

# Strategic trade control: regimes & frameworks.

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# Introduction

## Four questions to be discussed

1. **Why** controlling transfers of dual-use items
2. **What** has to be control
3. **Who** control and who has to be control
4. **How** to control

# Four main elements

1. A **legal framework**: primary and secondary legislation
2. A **authorisation process to control movements** : licensing
3. A **verification process** to safeguard the efficacy of the trade control system: custom and prosecution
4. Sharing **the non proliferation responsibility**: stakeholders awareness raising, Internal Compliance Program

# Why

A need of **safeguarding** that transactions match political legal **commitments** of the **supplier** and of the **end user** authorities

In other words :

Red-billed  
oxpecker



# General Principle of International Trade

**Principle** : free movement between countries of goods and technology

Within the guidelines/under the conditions defined by WTO (GATT, GATTS, TRIPS)

**Exceptions:** (in principle) strictly defined and exceptional

Ruled by international agreements



# Exceptions usually authorized for

## Economic reasons :

- Safeguard the balance of payments;
- prevent sudden increases in imports from causing serious injury to domestic producers,.....

# All economic sectors related



## Morocco launches safeguard investigation on coated wood board

2 AUGUST 2018

On 27 July 2018, Morocco notified the WTO's Committee on Safeguards that it had decided to initiate on 31 July 2018 a safeguard investigation on coated wood board.

[News item](#)



## US, EU safeguard actions under discussion at WTO committee meeting

23 APRIL 2018

Recent safeguard actions by the United States and the European Union drew WTO members' attention at a 23 April meeting of the WTO's Committee on Safeguards. Delegations also reviewed more than a dozen other safeguard actions taken by members.

[News item](#)



## Philippines launches safeguard investigation on ceramic floor and wall tiles

11 JANUARY 2019

On 11 January 2019, the Philippines notified the WTO's Committee on Safeguards that it had decided to initiate on 20 December 2018 a safeguard investigation on ceramic floor and wall tiles.

[News item](#)



## Chile Launches Safeguard investigation on powdered milk and Gouda cheese

8 MARCH 2018

On 8 March 2018, Chile notified the WTO's Committee on Safeguards that it initiated on 8 March 2018 a safeguard investigation on powdered milk and Gouda cheese.



## Russia launches two safeguard investigations: on microwave ovens and on welded tubes of stainless steel

20 MARCH 2019

On 19 March 2019, the Russian Federation notified the WTO's Committee on Safeguards that it initiated two safeguard investigations: (a) one on microwave ovens imported into the customs territory of the Eurasian Economic Union, initiated on 1 March 2019 and (b) the other on imports of welded tubes of stainless steel imported into the customs territory of the Eurasian Economic Union, initiated on 4 March 2019.



## Madagascar launches safeguard investigation on detergent powder

7 JANUARY 2019

On 7 January 2019, Madagascar notified the WTO's Committee on Safeguards that it had decided to initiate on 31 December 2018 a safeguard investigation on detergent powder.

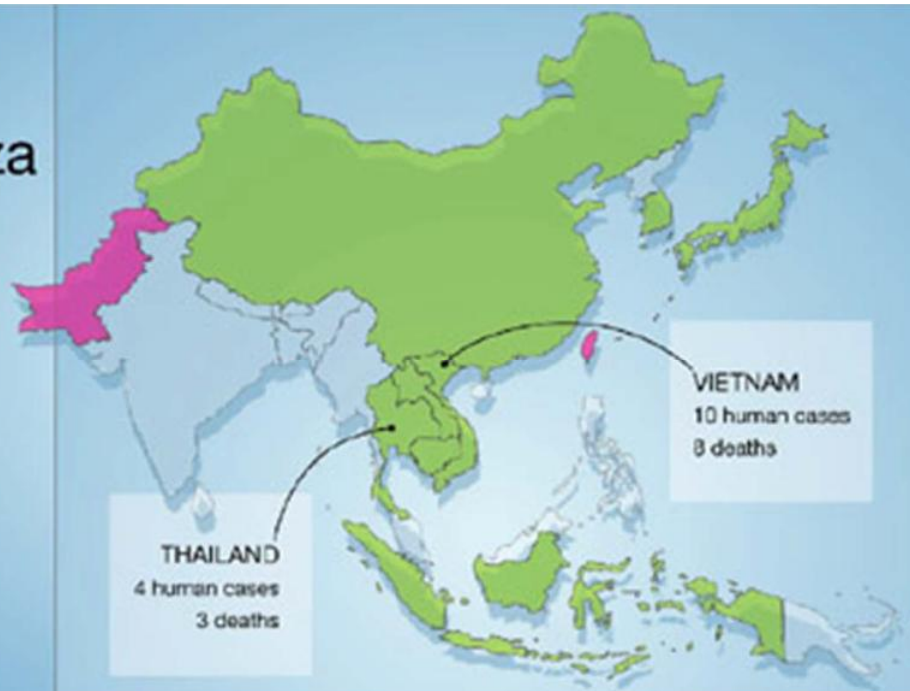
[News item](#)



