply to exports and 400 to imports;
- prohibitions (e.g. bans of certain products) (P), of which 203 apply to exports and 363 to imports;
- prohibitions except under defined conditions (i.e. conditional prohibitions) (CP), of which 169 apply to exports and 219 apply to imports.

Quotas[46], either global (GQ), allocated by country (GQC) or bilateral quotas (BQ), as well as QRs made effective through state-trading operations (STR) represent a small percentage of the total number of notified measures.

Figure 1. Number of measures notified, by type of restriction and affected trade flow

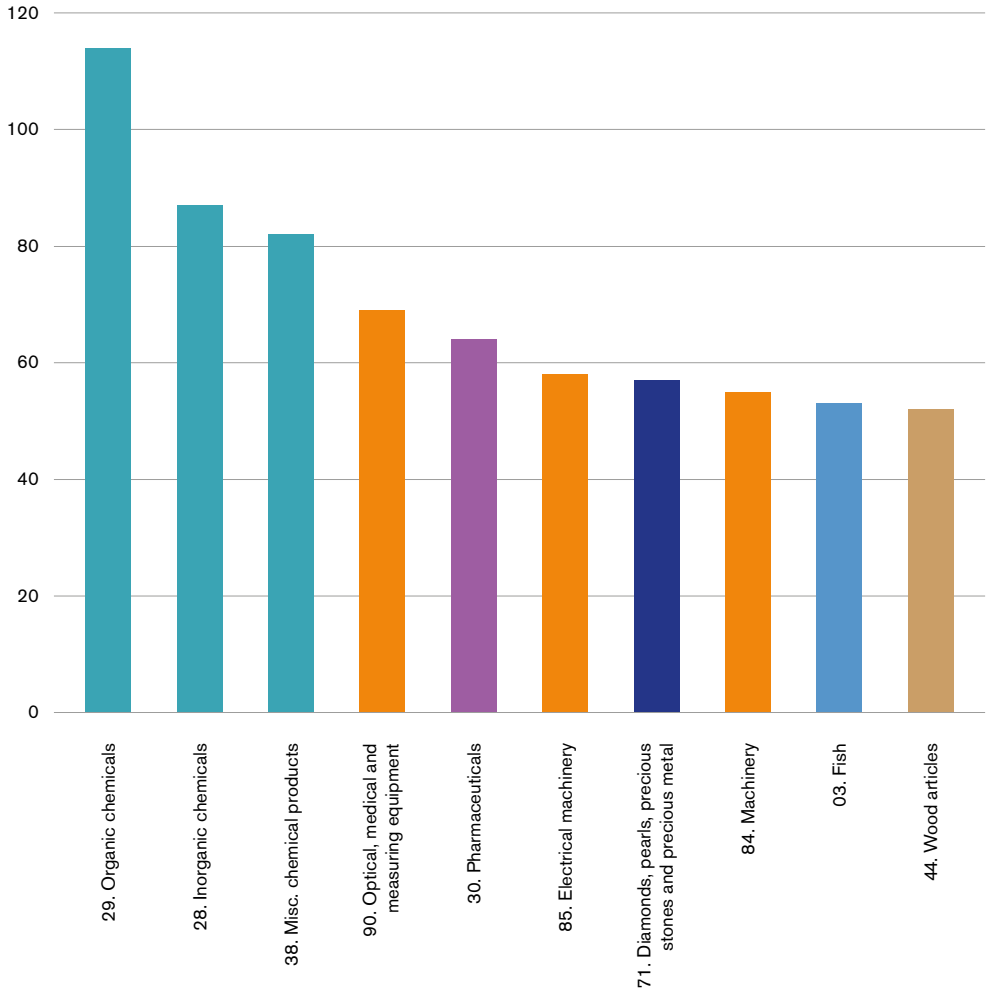


Source: WTO Secretariat based on the QR Database (https://qr.wto.org).
Note: BQ – bilateral quota; CP – conditional prohibition; GQ – global quota; GQC – global quota allocated by country; MPR – minimum price triggering a quantitative restriction; NAL – non-automatic licensing; P – prohibition; STR – quantitative restrictions made effective through state-trading.

Types of product affected

The rest of this section discusses solely export measures, which is the focus of this publication. In terms of the products affected by export-related measures, Figure 2 shows that chemical products are the most frequently affected, followed by optical and measuring instruments, different types of machinery and pharmaceuticals.[47] In terms of the specific HS Chapters, with 114 QRs, Chapter 29 (Organic chemicals) is the most frequently affected, followed by Chapter 28 (Inorganic chemicals) and Chapter 38 (Miscellaneous chemical products). To put the chart into perspective, 53 export measures reference Chapter 03.

Figure 2. Top 10 HS chapters affected by export-related measures in the QR notifications



Source: WTO Secretariat based on the QR Database (https://qr.wto.org).

WTO-related justifications

Paragraph 2(v) of the QR Decision requires members to provide "an indication of the grounds and WTO justification for the measures maintained […] and the precise WTO provisions", which is indicative in nature and provided by members for transparency purposes only.[48] Although members have most frequently cited at least one provision from GATT 1994 with regard to export measures (95 per cent of the justifications in the QR dataset), they have also mentioned other legal instruments such as waivers, provisions in WTO accession protocols and the TRIPS Agreement. On the other hand, there are 25 export-related QRs where no specific WTO provision has been cited.

Figure 3 shows that GATT 1994 was the most frequently cited WTO agreement in the dataset. Under GATT 1994, the "General Exceptions" of Article XX were the most frequently cited: 266 export-related QRs (73 per cent of the total). Particularly relevant is the reference to paragraph (b) of Article XX, which refers to measures "necessary to protect human, animal or plant life or health", which was cited in 38 per cent of the export measures in the dataset. The "Security Exceptions" of Article XXI was referred to as justification for 108 (15 per cent) of the notified export measures. Besides GATT 1994, members have also referred to a lesser extent to other legal justifications, such as the Kimberley Process Waiver[49] (eight export measures).

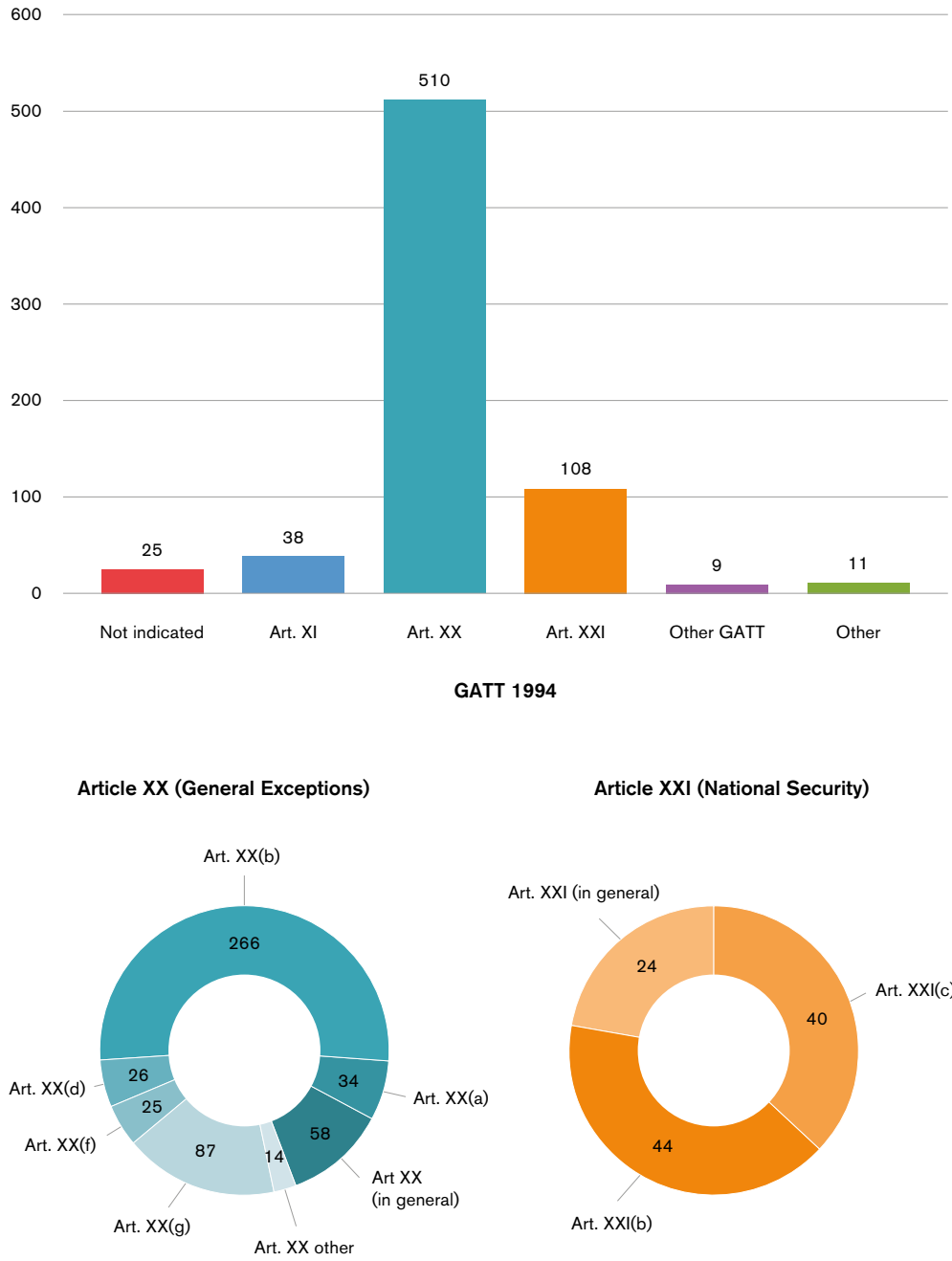
In several cases, reference has been made to an article in a WTO agreement in general without providing further details (e.g. there have been 58 cases where the member simply stated "Article XX"), or where the justification closely resembles the language of one of the general exceptions in the GATT, but no specific provision was cited (e.g. "protection of animal life and the environment").

Other grounds for restrictions

Paragraph (v) of the QR Decision acknowledges that some of these measures are the result of international cooperation beyond the WTO, and requires members to provide an indication of the grounds for the measures maintained, including "any relevant international commitment where appropriate". Several notifications have expressly noted that the measures were introduced pursuant to other arrangements, agreements or conventions outside of the WTO framework. It is worth noting that while some members have included very detailed information on other grounds for introducing restrictions, others have either avoided entirely the references or provided limited information in this regard despite being parties to the international agreements and conventions in question.

Table 1 shows the number of export-related QRs that have referred to international agreements. The most frequently cited international conventions in the notifications include CITES, the Montreal Protocol, the Rotterdam Convention, the Basel Convention, the Stockholm Convention, as well as the main three UN conventions on narcotics and psychotropic substances, among others.

Figure 3. Number of export-related QRs notified, by WTO provision cited as justification



Source: WTO Secretariat based on the QR Database (https://qr.wto.org).

Table 1. Top-15 non-WTO agreements or conventions cited as grounds for restrictions in the QR notifications

Non-WTO agreements or conventions	No. of QRs (export only)
Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), 1973	44
Montreal Protocol on Substances that Deplete the Ozone Layer, 1987	32
Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, 1998	23
Stockholm Convention on Persistent Organic Pollutants, 2001	18
Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, 1989	18
Single Convention on Narcotic Drugs, 1961	17
Convention on Psychotropic Substances, 1971	17
United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988	16
Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies, 1996	13
Minamata Convention on Mercury, 2013	11
Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, 1993	8
Vienna Convention for the Protection of the Ozone Layer, 1985	7
United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, 1970	5
International Atomic Energy Agency (IAEA) Code of Conduct on the Safety and Security of Radioactive Sources, 2004	4
International Commission for the Conservation of Atlantic Tunas (ICCAT), 1966	3

Source: WTO Secretariat based on the QR Database (https://qr.wto.org).

Other elements in the notifications

Paragraph 2(vii) of the QR Decision allows members to provide information on, *inter alia*, the manner in which the restriction is administered, and whether it is applied on a most-favoured-nation basis or to the trade with one or more trading partners. For example, about two-thirds of the measures in the dataset include information on how the measure is administered, or about which are the responsible entities, and what is the expected duration of the measures, among other things. It is worth mentioning that since 2020 there has been an improvement in the quality of the information provided, with more members indicating, for example, the effective duration of certain measures as well as how certain restrictions are administered or providing weblinks to the national legal basis. Several notifications provided information on QR measures that impose prohibitions or restrictions on specific partners, which are often related to resolutions by the United Nations Security Council[50], or more recently to COVID-19.

Endnotes

1 The WTO agreements do, by contrast, include a dedicated Agreement on Import Licensing Procedures, which recognizes that "the flow of international trade could be impeded by the inappropriate use of import licensing procedures" and provides rules for the operation of import licensing regimes.

2 See Annex 1A to the WTO Agreement. Unlike conventions discussed in other chapters of this publication, Annex 1A agreements are not limited to specific goods sectors but are generally applicable to trade in all goods. An exception to this is the WTO's Agreement on Agriculture, whose product coverage is limited to "agricultural products" as defined in that agreement.

3 Panel Report, *India – Quantitative Restrictions,* para. 5.129. See also Panel Report, *Argentina – Hides and Leather,* para. 11.17 (referring to "other measures" in GATT 1994 Article XI:1 as a "broad residual category").

4 Panel Report, India – *Quantitative Restrictions,* para. 5.128; Appellate Body Report, *China – Raw Materials,* paras 319 and 320.

5 Panel Reports, *Columbia – Ports of Entry,* para. 7.240; *China – Raw Materials,* para. 7.1081.

6 Appellate Body Report, *Argentina – Import Measures,* para. 5.217; Panel Report, *China – Raw Materials,* para. 7.1081.

7 Panel Report, *China – Raw Materials,* paras 7.957, 7.958, 7.1081 and 7.1082; GATT Panel Report, *Japan – Semi-conductors*, paras 117 and 118.

8 Panel Report, *China – Raw Materials,* paras 7.957 and 7.958 (finding that the discretion that arises from an undefined and generalized requirement to submit an unqualified number of "'other' documents" for approval of licences amounts to a restriction inconsistent with Article XI:1). See also GATT Panel Report, *Japan – Semi-conductors,* para. 118.

9 GATT 1994 *Ad* Articles XI, XII, XIII, XIV and XVIII. GATT 1994 Article XVII contains detailed rules on 'State Trading Enterprises' and provides that "if [a member] establishes or maintains a State enterprise, wherever located, or grants to any enterprise, formally or in effect, exclusive or special privileges, such enterprise shall, in its purchases or sales involving either imports or *exports*, act in a manner consistent with the general principles of non-discriminatory treatment prescribed in [the GATT 1994] for governmental measures affecting imports or *exports* by private traders" (*emphasis added*).

10 See Panel Report, *India – Quantitative Restrictions,* paras 5.134 and 5.135 in the context of imports effected through state trading enterprises.

11 Article 2 of the TRIMs Agreement.

12 See Panel Report, *Colombia – Ports of Entry,* para. 7.248 (noting that this illustrative list does not limit the scope of GATT 1994 Article XI:1 to a finite category of measures).

13 See Goode (2007), who defines a "voluntary export restraint" or an "orderly marketing arrangement" as a bilateral arrangement whereby an exporting country agrees to reduce or restrict exports so as to shield the importing country from having to make use of quotas, tariffs or other import controls.

14 Agreement on Safeguards, Article 11.1(b), footnote 4.

15 Article XII of the WTO Agreement.

16 Tajikistan Working Party Report, para. 181; Ukraine Working Party Report, para. 255.

17 China's Accession Protocol, para. 8.1 (committing to publish *inter alia* the names of the organizations responsible for export authorization and licensing, procedures and criteria for obtaining export licences or approvals, and the list of products subject to tendering requirements, export restrictions or export prohibitions). See also Saudi Arabia Working Party Report, para. 179 (committing that, prior to accession, the list of products subject to export licensing would be published in its official gazette).

18 China's Accession Protocol, para. 8.2.

19 Russian Federation Working Party Report, paras 668 and 669.

20 For an overview, see https://www.wto.org/english/res_e/publications_e/ai17_e/gatt1994_art11_oth.pdf, referring to GATT 1994 Articles XI:2, XII (Restrictions to Safeguard the Balance of Payments), XVIII (Governmental Assistance to Economic Development), XIX (Emergency Actions on Imports), XX (General Exceptions) and XXI (Security Exceptions), as well as the Agreement on Agriculture, the Understanding on Balance of Payments, and the Agreement on Safeguards.

21 *Decision on Notification Procedures for Quantitative Restrictions,* WTO document G/L/59/Rev.1, 3 July 2012.

22 See Panel Report, *Argentina – Financial Services,* para. 7.1067 (excluding a measure used for the calculation of tax base from the scope of GATT 1994 Article XI:1 due to its "fiscal nature").

23 See Panel Report, *Argentina – Hides and Leather*, paras 11.91-11.101 (finding that the involvement of private parties with conflicting commercial interests in the administration of export duties was unreasonable and partial administration, inconsistent with GATT 1994 Article X:3(a)).

24 See Appellate Body Report, *China – Raw Materials*, paras 323-328. See also Panel Report, *China – Raw Materials,* paras 7.273-7.282.

25 See, however, *Ministerial Decision on World Food Programme Food Purchases Exemption from Export Prohibitions or Restrictions,* WTO document WT/MIN(22)/29, 22 June 2022, adopted pursuant to GATT 1994 Article XI and Article 12 of the Agreement on Agriculture. WTO members decided not to impose any export prohibitions or restrictions on foodstuffs purchased for non-commercial humanitarian purposes by the World Food Programme (WFP). This decision was taken in view of the critical humanitarian support provided by the WFP, made more urgent in light of sharply rising levels of global hunger. The decision also provides that it "shall not be construed to prevent the adoption by any Member of measures to ensure its domestic food security in accordance with the relevant provisions of the WTO agreements."

26 Under Article 12(2) of the Agreement on Agriculture, developing country members are exempt from the requirements of Article 12(1), unless they are net-food exporters of the specific foodstuff concerned.

27 The acting member, in line with the Decision on Notification Procedures for Quantitative Restrictions, must also notify all QRs, including those taken pursuant to Article 12(1) of the Agreement on Agriculture, to the Committee on Market Access. This decision is discussed in more detail in the subsequent sections.

28 GATT Panel Report, *Canada – Herring and Salmon,* para. 4.2.

29 See Panel Report, *China – Rare Earths,* paras 7.568-7.599 (finding that the differences between the timing and levels of production quotas and export quotas imposed on rare earths, as well as the different product scopes of the two quotas, indicated that the export quota was not "made effective in conjunction with restrictions on domestic production or consumption" within the meaning of GATT 1994 Article XX(g)).

30 WTO Agreement, Article IX:3.

31 WTO Agreement, Article IX:4.

32 See *Extension of Waiver Concerning Kimberley Process Certification Scheme for Rough Diamonds*, WTO document WT/L/1039, 30 July 2018.

33 WTO document G/L/59/Rev.1.

34 See https://qr.wto.org.

35 *WTO Committee on Market Access*, WTO document WT/L/47, 17 February 1995, para. (d).

36 *Decision on Notification Procedures for Quantitative Restrictions*, WTO document G/L/59, 10 January 1996.

37 *Format for Notification of Quantitative Restrictions (Pursuant to the Decision Adopted by the Council for Trade in Goods on 1 December 1995, G/L/59)*, WTO document G/MA/NTM/QR/2, 10 July 1997.

38 WTO document G/L/59/Rev.1.

39 More information on the notifications procedures are provided in the note by the Secretariat *Notification of Quantitative Restrictions (QRs): A Practical Guide,* WTO document JOB/MA/101/Rev.2, 28 September 2018.

40 The QR Decision specifies that measures and symbols in annex 2 are without prejudice to members' rights and obligations under the WTO Agreement, and that they are "not intended to define or harmonize the concept of quantitative restrictions under the WTO".

41 WTO document G/L/59/Rev.1.

42 As required by paragraph 7 of the QR Decision, the WTO Secretariat annually circulates a report on status of notifications under document series G/MA/QR. In addition, the Secretariat regularly produces a report with factual information on the types of measure that have been notified, which is circulated under document series G/MA/W/114.

43 *Quantitative Restrictions: Factual Information on Notifications Received*, WTO document G/MA/W/114/Rev.5, 18 April 2023.

44 See the G/MA/W/157 and G/MA/W/168 document series.

45 Paragraph 5 of the QR Decision states that members shall be free to make reverse notifications of measures maintained by other members. They shall use the format in annex 1 and complete all the information required. These notifications will be included in the agenda of the Committee on Market Access and the member subject to reverse notification will have two months to comment in writing. In the absence of such a comment within the two months, the WTO Secretariat shall include the reverse information in the database.

46 A quota is a restriction (i.e. an absolute volume) on the amount of a good that may be imported by, or exported from, a country. It should not be confused with a "tariff quota" or "tariff rate quota" (TRQ), which consist in the application of a reduced tariff rate (i.e. in-quota duty) for a specified quantity of imported goods; imports above this specified quantity face a higher tariff rate (i.e. out-of-quota duty). TRQs are commonly used for agricultural products. Footnote 1 of the QR Decision explicitly excludes TRQs from its scope.

47 The calculation was based on the tariff codes provided in the notifications, including cases with partial information. For 192 export measures, no precise HS codes are provided in the notification ("Various" category).

48 Footnote 3 of WTO document G/L/59/Rev.1 provides, *inter alia,* that the "justification is provided for transparency purposes only and is therefore indicative. It shall not prejudice any legal position a Member may take on the particular measure that the justification is intended to cover."

49 See WTO document WT/L/1039.

50 For example, see *Notification Pursuant to the Decision on Notification Procedures for Quantitative Restrictions (G/L/59/Rev.1),* WTO document G/MA/QR/N/SGP/6, 14 April 2023.

1 Environmental protection

Convention on International Trade in Endangered Species of Wild Fauna and Flora

The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) regulates trade in specimens of over 38,000 species. It contains strict conditions under which international trade can be authorized through the issuance of export permits or licences. The Convention was adopted in 1973 and entered into force on 1 July 1975. At the time of writing, CITES has 184 parties and regulates all major markets of the world.

Prepared by Sofie H. Flensborg (Chief of Unit, CITES Secretariat).

Background

The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) is an international agreement that aims to ensure that international trade in specimens of wild animals and plants does not threaten the survival of the species.

Annually, international wildlife trade is estimated to be worth billions of dollars and to include hundreds of millions of plant and animal specimens.[1] This trade is diverse, ranging from live animals, such as pets, and live ornamental plants to a vast array of wildlife products derived from them, including food products, exotic leather goods, wooden musical instruments, timber, tourist curios and medicines. Levels of exploitation of some animal and plant species are high, and the trade in them, together with other factors such as habitat loss, is capable of heavily depleting their populations and even bringing some species close to extinction. Most wildlife species traded are not endangered, and an agreement to ensure the sustainability of the trade is important to safeguard these resources for the future. Today, CITES accords varying degrees of protection to more than 38,000 species of animals and plants, some of them subject to significant commercial trade as live specimens, parts and derived products.

As an international agreement, CITES is legally binding on the states parties and provides a set of common minimum standards for international trade in the specimens of species regulated by it. These need to be complemented by national legislation to ensure that the provisions can be applied and enforced at the national level by the designated CITES management authorities and mandated enforcement agencies, such as the police and customs authorities.

The ultimate decision-making body of the Convention is the Conference of the Parties (CoP), established by Article XI. The CoP meets every three years to review the implementation of the Convention and to consider any proposals put forward by parties to amend the Convention appendices containing the species of animals and plants covered. In the years between the CoP, the CITES Standing Committee provides guidance to the CITES Secretariat, oversees implementation and manages compliance matters. It also prepares the meetings of the CoP. The Animals Committee and the Plants Committee comprise experts serving in their individual capacity who provide scientific advice and guidance to parties, the CoP and the Standing Committee. The CITES Secretariat, based in Geneva and hosted by the United Nations, provides support to the parties, governing bodies and their working groups.

CITES and the WTO have been connected since the General Agreement on Tariffs and Trade (GATT)[2]. The exceptions contained in Article XX of GATT on measures necessary to protect human, animal or plant life or health (para. (b)) and on measures relating to the conservation of exhaustible resources (para. (g)) are particularly relevant. The importance of CITES is evident in the landmark *US–Shrimp* dispute, which involved measures to protect the endangered species of marine turtles.[3]

Trade measures

The species covered by the Convention are included in three different appendices:

(1) Appendix I includes species that are considered to be in danger of extinction and for which international trade is generally prohibited to not further endanger the species. In accordance with Article III, trade may be authorized in exceptional circumstances for non-commercial purposes (e.g. for scientific purposes) and under strict conditions. Approximately 3 per cent of the species covered by the Convention are included in Appendix I (ca. 700 fauna species and 400 flora species).
(2) Appendix II includes species that are not necessarily at this point endangered but could become so unless international trade is strictly regulated and controlled. Trade in specimens of these species may be authorized by nationally designated CITES management authorities under certain conditions, set out in Article IV. About 97 per cent of the species covered by the Convention are included in Appendix II (ca. 5,000 fauna species and 33,000 flora species).
(3) Appendix III includes species that are not endangered or threatened at the global level but for which a party seeks the support of other countries in the control and monitoring of trade by including the species in the Convention unilaterally. Such species must be protected under national law in order to qualify for inclusion in Appendix III (Article V). Less than 1 per cent of the species covered by the Convention are included in Appendix III.

Substantive provisions

Articles III–V regulate international trade in specimens of species included in Appendices I–III of the Convention. Trade is defined as export, import, re-export and introduction from the sea.[4] Introduction from the sea means that the specimen has been taken in an area not under the jurisdiction of any state (i.e. outside the territory and outside the exclusive economic zone of any country).[5] The specimens may have been taken in the air, water or seabed.

Specimens include live, dead, parts, derivatives and final products, as well as specimens produced through biotechnology.[6] However, for certain species – in particular for plant species – the specimens included or excluded by the Convention are further defined in annotations or footnotes.

As mentioned above, most species are included in Appendix II and only those may be subject to trade for commercial purposes. A nationally designated CITES management authority may authorize the export of such specimens under the following conditions, set out in Article IV:

- The specimens must have been legally acquired (not poached or illegally logged). It is responsibility of the trader to prove the legal origin of the goods presented for trade.

- The trade must not have a detrimental impact on the survival of the species in the wild. The nationally designated scientific authority must make a non-detriment finding to confirm that the taking of the wild animals or plants is sustainable. The finding is provided to the nationally designated CITES management authority before the trade can be authorized.
- Live specimens to be traded must be prepared and shipped in a manner that minimizes risks of injury, damage to health or cruel treatment. In practice, parties have agreed that live animals and plants must comply with the relevant regulations agreed by the International Air Transport Association.[7]

When these conditions are met, the nationally designated CITES management authority may issue a CITES export permit.[8] The parties have agreed on the information that must be included on the permit (e.g. species name, quantity, type of specimen, source, purpose of the trade). They have also agreed on a standard form for this permit that most parties use, with small variations (see Figure 1).[9]

An export permit is valid for a maximum of six months from the date of issuance. A shipment must reach the country of import before the export permit expires in order to be compliant with the Convention. The importing party can only clear a shipment if it is accompanied by a valid export permit. The Convention does not require importing parties to issue import permits for trade in specimens of species included in Appendix II of the Convention. Some parties have, however, adopted stricter domestic measures requiring an import permit to be issued prior to the shipment of the goods from the exporting country. To authorize re-export, the CITES management authority must ensure that the specimens were legally imported before issuing a re-export certificate.

In the case of introduction of specimens of species from the sea, the CITES management authority of the state of introduction (where the specimens will be first landed) must ensure that the taking of the species is sustainable and in accordance with any international or regional agreements applicable in the geographical location to the species concerned (e.g. regional fisheries management agreements). The parties have agreed that in the case the vessel registered in one state is landing the specimens taken in the high seas in another state, it is not to be considered as introduction from the sea under the Convention, but regulated as trade.[10] In this situation, the state in which the vessel is registered is considered to be the state of export; and the state into which the specimens are transported is considered to be the state of import. Parties have also made certain provisions to be applied in the case of chartering operations.[11]

The implementation of introduction from the sea requires coordination between the national fisheries authorities and the CITES management authorities. The CITES Secretariat is collaborating with the Food and Agriculture Organization of the United Nations to facilitate this. The Secretariat has also compiled a list of questions and answers on CITES and fisheries.[12]

Figure 1: Standard form for a CITES export permit

Standard CITES form

CONVENTION ON INTERNATIONAL TRADE IN ENDANGERED SPECIES OF WILD FAUNA AND FLORA

PERMIT/CERTIFICATE No.
☐ EXPORT
☐ RE-EXPORT
☐ IMPORT
☐ OTHER:

Original

2. Valid until

3. Importer (name and address)

3a. Country of import

4. Exporter/re-exporter (name, address and country)

Signature of the applicant

5. Special conditions

If for live animals, this permit or certificate is valid only if the transport conditions comply with the *IATA Live Animals Regulations*; if for live plants, with the IATA *Perishable Cargo Regulations*; or, in the case of non-air transport, with the *CITES Guidelines for the Non-Air Transport of Live Wild Animals and Plants*

6. Name, address, national seal/stamp and country of Management Authority

5a. Purpose of the transaction (see reverse)

5b. Security stamp no.

