

## Guidelines for Transfers of Sensitive Chemical or Biological Items

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June 2012

The Government of xxx has, after careful consideration and consistent with its obligations under the BTWC and the CWC, decided that, when considering the transfer of equipment, materials, technology and software that could contribute to chemical and biological weapons activities, it will act in accordance with the following Guidelines.

1. The purpose of these Guidelines is to limit the risks of proliferation and terrorism involving chemical and biological weapons (CBW) by controlling tangible and intangible transfers that could contribute to CBW activities by states or non-state actors, consistent with Article III of the Biological Weapons Convention, Article I of the Chemical Weapons Convention, and all relevant United Nations Security Council Resolutions. In accordance with Article X of the Biological Weapons Convention and Article XI of the Chemical Weapons Convention, these Guidelines are not intended to impede chemical or biological trade or international cooperation that could not contribute to CBW activities or terrorism. These Guidelines, including the attached Australia Group (AG) control lists and subsequent amendments thereto, form the basis for controlling transfers to any destination beyond the Government's national jurisdiction or control of materials, equipment, technology and software that could contribute to CBW activities. The Government will implement these Guidelines in accordance with its national legislation.
2. These Guidelines will be applied to each transfer of any item in the AG control lists. However, it is a matter for the Government's discretion to determine whether and to what extent to apply expedited licensing measures in the case of transfers to destinations it judges possess consistently excellent non proliferation credentials. Vigilance will be exercised in the consideration of all transfers of items on the AG control lists. Transfers will be denied if the Government judges, on the basis of all available, persuasive information, evaluated according to factors including those in paragraph 3, that the controlled items are intended to be used in a chemical weapons or biological weapons program, or for CBW terrorism, or that a significant risk of diversion exists. It is understood that the decision to transfer remains the sole and sovereign judgment of the Government.
3. In fulfilling the purposes of these Guidelines, national export control legislation, including enforcement and sanctions for violations, plays an important role.
4. To fulfil the purposes of these Guidelines, the evaluation of export applications will take into account the following non-exhaustive list of factors:
  - a. Information about proliferation and terrorism involving CBW, including any proliferation or terrorism-related activity, or about involvement in clandestine or illegal procurement activities, of the parties to the transaction;
  - b. The capabilities and objectives of the chemical and biological activities of the recipient state;
  - c. The significance of the transfer in terms of (1) the appropriateness of the stated end-use, including any relevant assurances submitted by the recipient state or end-user, and (2) the potential development of CBW;

- d. The role of distributors, brokers or other intermediaries in the transfer, including, where appropriate, their ability to provide an authenticated end-user certificate specifying both the importer and ultimate end-user of the item to be transferred, as well as the credibility of assurances that the item will reach the stated end-user;
  - e. The assessment of the end-use of the transfer, including whether a transfer has been previously denied to the end-user, whether the end-user has diverted for unauthorized purposes any transfer previously authorized, and, to the extent possible, whether the end-user is capable of securely handling and storing the item transferred;
  - f. The extent and effectiveness of the export control system in the recipient state as well as any intermediary states;
  - g. The applicability of relevant multilateral agreements, including the BTWC and CWC.
5. In a manner consistent with its national legislation and practices, the Government should, before authorizing a transfer of an AG-controlled item, either (a) satisfy itself that goods are not intended for reexport; (b) satisfy itself that, if reexported, the goods would be controlled by the recipient government pursuant to these guidelines; or (c) obtain satisfactory assurances that its consent will be secured prior to any retransfer to a third country.
  6. The objective of these Guidelines should not be defeated by the transfer of any non-controlled item containing one or more controlled components where the controlled component(s) are the principal element of the item and can feasibly be removed or used for other purposes. (In judging whether the controlled component(s) are to be considered the principal element, the Government will weigh the factors of quantity, value, and technological know-how involved and other special circumstances that might establish the controlled component or components as the principal element of the item being procured.) The objective of these Guidelines also should not be defeated by the transfer of a whole plant, on any scale, that has been designed to produce any CBW agent or AG-controlled precursor chemical.
  7. The Government reserves the discretion to: (a) apply additional conditions for transfer that it may consider necessary; (b) apply these guidelines to items not on the AG control lists; and (c) apply measure to restrict exports for other reasons of public policy consistent with its treaty obligations.
  8. In furtherance of the effective operation of the Guidelines, the Government will, as necessary and appropriate, exchange relevant information with other governments applying the same Guidelines.
  9. The Government encourages the adherence of all states to these Guidelines in the interest of international peace and security.

(Latest versions of Control Lists to be attached)

### Further provisions applicable to Australia Group Participants

In addition, participants in the Australia Group, consistent with their obligations under the BTWC and CWC and in accordance with their national legislation have, after careful consideration, decided also to give equal respect to the following provisions.

## Catch-All

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1. Participant states will ensure that their regulations require the following:
  - a. an authorisation for the transfer of non-listed items where the exporter is informed by the competent authorities of the Participant State in which it is established that the items in question may be intended, in their entirety or part, for use in connection with chemical or biological weapons activities;
  - b. that if the exporter is aware that non-listed items are intended to contribute to such activities it must notify the authorities referred to above, which will decide whether or not it is expedient to make the export concerned subject to authorisation.
2. Participant states are encouraged to share information on these measures on a regular basis, and to exchange information on catch-all denials relevant for the purpose of the AG.

## No Undercut Policy

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In accordance with the Group's agreed procedures, a license for an export that is essentially identical to one denied by another AG participant will only be granted after consultations with that participant, provided it has not expired or been rescinded. Essentially identical is defined as being the same biological agent or chemical or, in the case of dual-use equipment, equipment which has the same or similar specifications and performance being sold to the same consignee. The terms of the Group's 'no undercut policy' do not apply to denials of items under national catch-all provisions.

## Common Approaches

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AG participants implement these Guidelines in accordance with the Group's agreed common approaches on end-user undertakings and chemical mixtures.

## Intra EU Trade

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So far as trade within the European Union is concerned, each member State of the European Union will implement the Guidelines in the light of its commitments as a member of the Union.

## Brokering Services

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AG members should have in place or establish measures against illicit activities that allow them to act upon brokering services related to items mentioned in the AG control lists which could contribute to CBW activities. AG members will make every effort to implement those measures in accordance with their domestic legal framework and practices.