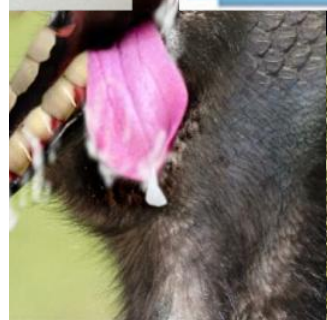
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# Avian influenza

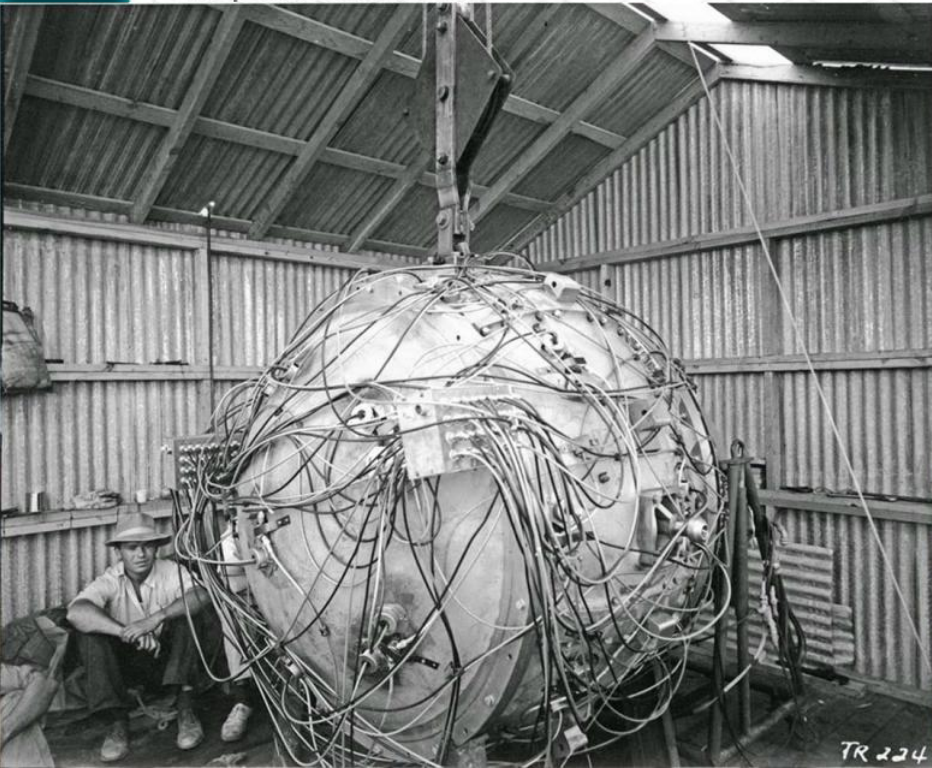
- Countries with H5N1 avian flu
  - Countries with strains other than H5N1
- Data correct on 2 February 2004



WE MAY BE SKINNY BUT WE ARE NOT MAD!



# And for security reasons: strategic trade exception



## And for security reasons: strategic trade exception

The general trade principle is almost  
**overturned**

- Principle : exchange mostly prohibited
- Exception : trade

**All transfers shall be submitted to  
authorisation** and some and suppliers  
“should restrain themselves” from  
transferring some “sensitive technologies”

# Strategic Trade control : an ongoing process dating back from 1921

A process inspired from....



In case you don't remember  
the story ....