	7./8. Scientific name (genus and species) and common name of animal or plant	9. Description of specimens, including identifying marks or numbers (age/sex if live)	10. Appendix no. and source (see reverse)	11. Quantity (including unit)	11a. Total exported/Quota
A	7./8.	9.	10.	11.	11a.
	12. Country of origin * Permit no. Date		12a. Country of last re-export Certificate no. Date		12b. No. of the operation ** or date of acquisition ***
B	7./8.	9.	10.	11.	11a.
	12. Country of origin * Permit no. Date		12a. Country of last re-export Certificate no. Date		12b. No. of the operation ** or date of acquisition ***
C	7./8.	9.	10.	11.	11a.
	12. Country of origin * Permit no. Date		12a. Country of last re-export Certificate no. Date		12b. No. of the operation ** or date of acquisition ***
D	7./8.	9.	10.	11.	11a.
	12. Country of origin * Permit no. Date		12a. Country of last re-export Certificate no. Date		12b. No. of the operation ** or date of acquisition ***

* Country in which the specimens were taken from the wild, bred in captivity or artificially propagated (only in case of re-export)
** Only for specimens of Appendix-I species bred in captivity or artificially propagated for commercial purposes
*** For pre-Convention specimens

13. This permit/certificate is issued by:

Place | Date | Security stamp, signature and official seal

14. Export endorsement:

15. Bill of Lading/Air waybill number:

Block	Quantity
A	
B	
C	
D	

Port of export | Date | Signature | Official stamp and title

CITES PERMIT/CERTIFICATE No.

Exemptions and special provisions

Article VII contains several important exemptions and special provisions that allows international trade to occur under different conditions and are described below.

Transit and transshipment

If a shipment is in transit through a territory and remains in customs control, no export permit is needed for the transit country. However, an export permit is required for the final destination (import country). If the shipment is transiting over land, it is unlikely that it remains in customs control and therefore it must be considered as import into the country of transit and re-export from this country and documents must be issued accordingly.[13]

Pre-Convention specimens

As noted above, new species are added to the Convention at every meeting of the CoP. If the CITES management authority has proof that a specimen was legally acquired before the provisions of the Convention applied to the species concerned, the authority may issue a pre-Convention certificate to allow trade to occur in that specimen without verifying that trade will not be detrimental to the survival of the species.[14]

Personal and household effects

The Convention allows for individuals to travel or undertake an international household move with personal or household effects of species included in the appendices without an export permit; this could include live pets, such as parrots. A special "certificate of ownership" exists to allow frequent cross-border movement of personally owned live animals (used particularly for falcons). However, in order to avoid any misuse of this exemption, parties have agreed on a number of limitations and conditions for its application.[15] In addition, some parties have adopted stricter domestic measures and do not allow any trade cross-border movement of personal and household effects without a CITES document.

Captive-bred animals and artificially propagated plants

The Convention contains special provisions for specimens that originate from artificial propagation (plantations) or from captive breeding (wildlife farms). If the nationally designated CITES management authority has proof that the specimen has been produced under certain specified conditions and in a controlled environment, this may be sufficient to authorize trade in that specimen. If the species concerned is included in Appendix I and the production is commercial (i.e. the artificial propagation of species listed in Appendix I or the rearing of falcons for falconry), the trade must be authorized under Article IV. This means that the trade for commercial purposes may be authorized under conditions applicable to trade in species listed in Appendix II. In addition, the facility must be registered in the CITES Registers[16] by the nationally designated CITES management authority.

Scientific exchanges and non-commercial loans between scientific institutions

Scientific institutions, including herbaria, laboratories and museums, can exchange herbarium specimens or other dried or embedded museum specimens or live plant material without CITES permits for non-commercial scientific purposes if they are included in the CITES Registers by the CITES management authority. There are about 900 scientific institutions currently registered.

Travelling exhibitions

It is possible for the nationally designated CITES management authority to give multi-year and multi-entry permits to travelling exhibitions (e.g. plant exhibition, travelling zoo) under certain conditions.

Stricter domestic measures

Parties to the Convention may adopt stricter domestic measures in accordance with Article XIV. Many parties have done so (e.g. to require import permits as a condition for accepting imports of species listed in Appendix II). This includes, *inter alia*, China, the European Union and the United States. Other parties have adopted measures to limit the use of some of the exemptions and special provisions mentioned above (e.g. with regard to personal and household effects or with regard to specimens produced under controlled conditions). Information on stricter domestic measures that has been communicated to the CITES Secretariat is available in the country profiles on the CITES website.[17]

National implementation

National laws for implementing CITES is critical to ensure that trade in protected species is legal, sustainable and traceable. Although the Convention is legally binding on states, it is essential that CITES parties have adequate legislation, which is permanently up to date and efficiently enforced. Adequate national legislation is key to effective wildlife trade controls by the state agencies charged with implementing and enforcing the Convention. It is also a vital prerequisite for ensuring that a party complies with the provisions of the Convention.

Parties' national legislation for the implementation of the Convention should provide them with the authority to:

- designate at least one CITES management authority and one scientific authority;
- prohibit trade in specimens in violation of the Convention;
- penalize such trade;
- confiscate specimens illegally traded or possessed.

The CITES National Legislation Project provides the Secretariat with a mandate to analyse parties' legislation and place it in one of three categories, depending on whether these four criteria are met. Some parties have incorporated CITES into broader biodiversity laws and supplemented with regulations on international trade, whereas others have adopted specific laws on trade in endangered species. In some jurisdictions, the Convention has direct applicability which influences the nature of the national implementing legislation.

The status of the national legislation can be found on the CITES website.[18] To date, over 100 of the 184 parties have adopted adequate legislation and submitted this for analysis by the Secretariat. Legislation of a few parties is available on the CITES website in their original language. Additional legislation can be found in the ECOLEX database.[19] A significant portion of the parties that do not yet have adequate legislation in place are least-developed countries.

Compliance measures

The Convention takes a supportive and non-adversarial approach to compliance matters with the aim of ensuring long-term compliance.[20] Compliance matters may relate to a lack of submission of annual reports, a lack of progress in adopting national implementing legislation, a lack of implementation of the requirement to produce non-detriment findings under Article IV as well as a lack of sufficient efforts to combat illegal trade of elephant ivory or specimens of other species. In most cases of non-compliance, the CITES Standing Committee adopts recommendations to assist the party concerned in addressing the identified shortcomings. Sometimes, such recommendations may be accompanied by a recommendation to other parties not to accept any exports from the party concerned until such time as the party has complied with the recommendations. Such recommendations to suspend trade are only put in place or withdrawn by the CITES Standing Committee and are always notified to the parties.[21] Currently, about 30 parties are subject to such recommendations.[22]

Trade data and species identification

Each year, parties must submit an annual report to the Secretariat comprising data on all authorized trade (import, export, re-export and introduction from the sea) in accordance with Article VIII(7)(a). Since 1975, the data have been compiled in the CITES Trade Database, managed on behalf of the CITES Secretariat by the United Nations Environment Programme World Conservation Monitoring Centre.[23] The Trade Database contains almost 25 million entries and is the only complete record of international trade in specimens of wild species of animals and plants.

To understand whether the Convention applies to a certain product, it is important to understand what species was used in the product and whether the species is included in one of the three appendices. Species identification tools and materials are rapidly evolving with the development of mobile apps and other tools.[24]

Recent developments and future prospects

Electronic licensing and customs control

At the time of its conception, there was no need to consider electronic and paperless permit systems, and so the Convention envisaged that each shipment of specimens listed in CITES is accompanied by a paper permit and that each shipment is inspected at the point of export to ensure that the shipment corresponds to the permit in terms of species and quantities. However, modern trade practices make it very complicated for some parties to ensure inspection of each shipment of CITES species and to wet stamp a paper permit. This was further exacerbated during the COVID-19 pandemic.

Many parties have initiated processes to move to electronic permitting systems, sometimes based on the Automated System for Customs Data (ASYCUDA). More recently, parties have agreed on work on risk assessment and analysis for border control of species listed in CITES. The Secretariat is mandated to develop guidance for a risk-based analysis related to the process of inspection under the CITES permit system – basically helping parties develop a system to prioritize the inspection efforts.

Illegal trade and wildlife crime

While legal, sustainable and traceable trade can have great benefits, illegal trade in wildlife undermines conservation efforts and has devastating economic, social and environmental impacts. The serious nature of wildlife crime is recognized and reflected in resolutions and decision adopted at the highest levels by CITES parties and in other forums. The Sustainable Development Goals specifically address illegal trade in wildlife through targets under Goal 15, and the United Nations General Assembly adopted the first resolution in 2015 on tackling illicit trafficking in wildlife.[25] A number of species listed in CITES are high value items targeted by organized crime groups and includes rosewood, elephant ivory, rhino horn, various reptiles and pangolin scales (UNODC, 2020). It is estimated that illegal trade in wildlife is worth up to US$ 20 billion per year (Nellemann *et al*., 2016), and wildlife is trafficked by some of the same organized crime groups that are also trafficking drugs, humans and weapons.

Endnotes

1 CITES Secretariat (2022): "In this analysis we estimate the financial value of direct global exports of CITES-listed species over the period 2016-2020 was approximately USD 1.8 billion for animal exports and USD 9.3 billion for plant exports."

2 See WTO/CITES (2015).

3 *United States – Import Prohibition of Certain Shrimp and Shrimp Products: AB-1998-4*, WTO document WT/DS58/AB/R, 12 October 1998, paras 132 and 135.

4 Article I(c).

5 Article I(e).

6 See *Trade in Readily Recognizable Parts and Derivatives*, Resolution Conf. 9.6 (Rev. CoP19), para. 2(b).

7 See *Transport of Live Specimens*, Resolution Conf. 10.21 (Rev. CoP19), para. 2.

8 See https://cites.org/eng/parties/country-profiles/national-authorities for contact information.

9 See *Permits and Certificates*, Resolution Conf. 12.3 (Rev. CoP19), Annexes 1 and 2.

10 See *Introduction from the Sea,* Resolution Conf. 14.6 (Rev. CoP16).

11 More information on Introduction from the sea is available here: https://cites.org/eng/prog/ifs.php.

12 See https://cites.org/sites/default/files/eng/com/sc/74/E-SC74-51.pdf.

13 *Transit and Transhipment*, Res. Conf. 9.7 (Rev. CoP15).

14 *Implementation of Article VII, Paragraph 2, Concerning 'Pre-Convention Specimens'*, Resolution Conf. 13.6 (Rev. CoP18).

15 *Control of Trade in Personal and Household Effects*, Resolution Conf. 13.7 (Rev. CoP17).

16 See https://cites.org/eng/resources/registers.php.

17 See https://cites.org/eng/parties/country-profiles.

18 See https://cites.org/eng/legislation.

19 See https://www.ecolex.org/result/?type=legislation.

20 *CITES Compliance Procedures*, Resolution Conf. 14.3 (Rev. CoP19).

21 It is possible to subscribe to CITES Notifications to the parties at https://cites.org/eng/newsletter/subscriptions.

22 See https://cites.org/eng/resources/ref/suspend.php.

23 See https://trade.cites.org.

24 The CITES community is gathering this information at https://cites.org/eng/imp/identification_materials/index.php.

25 *Tackling Illicit Trafficking in Wildlife*, resolution 69/314, UN document A/RES/69/314, 19 August 2015.

Basel, Rotterdam and Stockholm Conventions

The Basel, Rotterdam and Stockholm (BRS) Conventions, also known as the "Chemicals and Wastes Conventions", aim at addressing the harmful effects of hazardous chemicals and wastes, essentially through regulating their production, use, international trade and disposal. Although being in essence multilateral environmental agreements (MEAs), this chapter shows how they are interlinked to the multilateral trading system, through international trade-related aspects explicitly embodied in their respective provisions – in particular on export control systems.[1]

Prepared by Malika Amélie Taoufiq-Cailliau (Legal Officer, Secretariat of the Basel, Rotterdam and Stockholm Conventions), who contributed in a personal capacity.

Background

The BRS Conventions[2] comprise the following three international legal instruments:

- The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (Basel Convention);
- The Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (Rotterdam Convention);
- The Stockholm Convention on Persistent Organic Pollutants (Stockholm Convention).

Nearly all members of the United Nations are parties to the Basel and Stockholm Conventions; and most parties to the BRS Conventions are also WTO members. The former has 190 parties, the latter 186; and there are 165 parties to the Rotterdam Convention.

Although the BRS Conventions were adopted in different years, they share the common objectives of protecting human health and the environment from the harmful effects of hazardous chemicals and wastes:

(i) Concerning wastes: the Basel Convention was adopted on 22 March 1989, and entered into force on 5 May 1992.
(ii) Concerning chemicals: the Rotterdam Convention was adopted on 10 September 1998 and entered into force on 24 February 2004; the Stockholm Convention was adopted on 22 May 2001 and entered into force on 17 May 2004. Both conventions explicitly recognize that trade and environmental measures should be "mutually supportive" with a view to achieving sustainable development.

Primary purposes of the BRS Conventions

The overall rationale and primary purposes of the BRS Conventions were to set a level playing field between developing and developed countries by establishing a common understanding through an internationally applicable framework on the management of hazardous chemicals and wastes. At the same time, the BRS Conventions did not prevent countries that wished to do so from going further in the protection of human health and the environment.

Basel Convention on hazardous and other wastes

More specifically, the Basel Convention was designed to address serious concerns on and prevent dumping of hazardous wastes and other wastes (e.g. household waste) from developed countries to developing countries, based on three pillars:

- ensuring their environmentally sound management (ESM);
- regulating their transboundary movements (TBM);
- realizing the minimization of their generation, whether quantitatively or qualitatively (degree of hazards), and thus favouring their disposal closer to their source of generation.

Rotterdam and Stockholm Conventions on hazardous chemicals

For the hazardous chemicals and pesticides listed under the Rotterdam Convention, the provisions were originally crafted in order to promote shared responsibility and cooperative efforts between countries and to allow better informed decisions as to their imports and exports, through establishing an information exchange platform with respect to the substances banned or restricted within the jurisdictions of parties.[3]

For persistent organic pollutants (POPs), which are chemicals that are long lasting, long range, bio-accumulating and highly toxic to humans and wildlife, the Stockholm Convention responds to the need by prohibiting, restricting or phasing out their production, use, trade, release and storage.

Only a small percentage of chemicals that could be considered harmful to the environment and human health actually fall under the respective scopes of the Rotterdam and Stockholm Conventions.

In their decisions, the respective Conferences of the Parties (CoPs) to the BRS Conventions – the conventions' governing bodies – may however consider and decide e. g. to list additional hazardous chemicals and wastes to their annexes. Thus, the BRS Conventions can evolve to adapt, modifying their scope as needed, notably to enhance their effectiveness and to meet new challenges that may arise.

Trade-related measures and export control systems under the BRS Conventions

Trade-related measures[4] – in particular those on export controls – may play a key role for the ESM of hazardous chemicals and wastes. With regard to export controls and licensing, some very specific procedures are pivotal under the Basel and the Rotterdam Conventions, as they lie at the heart of their respective regulatory import and export control systems: the prior informed consent (PIC) procedures, which are the core export control systems under these two MEAs.

Under the Stockholm Convention, there are other types of measures enshrined in its provisions that may affect trade to a certain extent, and participate in export control. However, there is neither an established PIC procedure nor any similar export control mechanism.

The Ban Amendment, under the Basel Convention, which entered into force in December 2019, can be considered a unique export control instrument in itself. Adopted in 1995, some parties considered that the Basel Convention was too limited in terms of its scope and therefore believed that a total ban on the shipment of all hazardous wastes to developing countries was needed.

The prior informed consent procedure under the Basel Convention

The PIC procedure is set out in detail in Article 6 of the Basel Convention, to control the transboundary movements of hazardous wastes and other wastes, by means of:

- notifying, by an exporting party to an importing party, that the former intends to export to the latter a shipment of hazardous wastes or other wastes – exporters must provide accurate information about hazards relating to the wastes;
- consenting, by an importing party, in writing, after being properly informed, to a proposed shipment of those hazardous wastes and other wastes.

For the purpose of the PIC procedure, the Basel Convention provisions require the shipments of hazardous wastes and other wastes to be properly packaged, labelled and transported, with adequate international shipment or notification/movement documents[5] from their point of origin to their point of disposal or recycling. Parties, within the jurisdictions of which the wastes are merely in transit, may also refuse the transit, as the PIC procedure may also apply to them – even if they are not parties to the Basel Convention (see Article 7 of the Basel Convention).

There is a "duty to re-import" (i.e. to take back) on the exporter if the wastes in question cannot be disposed of in an environmentally sound manner (see Article 8 of the Basel Convention).

As a consequence, according to Article 9(1) of the Basel Convention, any transboundary movement of hazardous wastes or other wastes is deemed to be "illegal traffic" in the following cases:

> "(a) without notification pursuant to the provisions of this Convention to all States concerned; or
> (b) without the consent pursuant to the provisions of this Convention of a State concerned; or
> (c) with consent obtained from States concerned through falsification, misrepresentation or fraud; or
> (d) that does not conform in a material way with the documents; or
> (e) that results in deliberate disposal (e. g. dumping) of hazardous wastes or other wastes in contravention of this Convention and of general principles of international law."

More specifically, as per Article 9(2), when the illegal traffic is:

> "the result of conduct on the part of the exporter or generator, the State of export shall ensure that the wastes in question are:
>
> (a) taken back by the exporter or the generator or, if necessary, by itself into the State of export, or, if impracticable,
> (b) are otherwise disposed of in accordance with the provisions of this Convention,

within 30 days from the time the State of export has been informed about the illegal traffic or such other period of time as States concerned may agree. To this end the Parties concerned shall not oppose, hinder or prevent the return of those wastes to the State of export."

Therefore, each party to the Basel Convention has to adopt appropriate implementing legislation to comply with its obligations under the Convention on preventing and punishing illegal traffic, making it an environmental crime. Parties are to cooperate with each other to implement the provisions on illegal traffic and to improve the ESM of hazardous wastes.

The prior informed consent procedure under the Rotterdam Convention

Under the Rotterdam Convention, there is no ban or prohibition. Rather, a platform is established to exchange information and to allow more environmentally sound international trade of certain hazardous chemicals and pesticides. Along with the exchange of information, the PIC procedure is one of the key pillars of the Rotterdam Convention, applying to all hazardous industrial chemicals and pesticides listed under its Annex III, and is a formal mechanism for: (i) notifying whether the parties wish to receive imports of the chemicals and pesticides; and (ii) ensuring compliance with these decisions by exporting parties.

The mechanism enables the dissemination of decisions by importing parties on whether they accept the receipt of future shipments of hazardous industrial chemicals and pesticides listed under Annex III – to which exporting parties have to abide.

The provisions require that each party informs the Secretariat of the Rotterdam Convention[6] when taking a national regulatory action to ban or severely restrict a chemical or pesticide within its jurisdictions.

For chemicals and pesticides subject to the PIC procedure:

- Parties intending to export a hazardous chemical or pesticide must first verify that the importing party consents to the import.
- Parties intending to export a hazardous chemical or pesticide that is not listed under the Rotterdam Convention, yet that is nevertheless subject to bans or severe restrictions within its own territory, must notify the importing party of the proposed export and its own national restrictions.

Articles 5 to 7 as well as Article 9 of the Rotterdam Convention set out the procedures (i) for the inclusion of relevant chemicals to list in Annex III that are subject to the PIC procedure, and (ii) for the removal of chemicals from Annex III.

Essential documents for the PIC procedure include:

- decision guidance documents (see Article 7 of the Rotterdam Convention) to help

parties to assess risks when making informed decisions about the future import and use of the chemicals and pesticides in question;

- PIC circulars, published by the Secretariat every six months, on the import responses by parties (i.e. decisions on future imports of chemicals listed in Annex III) (see Article 10 of the Rotterdam Convention).

In addition, Articles 11 to 13 of the Rotterdam Convention set out obligations that have an impact on the control of imports and exports of both the chemicals listed in Annex III, which are subject to the PIC procedure, and the chemicals that are banned or severely restricted but are not listed in Annex III.

In terms of export control, Article 11 sets out specific obligations related to the export of chemicals listed in Annex III, according to which exporting parties are required to ensure that exports of hazardous chemicals and pesticides subject to the PIC procedure do not occur contrary to the decisions by importing parties. Article 11(1)(b), states that each exporting party shall:

> "Take appropriate legislative or administrative measures to ensure that exporters within its jurisdiction comply with decisions in each response no later than six months after the date on which the Secretariat first informs the Parties of such response in accordance with paragraph 10 of Article 10".

Article 11(2), in addition, states that:

> "Each Party shall ensure that a chemical listed in Annex III is not exported from its territory to any importing Party that, in exceptional circumstances, has failed to transmit a response or has transmitted an interim response that does not contain an interim decision ..."

Article 12 on export notifications is more relevant for chemicals not listed in Annex III and indeed provides that:

> "1. Where a chemical that is banned or severely restricted by a Party is exported from its territory, that Party shall provide an export notification to the importing Party. The export notification shall include the information set out in Annex V."

However, the obligations of a party set out in the above referred Article 12, paragraph 1, ceases when the chemical has been listed in Annex III (see Article 12(5)(a)).

Article 13 sets out various requirements applying to Annex III-listed and non-listed hazardous chemicals and pesticides:

> "1. The Conference of the Parties shall encourage the World Customs Organization to assign specific Harmonized System customs codes to the individual chemicals or groups of chemicals listed in Annex III, as appropriate. Each Party shall require that, whenever a code has been assigned to such a chemical, the shipping document for

that chemical bears the code when exported.

"2. Without prejudice to any requirements of the importing Party, each Party shall require that both chemicals listed in Annex III and chemicals banned or severely restricted in its territory are, when exported, subject to labelling requirements that ensure adequate availability of information with regard to risks and/or hazards to human health or the environment, taking into account relevant international standards.

"3. Without prejudice to any requirements of the importing Party, each Party may require that chemicals subject to environmental or health labelling requirements in its territory are, when exported, subject to labelling requirements that ensure adequate availability of information with regard to risks and/or hazards to human health or the environment, taking into account relevant international standards.

"4. With respect to the chemicals referred to in paragraph 2 that are to be used for occupational purposes, each exporting Party shall require that a safety data sheet that follows an internationally recognized format, setting out the most up-to-date information available, is sent to each importer.

"5. The information on the label and on the safety data sheet should, as far as practicable, be given in one or more of the official languages of the importing Party."

The Stockholm Convention Article 3 on measures to reduce or eliminate releases from intentional production and use of persistent organic pollutants

The provisions embodied under Article 3 of the Stockholm Convention are among the most relevant in terms of trade-related measures and export control because they directly affect the control and licensing of exports of the listed POPs. They set out requirements on both exporting (e.g. certification) and importing parties (e.g. ESM) for the international trade of POPs listed as prohibited (in Annex A) or restricted (in Annex B). Yet, they take into account applicable registered "specific exemptions" or "acceptable purposes".

Article 3(1) more specifically states in this respect that each party shall prohibit and/or take the legal and administrative measures necessary to eliminate its import and export of the chemicals listed in Annex A in accordance with the provisions of Article 3(2), as follows:

"2. Each Party shall take measures to ensure:

(a) That a chemical listed in Annex A or Annex B is imported only:

(i) For the purpose of environmentally sound disposal as set forth in paragraph 1 (d) of Article 6; or
(ii) For a use or purpose which is permitted for that Party under Annex A or Annex B;

(b) That a chemical listed in Annex A for which any production or use specific exemption is in effect or a chemical listed in Annex B for which any production or use specific exemption or acceptable purpose is in effect, taking into account any relevant provisions in existing international prior informed consent instruments, is exported only:

(i) For the purpose of environmentally sound disposal as set forth in paragraph 1 (d) of Article 6;
(ii) To a Party which is permitted to use that chemical under Annex A or Annex B; or
(iii) To a State not Party to this Convention which has provided an annual certification to the exporting Party. Such certification shall specify the intended use of the chemical and include a statement that, with respect to that chemical, the importing State is committed to:

a. Protect human health and the environment by taking the necessary measures to minimize or prevent releases;
b. Comply with the provisions of paragraph 1 of Article 6; and
c. Comply, where appropriate, with the provisions of paragraph 2 of Part II of Annex B.

The certification shall also include any appropriate supporting documentation, such as legislation, regulatory instruments, or administrative or policy guidelines. The exporting Party shall transmit the certification to the Secretariat within sixty days of receipt.

(c) That a chemical listed in Annex A, for which production and use specific exemptions are no longer in effect for any Party, is not exported from it except for the purpose of environmentally sound disposal as set forth in paragraph 1 (d) of Article 6;

(d) For the purposes of this paragraph, the term 'State not Party to this Convention' shall include, with respect to a particular chemical, a State or regional economic integration organization that has not agreed to be bound by the Convention with respect to that chemical."

A unique export control measure under the Basel Convention Ban Amendment

In terms of export control, the Ban Amendment under the Basel Convention is also noteworthy. It requires that each party listed in Annex VII to the Basel Convention (i.e. members of the Organisation for Economic Co-operation and Development, the European Union, Liechtenstein") shall: (i) prohibit all transboundary movements of hazardous wastes destined for final disposal to states not listed in Annex VII; and (ii) prohibit all transboundary movements of hazardous wastes destined for reuse, recycling or recovery operations to states not listed in Annex VII.

Case studies

As mentioned above, one of the primary purposes of the BRS Conventions is to establish a level playing field between developing and developed economies, without preventing economies that wish to do so to go further in the protection of human health and the environment. When examining the implementation of the BRS Conventions, it is imperative to recognize that such national experiences may also vary not only due to economic and social considerations but also depending on the type of legal system and how international law and treaties are integrated with national law.

European Union: the REACH Regulation and other EU legislation impacting the export of hazardous chemicals and wastes

The Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) Regulation sets out the EU regulatory framework applicable to, in principle, all chemicals, and was adopted to improve the protection of human health and the environment.[7] In force in all EU Members since 1 June 2007, it also applies to three members of the European Free Trade Association (Iceland, Lichtenstein, Norway).

To comply with the REACH Regulation, companies must identify and manage the risks linked to the substances they produce or market. The burden of proof is placed on them and therefore, they have to demonstrate to the European Chemicals Agency (ECHA) how the substance can be safely used; also, they must communicate the risk management measures to the users.[8] Authorities can ban hazardous substances if their risks are considered unmanageable or may decide to restrict a use or make it subject to a prior authorization.

ECHA provides guidance documents[9] and answers to frequently asked questions[10] to assist companies, including manufacturers or exporters established outside the European Union, in complying with the REACH Regulation. National help desks can also be reached directly.[11]

Additional EU legislation handled by ECHA contributes to regulating chemicals and wastes ESM[12], notably by controlling exports through, for example:

- The PIC Regulation, in force since 1 March 2014, relating to the import and export of certain hazardous chemicals, with obligations on companies exporting to countries outside the European Union;[13]
- The POPs Regulation of 20 June 2019, as amended in 2022, to ban or severely restrict the production and use of POPS in the European Union;[14]
- The Waste Framework Directive, in force since July 2018, with measures addressing the adverse impacts of the generation and management of waste on the environment and human health, and for improving efficient use of resources considered crucial for the transition to a circular economy.[15]

Côte d'Ivoire: measures implementing the BRS Conventions

In August 2006, toxic waste originating from the *Probo Koala*, a vessel chartered by a private trading company, was dumped at several sites in Abidjan, Côte d'Ivoire, reportedly causing deaths and prompting tens of thousands of residents to seek medical attention.[16] This triggered essentially:

(i) The adoption of a specific decision by the Basel Convention Conference of the Parties condemning the dumping of wastes in Abidjan and calling for specific actions.
(ii) The implementation of the emergency plan developed by the Government of Côte d'Ivoire.
(iii) The implementation of a programme of action, which involved several international organizations cooperating altogether with national and local actors, notably in the delivery of technical assistance and capacity building activities to better equip relevant local as well as governmental authorities to fulfil two key objectives:
   - to strengthen the capacity of Abidjan and its port to manage hazardous wastes, including waste generated at sea, in an environmentally sound manner;
   - to strengthen the capacity of Côte d'Ivoire and other countries in the region to monitor and control the transboundary movements of chemicals and hazardous wastes and ensure their ESM.

In principle, national jurisdictions within Côte d'Ivoire may refer to and directly rely on the BRS Conventions, giving them full effect in court decisions, since these MEAs are considered as self-executing treaties under this country's constitutional legal system: that is, international law prevails over national law and as a result, direct effect and primacy is granted to international treaties, which become judicially enforceable upon ratification, without in principle having to wait for implementing legislation. Among the actions to prevent such an incident from happening again, the national regulatory framework applicable to chemicals and wastes had also had to be improved, with the adoption of several measures in order to more adequately implement the specific requirements under the BRS Conventions. These have led eventually to better prepared authorities, with more adapted mechanisms and procedures in place – in particular, concerning export control.[17]

Costa Rica: coordinating the management of chemical substances

In 2006, a mechanism was established to coordinate the management of chemical substances – through the *Secretaría Técnica de Coordinación para la Gestión de Sustancias Químicas*[18] – to support national competent authorities and act as a focal point of, among other MEAs, the BRS Conventions. Its objective is to provide effective and efficient guidance on national chemicals management, involving institutions representing the government (e.g. customs authorities), academia, civil society, agricultural and industry. Some elements of its work plan are risk assessment and reduction and capacity building, and activities on the following topics:

- pesticide management plans
- used oils or sludge
- mercury
- chemical safety, including chemical emergencies
- sustainable purchases
- illegal traffic
- Globally Harmonized System of Classification and Labelling of Chemicals (GHS).

Other initiatives include the harmonized customs classification codes and the close coordination with customs authorities for all chemicals covered by not only the BRS Conventions but also the Chemical Weapons Convention to allow better import and export control of regulated substances or to prevent illegal traffic.

Multilateral trade and the BRS Conventions

The extent to which the multilateral trading system and the BRS Conventions relate and are "mutually supportive" is explicitly referred to in the preambles to the Stockholm and Rotterdam Conventions. Under the Basel Convention, such a relationship was not originally reflected in its provisions, being adopted in 1989 (i.e. before the 1994 Marrakesh Agreement Establishing the World Trade Organization), but it was discussed later through its governing body and by means of several CoP decisions.

The Stockholm Convention states that the parties recognize "that this Convention and other international agreements in the field of trade and the environment are mutually supportive". The Rotterdam Convention expands the statement by specifying that the parties are aware of the "harmful impact on human health and the environment from certain hazardous chemicals and pesticides in international trade", and recognizes that "trade and environmental policies should be mutually supportive with a view to achieving sustainable development". The preamble concludes by expressing the determination to "protect human health, including the health of consumers and workers, and the environment against potentially harmful impacts from certain hazardous chemicals and pesticides in international trade".

The BRS Conventions, through their processes, mechanisms and procedures in place, notably the trade-related measures, are thus well placed to address the challenges caused by the production, the use, the international trade, and the disposal of hazardous chemicals and wastes, contributing to control, in a more environmental and sustainable fashion, their imports and exports.

They are at the heart of key global tools tackling climate change, pollution and biodiversity loss. In 2019, amendments to annexes to the Basel Convention – known as the Plastic Waste Amendments – were adopted, making the Basel Convention the only legally binding international instrument to respond to this type of pollution.

Among the options for future considerations is a need to further expand technical discussions on improving the export control systems and licensing of the BRS Conventions, including

on the PIC procedures themselves, whether generally (e.g. at discussions on environmental goods) or more specifically and thematically (e-waste, plastics, labelling, customs) at the level of both the WTO – at the Committee on Trade and Environment – and under other instances relating to market access or technical barriers to trade. Similarly, at the BRS Conventions CoPs, the adoption of more specific intertwined decisions so as to enhance the dialogue and consistencies can assist in overcoming possible silos between, on one hand, the trade community and forums and the WTO membership, and on the other hand, the environmental community and forums and the parties to MEAs, leading eventually to more sustainable trade, development and better protection of the planet.

Endnotes

1 For more information on how the BRS Conventions function and on how they may be considered mutually supportive with the WTO agreements, see the forthcoming online course "The BRS Conventions and the WTO: Enhancing International Cooperation for Sustainable Development", available on the WTO e-learning platform at https://www.learning.wto.org.

2 See http://www.brsmeas.org.

3 The Rotterdam Convention does not set out a ban but instead establishes an information exchange platform to allow more sustainable trade.

4 For more information on trade-related measures present in the BRS Conventions and other MEAs, see https://www.wto.org/english/tratop_e/envir_e/envir_matrix_e.htm.

5 For more information on these notification and movement documents, please see at http://www.basel.int/Procedures/NotificationMovementDocuments/tabid/1327/Default.aspx

6 The Food and Agriculture Organization of the United Nations (FAO) and the United Nations Environment Programme (UNEP) jointly perform the secretariat functions for the Rotterdam Convention.

7 Regulation (EC) No. 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No. 793/93 and Commission Regulation (EC) No. 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC.

8 See https://echa.europa.eu/regulations/reach/understanding-reach.

9 See https://echa.europa.eu/support/guidance.

10 See https://echa.europa.eu/support/qas.

11 See https://echa.europa.eu/support/helpdesks.

12 See https://echa.europa.eu/legislation.

13 Regulation (EU) No. 649/2012 of the European Parliament and of the Council of 4 July 2012 concerning the export and import of hazardous chemicals (recast).

14 Regulation (EU) 2019/1021 of the European Parliament and of the Council of 20 June 2019 on persistent organic pollutants (recast).

15 Directive (EU) 2018/851 of the European Parliament and of the Council of 30 May 2018 amending Directive 2008/98/EC on waste.

16 See https://www.ohchr.org/en/press-releases/2009/10/toxic-waste-un-expert-releases-report-probo-koala-incident and https://www.unep.org/news-and-stories/press-release/un-environment-releases-independent-audit-sites-affected-toxic-waste?_ga=2.171237792.1444052210.1679301497-1501661496.1679301497.

17 See the Government's online portal on export procedures of dangerous products, available at https://pwic.gouv.ci/procedures-exportations/dechets-dangereux.

18 See http://secretariasq.digeca.go.cr.

OECD Decision of the Council on the Control of Transboundary Movements of Wastes Destined for Recovery

Since March 1992, transboundary movements of wastes destined for recovery operations between members of the Organisation for Economic Co-operation and Development (OECD) have been supervised and controlled under the specific intra-OECD Control System. Established by the *Decision of the Council on the Control of Transboundary Movements of Wastes Destined for Recovery Operations* (OECD/LEGAL/0266), the OECD Control System for waste recovery aims at facilitating trade of recyclables in an environmentally sound and economically efficient manner by using a simplified procedure, as well as a risk-based approach to assess the necessary level of control for materials. It is closely interlinked with the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal. However, compared to the Basel Convention, the OECD Decision gives a simplified and more explicit means of controlling movements of covered wastes. It also facilitates transboundary movements of recoverable wastes between OECD members in the case where an OECD member is not a party to the Basel Convention. Wastes exported outside the national jurisdiction of any OECD member, whether for recovery or final disposal, do not benefit from this simplified control procedure.

Prepared by Frithjof Laubinger, Shunta Yamaguchi, Peter Börkey and Katarina Svatikova (Organisation for Economic Co-operation and Development).

Background

The control of transboundary movements of waste, in particular that of hazardous wastes, has been a concern to OECD members since the early 1980s. A number of OECD legal instruments relating to transboundary movements of waste were enacted as early as 1984 with the *Decision-Recommendation of the Council on Transfrontier Movements of Hazardous Waste* (OECD/LEGAL/0209).

Since March 1992, transboundary movements of waste destined for recovery operations between OECD members have been supervised and controlled according to the *OECD Council Decision on the Control of Transfrontier Movements of Wastes Destined for Recovery Operations* (C(92)39/FINAL). In June 2001, the Decision was revised and became *Decision of the Council on the Control of Transboundary Movements of Wastes Destined for Recovery Operations* (OECD/LEGAL/0266) (hereafter "the OECD Decision"). The OECD Decision establishes the framework for the specific intra-OECD Control System for transboundary movements of recoverable wastes and establishes rules for trade in waste in an environmentally sound and economically efficient manner.

The OECD Decision is closely interlinked with the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (Basel Convention). However, compared to the Basel Convention, it gives a simplified and more explicit means of controlling movements of covered wastes. The OECD Decision also facilitates transboundary movements of recoverable wastes between OECD members in the case where an OECD member is not a party to the Basel Convention. Wastes exported outside the national jurisdiction of any OECD member, whether for recovery or final disposal, do not benefit from this simplified control procedure.

The OECD Decision is a multilateral agreement, which is compatible with the environmentally sound management of hazardous wastes and other wastes pursuant to Article 11(2) of the Basel Convention:

> "Parties shall notify the Secretariat of any bilateral, multilateral or regional agreements or arrangements referred to in paragraph 1 and those which they have entered into prior to the entry into force of this Convention for them, for the purpose of controlling transboundary movements of hazardous wastes and other wastes which take place entirely among the Parties to such agreements. The provisions of this Convention shall not affect transboundary movements which take place pursuant to such agreements provided that such agreements are compatible with the environmentally sound management of hazardous wastes and other wastes as required by this Convention."

As any OECD decision, OECD/LEGAL/0266 is legally binding upon its adherents and is to be implemented and promulgated through national legislation in each OECD member (currently 38 members). In the case of the European Union and its member states, the OECD Decision is implemented through the waste shipments Regulation (EC) No. 1013/2006.[1]

In Canada, the *Cross-border Movement of Hazardous Waste and Hazardous Recyclable Material Regulations*[2] fully implement the requirements of the OECD Decision, the Basel Convention, together with the Canada-US Arrangement on non-hazardous waste and scrap. Other OECD Members have enacted similar national legislation.

Export controls under the OECD Decision

The OECD Decision applies only to transboundary movements of wastes which are destined for recovery operations within the national jurisdiction of any OECD member. The OECD Decision includes two categories of control procedures for wastes destined for recovery in another OECD member: the Green control procedure and the Amber control procedure (see Figure 1).

Green control procedure

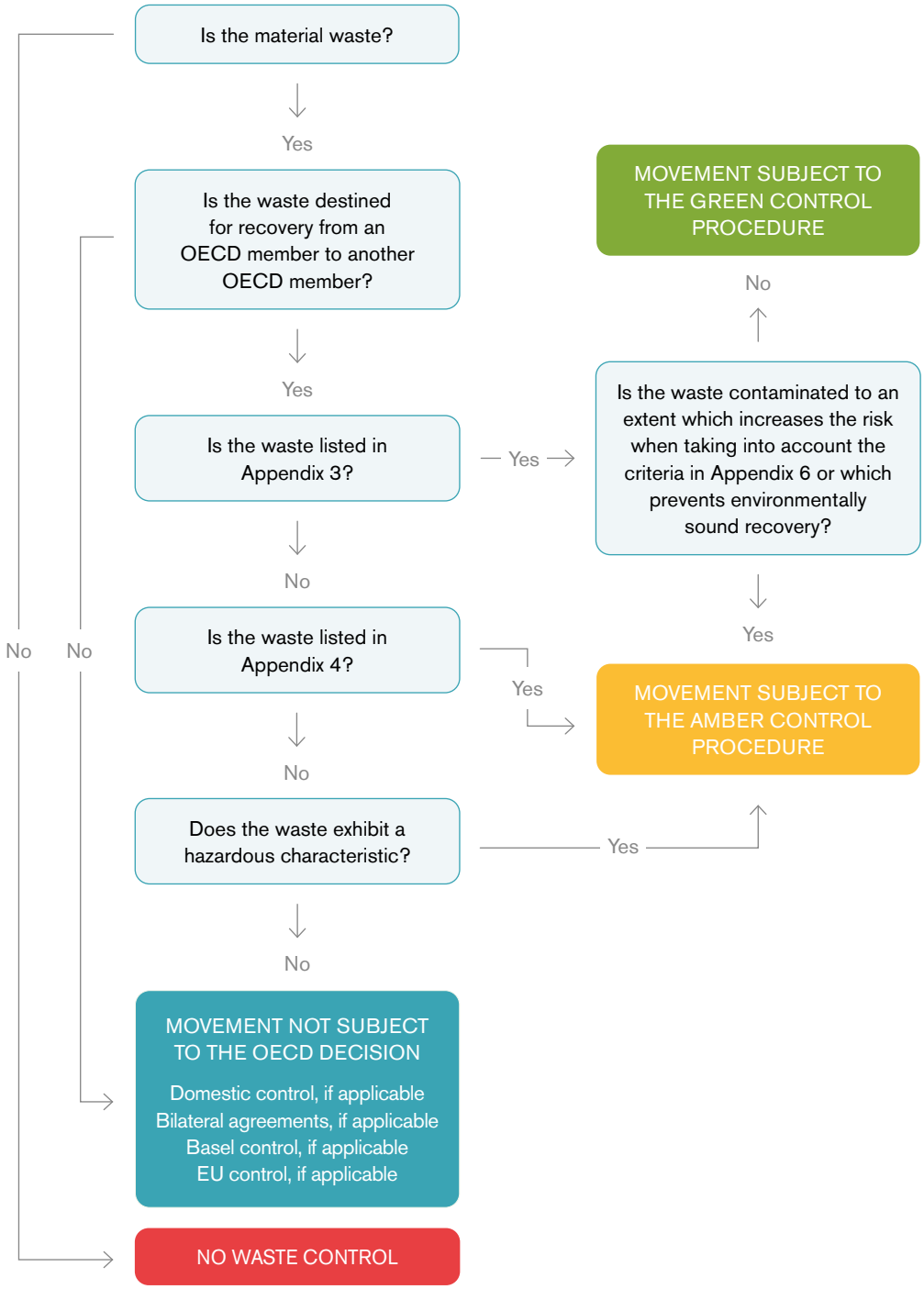
Wastes falling under the Green control procedure are listed in Appendix 3 to the OECD Decision. These wastes do not typically exhibit hazardous characteristics and are deemed to pose negligible risks for human health and the environment during their transboundary movement for recovery within the national jurisdiction of any OECD member. Appendix 3 is divided into two parts:

- Part I includes the wastes listed in Annex IX to the Basel Convention (i.e. wastes not characterized as hazardous in accordance with Article 1(1)(a) of the Convention). However, some adjustments have been made in respect of certain entries of Annex IX for the purposes of the OECD Decision.
- Part II contains additional wastes subject to the Green control procedure which, according to a number of risk criteria (see Appendix 6 to the OECD Decision), are assessed as wastes that do not pose any risk for human health and the environment when destined for recovery within the national jurisdiction of any OECD member. These entries are not listed under the Basel Convention.

Since the wastes subject to the Green control procedure are deemed to pose negligible risks for human health and the environment during their transboundary movement for recovery within the national jurisdiction of any OECD member, they are not controlled under the OECD Decision. However, the OECD Decision imposes a general requirement that all wastes, including those subject to the Green control procedure, shall be destined for recovery operations within a recovery facility which will recover them in an environmentally sound manner according to national laws, regulations and practices.

It should also be noted that some OECD members may impose specific requirements for the transboundary movements of wastes subject to the Green control procedure by their domestic legislation. For example, the waste shipments Regulation (EC) No. 1013/2006 requires that certain information, signed by the holder of wastes subject to the Green control procedure, accompany each shipment of such waste in order to assist the tracking of these shipments.

Figure 1: Identification of wastes subject to the OECD Decision



Amber control procedure

Wastes falling under the Amber control procedure are listed in Appendix 4 to the OECD Decision. These wastes usually, but not always, exhibit one or more hazardous characteristics. Due to their hazardousness or other reason referred to in Appendix 6 to the OECD Decision, they may pose a risk for human health and the environment during their transboundary movement for recovery within the national jurisdiction of any OECD member and are therefore subject to specific control procedures under the OECD Decision. Appendix 4 is divided into two Parts:

- Part I includes the wastes listed in Annex II (wastes requiring special consideration, i.e. wastes collected from households, residues arising from the incineration of household wastes and certain plastic waste) and Annex VIII (wastes characterized as hazardous) to the Basel Convention. Some adjustments have been made in respect to certain entries of Annex VIII for the purposes of the OECD Decision.
- Part II contains additional wastes subject to the Amber control procedure, which, according to a number of risk criteria (see Appendix 6 to the OECD Decision) are assessed to pose a risk for human health and the environment when destined for recovery within the national jurisdiction of any OECD member. These entries are not listed under the Basel Convention.

Notification procedure

Within the national jurisdiction of OECD members, all transboundary movements of waste subject to the Amber control procedure can take place only upon prior written notification to the competent authorities of countries of export, import and transit (if any) and upon tacit or written consent from these authorities to the notified movement of waste.

Once a competent authority of the OECD member of import receives a notification, it shall acknowledge the receipt within three working days. The competent authorities concerned (i.e. of import, export and transit OECD member) then have 30 days, following the issuance of the acknowledgement, to object to the movement or to issue a written consent to it. If no objection by any of the competent authorities concerned is lodged within 30 days, the movement may commence under a tacit consent.

In order to simplify and accelerate the notification procedures, competent authorities of OECD members have the possibility to designate “pre-consented recovery facilities” for which they do not raise objections concerning regular transboundary movements of certain waste types. Transboundary shipments to pre-consented facilities benefit from an accelerated procedure. Normally,[3] only a seven-working day consideration period following the issuance of the acknowledgement is allowed for competent authorities.

Members have the obligation to inform the OECD Secretariat of any pre-consent they grant to their recovery facility. This information is made available updated regularly in the OECD Database on Transboundary Movements of Waste.[4] Currently, the database lists around 460 pre-consented recovery facilities from 23 OECD members.

Tracking Procedure

Once all consents have been obtained from the competent authorities concerned, the shipment of waste may proceed in accordance with the consents and the terms of the contract. Furthermore, each shipment of waste shall be accompanied by a movement document from the point at which the transboundary movement begins to the point of recovery.

The movement document is the core element of the tracking procedure. It provides all the relevant information on a particular consignment of waste and shall accompany the consignment from the time it is no longer in the care of the exporter to the time it arrives at the recovery facility and is recovered. The movement document facilitates the identification of the waste as well as of the responsible parties and competent authorities to be contacted at any time, for example at the border control or other control points along transport routes, or in case of accident or other incident during the transport of the waste. It is also an important tool for competent authorities to follow-up the different stages of the waste shipment and to ensure that it is carried out in accordance with the information given in the notification and possible conditions set out in their consents.

Appendix 8 to the OECD Decision provides a template for the movement document as well as guidance on how to fill the template. The movement document must be completed and signed by the exporter at the start of the shipment, each carrier or carrier's representative when taking possession of the waste as well as the recovery facility upon receipt of the waste and then recovery of the waste concerned. The recovery facility sends completed and signed copies of the movement document to the exporter and the competent authorities concerned, both upon receipt and then recovery of the waste. In addition, if required by domestic legislation, the customs offices of the countries of export, import or transit may use the movement document to certify the passage through the customs offices of entry and exit.

Some considerations in relation to WTO agreements

The OECD Decision is a legally binding international instrument to establish controls for import and export of wastes which may pose a risk or a hazard to human health and the environment.[5] It provides for facilitated trade of waste destined for recovery within the OECD membership. The basic assumption thereby is that environmental standards, as well as capacities among OECD members, are all fulfilling minimum standards and are environmentally sound.

The OECD deems that the Decision is aligned with basic WTO principles as follows:

- **Without discrimination**: Equal controls apply to all trading partners within the OECD membership. Members may control certain wastes differently in conformity with domestic legislation and the rules of international law, in order to protect human health and the environment. However, these "specific national controls" should be on an exceptional basis and temporary in nature.
- **Freer**: The OECD Control System provides for facilitated trade of wastes destined for recovery operations, shortening the consideration period and establishing tacit consent, compared to trade rules established by the Basel Convention.
- **Predictable**: Full transparency of trade rules is enshrined into the OECD Decision. Any specific national controls, as well as any pre-consents to recovery facilities should be reported to the OECD Secretariat. This information is made available on the OECD website.
- **More competitive**: Through the notification procedure, the OECD Decision ensures that transboundary movements of hazardous waste are only taking place with the consent of export, import and, if any, transit countries, discouraging "unfair" practices.
- **More beneficial for less developed countries**: The OECD Decision only applies to OECD members. The specific national control provision allows for less-developed OECD members to apply stricter controls for transboundary movements of wastes if this is deemed necessary. These specific national controls should be on exceptional basis and temporary in nature, whilst the country works towards alignment. For instance, Colombia recently became an OECD member. It became an adherent to the OECD Decision with a specific timeframe for implementation and is currently not participating in the OECD Decision's control system.

Recent developments

Modification of controls for transboundary movements of plastic waste (since 1 January 2021)

At the 14th meeting of the Conference of the Parties (CoP) to the Basel Convention in May 2019, the CoP adopted amendments to Annex II (wastes requiring special consideration), Annex VIII (wastes characterized as hazardous) and Annex IX (wastes not characterized as hazardous, and hence outside the scope) to the Basel Convention, impacting the transboundary movement of plastic wastes. Normally, amendments to the annexes of the Basel Convention are automatically incorporated into the appendices of the OECD Decision unless an objection is made by an OECD member. On 3 July 2019, the OECD Secretariat received an objection to the automatic incorporation, which led to a series of meetings on how to control the wastes in questions under the OECD Decision.

Since 1 January, hazardous plastic wastes, namely those covered by new Basel entry A3210, are listed under Appendix 4 and subject to the Amber control procedure. For other plastic wastes, namely those covered by new Basel entries B3011 and Y48, each OECD member retains its right to control the plastic waste in question in conformity with its domestic legislation and international law, as no consensus was reached on the controls to be applied within the OECD Control System.[6]

Ongoing negotiations on controls for transboundary movements of e-waste

The 15th meeting of the Basel CoP in June 2022 adopted additional amendments to their waste lists, further restricting transboundary movements of electrical and electronic waste (e-waste). On 16 August 2022, the OECD Secretariat received an objection to the automatic incorporation of these e-waste amendments into the OECD Decision. A process is currently underway to work towards an alternative proposal on how to control transboundary movements of e-waste under the OECD Decision. This process is to be completed before the Basel amendments become effective on 1 January 2025.

Endnotes

1 Regulation (EC) No. 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste, 12 July 2006.

2 *Cross-border Movement of Hazardous Waste and Hazardous Recyclable Material Regulations*, SOR/2021-25, 26 February 2021.

3 This consideration period may be extended to 30 days on request by the competent authority of the OECD member of export.

4 See https://www.oecd.org/environment/waste/theoecdcontrolsystemforwasterecovery.htm.

5 See OECD (2009) for further information.

6 For information about these national controls lists, see https://www.oecd.org/env/waste/22-02-07-Reporting-of-controls.pdf.

Vienna Convention for the Protection of the Ozone Layer and Montreal Protocol on Substances that Deplete the Ozone Layer

The Vienna Convention for the Protection of the Ozone Layer and the Montreal Protocol on Substances that Deplete the Ozone Layer are major milestones in international environmental law, striving together to protect the environment from any harmful effects of the ozone layer depletion through control, reduction and ultimately elimination of production and consumption of ozone-depleting substances (ODSs). The Montreal Protocol contains detailed provisions on reporting on control and production of ODSs – the trade of which is through mandatory export and import licensing procedures. This chapter provides an overview of the Vienna Convention and the Montreal Protocol, discussing key institutions under each and provisions that affect trade in ODSs.

Prepared by the WTO Secretariat and reviewed by Gilbert M. Bankobeza (former Chief of Legal Affairs and Compliance, Ozone Secretariat, United Nations Environment Programme).

Background

The Vienna Convention for the Protection of the Ozone Layer (Vienna Convention) serves as a framework treaty for legal and practical action to protect the planet's ozone layer. Under the Vienna Convention, its parties aim to promote cooperation by means of systematic observations, research and information exchange on the effects of human activities on the ozone layer and to adopt legislative or administrative measures against activities likely to have adverse effects on the ozone layer.[1] The Vienna Convention is an important part of the international ozone regime, providing the forum for discussions on scientific research and observations of the ozone layer. It was adopted on 22 March 1985 and entered into force on 22 September 1988.

Parties to the Vienna Convention may adopt other treaties and protocols. On 16 September 1987, the contracting parties adopted the Montreal Protocol on Substances that Deplete the Ozone Layer (Montreal Protocol), which entered into force on 1 January 1989. In 2009, it achieved universal ratification together with the Vienna Convention. It is the only protocol to the Vienna Convention, and its objective is to protect human health and the environment against adverse effects resulting or likely to result from human activities which modify or are likely to modify the ozone layer. The Montreal Protocol has been amended on five occasions, the last of which was the Kigali Amendment to the Montreal Protocol, agreed on 15 October 2016 and entering into force on 1 January 2019, following ratification by 65 parties.

Vienna Convention for the Protection of the Ozone Layer

Overview

The overall objective of the Vienna Convention is to protect human health and the environment against the effects of ozone depletion. As a framework convention, it does not establish any specific controls on ozone-depleting substances (ODSs). Instead, it establishes a general obligation upon the parties to protect the ozone layer and emphasizes the need for international cooperation.[2] The Vienna Convention requires parties to take "appropriate measures … against adverse effects resulting or likely to result from human activities which modify or are likely to modify the ozone layer." These measures include:

- adoption of legislative and administrative measures;
- cooperation on research and scientific assessment;
- exchange of information;
- development and transfer of technology.

Key institutions

The Vienna Convention provided for the creation of the Conference of the Parties (CoP), initially meeting once every three years but now once every two years, the Ozone Secretariat, Ozone Research Managers (ORM) and the Bureau of the Conference of the Parties (Bureau).

The CoP was established to bring together all contracting parties to the Vienna Convention. Article 6 of the Vienna Convention lists some specific functions of the CoP, which include:

- reviewing scientific information;
- promoting the harmonization of appropriate policies, strategies and measures;
- deciding on reporting procedures;
- adopting programmes for research and systematic observations;
- considering and adopting protocols and amendments;
- establishing subsidiary bodies.

The CoP also has a general and more open-ended mandate to undertake any additional action required to achieve the purposes of the Vienna Convention.

The Ozone Secretariat is the administrative office for the Vienna Convention and the Montreal Protocol. It organizes the conferences and meetings for the parties to the Vienna Convention and the Montreal Protocol, manages the implementation of decisions resulting from these conferences and meetings, and provides governments, organizations and individuals with information on how they can protect the ozone layer.

The ORM is a subsidiary body established in response to Article 3 of the Vienna Convention concerning research and systematic observations. The ORM comprises government research managers dealing with atmospheric research and monitoring as well as research on health and environmental effects of ozone modifications. The main purpose of the meetings of the ORM is to ensure proper coordination of activities relating to ozone research and monitoring, and to identify gaps that need to be addressed.

The Bureau's core function is to facilitate, on behalf of the parties, the review of scientific information on the ozone layer, on its possible modification and on possible effects of any such modifications. The Bureau is also mandated to consider programmes for research, systematic observations, scientific and technological cooperation, the exchange of information and the transfer of technology and knowledge.

Montreal Protocol on Substances that Deplete the Ozone Layer

During the negotiations, states agreed that the Vienna Convention itself would provide a framework of general obligations, conducting research and systematic observations and cooperation in the legal, scientific and technical fields. They also agreed that states would

reconvene within two years to negotiate a separate protocol[3] with set timelines and targets for phasing out ODSs.

During the negotiations of the Montreal Protocol, three issues were of major importance:

(a) Broad adherence to the Montreal Protocol, including by developing countries. There was considerable concern about the financial abilities of developing countries to implement the Montreal Protocol.
(b) The Montreal Protocol needed to be drafted in a flexible way to adjust, in a timely manner, to new scientific evidence and to the changing needs of its parties.
(c) Setting an economically feasible and detailed time schedule for the phasing out of ODSs.

Overview

The Montreal Protocol requires parties to take measures to reduce global emissions of ODSs with the ultimate objective of their elimination. This is done through the adoption of control measures for the phasing out of the consumption and production of ODSs. The Montreal Protocol also includes control measures for the phasing down of hydrofluorocarbons (HFCs), which do not deplete the ozone layer, but which have a high global-warming potential[4] and are often used as substitutes for ODSs.

The Montreal Protocol establishes concrete and measurable legally binding obligations for parties' control on production and consumption of ODSs and HFCs. In its original form, the Montreal Protocol required developed countries to begin phasing out chlorofluorocarbons (CFCs) and halons in 1989 and set deadlines for achieving specific reductions. The controls in the Montreal Protocol have been made progressively more comprehensive, effective and ambitious through a series of amendments to add more substances and other measures and adjustments to tighten the control measures.