# Strategic trade control : an ongoing process dating back from 1921

## 1925: Prohibition of use of certain weapons

Massive used of chemicals during WWI:

Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare

## 1944: Prohibition of **nuclear** (*atomic bomb*) trade

US Mac Mahon Act



**1968:** Restraining or regulating **access** to certain **technologies**  
NPT, COCOM

**1975:** Banning the development, production and stockpiling of **biological weapons**  
Biological Weapons Convention (BWC)  
First multilateral disarmament treaty banning the development, production & stockpiling of an **entire category of WMD)**

1978: Avoiding **unfair** competition between suppliers  
Zangger Committee and NSG

1980:

Banning of **chemical weapons**

Chemical Weapons Convention

(Disarmament agreement negotiated within a multilateral framework that provides for the **elimination of an entire category of WMD** under universally applied international control).

1991: Facing **new proliferation** concerns  
Australia Group and **MTCR**

1991: From especially designed to (nuclear) **dual-use**  
**items**  
NSG

2000: Setting out the requirements for controlling **rough**  
**diamond** production and trade  
Kimberley Process Certification Scheme (KPCS)

**2001:** Fight against **terrorism** as an objective of export control regimes  
NSG, MTCR, Australia Group

**2001:** Prevent and suppress the **financing of terrorist acts**  
UNSCR 1373/2001

**2004:** From **export** to trade **control** to trade **management**: a global policy  
UNSCR 1540

**2005:** Preventing **torture**, capital punishment and other cruel, inhuman or degrading treatment or punishment in non-European Union (EU) countries  
EU Regulation 1236/2005

**2014** Regulating the international trade in **conventional arms**  
Arms Trade Treaty (ATT)

**2017:** From an exception to an **prohibition**  
Treaty on the Prohibition of Nuclear Weapons  
(adopted in July 2017 not in force)

# Trade Control State commitments: Mix of International, Regional and National legislations



- UNSCR, GATT, NPT, CWC, BWC, Kimberley Process, NSG, Wassenaar Arrangement, Australia Group, Unesco, ...
- European Regulations, NWFTZ, ...
- National Regulations and sometimes Sub-national Regulations

# What



# Two main elements

- A scope of control:
  - One list, several lists of items and controlling not listed items
- Operations
  - Tangible and intangible transfers, export; import, ...

# I. Listed items

## One lists, several lists of items to control

International regimes have adopted lists by categories:

- Nuclear : NPT and NSG
- Chemical: CWC and Australia Group
- Biological: BWC and Australia Group
- Missiles: MTCR

**One transversal lists including more than one categories**

- Chemical, biological: Australia Group
- Chemical, Biological, Nuclear: Wassenaar
- Chemical, Biological, Nuclear, Missile : EU Regulation 428/2009

# Example of one list per category : the NPT/NSG list

## NPT article III.2: Especially designed ?

NPT Parties make a commitment **not to provide:**

(a) *source or special fissionable material,*  
or

(b) *equipment or material especially  
designed or prepared for the processing,  
use or production of special fissionable  
material,*

*to any non-nuclear-weapon State  
(NNWS) ....*

# NSG



## Nuclear Suppliers Group (1976)

Has adopted **common understanding** of items that shall be controlled to fulfill NPT State commitments

**Two lists of items:**

# A list of Nuclear items (trigger list)

Items that are especially **designed or prepared for nuclear use:**

- Nuclear **material**;
- Nuclear reactors and equipment therefor, non-nuclear material for **reactors**;
- Plant and equipment for the **reprocessing, enrichment and conversion** of nuclear material and for fuel fabrication and heavy water production and;
- **Technology** associated with each of the abovementioned items;

A

Like ....





Industrial

Strategic Materials

Military



Shampoo



Triethanolamine



Chemical Weapon



Tennis Racket



Carbon Fiber



Missile Fuselage



Instant Coffee



Lyophilizer



Biological Weapon

# Different understanding of the same terms:

- Civilian and military;
- Peaceful and non peaceful;
- Nuclear and non nuclear;
- Conventional weapon related and non conventional weapons potentially related;
- Trigger List and trigger List;
- ...