Special provisions for developing countries

The Montreal Protocol recognizes that developing countries contributed to ozone depletion to a lesser extent than industrialized countries. Special provisions include a grace period for developing countries in phasing out or down the production and consumption of controlled substances (e.g. ten-year delay in phasing out hydrochlorofluorocarbons and a five-year later start in phasing down HFCs). This grace period is granted under Article 5 of the Montreal Protocol, which applies to developing countries whose annual calculated per capita level of consumption of Annex A controlled substances (CFCs and halons) was below a set threshold of 0.3 kg per capita on the date of the entry into force of the Montreal Protocol or any time thereafter until 1 January 1999. As a result of these provisions, discussions under the Montreal Protocol will often refer to "Article 5 parties" and to "non-Article 5 parties" to differentiate between developing and industrialized countries.

The adoption and implementation of the Montreal Protocol has been a significant milestone in international environmental law. It established stepwise schedules for reducing and eventually eliminating the consumption and production of a range of ODSs and recently also HFCs. These substances are listed in Annexes A, B, C, E and F to the Montreal Protocol and are to be phased out/down within the schedules provided in Articles 2A-2J. The Montreal Protocol controls both consumption and production of ODS and HFCs to protect the interests of producers and importers, who otherwise would have had to sustain high price inflation or engage in overproduction during the phase-out period of the targeted substances.

Key institutions

The Meeting of the Parties (MoP) is the organ that makes decisions such as those relating to the adoption of amendments to the Montreal Protocol, making adjustments to schedules for phasing out or down controlled substances and adding or removing substances listed under the annexes to the Protocol. The MoP considers and makes decisions on any additional action that may be required for the implementation of the Montreal Protocol.

The Bureau of the MoP reviews the work of any working groups established by the parties during their meetings and considers topics on the agenda for the next MoP. The first MoP established the Open-ended Working Group, and it comprises all parties, meets annually, and is tasked with preparing for, and supporting the MoP, notably by reviewing reports by the assessment panels.

In addition to the Ozone Secretariat mentioned above, other institutions include the Multilateral Fund, the assessment panels and the Implementation Committee. The Multilateral Fund, established by Decision II/8 of the Second MoP, in June 1990,[5] promotes technology transfer and provides financial assistance to Article 5 parties to meet their obligations under the Montreal Protocol.

In accordance with Article 6 of the Montreal Protocol, three assessment panels provide independent scientific information to the parties regarding ozone depletion, its environmental effects, and the status of alternative substances and technologies and their economic implications. The three panels are the Scientific Assessment Panel, the Technology and Economic Assessment Panel and the Environmental Effects Assessment Panel.

The Implementation Committee considers information and observations submitted to it with a view to securing an amicable solution to issues that are subject to non-compliance by any party or groups of parties. The non-compliance procedure was adopted by the parties under Article 8 of the Montreal Protocol to bring non-complying parties into compliance by engaging them in a cooperative manner. The non-compliance process can be invoked by any party to the Montreal Protocol, by the Ozone Secretariat or by the party itself.

Reporting on consumption and production

Under Article 7, each party reports annual statistical data on production, import and export of each of the substances controlled by the Montreal Protocol. All parties are obliged to report this national data for ODS, and for the parties that have ratified the Kigali Amendment to the Montreal Protocol have also to report national data for HFCs. Under Article 7(3), each party is to provide to the Ozone Secretariat statistical data on its annual production of each of the controlled substances listed in the relevant annexes and, separately, for each substance. The information must include information such as the amounts used for feedstocks, amounts destroyed by technologies approved by the parties, and imports from and exports to parties and non-parties, respectively.

The data on consumption and production are reported to the Ozone Secretariat and is available in an aggregated format on the ozone data centre.[6] The reporting obligations have been incorporated into a standard data reporting format, commonly called Article 7 data reporting forms.[7] Parties report their data through the online portal and have a variety of tools to assist them in the process.[8]

Trade control through mandatory export and import licensing procedures

Parties have an obligation, under Article 4B of the Montreal Protocol, to establish and implement a system for licensing the import and export of new, used, recycled and reclaimed controlled substances. Each party, within three months of the date of introducing its licensing system, also should report to the Ozone Secretariat the information on the establishment and operation of that system. Information regarding national focal points for licensing systems is available from the Ozone Secretariat.[9]

If the Montreal Protocol is amended and new substances are listed in the annexes, a timetable of three months is set for parties to establish licensing systems after ratifying the amendment. For example, the Kigali Amendment requires each party, by 1 January 2019, or within three months of the date of entry into force of that paragraph for the party, whichever is later, to establish and implement licensing systems for HFCs. Article 5 parties could delay taking those actions until 1 January 2021.

Certain decisions of the MoP also deal with illegal trade and production of ODSs. Paragraph 7 of Decision XIV/7 adopted at the 14th MoP, invited parties to report to the Ozone Secretariat fully proved cases of illegal trade in ODSs in order to facilitate an exchange of information.[10] Paragraph 5(d) of Decision XXXI/3 adopted at the 31st MoP, further encouraged parties to take action to identify and prevent illegal production, import, export and consumption of controlled substances and to report to the Ozone Secretariat on the cause of significant cases and actions taken to address them, to facilitate an exchange of information.[11] More information on the reported cases if illicit trade is available on the United Nations Environment Programme website.[12]

Dealing with non-parties

The Montreal Protocol addresses the problem of trade with states that are not yet parties to the treaty (non-parties). These provisions are set out under Article 4 of the Montreal Protocol, which sets deadlines beyond which trade with non-parties in the controlled substances is banned unless the MoP find them to be in compliance with the Protocol. Since the Montreal Protocol achieved universal ratification in 2009, and the first four amendments to the Protocol achieved universal ratification in 2014, provisions regarding trade with non-parties were less relevant for a period. However, the Kigali Amendment, agreed in 2016, has renewed the significance of these provisions under the Protocol. To date, 50 parties to the Montreal Protocol have not yet ratified the Kigali Amendment.

Endnotes

1 See Article 2 of the Vienna Convention.

2 *Ibid.*

3 A protocol is a treaty negotiated under the umbrella of an existing convention. It constitutes a separate and additional agreement, and which must be signed and ratified by the parties to the convention concerned. Protocols typically strengthen a convention by adding new, more detailed commitments.

4 Global warming potential is a measure of the relative global warming effects of different gases. Further information is available at https://wedocs.unep.org/bitstream/handle/20.500.11822/28246/7789G-WPRef_EN.pdf?sequence=2&isAllowed=y - :~:text=Global%20warming%20potential%20(GWP)%20is,a%20specific%20period%20of%20time.

5 *Decision II/8: Financial mechanism*, Second Meeting of the Parties, June 1990.

6 Available at https://ozone.unep.org/countries/data.

7 See https://www.ozonactionmeetings.org/system/files/10.4_background_a7_data_reporting_final_1.pdf.

8 Available at https://ozone.unep.org/countries/data-reporting-tools.

9 See https://ozone.unep.org/countries/additional-reported-information/focal-points-licensing-systems.

10 *Decision XIV/7: Monitoring of trade in ozone-depleting substances and preventing illegal trade in ozone-depleting substances*, Fourteenth Meeting of the Parties, November 2002.

11 Decision XXXI/3: Unexpected emissions of CFC 11 and institutional processes to be enhanced to strengthen the effective implementation and enforcement of the Montreal Protocol, Thirty-first Meeting of the Parties, November 2019.

12 See https://ozone.unep.org/countries/additional-reported-information/illegal-trade.

2 Drugs control

International Drug Control Conventions (1961, 1971 and 1988 Conventions)

The three conventions under the United Nations form the current normative framework for control of narcotic drugs, psychotropic substances and precursor chemicals: Single Convention on Narcotic Drugs, 1961, as amended by the 1972 Protocol Amending the Single Convention on Narcotic Drugs, 1961; the Convention on Psychotropic Substances of 1971; and the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988. They are collectively referred to as the International Drug Control Conventions (UNODC, 2013). These conventions facilitate cross-border movement of internationally controlled substances for medical, scientific and industrial use, while ensuring no diversion of these substances to illicit channels. This chapter provides an overview of key provisions of the conventions, such as those relating to the establishment of estimates and assessments for the production and trade of narcotic drugs and psychotropic substances, as well export and import authorization requirements for trade in these substances and their precursors. Additionally, this chapter outlines the operational support, including online pre-export notification system and authorization systems that is provided through the International Narcotics Control Board to the states parties to the conventions.

Prepared by the the International Narcotics Control Board.

Background

The right to health is one of a set of internationally agreed human rights, is inseparable from these other rights and is the overarching objective of the International Drug Control Conventions, which are aimed at safeguarding the health and welfare of humankind. Most recently, Sustainable Development Goal 3 (Ensure healthy lives and promote well-being for all at all ages) calls for a global partnership to ensure that medicines reach those who need them. These medicines include narcotic drugs and psychotropic substances that, while having essential uses in medicine, also pose a high risk of harm, including dependency and health deterioration. Recognizing this, the international community has set up a system of control that aims to facilitate international trade in these substances, while at the same ensuring that such trade is authorized exclusively for medical and scientific ends, and preventing diversion to illicit channels and misuse.

The current international drug control framework has its roots in the International Opium Commission, which met in 1909 in Shanghai and led to the adoption of the International Opium Convention, signed at The Hague in 1912, the first international drug control treaty, laying down initial principles of narcotics control as part of international law. In line with this first initiative, two instruments followed to form the first body of drug control legislation: the International Convention relating to Dangerous Drugs, in 1925, and the Convention for the Suppression of the Illicit Traffic in Dangerous Drugs, in 1936.

The Second World War and the subsequent dissolution of the League of Nations in 1946 profoundly disrupted the international legal framework of drug control and forced an overhaul of the normative system. It was in the context of this reform that the United Nations adopted a new international drug control treaty, the Single Convention on Narcotic Drugs, 1961, to recast and replace all pre-existing instruments related to narcotics control. This convention was followed by the adoption of two other legal instruments – the Convention on Psychotropic Substances of 1971 (1971 Convention) and the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 (1988 Convention), thus forming the current normative framework for control of narcotic drugs, psychotropic substances and precursor chemicals (i.e. substances used in the illicit manufacture of narcotic drugs and psychotropic substances). In addition, the Convention of 1961 was further expanded in 1972 by an amending protocol to become the Single Convention on Narcotic Drugs, 1961, as amended by the 1972 Protocol Amending the Single Convention on Narcotic Drugs, 1961 (1961 Convention). Today, all three conventions have been widely ratified by individual states. There are 186 states parties to the 1961 Convention, 184 to the 1971 Convention and 191 to the 1988 Convention, representing almost universal adherence to the current drug control framework.

In addition to introducing a comprehensive normative framework for international drug control, the Single Convention on Narcotic Drugs, 1961 established the International Narcotics Control Board (INCB) in 1968. The INCB is the independent, quasi-judicial control and treaty monitoring body for the implementation of international drug control treaties. In accordance

with its functions and mandate, the INCB closely monitors international trade in controlled substances to ensure that sufficient quantities of narcotic drugs, psychotropic substances and precursor chemicals are available for medical, scientific and industrial uses, and that there is no diversion from licit sources to illicit traffic. The objective of the conventions is not to hinder international trade in controlled substances, but to provide a framework to ensure they are traded for licit purposes only and that the risks for misuse or diversion of these substances are minimized. To this end, the INCB administers a system of estimates for narcotic drugs, a voluntary assessment system for psychotropic substances and monitors their licit activities through a statistical returns system.

As regards precursor chemicals that can be used in the illicit manufacture of narcotic drugs and psychotropic substances, the INCB supports governments in monitoring their international trade through a system of pre-export notifications and estimated annual legitimate requirements. These mechanisms facilitate investigations into suspicious transactions and seized consignments. The reports received through these mechanisms enables the INCB to support governments in identifying weaknesses in national and international control systems and contributes to rectifying such situations.

As of the end of January 2023, 141 narcotic drugs were listed under the 1961 Convention[1], 167 psychotropic substances under the 1971 Convention[2], and 33 precursor chemicals under the 1988 Convention[3]. Additional substances can be included in or deleted from the list of internationally controlled narcotics drugs and psychotropics substances, following a decision of the Commission on Narcotic Drugs (CND), based on a request of the same by a party to the 1961 Convention, 1971 Convention, or the World Health Organization (WHO). With regard to precursors, changes to the list of controlled precursor chemicals shall follow a decision of the CND based on a request of the same by a party to the 1988 Convention or the INCB.

Scope

All three conventions, together with the relevant resolutions adopted by the United Nations Economic and Social Council (ECOSOC) and the CND[4], require states parties to participate in the control of international trade of internationally controlled substances. With regard to narcotic drugs governed by the 1961 Convention, control may include the limitation of export and import of narcotic drugs to the estimated requirements of the importing country, the control and supervision of ports and free zones, the prohibition of certain transactions[5], and the detention of consignments without accompanying documents. Another important provision is the licence regime for the authorization of the export and import of narcotic drugs. Under this regime, each country must have a competent authority to issue authorizations for the export and import of narcotic drugs.

Somewhat similar provisions exist for psychotropic substances under the 1971 Convention, with varying degrees of control applied to different substances, depending on the level of health risk posed. For example, for psychotropic substances with greatest health risk,

import and export is allowed only if both the importer and exporter are national competent authorities, or persons or companies specifically authorized by the competent authorities of their respective countries to trade in these substances. Export controls for psychotropic substances with less health risk, on the other hand, would be less stringent, as the exporting country may simply send a notification of the export to the authorities of the importing country. Finally, neither prior authorization nor export declaration is required for those substances that pose the least risk to health.

Finally, the 1988 Convention contains further provisions for the control of international trade in precursor chemicals that can be used in the illicit manufacture of narcotic drugs and psychotropic substances. In particular, the 1988 Convention requires states parties to establish and maintain a system to monitor international trade in precursor chemicals in order to facilitate the identification of suspicious transactions involving these substances. Pursuant to the 1988 Convention, the monitoring of international trade in precursors should be conducted in close cooperation with the public and private sectors, including manufacturers, importers, exporters, wholesalers and retailers, who shall inform the competent authorities of suspicious orders and transactions. The states parties are required to notify each other about any reasons to believe that the import, export or transit of precursor chemicals is destined for the illicit manufacture of narcotic drugs or psychotropic substances. In case of sufficient evidence that precursor chemicals are to be used in the illicit drug manufacture, the 1988 Convention provides for their seizure.

Export-related measures

1961 and 1971 Conventions

International trade in narcotic drugs occurs within the framework of the system of estimates.[6] These estimates are annual quantities of internationally controlled narcotic drugs for medical or scientific use in a country as determined by its government. Each country and territory must have estimates in order to manufacture, trade or use narcotic drugs. The INCB reviews, modifies and approves these estimates prior to their publication.[7] This system ensures that there is no oversupply of narcotic drugs beyond projected demand, thereby reducing the risk of diversion of these substances.

It is important to note that estimates are not to be regarded as quotas, because the 1961 Convention permits the countries to amend their estimates at any point during the year in case their legitimate needs for narcotic drugs for medical and scientific purposes change. The INCB would only seek clarification on the requested amendments to estimates when the amended estimates significantly differ from the countries' consumption in the previous periods, or when no justification is provided for the requested changes.

In addition to estimating its annual amount of narcotic drugs for licit use, a state party is required to maintain a competent authority to issue export and import authorizations for narcotic drugs. This authority is also responsible for ensuring that these authorizations

contain the information as required by the 1961 Convention, their format follow a template approved by the CND, and that the quantity of a narcotic drug being traded does not exceed the relevant estimates.

When trading internationally controlled narcotic drugs, copies of import or export authorizations must be exchanged with the authority of the trading counterpart. The authority of the exporting country must ensure that a copy of the export authorization is included with the relevant shipment. Authorities are also responsible for tracking the completion of an authorized shipment of narcotic drugs by comparing the relevant export confirmation and import endorsement to ensure no diversion occurred during transit.

The 1971 Convention sets out the import and export controls for psychotropic substances listed in Schedules I-IV of the Convention.[8] Psychotropic substances with the highest health risk are listed in Schedule I, followed by those with fewer health risks and greater medical use. Controls for substances included in Schedules I and II are effectively identical as narcotic drugs under the 1961 Convention, though control measures with regard to the trading parties are required for substances included in Schedule I of the 1971 Convention.[9] Whilst the 1971 Convention requires fewer control measures for substances included in Schedules III and IV, countries determined that additional trade controls were necessary for these substances after the adoption of the Convention. Subsequent ECOSOC resolutions therefore invited governments to extend the control measures for substances in Schedules I and II of the 1971 Convention to substances in Schedules III and IV.[10]

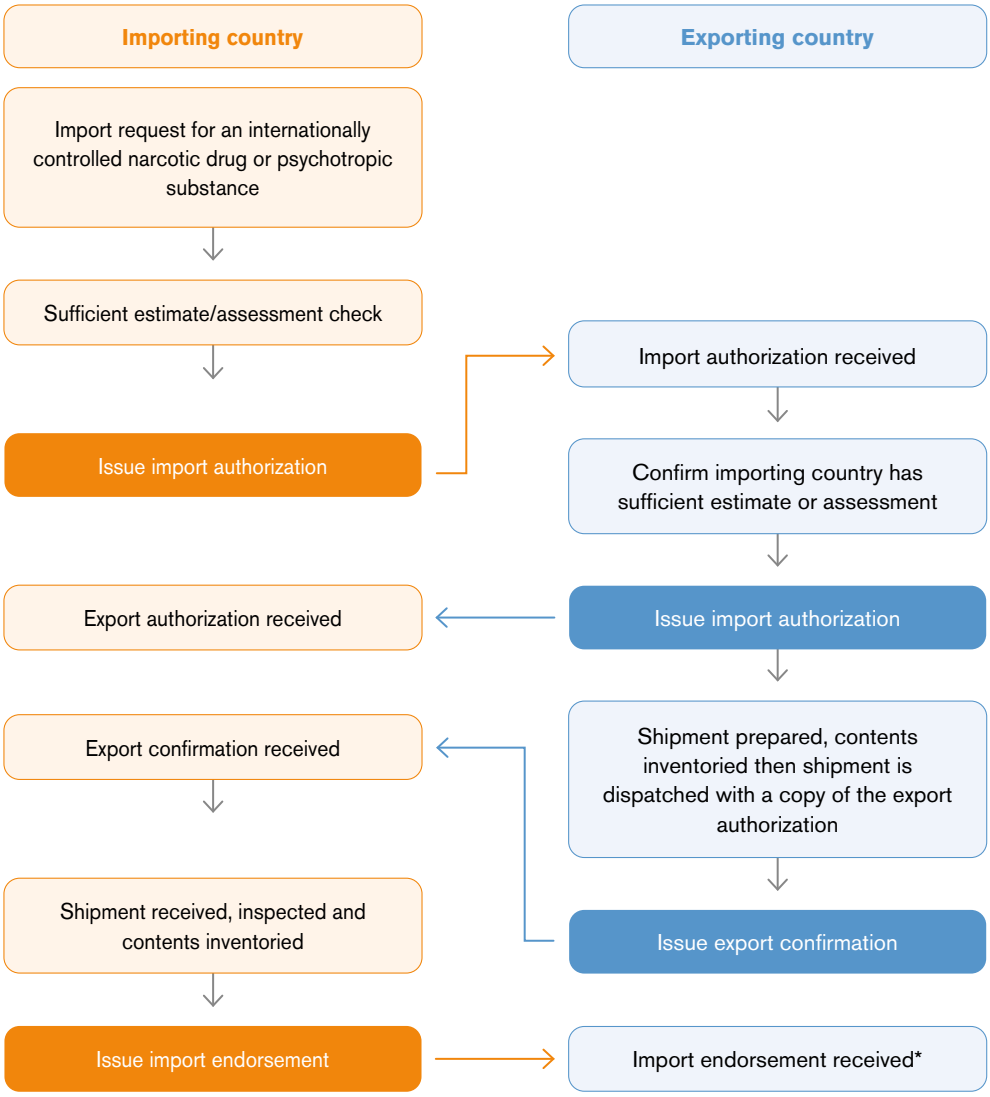
Although having similar control measures over the international trade of narcotic drugs and psychotropic substances, a key difference between the 1961 and 1971 Conventions is the assessment system for psychotropic substances. Established by ECOSOC resolutions, the assessment system (annual quantities of internationally controlled psychotropic substances for medical or scientific use in a country) is voluntary and the assessed quantities of psychotropic substances do not require approval by the INCB. Instead, they are immediately published online after being received by the INCB. Countries may update their assessments at any time, though the INCB recommends such updates are carried out at least once every three years.

Unique to the 1971 Convention is a provision which allows countries to notify all the states parties to the Convention that the notifying country is prohibiting the import of a specific psychotropic substance controlled under the Convention.[11] This is another tool for countries to avert potential diversions of those substances. The article also affords the notifying country the right to issue exceptional authorizations to import a substance that it would normally prohibit.

Nowadays, for all practical purposes, nearly all governments generally apply the same trade control measures for narcotic drugs and psychotropic substances as the requirements under both the 1961 and 1971 Conventions are closely aligned. One key difference is that certain preparations of narcotic drugs, listed in Schedule III, are exempt from international control, although countries still need to report the legitimate needs of narcotic drugs for these purposes.

Figure 1 below illustrates the key steps for importing and exporting countries to undertake for trade in narcotic drugs or psychotropic substances. This is a simplified workflow and does not necessarily reflect all the requirements of the 1961 and 1971 Conventions nor any legal requirements included in a country's own national drug control legislation.

Figure 1: Steps to be taken by national drug control authorities for the import and export of substances controlled under the 1961 and 1971 Conventions



* Upon completion of the shipment, if the packaging has been tampered with or if the export confirmation and import endorsement are in disagreement, then authorities from both the importing and exporting countries should take necessary steps to investigate whether a diversion has occurred.

1988 Convention

The control measures over trade in, and use of, precursor chemicals are based on provisions of Article 12 of the 1988 Convention as well as relevant UN resolutions.[12] In general, control measures over precursor chemicals are less stringent than those applied to narcotic drugs and psychotropic substances listed in the 1961 Convention and 1971 Convention, respectively.

Parties to the 1988 Convention are required to establish and maintain a system to monitor international trade in precursor chemicals. The monitoring system shall be applied in close cooperation with manufacturers, importers, exporters, wholesalers and retailers, who should inform the competent national authorities of suspicious orders and transactions.[13] In practice, the monitoring systems applied nationally take into account the extent, importance and diversity of the licit use over precursor chemicals in the country in order to facilitate their legitimate trade, while preventing diversion of these chemicals into illicit channels.

To monitor international trade, most countries apply a system of authorization to the imports and exports of precursors chemicals. These national systems of authorization may, however, differ from country to country. The most common national systems of authorization may require issuance of any of the following authorizations and/or permits by the government authority:

- A general authorization or permit for the imports or exports of precursor chemicals without any further notifications to the government authority.
- A general authorization to import or export a substance, with an obligation by the importer or exporter to report exports to the government authority at least annually.
- A general authorization granted by the competent national authority to a physical or legal person to import or export a substance, with an obligation by the importer or exporter to notify the government authority of individual export prior to arrival or dispatch, respectively. The importer or exporter does not need government authority's approval for each import/export.
- An individual export permit is required from the government authority to a physical or legal person prior to import or export of the substance. The importer or exporter needs government authority's approval for each import/export.

A limited number of countries have also banned or prohibited the import or export of particular precursor chemicals. There are also countries that do not yet control import of export of all precursor chemicals under international control. A compilation of the systems of authorization that governments apply to precursors chemicals is regularly shared with all competent national authorities of the parties to the 1988 Convention.

The 1988 Convention also provides for monitoring of international trade in precursor chemicals through a system of pre-export notifications. In particular, the exporting countries are obliged to provide pre-export notifications for shipments of precursor chemicals listed in Table I of the

Convention, if the importing countries have requested such pre-export notifications pursuant to Article 12(10)(a) of the 1988 Convention. Pursuant to this requirement, each country from whose territory a substance in Table I is to be exported shall ensure that, prior to such export, the competent authorities of the importing country are provided with mandatory information, in order to verify its legitimacy.

In order to also receive pre-export notifications for substances in Table II of the 1988 Convention, the governments of a number importing countries have requested the extension of the provisions of Article 12(10)(a) of the 1988 Convention. While the provision of pre-export notifications for precursors listed in Table II of the 1988 Convention is not mandatory, most exporting countries provide such notifications for shipments of Table II substances as well.

Furthermore, with a view to providing exporting countries with an additional tool to monitor international trade in selected precursors of amphetamine-type stimulants and thus lowering the risk of their diversion, countries are requested to provide the estimates of their annual legitimate requirements for certain substances.[14] These annual legitimate requirements provide an indication of the amounts of these substances that the country may need to import to satisfy its legitimate needs, and are published on the INCB website. They are not to be regarded as quotas for imports of the precursor chemicals in question and can be changed by importing countries at any point during the year, if necessary.

Finally, the 1988 Convention provides that imports and exports of precursor chemicals must be properly labelled and documented.[15] Specifically, the commercial and transportation documents should list the names of precursor chemicals, as stated in Tables I or II of the 1998 Convention, their amounts and provide details of the exporter and importer, and the consignee if available. The commercial documents used in connection with imports and exports of precursor chemicals should be maintained for at least two years and be available for inspection by the competent national authorities.

Trade controls for controlled substances in free ports and zones

A free port or free zone is typically a designated area within a country in which companies can import, export and manufacture goods without certain customs restrictions being implemented, such as reduced or no taxes and tariffs, or reduced control procedures and documentation. The limited supervision and lack of custom controls that tend to accompany free ports and free zones, however, may allow traffickers to store and smuggle illicit substances. In response to this heightened risk of illicit trafficking, the three international drug conventions require the states parties to exercise the same supervision and control of internationally controlled substances in free ports and free zones as in other parts of their territories.[16]

Simplified control measures during emergency situations

While the international trade of controlled substances is regulated by relevant administrative procedures established by states parties pursuant to treaty obligations as outlined above, the International Drug Control Conventions also provide scope for the temporary exemption of some control measures under specific circumstances. For instance, during emergency situations that require the use of controlled substances for humanitarian assistance, or when the government of the exporting country is of the view that the export of controlled substances is essential for the treatment of the sick, in accordance with Article 21 of the 1961 Convention.

A number of internationally controlled substances, including for example morphine, diazepam and phenobarbital, which are listed by the WHO as essential medicines and often included in emergency health kits, are vital for pain management, palliative care, surgical care and anaesthesia, as well as for the treatment of mental health and some neurological conditions. Other substances, such as fentanyl and midazolam, were also used in many countries to treat patients with COVID-19 admitted to intensive care units. Ensuring the availability of these controlled substances during emergency situations is critical to satisfy the sudden and acute needs of the receiving countries, in particular at the onset of emergencies.

Humanitarian relief agencies have found it difficult to rapidly obtain controlled substances for medical care in emergency situations, partly because of the additional administrative requirements for their international movement. It has been reported that some of these controlled medicines have been removed from emergency health kits in order to minimize possible delays that their presence might cause to the provision of humanitarian assistance.

The international community has long noted the urgent need for a practical solution to this obstacle. The *Model Guidelines for the International Provision of Controlled Medicines for Emergency Medical Care* (WHO, 1996) represents a concerted effort to expedite the supply of controlled substances during emergency situations through simplified control measures. When exporting controlled substances to sites of emergency, governments may permit such exports without the corresponding import authorizations and/or estimates. During such circumstances, estimates for the controlled substances can also be submitted by the exporting country in lieu of the recipient country.

In responding to recent international humanitarian emergencies, for instance the earthquake in Haiti in 2021 and the port explosion in Beirut in 2020, the INCB has taken active steps to remind all countries that simplified control procedures are permissible during these circumstances.[17]

Operational support provided to countries on trade facilitation

Online platforms

International Import and Export Authorization System

When the 1961 and 1971 Conventions entered into force, the only viable way to exchange import and export authorizations was for national authorities to issue paper documents and to exchange them via postal or express delivery services. Although that modality remains valid, states parties to these conventions foresaw the need to modernize this process. Through several CND resolutions, in particular its resolution 55/6[18], the CND instructed the United Nations Office on Drugs and Crime to develop an online platform for the secure exchange of import and export authorizations between relevant national authorities for the trade in internationally controlled narcotic drugs and psychotropic substances. Additionally, these resolutions also mandated the INCB to administer and promote this online system among states parties to the 1961 and 1971 Conventions.

As a result of this initiative, the International Import and Export Authorization System (I2ES) for narcotic drugs and psychotropic substances was launched in 2015.[19] Designed to be in conformity with the 1961 and 1971 Conventions, the platform is used by national drug control authorities to securely issue and exchange electronic import and export authorizations for substances controlled under the 1961 and 1971 Conventions. The system partially automates many of the steps illustrated in Figure 1, including automatic checking of available estimates and assessments, and is available at no cost to countries.

Pre-Export Notification Online

As previously indicated, the 1988 Convention requires states parties to issue pre-export notifications when exporting a precursor chemical that is included in Table I of the Convention to those importing countries that have invoked Article 12(10)(a).

In order to allow countries to exchange pre-export information more rapidly and for importing countries to confirm the legitimacy of the shipment, or to object to proposed shipments in real time, in case of suspicious transactions, the INCB developed the Pre-Export Notification (PEN) Online system.[20] Launched in 2006, PEN Online allows countries exporting precursor chemicals to issue and respond to pre-export notifications electronically, in compliance with the requirements of the 1988 Convention.

With 170 countries registered as of 2023, the INCB expanded the PEN Online system to allow countries to voluntarily issue pre-export notifications for precursor chemicals beyond

those under international control. This expansion, known as PEN Online Light, is a tool for countries to further safeguard international trade by exchanging information on planned exports of other alternative precursor chemicals that could potentially be exploited for the illicit manufacture of drugs.[21]

Import authorization assistance and verification

As previously indicated, states parties must issue import and export authorizations to permit the trade in internationally controlled narcotic drugs and psychotropic substances. Although the format and information in these documents have been standardized by the relevant conventions as well as the CND, drug control authorities in exporting countries may have doubts regarding the authenticity of an import authorization. Typically, this occurs when the exporting authority has not previously received an import authorization from a country. Additionally, if security features, contact details or other information regarding the counterpart have changed on the authorization document the exporting authority may wish to validate these changes prior to issuing an export authorization.

The INCB, through its Secretariat, assists countries which may need help in validating the authenticity of an import authorization document. The INCB Secretariat maintains a file containing sample specimens of import authorizations from states and non-states parties to the drug control conventions for this purpose. If the INCB Secretariat is not able to immediately confirm the validity of an import authorization presented by the authorities an export country, then the Secretariat will attempt to either facilitate communication between the authorities of the two countries or attempt to validate the import authorization with the issuing authority on behalf of the authorities of exporting country.

Endnotes

1 See https://www.incb.org/incb/en/narcotic-drugs/Yellowlist/yellow-list.html.

2 See https://www.incb.org/incb/en/psychotropics/green-list.html.

3 See https://www.incb.org/incb/en/precursors/Red_Forms/red-list.html.

4 Established by ECOSOC in 1946, the CND is the central drug policy-making body within the United Nations System and may make recommendations for the implementation of the International Drug Control Conventions.

5 These prohibited transactions include exports of consignments to a post office box, or to a bank to the account of a party other than the party named in the export authorization, and exports of consignments to a bonded warehouse unless the government of the importing country certifies on the import certificate, produced by the person or establishment applying for the export authorization, that it has approved the importation for the purpose of being placed in a bonded warehouse.

6 See Article 19 of the 1961 Convention.

7 Subject to the provisions of Article 12 of the 1961 Convention.

8 See Article 12 of the 1971 Convention.

9 See Article 7 of the 1971 Convention for special provisions regarding substances in Schedule I.

10 See resolutions 1985/15 and 1987/30, *Improvement of the control of international trade in psychotropic substances listed in Schedules III and IV of the 1971 Convention on Psychotropic Substances*, UN documents E/RES/1985/15 and E/RES/1987/30, 28 May 1985 and 26 May 1987.

11 See Article 13 of the 1971 Convention.

12 Including: resolution 1995/20, *Measures to strengthen international cooperation to prevent diversion of substances listed in table I of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 and used in the illicit manufacture of stimulants and other psychotropic substances*, UN document E/RES/1995/20, 24 July 1995; and resolution 49/3, *Strengthening systems for the control of precursor chemicals used in the manufacture of synthetic drugs*, UN document E/2006/28 E/CN.7/2006/10, 17 March 2006.

13 Article 12(9)(a) of the 1988 Convention.

14 These are methylenedioxyphenylacetone (3,4-MDP-2-P), ephedrine, phenylacetone (P-2-P) and pseudoephedrine, as well as estimated requirements for imports of preparations containing those substance (see UN document E/2006/28 E/CN.7/2006/10).

15 Article 12(9)(d)-(e) of the 1988 Convention.

16 Outlined in Article 31 of the 1961 Convention, Article 12 of the 1971 Convention and Article 18 of the 1988 Convention.

17 Further guidance on the implementation of these procedures is summarized in *Lessons from Countries and Humanitarian Aid Organizations in Facilitating the Timely Supply of Controlled Substances during Emergency Situations* (INCB, 2021).

18 See resolution 55/6, *Developing an international electronic import and export authorization system for licit trade in narcotic drugs and psychotropic substances*, UN document E/2012/28 E/CN.7/2012/18, 16 March 2012.

19 See https://i2es.incb.org.

20 See https://www.incb.org/documents/PRECURSORS/PEN/PEN_Online_Brochure_v2022.pdf.

21 See https://www.incb.org/documents/PRECURSORS/PEN/PEN_Online_LIGHT_brochure_final.pdf.

WHO Framework Convention on Tobacco Control and Protocol to Eliminate Illicit Trade in Tobacco Products

There are two international treaties currently in force that set out legal obligations for parties with the overall goal of curbing the tobacco epidemic: the WHO Framework Convention on Tobacco Control (WHO FCTC) and the Protocol to Eliminate Illicit Trade in Tobacco Products (Protocol). The WHO FCTC provides a framework of comprehensive, multisectoral tobacco control measures in order to reduce continually and substantially the prevalence of tobacco use and exposure to tobacco smoke. The Protocol builds on the WHO FCTC and focuses on the elimination of illicit trade in tobacco products through supply chain controls and other measures.

Parties' implementation of measures under the WHO FCTC may have significant effects on cross-border trade. These include demand reduction measures, such as price and tax measures, packaging and labelling regulations, and measures to ban cross-border tobacco advertising, promotion and sponsorship, as well as supply reduction provisions such as measures to combat illicit trade in tobacco products. The Protocol, on the other hand, expressly sets out several measures that may affect export regulations and controls, including the establishment of a global tracking and tracing regime for all products manufactured in or imported into a party, as well as obligations for parties to make the export of tobacco products subject to a licence or equivalent approval or control system.

WTO members that are parties to the WHO FCTC have used it to justify quantitative restrictions on import trade. WTO members may also find reference in future notifications to the WTO that may be made by parties to the Protocol with respect to import and export of tobacco products and tobacco manufacturing equipment. This chapter provides a brief introduction to these two treaties and discusses how implementation by parties of the obligations they contain could have an impact on certain aspects of cross-border trade in tobacco products.

Prepared by Evita Ricafort and Sara Hitchman (Secretariat of the WHO Framework Convention on Tobacco Control).

Background

Tobacco use and exposure to tobacco smoke kills over 8 million people globally each year.[1] The cost of smoking – including related health expenditures and productivity losses – has been estimated at over US$ 1.4 trillion annually.[2] Due to the heavy global toll of the tobacco epidemic and the need for a concerted response and international cooperation, the WHO Framework Convention on Tobacco Control (WHO FCTC) was adopted unanimously in 2003 by the 56th World Health Assembly – the governing body of the World Health Organization (WHO) – and entered into force in 2005. The WHO FCTC was quickly and widely embraced.

In recognition that the elimination of all forms of illicit trade in tobacco products is an essential component of tobacco control, the Protocol to Eliminate Illicit Trade in Tobacco Products (Protocol) was adopted in 2012 by the Conference of the Parties (CoP), the governing body of the WHO FCTC, and entered into force in 2018. As of the time of writing, there are 182 parties to the WHO FCTC. The Protocol has 67 parties. The Meeting of the Parties (MoP) is the governing body of the Protocol and comprises all parties to the Protocol.

WHO Framework Convention on Tobacco Control

The WHO FCTC aims to address the global tobacco epidemic and reaffirms the right of all people to the highest standard of health. It is the first treaty that was negotiated under the auspices of the WHO, and as stated in its preamble, was developed in response to the "concern of the international community about the devastating worldwide health, social, economic and environmental consequences of tobacco consumption and exposure to tobacco smoke". The obligations articulated in the WHO FCTC comprise a series of demand and supply reduction measures, as well as provisions relating to criminal and civil liability and to scientific and technical cooperation and exchange of information – all of which seek to address comprehensively the complex factors that facilitate the spread of the tobacco epidemic globally.

The objective of the WHO FCTC and its Protocol, articulated in Article 3, is to:

> "… protect present and future generations from the devastating health, social, environmental and economic consequences of tobacco consumption and exposure to tobacco smoke by providing a framework for tobacco control measures to be implemented by the parties at the national, regional and international levels in order to reduce continually and substantially the prevalence of tobacco use and exposure to tobacco smoke."

Article 4 sets out its guiding principles and calls for comprehensive multisectoral implementation of tobacco control measures, while requiring in its general obligations (Article 5) that parties protect their public health policies with respect to tobacco control from commercial and other vested interests of the tobacco industry (defined in Article 1(e) as "tobacco manufacturers, wholesale distributors and importers of tobacco products").

Demand reduction provisions

The core demand reduction provisions of the WHO FCTC are found in Articles 6 and 7-14:

- price and tax measures (Article 6);
- non-price measures to reduce demand, such as protection from exposure to tobacco smoke (Article 8);
- regulation of the contents of tobacco products and tobacco product disclosures (Articles 9 and 10);
- packaging and labelling of tobacco products (Article 11);
- education, communication, training and public awareness (Article 12);
- bans on tobacco advertising, promotion and sponsorship (Article 13);
- measures to address tobacco dependence and cessation (Article 14).

Supply reduction provisions

The core supply reduction provisions of the WHO FCTC are found in Articles 15-17:

- commitment of parties to eliminate all forms of illicit trade in tobacco products (Article 15– expanded upon in the Protocol);
- regulation of sales to and by minors (Article 16);
- provision of economically viable alternatives for tobacco workers and growers (Article 17).

Other provisions

Other articles seek to protect human health and the environment from the impact of tobacco cultivation and manufacture (Article 18), to provide for criminal and civil liability to enforce measures (Article 19), as well as establish mechanisms to promote scientific and technical cooperation and exchange of information (Articles 20-22).

In addition to the provisions of the WHO FCTC, the parties have adopted guidelines for implementation of several articles that further elaborate on evidence-based measures to assist parties in meeting their obligations.[3]

Some of the obligations contained in the WHO FCTC and the overall determination of parties "to give priority to their right to protect public health" may have an effect on cross-border trade. These provisions could include measures related to control of the supply chain to eliminate illicit trade in tobacco products under Article 15 (including

licensing to control or regulate the production and distribution of tobacco products). The implementation of the Convention by a party will involve regulatory measures applicable to the tobacco industry.

Protocol to Eliminate Illicit Trade in Tobacco Products

The Protocol is an international treaty elaborated by the parties to the WHO FCTC further to Article 15, which aims to eliminate all forms of illicit trade in tobacco products through the implementation of a package of measures with an emphasis on international cooperation. The Protocol was developed in response to illicit trade in tobacco products, including both domestic and cross-border trade, and covering tobacco, tobacco products and tobacco manufacturing equipment.

Illicit trade in tobacco products is a serious threat to public health because it fuels the tobacco epidemic by increasing the accessibility and affordability of tobacco products. Moreover, illicit trade undermines tobacco control policy by reducing the impact of key tobacco control measures like price and tax increases, thus also causing substantial losses in government revenues, as well as circumventing labelling and packaging requirements and other important demand reduction measures. Illicit trade in tobacco products also contributes to the funding of transnational criminal activities.

Supply chain related provisions in the Protocol

The Protocol seeks to secure the supply chain of tobacco products through a series of key measures to prevent, deter, detect, investigate and prosecute illicit trade. These include obligations on the parties to implement a licensing (or equivalent approval) or control system with regard to the manufacture of tobacco products and manufacturing equipment, as well as for the import or export of such products and equipment (Article 6), with the addition of due diligence requirements (Article 7).

A key element of the Protocol is the obligation to establish a global tracking and tracing regime, comprising national and/or regional tracking and tracing systems for all products manufactured in or imported into the party, and a global information sharing focal point enabling parties to make enquiries and receive relevant information (Article 8). Additional measures to effect supply chain control include:

- obligations with regard to record-keeping (Article 9);
- security and preventive measures (Article 10);
- measures to regulate effectively sales through the Internet (Article 11);
- free zones and international transit (Article 12);
- duty-free sales (Article 13).

Other provisions in the Protocol

Additional provisions relate to:

- establishment, investigation and prosecution of offences (Articles 14-19);
- international cooperation, including general and enforcement information sharing (Articles 20-22);
- assistance and cooperation (Articles 23-29);
- extradition (Articles 30 and 31).

As noted above, several provisions of the Protocol contain obligations on parties to implement measures with regard to the import and export of tobacco, tobacco products and tobacco manufacturing equipment. The following include key obligations under the Protocol that may have significant implications on export regulations and controls.

Licence, equivalent approval or control

Article 6 (Licence, equivalent approval or control system) requires parties to make the manufacture, import and export of tobacco products and manufacturing equipment subject to a licence or equivalent approval system. Article 6 outlines the measures that parties shall take with a view to ensuring an effective licensing system, including measures to:

- establish or designate a competent authority to issue, renew, suspend, revoke and/or cancel licences;
- require that each application for a licence contains requisite information about the applicant, such as identity, manufacturing locations and capacity, details of the tobacco products and manufacturing equipment, description of the intended use and intended market of sale of the tobacco products, and other relevant information;
- monitor and collect licence fees and consider using them in effective administration and enforcement of the licensing system or for public health;
- prevent, detect and investigate any irregular or fraudulent practices in the operation of the licensing system;
- undertake periodic review, renewal, inspection or audit of licences;
- establish a time frame for expiration of licences and subsequent requisite reapplication; and
- oblige the licensed natural or legal person to inform the competent authority in advance of any change of location of their business or any significant change, and of any acquisition or disposal of manufacturing equipment.

Article 6 also indicates that five years after the entry into force of the Protocol, the MoP (the governing body of the Protocol) will take action to identify any “key inputs” that are essential to the manufacture of tobacco products and can be subject to an effective control mechanism, then consider the necessary action.

Tracking and tracing

Article 8 (Tracking and tracing) requires a global tracking and tracing regime to be established within five years of entry into force of the Protocol, for purposes of further securing the supply chain and to assist in the investigation of illicit trade in tobacco products. This regime will have a "global information sharing focal point" accessible to all parties and enabling them to make inquiries and receive relevant information.

Parties are obliged to establish national and regional tracking and tracing systems, controlled by the party for all tobacco products that are manufactured in or imported into its territory taking into account their own national or regional specific needs and available best practice. Each party will also have to ensure that all unit packets and packaging and any outside packaging of cigarettes bear unique, secure and non-removable identification markings, such as codes or stamps, within five years of the Protocol entering into force for that party; for other tobacco products, the deadline is ten years from entry into force.

Record-keeping

Article 9 (Record-keeping) obliges parties to require all natural and legal persons engaged in the supply chain of tobacco, tobacco products and manufacturing equipment to obtain and store information on all relevant transactions, and which should be made available to the authorities. These records include shipment date, shipping routes and destination, mode of transportation, intended market of retail sale or use, and other relevant information.

Unlawful conduct

Article 14 (Unlawful conduct including criminal offences) details what conduct should be considered unlawful subject to the principles of the domestic law of each party. Parties have discretion in deciding which of the unlawful conduct would constitute a criminal offence and shall notify the Secretariat which of the unlawful conduct that party has determined to be a criminal offence. Such conduct includes:

- exporting tobacco, tobacco products or manufacturing equipment without paying the applicable duties, taxes and other levies or without bearing applicable fiscal stamps and unique identification markings, or attempts to smuggle such products;
- exporting illicitly manufactured tobacco, illicit tobacco products, products bearing false fiscal stamps and/or other required markings or labels, or illicit manufacturing equipment;
- failing to keep records required in the Protocol or maintaining false records.

Information sharing

Article 20 (General information sharing) requires parties to report on matters relevant for purposes of achieving the objectives of the Protocol, including details of seizures of tobacco products and taxes evaded, and exports of tobacco, tobacco products or manufacturing equipment.

Article 21 (Enforcement information sharing) requires parties to exchange information such as records of licensing, investigations and prosecutions, and records of payment for export of tobacco, tobacco, products or manufacturing equipment, on their own initiative or on the request of a party that provides due justification that such information is necessary for the detection or investigation of illicit trade.

Considerations in relation to WTO agreements

WTO members that are parties to the WHO FCTC have used it to justify quantitative restrictions on the import and export of tobacco products. To date, four notifications[4] to the WTO have used the WHO FCTC as a justification for quantitative restrictions on import trade. None has listed the WHO FCTC as a justification for quantitative restrictions on export trade flows. Justifications for restrictions with regard to tobacco or tobacco products have focused instead on GATT 1994 Article XX(b), which refers to the protection of human life or health, in addition to existing national legislation.

On the other hand, the Protocol envisions control of the tobacco product supply chain to eliminate illicit trade in tobacco products and covers the import and export of tobacco products and manufacturing equipment specifically. Hence, it may find reference in notifications to the WTO in the future with regard to the import and export of tobacco products and tobacco manufacturing equipment.

Endnotes

1 See https://www.who.int/news-room/fact-sheets/detail/tobacco.

2 Goodchild *et al.* (2018).

3 Available at https://fctc.who.int/who-fctc/overview/treaty-instruments.

4 See: *Notification pursuant to the Decision on Notification Procedures for Quantitative Restrictions*, WTO documents G/MA/QR/N/MYS/1, 6 October 2020; G/MA/QR/N/MUS/4, 14 September 2018; G/MA/QR/N/MUS/5, 24 September 2020; and G/MA/QR/N/MUS/6, 5 October 2022.

3 Weapons and disarmament

United Nations Security Council resolutions and export controls

In discharging its primary responsibility of maintenance of international peace and security, the United Nations Security Council has adopted several resolutions pertaining to weapons control and other measures, which may have an effect on trade in certain products, especially when the resolutions seek to control the proliferation and transfer of nuclear, chemical and biological weapons. While some of these resolutions are of general application, others are specific to certain UN members. Security Council resolution 1540, which was adopted in 2004, is a key instrument that affirms that the proliferation of nuclear, chemical and biological weapons and their means of delivery constitutes a threat to international peace and security and established a framework that obliges all states, *inter alia*, to refrain from supporting by any means non-state actors from developing, acquiring, manufacturing, possessing, transporting, transferring or using nuclear, chemical or biological weapons and their means of delivery. This chapter delves into this resolution, discussing the obligations UN members have undertaken and the institutional mechanisms established thereunder, with an emphasis on export controls.

Prepared by the WTO Secretariat and reviewed by the Security Council Affairs Division (Department of Political and Peacebuilding Affairs, United Nations).

Background

The Security Council is one of the primary organs of the United Nations. The Charter of the United Nations confers the Security Council with the "primary responsibility [of] the maintenance of international peace and security".[1] It has fifteen members, including the five permanent members (China, France, Russian Federation, United Kingdom, United States) and ten non-permanent members elected by the General Assembly[2], with each member having one vote.[3] Under the UN Charter, all UN members are obligated to comply with decisions of the Security Council.[4]

Resolutions adopted by the Security Council are binding on all UN members. Security Council resolutions are formal expressions of the opinion or will of UN organs. It is an official document accepted by fifteen members of the Security Council and is adopted by a vote of its members. The resolution is adopted if nine or more of the fifteen members vote for the resolution, "including the concurring votes of the permanent members"[5]; that is, it is not vetoed by any of the five permanent members. Security Council resolutions may concern current UN activities (e.g. elections to the International Court of Justice), but are more often adopted as part of its work to ensure the peaceful settlement of international disputes and eliminate threats to international peace and security. Security Council resolutions may also impose sanctions aimed at maintaining peace and security, some of which may require UN members to introduce trade restrictive measures or controls.

Security Council resolution 1540 (2004)

Security Council resolution 1540, which was adopted on 28 April 2004, is a key instrument to prevent the proliferation of nuclear, chemical and biological weapons and their means of delivery.[6] This resolution obliges UN members, *inter alia*, to refrain from supporting by any means non-state actors from developing, acquiring, manufacturing, possessing, transporting, transferring or using nuclear, chemical or biological weapons and their means of delivery. While this resolution does not prescribe specific trade-related measures, several UN members have introduced export controls and other trade-related measures to comply with these obligations.

Bodies under Security Council resolution 1540 (2004)

The resolution establishes a subsidiary body called the 1540 Committee that reports to the Security Council on the implementation of the resolution.[7] It comprises the 15 members of the Security Council, and its mandate and scope of activities are derived from Security Council resolution 1540 (2004) and other subsequent resolutions of the Security Council. Broadly, the 1540 Committee works in the areas of monitoring and implementation of the resolution, provision of related assistance, cooperation with other international organization and transparency and outreach.

The working groups are open to all members of the 1540 Committee established pursuant to Security Council resolution 1540 (2004).[8] The current 20th programme of work of the 1540 Committee covers the period from 1 February 2023 to 31 January 2024.[9]

The 1540 Committee is assisted by the Group of Experts.[10] The Experts and its Coordinator are appointed by the UN Secretary-General following the approval of their recruitment by the 1540 Committee. The UN Department for Political and Peacebuilding Affairs and the UN Office for Disarmament Affairs provide support to the 1540 Committee and its Group of Experts.

Export controls under Security Council resolution 1540 (2004)

While Security Council resolution 1540 (2004) does not prescribe the export controls to be followed by UN members, it requires them to refrain from providing any form of support to non-state actors that attempt to develop, acquire, manufacture, posses, transport, transfer or use nuclear, chemical or biological weapons and their means of delivery. They are also required, in accordance with their domestic procedures, to adopt and enforce appropriate effective laws that prohibit any non-state actor to manufacture, acquire, possess, develop, transport, transfer or use nuclear, chemical or biological weapons and their means of delivery, in particular for terrorist purposes, as well as attempts to engage in any of the foregoing activities, participate in them as an accomplice, assist or finance them.

UN members, under the resolution are required to[11]:

(i) develop and maintain appropriate effective measures to account for and secure such items in production, use, storage or transport;
(ii) develop and maintain appropriate effective physical protection measures;
(iii) develop and maintain appropriate effective border controls and law enforcement efforts to detect, deter, prevent and combat, including through international cooperation when necessary, the illicit trafficking and brokering in such items in accordance with their domestic legal authorities and legislation and consistent with international law;
(iv) establish, develop, review and maintain appropriate effective domestic export and transshipment controls over such items, including appropriate laws and regulations to control export, transit, transshipment and re-export and controls on providing funds and services related to such export and transshipment such as financing, and transporting that would contribute to proliferation, as well as establishing end-user controls; and establishing and enforcing appropriate criminal or civil penalties for violations of such export control laws and regulations.

It is important to note that neither the resolution nor the 1540 Committee endorse or require any control lists that UN members must adopt. Each of them may adopt the lists of materials, agents or technology that it considers appropriate. However, the 1540 Committee recognizes that several international conventions, intergovernmental organizations and multilateral or regional agreements or arrangements have already adopted lists of sensitive goods that are in the public domain.

Domestic implementation of Security Council resolution 1540 (2004)

The 1540 Committee seeks to promote implementation of the resolution by all UN members through dialogue, outreach, assistance and cooperation. To this end, it uses several tools in these efforts, including the so-called 1540 Committee Matrix, an assistance template[12], participation in workshops and events relevant for the implementation of the resolution and information posted on its website.

Through Security Council resolution 1540 (2004) and its follow-up resolutions, all UN members are required to present a report (the "first report") describing the steps they have taken to implement the resolution and to submit such a report to the 1540 Committee.[13] Further information was sought from UN members, on a voluntary basis, through subsequent and related Security Council resolutions, such as on their laws and regulations[14] and national implementation action plans.[15] Several members are in the process of either providing or updating this information.

The information relating to the specific implementation by each UN member is compiled in matrices, referred to generally as the 1540 Committee Matrix, which is a reference tool for facilitating technical assistance and to enable the 1540 Committee to continue to enhance its dialogue with UN members on their implementation of Security Council resolution 1540 (2004) and other relevant Security Council resolutions.[16] A matrix for each UN member is prepared by the group of experts based on national reports, and is subsequently reviewed and approved by the 1540 Committee. While the information in the matrices originates primarily from national reports provided by UN members to the 1540 Committee, it is complemented by official government information, including that made available to intergovernmental organizations. The reports and the matrices are periodically updated. It should be noted that the matrices are not a tool for measuring compliance of states in their non-proliferation obligations but for facilitating the implementation of the relevant Security Council resolutions.

The 1540 Committee Matrix includes a section to review the "Border controls and export and transshipment controls to prevent the proliferation of nuclear, chemical and biological weapons and their means of delivery including related material". It contains information for each UN member on issues such as border controls to detect, deter, prevent and combat illicit trafficking; law enforcement to detect, deter, prevent and combat illicit trafficking; border control detection measures; export control legislation in place; licensing provisions and authority; controls lists of materials, equipment and technology; end-user controls; transit controls; and transshipment controls, among other things. Once approved, the 1540 Committee Matrix for every UN member is made publicly available through the Security Council website.

The 1540 Committee further encourages states to review their existing legislation and practices, and to consider steps to fill any gaps.

Security Council resolution 1540 (2004) and other weapons-related international treaties

The resolution affirms support for the multilateral treaties whose aim is to eliminate or prevent the proliferation of weapons of mass destruction and the importance for all states to implement them fully. It reiterates that none of the obligations in Security Council resolution 1540 (2004) shall conflict with or alter the rights and obligations of parties to the Treaty on the Non-Proliferation of Nuclear Weapons, the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, or the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction or alter the responsibilities of the International Atomic Energy Agency and the Organization for the Prohibition of Chemical Weapons.

Security Council resolution 1540 (2004) complements relevant multilateral treaties and conventions by requiring all states to comply with the obligations outlined in the resolution, irrespective of their status regarding such treaties and arrangements. Through its integrated approach, Security Council resolution 1540 (2004) aims at preventing proliferation of weapons of mass destruction (WMD) and their means of delivery as well as illicit trafficking in WMD-related materials, particularly with respect to the activities of non-state actors.

The resolution is particularly relevant at the practical level. For instance, by implementing Security Council resolution 1540 (2004) states better integrate their domestic capacities – such as with law enforcement and border control agencies – to prevent the proliferation of illicit trafficking of WMD.

Other Security Council resolutions

As mentioned above, while Security Council resolution 1540 (2004) is broader in scope, other resolutions may impose sanctions on specific UN members and are aimed at maintaining international peace and security. To oversee such sanctions, the Security Council establishes sanctions committees, composed of all Security Council members, which are tasked with implementation of the "sanctions regimes". The Security Council Affairs Division of the UN Department of Political and Peacebuilding Affairs provides substantive and secretariat support to these committees, in addition to also recruiting, managing and supporting groups of experts assisting these committees. These sanctions may typically include specific trade-related measures, such as trade embargos, or require in practice the introduction of export controls.

Endnotes

1 UN Charter, Chapter V, Article 24(1).

2 UN Charter, Chapter V, Article 23(1).

3 See UN Charter, Chapter V, Article 27. The five permanent members of the Security Council have the so-called "veto powers".

4 UN Charter, Chapter V, Article 25.

5 UN Charter, Chapter V, Article 27(3).

6 *United Nations Security Council resolution 1540 (2004),* UN document S/RES/1540 (2004), 28 April 2004.

7 Security Council resolution 1540 (2004), Operative para. 4.

8 See https://www.un.org/en/sc/1540/about-1540-committee/working-groups.shtml.

9 The complete list of current and previous programmes of work of the 1540 Committee are available at https://www.un.org/en/sc/1540/about-1540-committee/programme-of-work.shtml.

10 See https://www.un.org/en/sc/1540/about-1540-committee/group-of-experts.shtml.

11 See https://www.un.org/en/sc/1540/faq.shtml#1.

12 The 1540 Committee developed an assistance template and encourages states in need of assistance to use the template to submit their assistance requests. More information is available at https://www.un.org/en/sc/1540/assistance/assistance-template.shtml.

13 National Reports are available at https://www.un.org/en/sc/1540/national-implementation/national-reports.shtml.

14 The List of Legislative Documents is available at https://www.un.org/en/sc/1540/national-implementation/legislative-database/list-of-legislative-documents.shtml.

15 National Implementation Action Plans are available at https://www.un.org/en/sc/1540/national-implementation/national-implementation-plans.shtml.