# Nuclear Suppliers Group

- No definition of the term
- Only used in the **Guidelines title**

*With the objective of averting the proliferation of nuclear weapons ... transfer of **certain** equipment, materials, software, and related technology that could **make a major contribution** to a “nuclear explosive activity,” an “unsafeguarded nuclear fuel-cycle activity” or acts of nuclear terrorism*

Items are listed due to their potential contribution to:

- “Nuclear explosive activity, ”
- “Unsafeguarded nuclear fuel-cycle activity”

**A third term was added after 2001:**

- “*Acts of nuclear terrorism*”
- Contrary to the first one this last term has not been defined

# NSG list of dual-use items

## 6 categories :

- Industrial equipment,
- Materials,
- Uranium isotope separation equipment and components,
- Heavy water production plant related equipment,
- Test and measurement equipment for the development of nuclear explosive devices,
- Components for nuclear explosive devices

**Example: one list for several  
categories: Wassenaar  
Arrangement, European  
Union and Japan,**

# Wassenaar List

Category 1 Special Materials and Related Equipment

Category 2 Materials Processing

Category 3 Electronics

Category 4 Computers

Category 5 Telecommunications and Information Security

Category 6 Sensors and Lasers

Category 7 Navigation and Avionics

Category 8 Marine

Category 9 Aerospace and Propulsion

# EU Regulation 428/2009

- Category 0: Nuclear materials
- Category 1: Facilities and equipment
- Category 2: Special materials and related equipment
- Category 3: Materials Processing
- Category 4: Electronics
- Category 5: Computers
- Category 6: Telecommunications and information security'
- Category 7: Sensors and lasers
- Category 8: Navigation and avionics
- Category 9: Marine Aerospace and Propulsion



# Japan control list

Japanese Category	Type of Control	Classification of the Items			International Regimes
		Military items	Arms		
1	List Control	Military items	Arms		WA/ML
2		Dual-use items	WMD-related	Nuclear items	NSG
3				Chemical weapons	AG
3-2				Biological weapons	AG
4				Missiles	MTCR
5			Conventional arms-related	Advanced materials	WA Cat. 1
6				Material processing	WA Cat. 2
7				Electronics	WA Cat. 3
8				Computers	WA Cat. 4
9				Communication/ Information security	WA Cat. 5
10				Sensors and lasers	WA Cat. 6
11				Navigation/avionics	WA Cat. 7
12				Marine	WA Cat. 8
13				Aerospace/propulsion	WA Cat. 9
14				Other ML items	Except for WA/ML
15	Sensitive items	WA very sensitive			
16	Catch-All Control	Items other than those under Categories 1 - 15			

# Japan Commodity Watch List

List of specific dual-use goods with **high risks of diversion** for the development, manufacture, use or storage of WMD:

- (1) Tributyl phosphate (TBP) (N)
- (2) Carbon/Glass/Aramid fiber (N, M)
- (3) Titanium alloys (N, M)
- (4) Maraging steel (N, M)
- (5) Aluminum alloys tubes with a diameter of more than 75 mm (N)
- (6) Flow-forming machines (N, M)
- (7) N/C Machine tools (N, M)
- (8) Isostatic presses (N, M)
- (9) Filament winding machines (N, M)
- (10) Frequency changers (N)
- (11) Mass spectrometers and ion sources (N)
- (12) Vibration test systems (N, M)
- (13) Centrifugal multiplane balancing machines

...

### III. Unlisted items: Catch-all clause



# Principle: enlarging the non proliferation responsibility

Three levels:

- Exporter has been informed,
- Exporter knows,
- Exporter has grounds for suspecting

# NSG example

5. Suppliers should ensure that their national legislation requires an authorisation for the transfer of **items not listed in the Annex** *if* the items in question **are or may be intended**, in their entirety or in part, for use in connection with a “nuclear explosive activity.”

# European Regulation example

1. Member States' Authorities has to require, through a **notification to exporters**, an export authorisation for an item not listed if there is risk that this item might be used in weapons of mass destruction program
2. **Obligation** for the exporter to **notify** to his National Authorities if he is **aware** that an item he intends to export ...
3. Exporter to notify to his National Authorities if he has **grounds for suspecting** that the item ...