16 Committee Approved Matrices are available at https://www.un.org/en/sc/1540/national-implementation/1540-matrices/committee-approved-matrices.shtml.

Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and their Destruction

This chapter introduces the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction – commonly known as the Chemical Weapons Convention (CWC) – and its implementing body, the Organisation for the Prohibition of Chemical Weapons (OPCW), and examines the provisions of the Convention relevant to the international trade in chemicals. The OPCW seeks to achieve a world permanently free of chemical weapons and to contribute to international security and stability. The trade measures discussed relate to, *inter alia*: the transfer-related obligations undertaken by states parties upon acceding to the Convention; the quantitative restrictions placed on the import and export of certain toxic chemicals relevant to the object and purpose of the Convention; and the monitoring and verification by the Technical Secretariat of the OPCW of such transfers, in furtherance of its mandate of promoting non-proliferation and preventing the re-emergence of chemical weapons. The chapter further considers these Convention-based import and export obligations in relation to the WTO agreements and concludes with relevant recent developments and future considerations.

Prepared by Johan Rautenbach and Vanya Kumar (Organisation for the Prohibition of Chemical Weapons).

Background

The OPCW is the implementing body of the Convention.[1] The OPCW seeks to achieve a world permanently free of chemical weapons and to contribute to international security and stability. It was established by states parties to the Convention to achieve the object and purpose of general and complete chemical disarmament under strict and effective international control and promoting the use of chemistry for peaceful purposes; to ensure implementation of its provisions, including international verification of compliance with it; and to provide a forum for consultation and cooperation among states parties.[2]

The OPCW consists of three organs: the two policymaking organs are the Conference of the States Parties (CSP; 193 states parties) and the Executive Council (EC; 41 states parties); and the third organ is the Technical Secretariat, which is responsible for the day-to-day work of the OPCW. The Technical Secretariat verifies the destruction of chemical weapons, conducts inspections of chemical industry and military facilities, and assists states parties in the fulfilment of their CWC obligations.

Article I of the Convention identifies the general obligations that each state party undertakes upon accession to the Convention. States parties are *inter alia* required to declare and destroy their chemical weapons stockpiles and production facilities. They are further prohibited from exporting or importing chemical weapons, or from providing assistance or encouragement to other countries to develop or acquire chemical weapons.

Each state party is also required to adopt the necessary measures to ensure that toxic chemicals and their precursors are only developed, produced, otherwise acquired, retained, transferred or used within its territory or in any other place under its jurisdiction or control for purposes not prohibited under the Convention.[3] In particular, states parties have specific obligations in relation to the import and export of those toxic chemicals and their precursors which are listed in the Annex on Chemicals to the Convention, as described in the section on "Trade measures" below.

States parties acceding to the CWC undertake the obligation to review existing national regulations in the field of trade in chemicals in order to render them consistent with the object and purpose of the Convention.[4] Trade measures under the Convention, considered below, have effectively contributed to preventing the proliferation of chemical weapons and promoting universal adherence to the Convention.

Trade measures

The application of trade measures, including import and export regulations and controls, by the OPCW and the implementing states parties, is engaged primarily with respect to the transfer regime under the Convention and related decisions of the OPCW policymaking organs. This control regime concerns transfers of the "scheduled" chemicals (i.e. the toxic

chemicals and their precursors listed in Schedules 1, 2 and 3 of the Annex on Chemicals to the Convention).[5]

States parties are required to make chemical industry declarations related to the mentioned toxic chemicals and precursors, as well as to other chemical production facilities producing discrete organic chemicals. Each state party is required to submit initial and annual declarations regarding relevant chemicals and facilities in accordance with the Verification Annex to the Convention.[6]

Decisions of the CSP also provide guidance on the implementation of the transfer-related provisions of the Convention.[7] To help further harmonize the way states parties report imports and exports, thereby reducing the number of discrepancies where the quantities declared by the importing and exporting states parties do not match, and considering the lack of agreed understanding of the terms "import" and "export", the CSP at its Thirteenth Session, which took place in 2008, decided that:

> "… solely for the purposes of submitting declarations under paragraphs 1, 8(b) and 8(c) of Part VII and paragraph 1 of Part VIII of the Verification Annex, the term 'import' shall be understood to mean the physical movement of scheduled chemicals into the territory or any other place under the jurisdiction or control of a State Party from the territory or any other place under the jurisdiction or control of another State, excluding transit operations; and the term 'export' shall be understood to mean the physical movement of scheduled chemicals out of the territory or any other place under the jurisdiction or control of a State Party into the territory or any other place under the jurisdiction or control of another State, excluding transit operations".[8]

These definitions are relevant with respect to the interpretation of the related provisions of the Convention, as discussed below.

General transfer regime for scheduled chemicals

Schedule 1 chemicals

The toxic chemicals and precursors listed in Schedule 1[9] are those which have been developed, produced, stockpiled or used as chemical weapons, or otherwise pose high risk to the object and purpose of the Convention, having little or no use for purposes not prohibited under the Convention.[10] Since they pose high risk to the object and purpose of the Convention, strict restrictions are therefore placed on transfers of such chemicals. In particular:

(i) A state party may only transfer Schedule 1 chemicals outside its territory to another state party to the Convention.[11] Transfers to states not party to the Convention are accordingly prohibited, as further affirmed by the OPCW policymaking organs.[12]

(ii) Schedule 1 chemicals transferred cannot be retransferred to a third state.[13]

(iii) Purposes for which Schedule 1 chemicals can be transferred is limited to research, medical, pharmaceutical or protective purposes – in types and quantities which can be justified for such purposes, with an aggregate amount given or acquired at any given time being less than or equal to 1 tonne.[14]

(iv) Procedures for the import and export of Schedule 1 chemicals under the Convention involve a notification process. Both states parties involved in the transfer are required to notify the Technical Secretariat not less than 30 days before any such transfer.[15]

Additionally, not later than 90 days after the end of a year, each state party is required to make a detailed annual declaration regarding transfers of Schedule 1 chemicals during that year. For each transfer, such declarations must include information on the chemical name, structural formula, any Chemical Abstracts Service registry number, quantity acquired or transferred, the recipient and the purpose of the transfer.[16]

Schedule 2 chemicals

The toxic chemicals and precursors listed in Schedule 2[17] pose significant risk to the object and purpose of the Convention and are not produced in large commercial quantities for purposes not prohibited under the Convention.[18] The transfers of such chemicals are also regulated by the Convention.

Schedule 2 chemicals may only be transferred to or received from states parties. The transfer of Schedule 2 chemicals by states parties to the Convention to states not party is accordingly prohibited.[19] This obligation took effect on 29 April 2000, three years after entry into force of the Convention.[20]

The Convention does not contain general quantitative prohibitions on transfers of Schedule 2 chemicals. These are, however, monitored through state party declarations, which are *inter alia* to include aggregate national data for the previous calendar year on quantities imported and exported of each Schedule 2 chemical, as well as a quantitative specification of import and export for each country involved.[21] The national data to be aggregated includes activity by natural and legal persons transferring a declarable chemical between the territory of the declaring state party and the territory of other states.[22]

In addition, for declared Schedule 2 plant sites, states parties are required to provide data on the quantities imported and exported of each Schedule 2 chemical produced, processed, or consumed above the declaration threshold at the plant site, as well as information regarding direct exports of each Schedule 2 chemical above the declaration threshold, with a specification of the states involved.[23]

Schedule 3 chemicals

The toxic chemicals and precursors listed in Schedule 3[24] pose a risk to the object and purpose of the Convention, but may also be produced in large commercial quantities for purposes not prohibited under the Convention.[25] They are therefore subject to less stringent transfer controls than other scheduled chemicals.

Distinct from the regime governing the transfers of Schedule 1 and 2 chemicals, the transfer of Schedule 3 chemicals to states not party to the Convention is not prohibited. Each state party is, however, required to adopt the necessary measures to ensure that the transferred chemicals shall only be used for purposes not prohibited under the Convention. The transferring state party must, *inter alia,* require from the recipient state (not party) certification in relation to the transferred chemicals, stating:

(i) that they will only be used for purposes not prohibited under the Convention;
(ii) that they will not be re-transferred;
(iii) their types and quantities;
(iv) their end uses; and
(v) the names and addresses of the end users.[26]

The Convention does not contain general quantitative prohibitions on transfers of Schedule 3 chemicals. These are, however, monitored through state party declarations, which are to include, *inter alia,* aggregate national data for the previous calendar year on the quantities produced, imported and exported of each Schedule 3 chemical, as well as a quantitative specification of import and export for each country involved.[27] A summary is provided in Table 1.

Table 1. Summary of schedules

Schedule 1	Schedule 2	Schedule 3
Poses a high risk to the object and purpose of the Convention	Poses a significant risk to the object and purpose of the Convention	Poses a risk to the object and purpose of the Convention
Precursor in final stage of chemical weapon production	Precursor to Schedule 1 or Schedule 2A chemicals	Precursor to Schedule 1 or Schedule 2B chemicals
Little or no use for purposes not prohibited by the Convention	Not produced commercially in large quantities for purposes not prohibited by the Convention	May be produced commercially in large quantities for purposes not prohibited by the Convention
For example: sarin, ricin or mustard gas	For example: thiodiglycol used for textile dyeing or dimethyl methylephosphate (DMMP) as a flame retardant	For example: phosgene used for plastics, triethanolamine for cosmetics/toiletries and cement

Implementation considerations

Domestic legislation

States parties are under the obligation to enact national legislation, including penal legislation, to implement their obligations under the Convention, *inter alia* prohibiting natural and legal persons on their territory or under their jurisdiction from undertaking any activity prohibited to a state party under the Convention.[28] The "initial measures" envisaged under the OPCW National Implementation Framework comprise the minimum set of legislative measures deemed necessary for a non-possessor state party that has no declarable chemical production facility on its territory,[29] and include a comprehensive control regime for scheduled and toxic chemicals and reporting on transfers (import and export) of scheduled chemicals, as well as penalties for violation of the law. States parties have generally implemented the restrictions, annual reporting and advance notification requirements in relation to the import and export of scheduled chemicals through the enactment of domestic legislation.[30]

Addressing discrepancies

The implementation of transfer-related requirements by states parties, which are subject to verification by the OPCW, indicate that declarations of import and export aggregate national data and the level of discrepancies between declared imports and exports (transfer discrepancies) is a long-standing issue. Factors identified as potential causes for transfer discrepancies include:

(i) lack of effective national legislation to allow authorities to collect the necessary data;
(ii) lack of awareness among traders and industry and among customs officers;
(iii) differing approaches to declarations of trade in mixtures;
(iv) lack of harmonization in reporting due to differing understandings of the terms "import" and "export";
(v) trade over the year end (where export takes place at the end of one year but the import occurs early in the following year);
(vi) simple clerical errors or confusion over units of weight.[31]

This issue is being addressed by the Technical Secretariat as part of its analysis of the aggregate national data by matching up imports and exports to identify transfer discrepancies and then writing to both states parties involved in a discrepancy to encourage them to review their data and consult together with a view to resolving the discrepancy (OPCW, 2022).

Training and capacity building with the World Customs Organization

Cognizant of the key role played by customs officials in monitoring the import and export of toxic chemicals of relevance to the CWC, the OPCW and the World Customs Organization

signed, on 13 January 2017, a memorandum of understanding to expand cooperation and tighten national and international controls on the trade in toxic chemicals. The memorandum contains an agreement on measures to combat the illicit trafficking of chemicals, transfers of which are prohibited under the CWC, and incorporates provisions for mutual consultation, exchange of information, technical and financial cooperation, and technical meetings and missions.[32]

The OPCW and World Customs Organization have co-organized several joint training courses geared toward enhancing the capacities and capabilities of national customs authorities to enforce the Convention's chemical transfer regime and exercise the oversight necessary for the trade in dual-use chemicals, thereby preventing the misuse of toxic chemicals and promoting peaceful uses of chemistry. The training programme, which is set to continue in the future, is regularly updated to reflect new or emerging challenges, including illicit trafficking of chemicals through non-state actors.

Some considerations in relation to the WTO agreements

States parties to the Convention expressly outlined their desire to "promote free trade in chemicals" in the preamble, which is consistent with the spirit and purpose of the General Agreement on Tariffs and Trade. Transfer control and licensing procedures under the Convention are intended to be efficient, minimize disruptions to the normal trade of chemicals for peaceful use, and promote economic and technological development of states parties. Subject to the provisions of the Convention and without prejudice to the principles and applicable rules of international law, states parties have the general right to transfer chemicals, and are required to not maintain restrictions among themselves which would restrict or impede trade in the field of chemistry for industrial, agricultural, research, medical, pharmaceutical or other peaceful purposes.[33]

Recent developments

In 2019, the CSP, at its 24th Session, approved the introduction of certain chemicals to Schedule 1 of the Annex on Chemicals to the Convention.[34] This marked the first time that changes had been introduced to this Annex since the Convention entered into force in 1997, demonstrating its capacity to remain fit-for-purpose in engaging with emerging threats. The changes also signified that, for states parties, the transfer regime relating to Schedule 1 chemicals was engaged for the first time with respect to these particular chemicals. The addition of new chemicals to the three schedules remains a possibility in the future as well.

The verified destruction of currently declared chemical weapons stockpiles is expected to be completed in 2023. The approaching completion of global chemical weapons disarmament as well as developments in science and technology and the expansion of global chemical

industry have been key drivers of the OPCW's adaptation to changing strategic circumstances, which include an increased focus on preventing the re-emergence of chemical weapons. This mandate of the OPCW received greater impetus with the inauguration of the new OPCW Centre for Chemistry and Technology in May 2023, which, among other activities, will allow for capacity development activities relating to the control of trade in chemicals using state-of-the-art facilities. Also of particular importance for the process of the OPCW adaptation are the special sessions of the CSP, generally convened every five years, to undertake reviews of the operation of the Convention, taking into account relevant scientific and technological developments.[35]

Finally, continuing to address proliferation risks by monitoring the international transfer of certain toxic chemicals remains an essential component in the realization of the object and purpose of the Convention. Ensuring the enactment of Convention-based obligations within domestic legislation in all states parties, elimination of discrepancies in reported transfer data, capacity-building of national authorities, and promoting chemical safety and security by providing tools and knowledge to mitigate risks arising from potential misuse of toxic chemicals are important goals of the OPCW in the context of export controls, as is the achievement of universality of OPCW membership. Sustained global effort, including further international cooperation in the field of trade in chemicals and improved understanding of the interlinked international obligations in this regard, is of benefit for the fulfilment of the OPCW's mandate of eliminating an entire category of weapons of mass destruction under international verification and preventing their re-emergence.

Endnotes

1 The Convention opened for signature in Paris on 13 January 1993 and entered into force on 29 April 1997.

2 Article VIII, para. 1.

3 Article VI, para. 2.

4 Article XI, para. 2(e).

5 The three schedules to the Annex on Chemicals list toxic chemicals and their precursors for the purpose of implementation of verification measures under the Convention; however, they do not constitute a definition of "chemical weapon", which is defined under Article II, para. 1.

6 Pursuant to Article VI, paras 7 and 8.

7 See: *Guidelines Regarding Declarations of Aggregate National Data for Schedule 2 Chemical Production, Processing, Consumption, Import and Export and Schedule 3 Import and Export*, OPCW document C-7/DEC.14, 10 October 2002; *Guidelines Regarding Declaration of Import and Export Data for Schedule 2 and 3 Chemicals*, OPCW document C-13/DEC.4, 3 December 2008; and *Implementation of Restrictions on Transfers of Schedule 2 and Schedule 3 Chemicals to and from States not Party to the Convention*, OPCW document C-V/DEC.16, 17 May 2000). The guidelines do not dictate how and on what basis states parties should collect data, but rather how the data collected should be reported.

8 OPCW document C-13/DEC.4, para. 1.

9 These include chemicals such as sarin, VX and saxitoxin.

10 Annex on Chemicals, "Guidelines for Schedule 1".

11 Verification Annex, Part VI, para. 1.

12 See *Report of the Third Special Session of the Conference of the States Parties to Review the Operation of the Chemical Weapons Convention*, OPCW document RC-3/3*, 19 April 2013, para. 9.91, recalling, in relation to transfers of scheduled chemicals to or from states not party, "the prohibitions on any such transfers of Schedule 1 and Schedule 2 chemicals."

13 Verification Annex, Part VI, para. 4.

14 Verification Annex, Part VI, paras 2 and 3.

15 An exception to the same is contained in the CWC: for quantities of 5 mg or less, the Schedule 1 chemical saxitoxin is not subject to the notification period if the transfer is for medical/diagnostic purposes. In such cases, the notification is to be made by the time of transfer (Verification Annex, Part VI, paras 5 and 5*bis*).

16 Verification Annex, Part VI, para. 6.

17 These include chemicals such as amiton, PFIB and BZ.

18 Annex on Chemicals, "Guidelines for Schedule 2".

19 Verification Annex, Part VII, para. 31. This provision is inapplicable to certain products containing Schedule 2 chemicals below established thresholds as well to products identified as consumer goods packaged for retail sale for personal use or packaged for individual use (see OPCW document C-V/DEC.16, para. 1).

20 Verification Annex, Part VII, para. 31 and 32. During the interim three-year period, each state party was to require an end-use certificate for transfers of Schedule 2 chemicals to states not party to the Convention. Each state party was also obligated to adopt the necessary measures to ensure that the transferred chemicals would only be used for purposes not prohibited under the Convention.

21 Verification Annex, Part VII, paras 1 and 2. Initial declarations are to be submitted not later than 30 days after the entry into force of the Convention for a state party and, thereafter, annual declarations not later than 90 days after the end of the previous calendar year.

22 OPCW document C-7/DEC.14, para. 1.

23 Verification Annex, Part VII, paras 8(b), 8(c) and 8(e)(iii). See also OPCW document C-13/DEC.4, preambular para. 3. Part VII, para. 3 of the Verification Annex provides the following declaration thresholds for plant sites producing, processing or consuming Schedule 2 chemicals: more than 1 kg of a chemical designated "*" in Schedule 2, part A; 100 kg of any other chemical listed in Schedule 2, part A; or 1 tonne of a chemical listed in Schedule 2, part B.

24 These include chemicals such as phosgene, cyanogen chloride and hydrogen cyanide.

25 Annex on Chemicals, "Guidelines for Schedule 3".

26 Verification Annex, Part VIII, para. 26. End-use certificates are not required for products containing Schedule 3 chemicals below an established threshold nor for products identified as consumer goods packaged for retail sale for personal use or packaged for individual use (see *Provisions on Transfers of Schedule 3 Chemicals to States not Party to the Convention*, OPCW document C-VI/DEC.10, 17 May 2001, para. 2).

27 Verification Annex, Part VIII, paras 1 and 2. Part VIII, para. 3 of the Verification Annex provides the following declaration thresholds for plant sites producing Schedule 3 chemicals: more than 30 tonnes.

28 Pursuant to Article VII, para. 1.

29 This indicates that these are measures that states parties would have to take irrespective of any chemical weapon destruction obligations or the state of their chemical industry.

30 According to the latest reported data of 31 July 2022, out of the 193 states parties to the Convention, 158 had adopted national implementing legislation, of which 122 had legislation covering all the initial measures and 36 had legislation covering some of the initial measures. Thirty-five states parties had yet to report on the adoption of any relevant legislation (see *Report by the Director-General: Overview of the Status of Implementation of Article VII of the Chemical Weapons Convention as at 31 July 2022*, OPCW document EC-101/DG.13* C-27/DG.9, 9 September 2022, paras 7 and 16).

31 See also: OPCW document EC-XXIII/S.1, 12 January 2001; and OPCW document EC-67/S/1, 16 January 2012.

32 The capacity development activities relevant to the control of trade in chemicals primarily target customs administrations as the authorities which provide data on the import and export of scheduled chemicals. The trainings at times also involve national authorities due to their role in receiving the customs data and making annual declarations.

33 Pursuant to Article XI, para. 2, in particular para. 2(c).

34 In accordance with Article XV, paras 4 and 5. See also: *Technical Change to Schedule 1(A) of the Annex on Chemicals to the Chemical Weapons Convention*, OPCW document C-24/DEC.4, 27 November 2019; and *Changes to Schedule 1 of the Annex on Chemicals to the Chemical Weapons Convention*, OPCW document C-24/DEC.5, 27 November 2019; and *Consolidated Text of Adopted Changes to Schedule 1 of the Annex on Chemicals to the Chemical Weapons Convention*, OPCW document S/1820/2019, 23 December 2019.

35 Article VIII, para. 22. The Fifth Review Conference took place on 15-19 May 2023.

Arms Trade Treaty

The Arms Trade Treaty (ATT) is an international treaty that regulates international trade in conventional arms by establishing the highest international standards governing arms transfers and seeks to prevent and eradicate their illicit trade and diversion.[1] The Treaty requires states parties to set-up a national control system and take regulatory measures to control the export, import, transit, transshipment and brokering of, as a minimum, eight categories of major conventional arms, as well as to provide transparency about their imports and exports. To support effective implementation of these requirements, the ATT foresees international cooperation and assistance, mandates the Conference of States Parties (CSP) to review implementation on a continuous basis, including the consideration of recommendations and interpretation issues, and establishes a Secretariat to assist states parties in their implementation efforts. This chapter describes the basics of the Treaty and explains its scope and substantive requirements, as well as the measures states parties need to or can take to implement those requirements, with a focus on export controls.

Prepared by the Arms Trade Treaty Secretariat.

Background

The ATT was adopted by the United Nations General Assembly on 2 April 2013, following a process that was initiated at the UN level in 2006, eleven years after a group of Nobel Peace Laureates first called for such an initiative and presented their own International Code of Conduct on Arms Transfers. The adoption of the ATT by the United Nations General Assembly followed two diplomatic conferences where no consensus could be reached about a draft text that nonetheless enjoyed an overwhelming level of support. The Treaty opened for signature on 3 June 2013 and entered into force on 24 December 2014. At the time of writing, 113 states have become states parties to the Treaty and 28 states have signed the Treaty but not yet ratified it.[2]

Despite the fact that the ATT regulates international trade, the Treaty was not discussed within the WTO but under the auspices of the First Committee of the United Nations General Assembly, which deals with disarmament and international security. The potential application of the General Agreement on Tariffs and Trade (GATT) was also not under debate in the negotiations and the Treaty, including its preamble, does not include any reference to GATT or other general trade agreements. While the Treaty recognizes the legitimate political, security, economic and commercial interests of states in the international arms trade and respects their legitimate interests to acquire conventional arms to exercise their right to self-defence and for peacekeeping operations, and to produce, export, import and transfer conventional arms, the Treaty also clarifies in Article 1 that its purpose is humanitarian in nature, not to facilitate or deregulate trade in these products:[3]

> "The object of this Treaty is to:
>
> - Establish the highest possible common international standards for regulating or improving the regulation of the international trade in conventional arms;
> - Prevent and eradicate the illicit trade in conventional arms and prevent their diversion;
>
> for the purpose of:
>
> - Contributing to international and regional peace, security and stability;
> - Reducing human suffering;
> - Promoting cooperation, transparency and responsible action by States Parties in the international trade in conventional arms, thereby building confidence among States Parties."

The ATT framework consists of two important structures: the CSP and the ATT Secretariat. The working of the two structures is funded through mandatory assessed contributions by states parties (and other states participating in CSP meetings). Their basic tasks are defined in Articles 17 and 18 of the Treaty.

The CSP is the decision-making body in the ATT framework. Substantively, the CSP is mandated to review the implementation of the Treaty and to consider: (i) recommendations regarding the implementation and operation of the Treaty; (ii) amendments to the Treaty; and (iii) issues arising from the interpretation of the Treaty. For that purpose, the CSP has established a number of subsidiary bodies. Most importantly are the standing working groups. Currently, these are the Working Group on Effective Treaty Implementation (WGETI), the Working Group on Transparency and Reporting (WGTR) and the Working Group on Treaty Universalization (WGTU).

The WGETI is the most important body with respect to the practice of transfer controls. It acts as a forum for states parties to exchange information and challenges on the practical implementation of the Treaty at the national level, and to address specific issues set by CSP as priorities to take Treaty implementation forward. It has delivered a substantial body of voluntary guidance on Treaty implementation.[4]

Complementary to the working groups is the Diversion Information Exchange Forum. This is a subsidiary body for informal voluntary exchanges between states parties and signatory states concerning concrete cases of detected or suspected diversion and for sharing concrete, operational diversion-related information.

The ATT Secretariat manages the reporting process under the Treaty, maintains a database of national points of contact and facilitates the matching of offers of and requests for assistance for Treaty implementation. It facilitates the work of the CSP and performs other duties as decided by the CSP, including supporting the work of the President of Conference and the subsidiary bodies during the preparatory phase leading up to each CSP. In addition, the ATT Secretariat also administers the Voluntary Trust Fund and a sponsorship programme to facilitate the participation of state representatives in ATT meetings.

Overview of Treaty requirements

The Treaty regulates the international trade in conventional arms. In terms of activities, “international trade” applies to the following types, which are commonly referred to as “transfer”: export, import, transit, transshipment and brokering. The Treaty does not define these activities. Its scope excludes the international movement of conventional arms by, or on behalf of, a state party for its use provided that the conventional arms remain under that state party’s ownership. The Treaty does not regulate and control conventional arms exclusively within the territory of states parties; it therefore does not apply to, for example, the domestic production and possession of firearms.

In terms of goods, the minimum scope of conventional arms that states parties need to subject to control concerns the following categories:

(a) battle tanks;
(b) armoured combat vehicles;
(c) large calibre artillery systems;
(d) combat aircraft;
(e) attack helicopters;
(f) warships;
(g) missiles and missile launchers;
(h) small arms and light weapons.

States parties can apply national definitions of those categories, but these cannot cover less than the descriptions used in the United Nations Register of Conventional Arms at the time of entry into force of the Treaty for categories (a)-(g) and the descriptions used in relevant UN instruments at the time of entry into force of the Treaty for category (h).[5]

States parties are also encouraged to apply the provisions of the Treaty to the broadest range of conventional arms. In that respect, reference is often made to the *Munitions List* of the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies, which contains 22 main entries on items designed for military use.[6] The main obligations of the Treaty also apply to ammunition/munitions fired, launched or delivered by the listed categories of conventional arms, as well as their parts and components delivered in a form that provides the capability to assemble the arms in question. The range of arms and other items that a state party subjects to control – which can vary according to the type of transfer beyond the minimum scope – needs to be included in a national control list. This list then needs to be provided to the ATT Secretariat, which will make it available to other states parties. States parties are also encouraged to make the list publicly available.

National control system – Article 5(2)

The overarching obligation for each state party is to establish and maintain a national control system, including a national control list, in order to implement the provisions of the Treaty. In concrete terms, such a control system needs to contain legislation, regulations, administrative procedures, enforcement arrangements and institutions that enable a state to apply the substantive obligations of the Treaty in practice and to effectively control the import, export, transit, transshipment and brokering of conventional arms and their ammunition/munitions, parts and components.

Transfer control requirements – Articles 6 to 11

Article 6 of the Treaty concerns prohibited transfers of the aforementioned categories of conventional arms, ammunition/munitions and parts and components.[7] States parties need to prevent the respective types of transfer in a number of circumstances. These prohibitions make the link between states' broader international obligations and arms transfers explicit. States parties are required to prevent import, export, transit, transshipment and brokering when:

(1) it would violate measures adopted by the United Nations Security Council under Chapter VII of the Charter of the United Nations, in particular arms embargoes;
(2) it would violate relevant international obligations under the state's international agreements, in particular those relating to the transfer of, or illicit trafficking in, conventional arms;
(3) it has knowledge at the time of authorization that the arms or items would be used in the commission of genocide, crimes against humanity, grave breaches of the Geneva Conventions of 1949, attacks directed against civilian objects or civilians protected as such, or other war crimes as defined by international agreements to which the state is a party.

Subsequently, the Treaty provides additional obligations per type of transfer, which require varying degrees of control. Other important Treaty obligations concern export of the aforementioned arms and items. Beyond the circumstances in which all transfers, including export, are prohibited, states parties are required to subject all exports to authorization to allow an assessment against a number of criteria. If states parties assess that there is an overriding risk of any of the negative consequences in these criteria, even after having considered possible mitigating measures, they are required to deny authorization of the export. Like the prohibitions in Article 6, the assessment criteria in Article 7 are steeped in international law. States parties are required to assess the potential that the conventional arms or items:

(a) would contribute to or undermine peace and security;
(b) could be used to:
    (i) commit or facilitate a serious violation of international humanitarian law;
    (ii) commit or facilitate a serious violation of international human rights law;
    (iii) commit or facilitate an act constituting an offence under international conventions or protocols relating to terrorism to which the exporting state is a party;
    (iv) commit or facilitate an act constituting an offence under international conventions or protocols relating to transnational organized crime to which the exporting state is a party.

In their assessment, states parties also need to take into account the risk of the items being used to commit or facilitate serious acts of gender-based violence or serious acts of violence against women and children.

Concerning import, transit and transshipment, as well as brokering, the additional obligations are less specific. The focus therefore is on preventing the circumstances included in Article 6 and preventing diversion. The specific provisions on these types of transfer generally require states parties to take measures to regulate these types of transfer, albeit only "where necessary and feasible", or "pursuant to its national laws". While these provisions only refer to the eight categories of conventional arms in Article 2(1), states parties need to take into account that they still need apply the prohibitions in Article 6 to import, transit and transshipment, and brokering of the aforementioned other items as well.

A crucial requirement across-the-board of all types of transfer concerns the obligation to take measures to prevent diversion. This obligation applies to all states parties involved in arms transfers because diversion can occur in all stages of the transfer chain, from the point of embarkation to the point of storage and use. States parties need to take this into account when developing their national control system. Article 11 also specifically requires importing, transit, transshipment and exporting states parties to cooperate and exchange information to mitigate the risk of diversion. An exporting state party in particular is required to conduct a diversion risk assessment and consider establishing mitigation and preventive measures.

Additional requirements: record-keeping and reporting – Articles 12 and 13

Next to the obligation to provide control measures, states parties also are required to keep records on authorized or actual exports – with an encouragement to do the same for import, transit and transshipment – and to report annually to the ATT Secretariat on authorized or actual exports and imports in the preceding year. Both obligations apply as a minimum to the eight categories of conventional arms in Article 2(1). In addition to the annual report, states parties also need to provide an initial report on their implementation measures, as well as updates, and are encouraged to report on effective diversion prevention measures. Especially the annual reporting requirement is a key obligation of the Treaty for the purpose of transparency, explicitly mentioned in Article 1, and accountability, as these reports reflect states parties' application of the Treaty in practice. In light thereof, these reports are made available to all other states parties, while most states parties also agree to their reports being made publicly available on the ATT website.[8] As a testament to the importance, of the annual reporting obligation a comprehensive guidance document was developed within the ATT framework to assist states parties in preparing their reports.[9]

Export-related measures

As explained in the previous section, the Treaty requires states parties to subject exports to authorization and assessment and to set-up a national control system to comply with these requirements. The Treaty is mostly silent, however, on how to do this and which measures to take. This was deliberate in part, acknowledging that the involvement of states around the world in the international arms trade varies significantly. In that regard, the *Voluntary Basic Guide to Establishing a National Control System*, which was developed within the ATT framework, explains that the ATT does not specify a one-size-fits-all approach for the national control system and that each state party has a discretion depending on its size, resources, export profile and legislative as well as institutional/constitutional framework.[10] Many states are also a party to other international or regional instruments that provide similar regimes, which can require stricter or more expansive controls, or provide more explicit obligations and/or guidance regarding practical implementation. This does not mean that there are no common approaches among states parties and good practices. These practices do exist, and such practices have also been identified in the aforementioned body of guidance documents that have been developed within the ATT framework.

In that regard, the basic export control measure that states apply as part of their national control system is a regime of prior authorization, mostly laid down in national legislation, for all items included in its national (export) control list. This allows the state to apply the export assessment criteria, which may or may not be included in a legislative act. The basic framework is supplemented with regulations that set out a process and the information and documentation that needs to be supplied and administrative procedures for processing and deciding applications.

Export authorization regime

The export authorization regime mostly involves a systematic licence (or permit) requirement for all exports, with states applying different types of licence that vary in degree of flexibility. Next to the traditional "individual" licence, which authorizes the export of a set quantity of arms to a specific recipient, states also apply more flexible licences, such as open and general licences. These generally allow exporters to export an undetermined quantity of arms to one or more recipients, certain types of recipient (e.g. armed forces) or for a specific purpose (e.g. a specific armament programme), either after authorization or a simple registration. This is often combined with post-export reporting requirements. States mostly use such licences for low-risk transfers, which states generally consider unproblematic in light of Articles 6, 7 and 11 of the Treaty, based on a relationship of trust (confidence) between the states involved. A good example of this is the licensing regime which EU member states are required to operate for transfers within the European Union itself.[11] A very specific licensing regime is also applied to import of small arms and light weapons by member states of the Economic Community of West African States (ECOWAS). The ECOWAS Convention on Small Arms and Light Weapons, their Ammunition and other related Materials provides a system of a general transfer ban and possible exemption requests that are processed via the ECOWAS Executive Secretariat, following consultations with all ECOWAS member states.

Next to requiring export authorizations, some states also reserve access to their export authorization regime – or to flexible licence types – to registered entities that have demonstrated their ability to comply with export regulations and exercise due diligence in their business relationships.

Authorities, processes and information

The Treaty itself obliges states parties in Article 5(5) and 5(6) to designate competent national authorities in order to have an effective and transparent national control system, as well as each state party shall designate one or more national points of contact.[12] The Treaty also presupposes dedicated procedures to be put in place, to enable the exporting state to conduct the required risk assessment and prevent diversion. In that respect, states need to provide a clear application process, regulations and instructions to potential applicants, to ensure that it can apply measures such as those included in Articles 8(1) and 11(2): examining parties involved in the export, requiring end-use or end-user documentation, additional information and assurances. To this effect, the Treaty also focuses on cooperation

between the states parties involved in the transfer. Next to a general cooperation requirement in Article 14, Article 8(1) obliges importing states parties to take measures to ensure that appropriate and relevant information is provided to the exporting state party. Article 11(3) obliges all states involved in a transfer to exchange information to mitigate the risk of diversion. Extensive guidance on these aspects is included in the aforementioned *Voluntary Basic Guide to Establishing a National Control System* and the document with possible measures to prevent and address diversion.[13]

Export assessment

The consistent, objective and non-discriminatory application of the prohibitions in Article 6 and the export assessment in Article 7, as well as the diversion risk assessment in Article 11, is the core element of the export authorization regime. States parties need to equip themselves to make prospective assessments of the future behaviour of the recipients of the arms to be exported, how they are likely to behave and how the arms to be transferred will likely be used, based on historic behaviour, present circumstances and reasonable expectations.[14]

As part of the export assessment, states also need to consider mitigating measures. The Treaty focuses on cooperation between the exporting and importing states. Both Articles 7(2) and 11(2) refer to confidence-building measures and jointly developed and agreed programmes as examples of mitigating measures.

For the purpose of this assessment, most states establish a process that involves a multitude of different government entities to inform decision-makers and use a wide range of information sources, both public and restricted, beyond the information provided by exporters and importing states. Because a comprehensive, consistent and well-informed assessment is so important, the implementation of the relevant provisions is extensively discussed in the ATT framework. While a specific voluntary guide to implementing Articles 6 and 7 is under development, lists of possible reference documents for the risk assessment under Articles 7 and 11 have already been developed, as well as elements of a process for the diversion risk assessment.[15]

Post-export control

The Treaty does not explicitly require states parties to apply any form of control on exported arms after their delivery. In the post-export realm, the Treaty only encourages exporting states parties to reassess authorizations if they become aware of new relevant information after an authorization has been granted, after consultations with the importing state, if appropriate. Additionally, the abovementioned examples of mitigating measures to reduce the risk of misuse or diversion through cooperation between the exporting and importing state can also be understood to have post-export elements in it. In that respect, guidance on post-delivery controls is also included in the aforementioned document with possible measures to prevent and address diversion.[16]

Enforcement

On enforcement, the Treaty itself, in Article 14, simply obliges states parties to take "appropriate measures" to enforce the requirements it has introduced into its national control system to regulate the different types of transfer. The Treaty does not prescribe their nature. Generally, states parties supplement proportionate and dissuasive sanctions with providing enforcement bodies with adequate powers to inspect and (temporarily) seize (suspicious) items and shipments, interagency cooperation arrangements and preventive measures such as outreach to those involved in arms transfers. The Treaty does oblige states, where possible, to assist one another in investigations, prosecutions and to share relevant information, for example regarding illicit activities and actors. Article 11, on diversion, also highlights the need for enforcement measures and cooperation, *inter alia* via the sharing of operational diversion-related information. The latter is also encouraged within the ATT framework, as the aforementioned Diversion Information Exchange Forum was established for this specific purpose, as a complement to bilateral exchanges.

Other transfers of arms

In addition to the provisions discussed above, the ATT also deals with specific measures states parties (need to) adopt as part of their national control system to implement the import, transit and transshipment and brokering requirements – information on which is available on the ATT website. It should also be noted that most states involved in the international arms trade regulate are not arms producing and exporting states. In that respect, the WGETI has a specific sub-working group dealing with transit and transshipment, which is in the process of developing draft elements for a possible voluntary guide on the implementation of Article 9.[17]

Recent developments

As explained in the Background, a comprehensive understanding of the substantive Treaty obligations and their effective implementation have been a priority within the ATT framework, next to transparency and universalization. This will continue, as the consideration of recommendations regarding the implementation of the Treaty and of issues arising from the interpretation of the Treaty are focus areas of the ATT framework. With the establishment of the Diversion Information Exchange Forum, the ATT framework has also created a platform for states parties (and signatory states) to engage in exchanges about concrete cases and operational information. While the Treaty does not include a formal review clause, it has been possible for states parties to propose amendments to the Treaty from the end of 2020. At the time of writing, no such proposals have been submitted. How all these aspects will develop is dependent on several factors, including the aspirations and commitments of states parties, the further universalization of the Treaty and geopolitical evolution.

Endnotes

1 The Treaty text, the ATT Universalization Toolkit and Welcome Pack for new states parties are available from the ATT website at https://www.thearmstradetreaty.org.

2 Information on participation in the ATT, including a regional overview, is available from https://www.thearmstradetreaty.org/treaty-status.html?templateId=209883.

3 For the discussions on this issue, see chapter 3 of Small Arms Survey (2014) and Clapham *et al.* (2016).

4 See https://www.thearmstradetreaty.org/tools-and-guidelines.html.

5 These descriptions have been reproduced in annexes 1 and 3 of the FAQ-style guidance document on the annual reporting obligation (*Reporting Authorized or Actual Exports and Imports of Conventional Arms under the ATT*, ATT document ATT/CSP8.WGTR/2022/CHAIR/734/Conf.Rep, 22 July 2022).

6 The Wassenaar Arrangement is an informal intergovernmental regime founded to promote greater responsibility in transfers of conventional arms and dual-use goods and technologies. Its participating states are required to control all items set forth in its *Munitions List*, updated annually, with the objective of preventing unauthorized transfers or re-transfers of those items. The *Munitions List* also forms the basis for the *Common Military List of the European Union*.

7 As well as the other arms and items which states parties have opted to include in their national control lists.

8 See https://www.thearmstradetreaty.org/annual-reports.html.

9 The FAQ-style guidance document on the annual reporting obligation (ATT document ATT/CSP8.WGTR/2022/CHAIR/734/Conf.Rep) was endorsed by the CSP in 2017 and updated in 2019 and 2021 (see https://www.thearmstradetreaty.org/reporting.html).

10 The *Voluntary Basic Guide* is available from https://www.thearmstradetreaty.org/tools-and-guidelines.html. It is noted that the *Guide* is not fully completed and that certain sections will be developed following discussions on these areas within the ATT framework.

11 See Directive 2009/43/EC of the European Parliament and of the Council of 6 May 2009 simplifying terms and conditions of transfers of defence-related products within the Community. The directive also allows EU member states to completely exempt certain transfers from the prior authorization requirement.

12 States parties can consult a database of national points of contact in a restricted area of the ATT website.

13 The Voluntary Basic Guide and the document with possible measures to prevent and address diversion is available from https://www.thearmstradetreaty.org/tools-and-guidelines.html.

14 In that respect, the components of Articles 6 and 7 can be applied jointly in one assessment, also because some elements refer to similar legal instruments, as long as states parties respect the different features of these respective obligations. If a state establishes that one of the prohibitions in Article 6 is applicable, it needs to simply stop the export; there is no question of taking into account certain other considerations or considering mitigating measures as there is when conducting the risk assessment under Article 7.

15 A draft chapter 1 (key concepts) of the proposed Voluntary Guide (Annex A) was completed in 2022 (see *ATT Working Group on Effective Treaty Implementation: Chair's Draft Report To CSP8*, ATT document ATT/CSP8.WGETI/2022/CHAIR/733/Conf.Rep, 22 July 2022). The lists of possible reference documents to be considered by states parties in conducting a risk assessment under Article 7 and to prevent and address diversion are available from https://www.thearmstradetreaty.org/tools-and-guidelines.html. A voluntary paper outlining the elements of a process for assessing the risk of diversion can be found in the annex to *ATT Working Group on Effective Treaty Implementation: Chair's Draft Report To CSP7*, ATT document ATT/CSP7.WGETI/2021/CHAIR/675/Conf.Rep, 22 July 2021.

16 In 2022, post-shipment controls and coordination was also specifically discussed in the ATT framework, *inter alia*, with a recommendation to share and learn from national experiences with post-export controls within the ATT framework (see: para. 21 of the *Final Report* of the 8th CSP, ATT document ATT/CSP8/2022/SEC/739/Conf.FinRep.Rev 2, 26 August 2022; *Working Paper Presented by the President of the Eight Conference of States Parties to the Arms Trade Treaty (ATT)*, ATT document ATT/CSP8/2022/PRES/732/Conf.PostShip, 22 July 2022).

17 These draft elements will be discussed (and supplemented) in 2023, during the 9th cycle of the CSP.

Australia Group

The Australia Group (AG) is a multilateral export control regime that works to impede the proliferation of chemical and biological weapons, including their delivery systems and supporting programmes. Australia is the permanent chair of the AG and hosts its secretariat.

Through the harmonization of export controls based on common control lists and the exchange and publication of information, cooperation among AG participants aims to prevent would-be proliferators and terrorists from exploiting differences or ambiguities in national export control arrangements. The principal objective of AG participants is to use licensing measures to control the export of certain chemicals, biological agents, and dual-use chemical and biological manufacturing facilities and equipment. The AG regularly updates its control lists on the basis of expert-level discussion and consensus. These are then implemented in accordance with AG participants' national frameworks and sovereign decision-making.

The AG's effectiveness is based on a shared commitment to counter-proliferation objectives and the strength of each participating state's export control framework; as well as the transparency of its common control lists which are publicly available to both AG participants and non-participants. AG activities do not hinder legitimate trade involving chemicals, biological agents and dual-use items and equipment. Instead, the AG helps increase the awareness, confidence, trust and assurance necessary to make peaceful trade of these items possible. AG participants are committed to expanding trade in chemical and biological items for peaceful purposes and maintaining active chemical and biotechnological industries.

Prepared by the Australia Group Secretariat.

Background

The Australia Group (AG) was founded in 1985, in the wake of chemical weapons use in the Iran–Iraq war. In response, Australia, 14 other participating countries and the European Commission came together to form the AG, where a common control list of chemicals and equipment was developed and agreed to. These countries shared this information to encourage others to better understand and implement export controls.

Evidence of the diversion of dual-use materials to biological weapons programmes in the early 1990s led to the controls evolving and expanding further to prevent the proliferation of biological weapons, with controls on specific biological agents. The control lists now include technologies and equipment which could be used in the manufacturing or disposal of both chemical and biological weapons.

The AG is an informal arrangement with no legally binding obligations for participants. Cooperation among AG participants contributes to global security and helps participants fulfil their international non-proliferation obligations under the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction (CWC), the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction (BWC) and United Nations Security Council resolution 1540.[1]

Participants and adherence

The name of the AG reflects Australia's role in initiating the first meeting of the group. The number of participants has now expanded to 43 (42 countries and the European Union). The most recent countries to join were Mexico in 2013 and India in 2018 (see Table 1).

Countries interested in joining the AG should, in the first instance, provide an expression of interest to the AG Chair through the AG Secretariat.[2] The Chair will then seek the views of AG participants and list the request for discussion at the next AG meeting. Decisions on new AG participants are made by consensus by all AG participants.

Criteria for participation are published on the AG website. They include, but are not limited to:

- a commitment to prevent the spread of chemical and biological weapon (CBW) proliferation, including being a party, in good standing, to the CWC and the BWC;
- being a manufacturer, exporter or transshipper of AG controlled items;
- adopting and implementing the AG *Guidelines for Transfers of Sensitive Chemical or Biological Items*;
- implementing an effective export control system which provides national controls for all items on the *AG Common Control Lists* and is supported by adequate licensing and enforcement regimes;

Table 1. Australia Group participants and initial year of joining

Participants	Year	Participants	Year
Australia	1985	Latvia	2004
Austria	1989	Lithuania	2004
Belgium	1985	Luxembourg	1985
Bulgaria	2001	Malta	2004
Canada	1985	Mexico	2013
Croatia	2007	Netherlands	1985
Cyprus	2000	New Zealand	1985
Czech Republic	1994	Norway	1986
Denmark	1985	Poland	1994
Estonia	2004	Portugal	1985
European Union	1985	Romania	1995
Finland	1991	Slovak Republic	1994
France	1985	Slovenia	2004
Germany	1985	Spain	1985
Greece	1985	Sweden	1991
Hungary	1993	Switzerland	1987
Iceland	1993	Türkiye	2000
India	2018	Ukraine	2005
Ireland	1985	United Kingdom	1985
Italy	1985	United States	1985
Japan	1985		

- creating legal penalties and sanctions for contravention of controls and being willing to enforce them;
- creating relevant channels for the exchange of information including: accepting the confidentiality of the information exchange; creating liaison channels for expert discussions; and creating a denial notification system protecting commercial confidentiality; and
- agreeing to participate in the AG in a way that will strengthen the effectiveness of the AG in preventing CBW proliferation.

Countries can also make a political commitment to adhere to the AG *Guidelines* and *Control Lists* by notifying the AG Chair. This adherence is unilateral by the non-participant country and not subject to any acceptance decision by the AG membership. Kazakhstan made such a declaration in 2015.

The AG strongly encourages all states to adopt its guidelines and control lists, which are freely published on its website and made available to participants and non-participants, industry, academia and research institutions — as a guide to developing their own export control frameworks.[3]

Trade-related measures: export controls

Cooperation among AG participants aims to prevent would-be proliferators from exploiting differences or ambiguities in national export control arrangements. The principal objective of AG participants is to use licensing measures to control the export of certain chemicals, biological agents, and dual-use chemical and biological manufacturing facilities and equipment.

AG participants harmonize their export controls by utilizing the regularly reviewed *AG Common Control Lists*, which outline items participants undertake to control through export licensing procedures. These licensing measures are consistent, transparent and publicly available, helping industry to understand licensing arrangements and the reasons for them.

There are a number of important factors AG participants take into consideration when implementing their exporting licensing measures. These include:

- that the measures be effective in impeding the production of CBWs;
- that they should be reasonably easy and economical to implement; and
- that they should not impede the normal trade of materials and equipment used for legitimate purposes.

Importantly, licensing measures do not constitute automatic bans on such items. In practice they are monitoring and control arrangements for exports: an export is denied only if there is particular concern about potential diversion for CBW purposes.

AG consultations and licensing measures have raised the cost to would-be proliferators. They have succeeded in raising the awareness of participating countries and their industries about the risks of inadvertent association with CBW and has helped them avoid this danger.

The AG recognizes that export licensing measures on CBW precursors, equipment and technology need to be maintained by as many relevant supplier or transhipment countries as possible to be effective.

Relationship with other international weapons conventions

All participants in the AG are states parties to both the CWC and the BWC. In addition to states parties' application of the non-proliferation provisions of the CWC and BWC, appropriate domestic measures are required of all states to ensure compliance with United Nations Security Council Resolution 1540. The resolution affirms support for the multilateral treaties whose aim is to eliminate or prevent the proliferation of weapons of mass destruction (WMD). Resolution 1540 obligates all countries to combat the spread of chemical, biological, and nuclear weapons, their means of delivery, and illicit trafficking in related materials within or across their borders. This includes denying non-state actors WMD access. Resolution 1540 also encourages enhanced international cooperation in this regard. By cooperating on the application of effective national export and transhipment controls, AG participation assists states with resolution 1540 commitments. By applying suitable export licensing measures AG participants demonstrate determination to avoid involvement in the proliferation of these weapons and uphold resolution 1540.

In complying with their international obligations, AG participants seek to ensure that international trade in chemical and biological products for peaceful purposes is not impaired. Both the CWC and BWC require states parties not to restrict peaceful trade. Article XI of the CWC recognizes that the eradication of illicit trade is necessary for the unfettered development of legitimate trade, thereby acknowledging that export measures instituted and maintained solely to implement obligations under the CWC, are valid.

Similarly, Article III of the BWC specifies that states parties should not transfer agents or materials for purposes contrary to the BWC. Article X establishes that the BWC "shall be implemented in a manner designed to avoid hampering the economic or technological development of States Parties to the Convention".

The AG works alongside other multilateral export control regimes which together help underpin global security by providing guidance, norms and standards for the peaceful trade of technology along with assurances of the origin, destination and end-user of relevant dual-use goods and technologies.

Impact of AG export licensing measures

AG controls have only a minimal impact on total trade in chemicals, biological agents and dual-use items and equipment. Export licences deter proliferation by increasing visibility of trade in relevant materials and provide the ability for a national authority to stop a sale if the product concerned is likely to contribute to a CBW programme.

The AG's activities are limited to counter-proliferation measures and are neither intended to favour the commercial development of industries in AG participants, nor to hinder legitimate economic development in other countries.

Outreach

AG participants ensure that the private sector in their respective jurisdictions are informed of the dangers inherent in the uncontrolled export of relevant chemical and biological materials and equipment. Companies, conscious of their public image and corporate responsibilities, welcome the assurances provided by the AG controls. The transparency generated by AG participation increases confidence, helping create an environment where international trade in chemical and biological products for peaceful purposes is not impaired.

The AG maintains a practice of briefing non-participants on its activities as well as industry and academia. These briefings include highlighting the publicly available lists of chemicals, biological agents, and related equipment and technologies which are of proliferation concern. These outreach measures have resulted in a number of countries exploring the possibility of participating in the AG, either as a potential participant or unilateral adherent. It has also contributed to a number of countries strengthening their export controls to inhibit illicit WMD programmes on the basis of the AG lists.

Institutional mechanisms and control lists

All decisions in the AG are made by consensus. The AG holds annual Plenary and Intersessional meetings. The Plenary is supported by the following subgroup meetings which bring together national and technical experts:

- Implementation Meeting: to discuss and agree to updates to the control lists;
- Enforcement Exchange: to build a shared awareness of current AG enforcement issues and mitigation strategies to assist participants in developing best practice;
- Information Exchange: to share updated information about CBW programmes and their proliferation networks; and
- New and Evolving Technologies Technical Experts Meeting (NETTEM): to identify emerging technological trends that may have proliferation impacts.

The *AG Common Control Lists* comprise certain chemicals, biological agents, equipment, technology and software able to be used in the manufacture, storage, transport, dispersion and disposal of CBWs. These control lists apply export licensing measures to the export of:

- chemical weapons precursors;
- human and animal pathogens and toxins;
- plant pathogens;
- dual-use chemical manufacturing equipment and related technology/software; and
- dual-use biological equipment and related technology/software.

Noting the *AG Common Control Lists* are a benchmark for global best practice, AG participants regularly work to refine controls applied to the chemical and biological items on the lists, via discussions among national technical experts. This includes agreeing to new

items on the *AG Common Control Lists* in response to emerging threats, and the removal of items where they are no longer appropriate.

Export licence applications based on AG controls are examined by AG participants' national authorities and are given effect in accordance with individual national export control frameworks. The AG "no undercut" policy ensures participants are following a common approach to controls on CBW-related exports. Where one participant has denied the export of an AG-listed item for CBW non-proliferation reasons, other participants commit to not agreeing to approve essentially identical export licence applications without first consulting with the participant that issued the original denial.

Recent developments

The AG continues to work to keep itself relevant and effective, including by prioritizing the understanding of emerging technologies and new proliferation risks. The annual Plenary and Intersessional meetings are opportunities to exchange information on these developments.

In recent meetings, participants have agreed to reinforce efforts to stay ahead of potential proliferators by increasing awareness of the potential exploitation of scientific developments that could be used for CBW. They share approaches to challenges posed by intangible technology transfer or ITT (transfer of technology through non-physical means), proliferation financing, procurement, transshipment and broader proliferation networks, including through enhanced engagement with industry and academia. They also share approaches for keeping pace with rapid developments in dual-use technologies, such as synthetic biology and novel delivery systems.

The AG stands ready to engage all interested states in outreach activities – either in person or virtually – should they to wish to learn more about what the AG does. Contact details can be found on the AG website.[4]

Endnotes

1 *United Nations Security Council resolution 1540 (2004),* UN document S/RES/1540 (2004), 28 April 2004.

2 See https://www.dfat.gov.au/publications/minisite/theaustraliagroupnet/site/en/index.html.

3 Available at https://www.dfat.gov.au/publications/minisite/theaustraliagroupnet/site/en/index.html.

4 Available at https://www.dfat.gov.au/publications/minisite/theaustraliagroupnet/site/en/index.html.

Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies

Since its establishment in 1996, the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies (Wassenaar Arrangement) has served as an intergovernmental forum contributing to international security and stability by facilitating confidence building and information sharing, and promoting transparency and greater responsibility in transfers of conventional arms and dual-use goods and technologies. It aims to prevent potentially dangerous build-ups of arms which could adversely affect regional and international security and stability (known as destabilizing accumulations) as well as the acquisition of these items by terrorists. The Wassenaar Arrangement is the first multilateral body focused on export controls for conventional arms and dual-use goods and technologies, and it comprises 42 participating states spanning six continents. It is consensus-based with decisions taken on a politically binding basis.

Contributing to international non-proliferation efforts, the Arrangement complements and reinforces other multilateral export control regimes to promote transparency and accountability in transfers (i.e. deliveries) of arms and dual-use items. Wassenaar Arrangement participating states collectively agree on the munitions and dual-use goods and technologies to be included in both the control lists, then apply national export controls to items on these lists with the objective of preventing unauthorized transfers or re-transfers. All measures undertaken with respect to the Arrangement will be in accordance with national legislation and policies and will be implemented on the basis of national discretion. To encourage broad adoption of the Arrangement's standards and effective national export control systems in line with its objectives, outreach is conducted to non-members.

Prepared by the Wassenaar Arrangement Secretariat.

Background

The Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies (Wassenaar Arrangement) is the first multilateral body focused on export controls for conventional arms and dual-use goods and technologies. The Arrangement was established in 1996 as an intergovernmental forum to contribute to regional and international security and stability by facilitating information exchange and promoting transparency and greater responsibility in transfers (i.e. deliveries) of conventional arms and dual-use goods and technologies. By doing so, it aims to prevent destabilizing accumulations of arms which could adversely affect regional and international security and stability as well as the acquisition of these items by terrorists.

The Arrangement focuses on threats to peace and security that may arise from transfers of armaments and sensitive dual-use goods and technologies where the risks are judged greatest. Wassenaar Arrangement participating states seek, through their national policies, to ensure that transfers of these items do not contribute to the development or enhancement of military capabilities that undermine these goals and are not diverted to support such capabilities.

Membership

Agreement to establish the Wassenaar Arrangement was reached in December 1995 at a high-level meeting held in Wassenaar, the Netherlands, where it was decided to establish a small secretariat in Vienna, Austria. The following year, the Wassenaar Arrangement started operations after the adoption of the *Initial Elements*[1], its main founding document, and its 33 founding members held the inaugural plenary meeting. Since its establishment, the Wassenaar Arrangement membership has expanded to 42 participating states (see Table 1).

The Arrangement is open, on a global and non-discriminatory basis, to prospective adherents that fulfil the agreed criteria.[2] When deciding on the eligibility of a state for participation, the following factors, *inter alia*, will be taken into consideration:

(i) whether it is a producer or exporter of arms or industrial equipment respectively;
(ii) whether it has taken the Wassenaar Arrangement control lists as a reference in its national export controls;
(iii) its non-proliferation policies and appropriate national policies, including adherence to non-proliferation regimes and treaties;
(iv) its adherence to fully effective export controls.