# III. Operations

- **Tangible transactions (physical movements)**  
Export, import, transshipment, transit, financing, shipping
- **Intangible transactions (virtual movements)**  
Export, import, financing, brokering



## Example NPT article III.2

NPT Parties make a commitment not to **provide:**

*(a) source ...*

*(b) equipment or material especially designed ...*

*to any non-nuclear-weapon State (NNWS) for peaceful purposes, unless the source or special fissionable material shall be subject to the safeguards required by this Article*

## UN Security Council Resolution 620 (1988)

*Calls upon all states to continue to apply, to establish or to strengthen strict control of the **export of chemical** products serving as chemical weapons, in particular to parties to a conflict when it is established or there is substantial reason to believe that they have used chemical weapons in violations of international obligations.*

# Australia Group Guidelines

*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, ...*

# UN Resolution 1540 example

*Establish, develop, review and maintain appropriate effective national export and trans-shipment controls over such items, including appropriate laws and regulations to control **export, transit, trans-shipment and re-export and controls on providing funds and services related to such export and trans-shipment such as financing, and transporting** that would contribute to proliferation, as well as establishing end-user controls; ...*

# Who

Authorities to  
grant the  
authorisation

Operators

Interactions

Customs and  
prosecutors

Intermediaries

# How

# Authorisation Fundamental principle :

- All items should be submitted to **national export authorisation**
- Authorisation should be granted under certain **conditions**
- Authorisation should be granted after considering certain **criteria**



# Example : NPT/NSG, Australia Group

## Treaty on the Non-Proliferation of Nuclear Weapons (article III.2) :

State parties make a commitment **not to provide:**

*(a) source ...*

*(b) equipment ...*

*to any non-nuclear-weapon State (NNWS) for peaceful purposes, **unless** the source or special fissionable material shall be subject to the **safeguards** required by this Article*

## NSG interpretation: Condition for Nuclear Transfers (INFCIRC/254/Rev.12/Part.1)

### *Safeguards*

*4. (a) Suppliers should transfer trigger list items or related technology to a non-nuclear weapon State **only** when the receiving State has brought into force an **agreement** with the IAEA requiring the application of safeguards on all source and special fissionable material in its current and future peaceful activities.*

## NSG example: Criteria for Nuclear Transfers (INFCIRC/254/Rev.12/Part.1)

### *Non-proliferation Principle*

*10. Notwithstanding other provisions of these Guidelines, suppliers should authorize transfer of items or related technology identified in the trigger list only when they are **satisfied** that the transfers would not contribute to the proliferation of nuclear weapons or other nuclear explosive devices or be diverted to acts of nuclear terrorism.*

# Australia Group Criteria example

List of criteria to be assess by national authorities

...

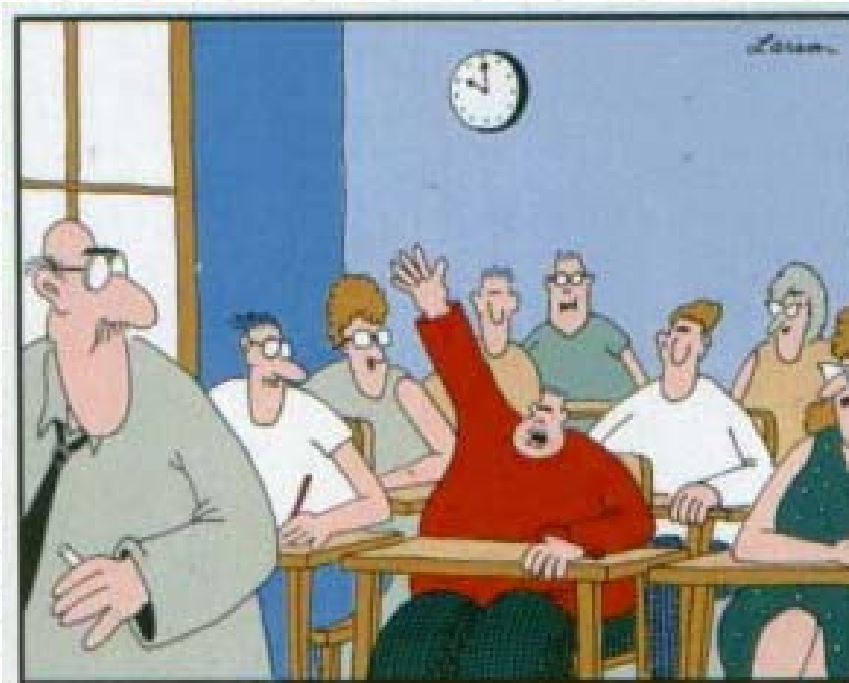
*b. The **capabilities** and objectives of the chemical and biological activities of the recipient state;*

*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** ... 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 ....;*

And now I guess ...



"Mr. Osborne, may I be excused?  
My brain is full."