The Wassenaar Arrangement is one of the five multilateral non-proliferation export control regimes on weapons of mass destruction and their delivery systems, arms and dual-use goods and technologies. Whereas other export control regimes focus on controls regarding weapons of mass destruction and their delivery systems, the Arrangement is mandated to consider the risks associated with transfers of arms and dual-use goods and technologies

Table 1. Wassenaar Arrangement participating states

Participating states		
Argentina*	Hungary*	Poland*
Australia*	India	Portugal*
Austria*	Ireland*	Romania*
Belgium*	Italy*	Russian Federation*
Bulgaria*	Japan*	Slovenia
Canada*	Republic of Korea*	Slovakia*
Croatia	Latvia	South Africa
Czech Republic*	Lithuania	Spain*
Denmark*	Luxembourg*	Sweden*
Estonia	Malta	Switzerland*
Finland*	Mexico	Türkiye*
France*	Netherlands*	Ukraine*
Germany*	New Zealand*	United Kingdom*
Greece*	Norway*	United States of America*

* Founding member.

in order to promote effective export controls worldwide. The Arrangement complements and reinforces, without duplication, the other regimes which focus on the non-proliferation of weapons of mass destruction and their delivery systems, as well as other internationally recognized measures designed to promote transparency and accountability in transfers.

National implementation of Wassenaar Arrangement commitments ensures that export controls are applied in a manner consistent with other commitments and obligations, and the *Initial Elements* stipulate that the Arrangement "will not impede bona fide civil transactions". In addition to interacting regularly with relevant international and regional organizations engaged in related activities, the Arrangement maintains informal expert-level contacts with the other regimes on technical export control list matters.

Structure

The Wassenaar Arrangement is a multilateral forum in which all decisions are taken by consensus. Deliberations are also kept in strict confidence. The Arrangement's main governance and decision-making body is the Plenary, which is composed of representatives of all participating states and normally meets once a year, usually in December. The Plenary Chair position is subject to annual rotation among participating states. In 2023, India succeeded Ireland as Plenary Chair of the Wassenaar Arrangement.

The Plenary establishes subsidiary bodies to prepare recommendations for Plenary decisions and when necessary calls *ad hoc* meetings to discuss issues relating to the Arrangement's functioning. The main subsidiary bodies meet periodically throughout the year and include: the General Working Group, which deals with policy-related matters; the Experts Group, which addresses issues relating to the lists of controlled items; and the Licensing and Enforcement Officers Meeting, a forum for information-sharing on practical implementation issues. The Secretariat in Vienna supports the participating states in the Arrangement's functioning.

Scope of export-related measures

Participating states agree on the conventional arms, dual-use goods and technologies to be included in both the control lists of the Wassenaar Arrangement: the *Munitions List*; and the *List of Dual-Use Goods and Technologies* (both publicly available on the Arrangement's website[3]). They then apply national export controls to items on these lists with the objective of preventing unauthorized transfers or re-transfers. The decision to approve or deny the transfer of any item is the sole responsibility of each participating state on the basis of national discretion.

Representatives of Wassenaar Arrangement participating states meet regularly in Vienna to exchange information on risks associated with transfers of arms and dual-use goods and technologies. Participating states have agreed to a number of guidelines, elements, best practice documents and procedures as a basis for decision-making through the application of their own national legislation and policies.

The Arrangement is also intended to enhance cooperation to prevent the acquisition of arms and sensitive dual-use items for military end-uses if the situation in a region or the behaviour of a state is, or becomes, cause for serious concern for participating states. However, as laid out in the *Initial Elements*, the Arrangement is not directed against any state or group of states. In addition, it does not interfere with the rights of states to acquire legitimate means for self-defence in accordance with Article 51 of the Charter of the United Nations.

Export controls and their implementation

Wassenaar Arrangement participating states have agreed to maintain national export controls on items included in the control lists, which are updated on an annual basis. A summary of changes to the lists is also published annually on the Arrangement's website.[4]

Export controls are measures undertaken by governments to ensure that transfers of strategically sensitive items are properly reviewed by requiring an exporter to apply for a licence prior to export. Licensing factors that governments may take into account include the destination country, the security situation in its region, sensitivity of the item, the credentials of the end-user and the specified end-use.

Controlled items include those that are considered to have significant security implications if they were to fall into the wrong hands. The Arrangement also takes into account technological developments in updating the lists. The scope of the lists is as follows:

- The *Munitions List* covers 22 categories of equipment specially designed for military use and related software and technology, including conventional weapons, ammunition, parts and components, and production equipment.
- The *List of Dual-Use Goods and Technologies* contains more than 1,000 items that have civil applications, but may also be used for, or diverted to, the development, production, use or enhancement of military capabilities (see Table 2).

Table 2. Categories of product in the *List of Dual-Use Goods and Technologies*

Category	Goods and technologies
1	Special materials and related equipment
2	Materials processing
3	Electronics
4	Computers
5	Part I: Telecommunications Part II: Information security
6	Sensors and lasers
7	Navigation and avionics
8	Marine
9	Aerospace and propulsion

Note: This list includes separate compilations of dual-use goods and technologies deemed sensitive or very sensitive.

Implementation of the control lists is the sole responsibility of each individual Wassenaar Arrangement participating state. Although all participating states agree to apply export controls to the goods and technologies specified in the lists, practical implementation varies from country to country in accordance with national procedures, policies and legislation. The National Contacts page of the Wassenaar Arrangement website[5] provides further information on export controls – and in some cases export control documentation – from the respective national authorities of participating states.

Information exchange and reporting

To develop common understandings of transfer risks and to inform their national licence decision-making, participating states regularly exchange information of both a general and specific nature. Participating states share, on a voluntary basis, national experiences and information that enhance transparency, lead to discussions among all participating states on arms transfers, as well as on sensitive dual-use goods and technologies, and assist in promoting consistency within the Arrangement by developing common understandings of associated transfer risks. On the basis of this information, participating states assess the scope for coordinating national control policies to combat these risks.

Information exchanged includes any matters that participating states wish to bring to the attention of others, including notifications going beyond those agreed upon. Possible elements of general information exchange on non-participating states, pursuant to the purposes of the Arrangement, can include acquisition/arms brokering activities, sensitive end-users, trade in critical goods and technology, diversion activities and related risks, and projects/programmes of concern, among others.

The Arrangement's specific information exchange is based on the provisions of the *Initial Elements*, which require notifications of transfers of conventional arms (battle tanks, armoured combat vehicles, large calibre artillery systems, military aircraft/UAVs, military and attack helicopters, warships, missiles or missile systems and small arms and light weapons) to destinations outside the Arrangement, notifications of transfers of the most sensitive dual-use goods and technologies to such destinations and certain instances in which a licence for the transfer of dual-use goods and technologies to such destinations was denied. Reporting of licences denied helps to bring to the attention of participating states transfers that may undermine the Arrangement's objectives. Participating states are required to submit such reports on a six-monthly basis, and in some cases more frequently. In accordance with the *Initial Elements*: "Notification of a denial will not impose an obligation on other participating states to deny similar transfers." Participating states also reserve the right to request information on specific transfers through, *inter alia*, normal diplomatic channels. Licensing and enforcement experts of participating states also regularly meet to share their best practices, practical case studies and lessons learned.

Participating states have also agreed on a number of best practices, guidelines and procedures covering different aspects of export control to promote common approaches. These are available for public reference[6] for use by, *inter alia*, other interested governments, industry and academia. As of 2022, the 25 Wassenaar Arrangement best practice documents address various aspects of the implementation of export controls such as prevention of destabilizing accumulations, transit and transhipment, re-export controls, demilitarized military equipment, intangible transfers of technology, internal compliance programmes, and end-use and end-user controls, among others.

Outreach

Although the Arrangement does not have an observer category, it conducts diverse outreach to inform non-participating states about its objectives and activities, encourage broad adoption of the Arrangement's standards and promote effective national export control systems in line with non-proliferation norms, transparency and responsibility for transfers of conventional arms and dual-use items. The Arrangement organizes regular collective outreach events for interested outreach partners, as well as outreach dialogue with individual countries and, upon invitation, bilateral outreach visits to interested countries, as agreed by the Wassenaar Arrangement Plenary.

Other activities to raise awareness of the Arrangement's work include seminars, workshops and participation in international conferences with representatives from governments, industry and academia. A number of participating states also undertake export controls-related outreach on a national or regional basis, including by organizing events aimed at engagement with countries in specific regions. Outreach efforts are published regularly on the Arrangement's website.[7]

Recent developments

As outlined in the Plenary Chair's statement of December 2022,[8] the Wassenaar Arrangement continues to systematically review, update and improve its control lists to ensure their ongoing relevance, taking into account international and regional security developments, technological change, market trends and experience gained. New export controls introduced in 2022 include those on supersonic flight technology and rim-driven motors for submarine propulsion. The Arrangement has also updated existing controls regarding high-performance computers, certain types of lasers, submunitions and grenades, aircraft ground equipment, navigational satellite jamming equipment and inertial measurement equipment. Further, the Arrangement updated the "Best Practices regarding Very Sensitive List Items", the "End-User Assurances Commonly Used – Consolidated Indicative List", and identified other existing guidelines for possible updating as appropriate in 2023.

Endnotes

1 Available at https://www.wassenaar.org/public-documents.

2 See appendix 4 to the *Initial Elements*, available at https://www.wassenaar.org/public-documents.

3 See https://www.wassenaar.org/control-lists.

4 See https://www.wassenaar.org/control-lists.

5 See https://www.wassenaar.org/participating-states.

6 For current best practice documents, see https://www.wassenaar.org/best-practices.

7 See https://www.wassenaar.org/outreach.

8 See https://www.wassenaar.org/blog.

Annex

WTO members and their current status with the selected international agreements and conventions

(as of 30 August 2023)

	ENVIRONMENTAL PROTECTION								DRUGS CONTROL					WEAPONS AND DISARMAMENT			
WTO members	Convention on International Trade in Endangered Species of Wild Fauna and Flora	Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal	Ban Amendment to the Basel Convention	Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade	Stockholm Convention on Persistent Organic Pollutants	OECD Decision of the Council on the Control of Transboundary Movements of Wastes Destined for Recovery	Vienna Convention for the Protection of the Ozone Layer	Montreal Protocol on Substances that Deplete the Ozone Layer	Single Convention on Narcotic Drugs, 1961	Convention on Psychotropic Substances of 1971	United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988	WHO Framework Convention on Tobacco Control	Protocol to Eliminate Illicit Trade in Tobacco Products	Chemical Weapons Convention	Arms Trade Treaty	Australia Group	Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies
Afghanistan	●	●		●	●		●	●	●	●	●	●		●	●		
Albania	●	●	●	●	●		●	●	●	●	●	●		●	●		
Angola	●	●			●		●	●	●	●	●	●		●			
Antigua & Barbuda	●	●	●	●	●		●	●	●	●	●	●		●	●		
Argentina	●	●	●	●	●		●	●	●	●	●			●	●	●	●
Armenia	●	●		●	●		●	●	●	●	●	●		●			
Australia	●	●		●	●	●	●	●	●	●	●	●		●	●	●	●
Austria	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●
Bahrain, Kingdom of	●	●	●	●	●		●	●	●	●	●	●		●			
Bangladesh	●	●			●		●	●	●	●	●	●		●			
Barbados	●	●		●	●		●	●	●	●	●	●		●	●		
Belgium	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●
Belize	●	●		●	●		●	●	●	●	●	●		●	●		
Benin	●	●	●	●	●		●	●	●	●	●	●	●	●	●		
Bolivia, Pl. State of	●	●	●	●	●		●	●	●	●	●	●		●			
Botswana	●	●	●	●	●		●	●	●	●	●	●		●	●		
Brazil	●	●	●	●	●		●	●	●	●	●	●	●	●	●		
Brunei Darussalam	●	●	●				●	●	●	●	●	●		●			

	ENVIRONMENTAL PROTECTION								DRUGS CONTROL					WEAPONS AND DISARMAMENT			
WTO members	Convention on International Trade in Endangered Species of Wild Fauna and Flora	Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal	Ban Amendment to the Basel Convention	Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade	Stockholm Convention on Persistent Organic Pollutants	OECD Decision of the Council on the Control of Transboundary Movements of Wastes Destined for Recovery	Vienna Convention for the Protection of the Ozone Layer	Montreal Protocol on Substances that Deplete the Ozone Layer	Single Convention on Narcotic Drugs, 1961	Convention on Psychotropic Substances of 1971	United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988	WHO Framework Convention on Tobacco Control	Protocol to Eliminate Illicit Trade in Tobacco Products	Chemical Weapons Convention	Arms Trade Treaty	Australia Group	Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies
Bulgaria	•	•	•	•	•		•	•	•	•	•	•		•	•	•	
Burkina Faso	•	•		•	•		•	•	•	•	•	•	•	•	•		
Burundi	•	•		•	•		•	•	•	•	•	•		•			
Cabo Verde	•	•		•	•		•	•	•	•	•	•	•	•	•		
Cambodia	•	•		•	•		•	•	•	•	•	•		•			
Cameroon	•	•		•	•		•	•	•	•	•	•		•	•		
Canada	•	•		•	•	•	•	•	•	•	•	•		•	•	•	•
Central African Republic	•	•			•		•	•	•	•	•	•		•	•		
Chad	•	•		•	•		•	•		•	•	•	•	•	•		
Chile	•	•	•	•	•	•	•	•	•	•	•	•		•	•		
China	•	•	•	•	•		•	•	•	•	•	•		•	•		
Colombia	•	•	•	•	•	•	•	•	•	•	•	•		•			
Congo	•	•	•	•	•		•	•	•	•	•	•	•	•			
Costa Rica	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•		
Côte d'Ivoire	•	•	•	•	•		•	•	•	•	•	•	•	•	•		
Croatia	•	•	•	•	•		•	•	•	•	•	•	•	•	•	•	•
Cuba	•	•		•	•		•	•	•	•	•			•			
Cyprus	•	•	•	•	•		•	•	•	•	•	•	•	•	•	•	
Czech Republic	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•
Dem. Rep. of the Congo	•	•		•	•		•	•	•	•	•	•		•			
Denmark	•	•	•	•	•	•	•	•	•	•	•	•		•	•	•	•
Djibouti	•	•		•	•		•	•	•	•	•	•		•			
Dominica	•	•		•	•		•	•	•	•	•	•		•	•		
Dominican Republic	•	•		•	•		•	•	•	•	•			•	•		

WTO members	ENVIRONMENTAL PROTECTION								DRUGS CONTROL					WEAPONS AND DISARMAMENT			
	Convention on International Trade in Endangered Species of Wild Fauna and Flora	Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal	Ban Amendment to the Basel Convention	Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade	Stockholm Convention on Persistent Organic Pollutants	OECD Decision of the Council on the Control of Transboundary Movements of Wastes Destined for Recovery	Vienna Convention for the Protection of the Ozone Layer	Montreal Protocol on Substances that Deplete the Ozone Layer	Single Convention on Narcotic Drugs, 1961	Convention on Psychotropic Substances of 1971	United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988	WHO Framework Convention on Tobacco Control	Protocol to Eliminate Illicit Trade in Tobacco Products	Chemical Weapons Convention	Arms Trade Treaty	Australia Group	Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies
Ecuador	•	•	•	•	•		•	•	•	•	•	•	•	•			
Egypt	•	•	•		•		•	•	•	•	•	•	•				
El Salvador	•	•	•	•	•		•	•	•	•	•	•		•	•		
Estonia	•	•	•	•	•	•	•	•	•	•	•	•		•	•	•	•
Eswatini	•	•		•	•		•	•	•	•	•	•	•	•			
European Union	•	•	•	•	•		•	•			•	•	•			•	
Fiji	•				•		•	•	•	•	•	•	•	•			
Finland	•	•	•	•	•	•	•	•	•	•	•	•		•	•	•	•
France	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•
Gabon	•	•		•	•		•	•	•	•	•	•	•	•	•		
The Gambia	•	•	•	•	•		•	•	•	•	•	•	•	•			
Georgia	•	•		•	•		•	•	•	•	•	•		•	•		
Germany	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•
Ghana	•	•	•	•	•		•	•	•	•	•	•	•	•	•		
Greece	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•
Grenada	•	•		•	•		•	•	•	•	•	•		•	•		
Guatemala	•	•	•	•	•		•	•	•	•	•	•		•	•		
Guinea	•	•	•	•	•		•	•	•	•	•	•	•	•	•		
Guinea-Bissau	•	•		•	•		•	•	•	•	•	•		•	•		
Guyana	•	•		•	•		•	•	•	•	•	•		•	•		
Haiti							•	•	•		•			•			
Honduras	•	•		•	•		•	•	•	•	•	•		•	•		
Hong Kong, China	*	*	*	*	*		*	*	*	*	*	*		*	*		
Hungary	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•

	ENVIRONMENTAL PROTECTION								DRUGS CONTROL					WEAPONS AND DISARMAMENT			
WTO members	Convention on International Trade in Endangered Species of Wild Fauna and Flora	Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal	Ban Amendment to the Basel Convention	Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade	Stockholm Convention on Persistent Organic Pollutants	OECD Decision of the Council on the Control of Transboundary Movements of Wastes Destined for Recovery	Vienna Convention for the Protection of the Ozone Layer	Montreal Protocol on Substances that Deplete the Ozone Layer	Single Convention on Narcotic Drugs, 1961	Convention on Psychotropic Substances of 1971	United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988	WHO Framework Convention on Tobacco Control	Protocol to Eliminate Illicit Trade in Tobacco Products	Chemical Weapons Convention	Arms Trade Treaty	Australia Group	Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies
Iceland	•	•	•		•	•	•	•	•	•	•	•		•	•	•	
India	•	•		•	•		•	•	•	•	•	•	•	•		•	•
Indonesia	•	•	•	•	•		•	•	•	•	•			•			
Ireland	•	•	•	•	•	•	•	•	•	•	•	•		•	•	•	•
Israel	•	•		•		•	•	•	•	•	•	•					
Italy	•	•	•	•	•	•	•	•	•	•	•	•		•	•	•	•
Jamaica	•	•	•	•	•		•	•	•	•	•	•		•	•		
Japan	•	•		•	•	•	•	•	•	•	•	•		•	•	•	•
Jordan	•	•	•	•	•		•	•	•	•	•	•		•			
Kazakhstan	•	•		•	•		•	•	•	•	•	•		•	•		
Kenya	•	•	•	•	•		•	•	•	•	•	•	•	•			
Korea, Republic of	•	•		•	•	•	•	•	•	•	•	•		•	•	•	•
Kuwait, the State of	•	•	•	•	•		•	•	•	•	•	•	•	•			
Kyrgyz Republic	•	•		•	•		•	•	•	•	•	•		•			
Lao People's Dem. Rep.	•	•		•	•		•	•	•	•	•	•		•			
Latvia	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•
Lesotho	•	•	•	•	•		•	•	•	•	•	•		•	•		
Liberia	•	•	•	•	•		•	•	•		•	•		•	•		
Liechtenstein	•	•	•	•	•		•	•	•	•	•			•	•		
Lithuania	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•
Luxembourg	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•
Macao, China	*	*	*	*	*		*	*	*	*	*	*		*	*		
Madagascar	•	•		•	•		•	•	•	•	•	•	•	•	•		
Malawi	•	•	•	•	•		•	•	•	•	•			•			

	ENVIRONMENTAL PROTECTION								DRUGS CONTROL					WEAPONS AND DISARMAMENT			
WTO members	Convention on International Trade in Endangered Species of Wild Fauna and Flora	Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal	Ban Amendment to the Basel Convention	Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade	Stockholm Convention on Persistent Organic Pollutants	OECD Decision of the Council on the Control of Transboundary Movements of Wastes Destined for Recovery	Vienna Convention for the Protection of the Ozone Layer	Montreal Protocol on Substances that Deplete the Ozone Layer	Single Convention on Narcotic Drugs, 1961	Convention on Psychotropic Substances of 1971	United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988	WHO Framework Convention on Tobacco Control	Protocol to Eliminate Illicit Trade in Tobacco Products	Chemical Weapons Convention	Arms Trade Treaty	Australia Group	Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies
Malaysia	•	•	•	•			•	•	•	•	•	•		•			
Maldives	•	•	•	•	•		•	•	•	•	•	•		•	•		
Mali	•	•		•	•		•	•	•	•	•	•	•	•	•		
Malta	•	•	•	•	•		•	•	•	•	•	•	•	•	•	•	•
Mauritania	•	•		•	•		•	•	•	•	•	•		•	•		
Mauritius	•	•	•	•	•		•	•	•	•	•	•	•	•	•		
Mexico	•	•	•	•	•	•	•	•	•	•	•	•		•	•	•	•
Moldova, Republic of	•	•	•	•	•		•	•	•	•	•	•	•	•	•		
Mongolia	•	•		•	•		•	•	•	•	•	•	•	•			
Montenegro	•	•	•	•	•		•	•	•	•	•	•	•	•	•		
Morocco	•	•	•	•	•		•	•	•	•	•			•			
Mozambique	•	•		•	•		•	•	•	•	•	•		•	•		
Myanmar	•	•			•		•	•	•	•	•	•		•			
Namibia	•	•	•	•	•		•	•	•	•	•	•		•	•		
Nepal	•	•		•	•		•	•	•	•	•	•		•			
Netherlands	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•
New Zealand	•	•		•	•	•	•	•	•	•	•	•		•	•	•	•
Nicaragua	•	•	•	•	•		•	•	•	•	•	•	•	•			
Niger	•	•	•	•	•		•	•	•	•	•	•	•	•	•		
Nigeria	•	•	•	•	•		•	•	•	•	•	•	•	•	•		
North Macedonia	•	•	•	•	•		•	•	•	•	•	•		•	•		
Norway	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•
Oman	•	•	•	•	•		•	•	•	•	•	•		•			
Pakistan	•	•		•	•		•	•	•	•	•	•	•	•			

	ENVIRONMENTAL PROTECTION								DRUGS CONTROL					WEAPONS AND DISARMAMENT			
WTO members	Convention on International Trade in Endangered Species of Wild Fauna and Flora	Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal	Ban Amendment to the Basel Convention	Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade	Stockholm Convention on Persistent Organic Pollutants	OECD Decision of the Council on the Control of Transboundary Movements of Wastes Destined for Recovery	Vienna Convention for the Protection of the Ozone Layer	Montreal Protocol on Substances that Deplete the Ozone Layer	Single Convention on Narcotic Drugs, 1961	Convention on Psychotropic Substances of 1971	United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988	WHO Framework Convention on Tobacco Control	Protocol to Eliminate Illicit Trade in Tobacco Products	Chemical Weapons Convention	Arms Trade Treaty	Australia Group	Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies
Panama	●	●	●	●	●		●	●	●	●	●	●	●	●	●		
Papua New Guinea	●	●			●		●	●	●	●		●		●			
Paraguay	●	●	●	●	●		●	●	●	●	●	●	●	●	●		
Peru	●	●	●	●	●		●	●	●	●	●	●		●	●		
Philippines	●	●		●	●		●	●	●	●	●	●		●	●		
Poland	●	●	●	●	●	●	●	●	●	●	●	●		●	●	●	●
Portugal	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●
Qatar	●	●	●	●	●		●	●	●	●	●	●	●	●			
Romania	●	●	●	●	●		●	●	●	●	●	●		●	●	●	●
Russian Federation	●	●		●	●		●	●	●	●	●	●		●			●
Rwanda	●	●		●	●		●	●	●	●	●	●	●	●			
Saint Kitts & Nevis	●	●	●	●	●		●	●	●	●	●	●		●	●		
Saint Lucia	●	●	●		●		●	●	●	●	●	●		●	●		
St Vincent & the Grenadines	●	●		●	●		●	●	●	●	●	●		●	●		
Samoa	●	●		●	●		●	●			●	●	●	●	●		
Saudi Arabia, Kingdom of	●	●	●	●	●		●	●	●	●	●	●	●	●			
Senegal	●	●		●	●		●	●	●	●	●	●	●	●	●		
Seychelles	●	●	●		●		●	●	●	●	●	●	●	●	●		
Sierra Leone	●	●	●	●	●		●	●	●	●	●	●		●	●		
Singapore	●	●		●	●		●	●	●	●	●	●		●			
Slovak Republic	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●
Slovenia	●	●	●	●	●	●	●	●	●	●	●	●		●	●	●	●
Solomon Islands	●	●			●		●	●	●			●		●			
South Africa	●	●	●	●	●		●	●	●	●	●	●		●	●		●

	ENVIRONMENTAL PROTECTION								DRUGS CONTROL					WEAPONS AND DISARMAMENT			
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Spain	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●
Sri Lanka	●	●	●	●	●		●	●	●	●	●	●	●	●			
Suriname	●	●		●	●		●	●	●	●	●	●		●	●		
Sweden	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●
Switzerland	●	●	●	●	●	●	●	●	●	●	●			●	●	●	●
Chinese Taipei																	
Tajikistan	●	●			●		●	●	●	●	●	●		●			
Tanzania	●	●	●	●	●		●	●	●	●	●	●		●			
Thailand	●	●	●	●	●		●	●	●	●	●	●		●			
Togo	●	●		●	●		●	●	●	●	●	●	●	●	●		
Tonga	●	●		●	●		●	●	●	●	●	●		●			
Trinidad & Tobago	●	●	●	●	●		●	●	●	●	●	●		●	●		
Tunisia	●	●	●	●	●		●	●	●	●	●	●		●			
Türkiye	●	●	●	●	●	●	●	●	●	●	●	●	●	●		●	●
Uganda	●	●		●	●		●	●	●	●	●	●		●			
Ukraine	●	●		●	●		●	●	●	●	●	●		●		●	●
United Arab Emirates	●	●		●	●		●	●	●	●	●	●		●			
United Kingdom	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●
United States	●					●	●	●	●	●	●			●		●	●
Uruguay	●	●	●	●	●		●	●	●	●	●	●	●	●	●		
Vanuatu	●	●		●	●		●	●			●	●		●			
Venezuela, Bol. Rep. of	●	●		●	●		●	●	●	●	●	●		●			
Viet Nam	●	●		●	●		●	●	●	●	●	●		●			
Yemen	●	●		●	●		●	●	●	●	●	●		●			
Zambia	●	●	●	●	●		●	●	●	●	●	●		●	●		
Zimbabwe	●	●		●	●		●	●	●	●	●	●		●			

* The relevant agreement or convention has been notified as applicable to this separate customs territory.

Abbreviations

ATT	Arms Trade Treaty
Ban Amendment	Amendment to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal
Basel Convention	Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal
BRS Conventions	Basel, Rotterdam and Stockholm Conventions
BWC	Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction
CFCs	chlorofluorocarbons
CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora
CND	Commission on Narcotic Drugs
CoP	Conference of the Parties
CSP	Conference of (the) States Parties
CWC	Chemical Weapons Convention
ECOSOC	United Nations Economic and Social Council
ESM	environmentally sound management
GATT	General Agreement on Tariffs and Trade
HFCs	hydrofluorocarbons
HS	Harmonized System
INCB	International Narcotics Control Board
MEA	multilateral environmental agreements
Montreal Protocol	Montreal Protocol on Substances that Deplete the Ozone Layer

MoP	Meeting of the Parties
ODS	ozone-depleting substance
OECD	Organisation for Economic Co-operation and Development
OPCW	Organisation for the Prohibition of Chemical Weapons
PEN Online	Pre-Export Notification Online
PIC	prior informed consent
POP	persistent organic pollutant
QR	quantitative restriction
QR Decision	Decision on Notification Procedures for Quantitative Restrictions
Rotterdam Convention	Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade
Stockholm Convention	Stockholm Convention on Persistent Organic Pollutants
TRIM	trade-related investment measure
TRIMs Agreement	Agreement on Trade-Related Investment Measures
Vienna Convention	Vienna Convention for the Protection of the Ozone Layer
WGETI	Working Group on Effective Treaty Implementation
WHO	World Health Organization
WHO FCTC	WHO Framework Convention on Tobacco Control
WMD	weapons of mass destruction
WTO Agreement	1994 Marrakesh Agreement Establishing the World Trade Organization

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World Trade Organization
154, rue de Lausanne
CH-1211 Geneva 2
Switzerland
Tel: +41 (0)22 739 51 11

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Measures such as prohibitions, export licences and restrictions assist in risk management and the regulation of trade in controlled and sensitive goods. They are established pursuant to international agreements and conventions on protecting people and the environment, on controlling drugs and harmful substances, and on contributing to international peace and weapons controls. This publication explores how particular international agreements and conventions operate in practice and how they link to the multilateral trading system.

Prepared or reviewed by the secretariats and implementing bodies of the relevant international agreements and conventions, the chapters delve into the export-related controls covered by these legal instruments and how these restrictions tie in with WTO agreements. The agreements and conventions included in this publication were selected on the basis of three criteria: the presence of provisions in the agreement or convention that seek to regulate exports; the extent to which WTO members are party to those provisions; and how often members refer to them in their notifications submitted to the WTO Secretariat.

The aim of the publication is to provide a better understanding of how international agreements and conventions regulate the export of high-risk and controlled goods and how these regulations co-exist with WTO rules.

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