Internal Compliance Programme (ICP)
Export control regulations

Legal basis

Legislation on goods controls:

Federal Act on the Control of Dual-Use Goods, Specific Military Goods and Strategic Goods (Goods Control Act, GCA[1])

Ordinance on the Control of Dual-Use Goods, Specific Military Goods and Strategic Goods (Goods Control Ordinance, GCO[2])

Ordinance on the Control of Chemicals with Civilian and Military Uses (Chemicals Control Ordinance, ChCO[3])

Ordinance on the Export and Brokerage of Goods for Internet and Mobile Communications Surveillance (Surveillance Goods Export Ordinance, SGEO[4])

Legislation on war materiel:

Federal Act on War Materiel (War Materiel Act, WMA[5])

Ordinance on War Materiel (War Materiel Ordinance, WMO[6])

Legislation on sanctions:

Federal Act on the Implementation of International Sanctions (Embargo Act, EmbA[7])

Ordinances as per SECO list (D/F/I)[8]

[1] SR 946.202

[2] SR 946.202.1

[3] SR 946.202.21

[4] SR 946.202.3

[5] SR 514.51

[6] SR 514.511

[7] SR 946.231

[8] https://www.seco.admin.ch/de/sanktionsverordnungen

Introductory note

This publication explains why export-oriented companies must implement an internal compliance programme (ICP), what the Swiss legal basis is, and what criteria an effective ICP should meet. It is intended to help you set up such an ICP or to optimise any programme that is already in place. Higher education and public institutions must also implement an internal compliance programme, but natural persons are exempt. Since 2016, the licence issue conditions for goods that are subject to the Goods Control Ordinance have required proof of reliable internal controls (Art. 5 para. 2 GCO). The same applies to goods subject to the Surveillance Goods Export Ordinance (Art. 5 SGEO). From 1 November 2021, proof of an ICP must also be supplied for licences issued under the Chemicals Control Ordinance (Art. 19a para. 2 ChCO) and legislation on war materiel (Art. 12a para. 2 War Materiel Ordinance, WMO). The format of this proof is not prescribed in detail so that scope for company-specific administrative procedures remains in the future. The company's management is responsible for the way in which proof is supplied.

Definitions

'Compliance' as it is used here is a legal concept requiring only that Swiss companies act in accordance with the law. In that sense its essential meaning is understood without question by all legal subjects.

In the corporate context, compliance can also be understood to mean that breaches of the law by a company's directors and employees must be prevented by means of appropriate organisational measures.

Compliance therefore covers all required and prohibited action relating to international trade in goods and is in no way limited to reviewing lists of sanctions, as is often wrongly assumed. Specifically, a company must ensure that none of its goods is entered in the goods control lists set out in the annexes to the GCO, SGEO and ChCO, and Annex 1 to the WMO. 'Goods' refers to goods, software and technology in both tangible and intangible form. In the interests of simplicity, goods here also covers war materiel as defined in Article 5 War Materiel Act (WMA).

Ensuring that export controls fulfil their purpose

Controls on dual-use industrial products are intended to prevent (1) their use to develop, manufacture or deploy nuclear, biological or chemical weapons (weapons of mass destruction, WMD); (2) their possible use to develop, manufacture or deploy delivery systems for WMD; and (3) a state displaying conduct that threatens regional or global security arming itself with conventional weapons. Controls under the Surveillance Goods Export Ordinance (SGEO) are intended to prevent such goods being used by the ultimate recipient for the purposes of repression. These export controls are based on internationally coordinated measures.

The objective of controls on war materiel is to fulfil Switzerland's international obligations and uphold its foreign policy principles by monitoring the manufacture and transfer of such materials and the related technologies. They should also enable Switzerland to maintain a level of manufacturing capacity that is adapted to its national defence needs.

I. Why does your company need an internal compliance programme?

Joint effort to combat the spread of weapons of mass destruction

As an export-oriented country, Switzerland has a history of active support for open markets and free trade. However, for reasons of national security, for certain types of goods it makes sense to control the export, import, transit, trade and brokerage and the transfer of intellectual property (GCA, WMA). Certain weapons are forbidden entirely. For example, nuclear weapons specifically, as well as biological and chemical weapons, may not be developed, manufactured, brokered, acquired, passed on, exported, imported, transited, stored or used in any other way. Their financing is also prohibited (WMA). Compulsory measures may apply to certain countries in order to implement sanctions that have been ordered by the United Nations, the Organization for Security and Co-operation in Europe, or by Switzerland's most significant trading partners, and which serve to ensure compliance with international law, and respect for human rights in particular (EmbA).

Preventing the spread of weapons of mass destruction (WMD) is one of the most pressing challenges that the world now faces. To achieve this effectively, all industrial nations have committed to the non-proliferation of WMD and to control the export of critical goods to certain countries. The conventional armaments sector is also subject to controls.

Export controls can only be effective if all economic operators believe that they are necessary and support them with all of the means at their disposal. Close cooperation on a basis of trust between manufacturers and the authorities is therefore essential to achieve this shared aim. Your knowledge about the technical characteristics of the goods you offer, and about potential customers in Switzerland and abroad, is a key factor in export controls. Your expertise and experience could be extremely helpful in identifying and averting illegitimate attempts to obtain those goods. This requires a systematic approach. A company must be organised in such a way as to recognise unlawful efforts to purchase critical goods and to stop them before those goods are exported.

Protect the reputation of your company and Switzerland as a location

The Swiss system of export controls rests on the independent responsibility of companies and their employees. They decide what contracts they conclude, what goods, software and technologies they export, what services they provide abroad, and what technical knowledge they wish to pass on to others.

Violations of export control law are not prosecuted under criminal law alone. The media seize on actual or alleged export 'scandals', which are then scrutinised by a critical domestic and international public. Anyone who comes under suspicion of having exported goods illegally is open to considerable damage to their reputation. In many cases, negative coverage spreads outwards from the company concerned and may have consequences for the whole of the Swiss economy. Depending on the extent and implications of the violation, failure to observe export control regulations may jeopardise the future of your company. Suppliers, customers and banks might distance themselves from your business.

Conversely, over the long term a properly functioning export controls system can help to secure strategically significant foreign markets for the entire Swiss export industry. Put simply, delivering an industrial good to a critical destination country for its nuclear weapons or missile programme might appear to generate a short-term profit for a single company, but in the long term all exporting companies could reap much greater rewards if the destination country were to abandon its WMD programmes, so more goods could be exported for civilian purposes.

To counter the proliferation of weapons of mass destruction and reduce the reputational risk to industry and to Switzerland as a whole, companies must have proper compliance systems in place to ensure that export control regulations are met.

Abide by applicable law

In addition to export control regulations, any entity participating in any way in international goods trading must satisfy a whole series of requirements. These include customs procedures, tax law, statistics requirements, preferential trade agreements, contract law and transport regulations. 'Export control law' as used in this publication actually has a narrow definition, referring only to those requirements that limit international goods trading for foreign and security policy reasons. In some contexts the understanding is broader, including export restrictions to protect the environment, health, the consumer or cultural heritage, for example. This publication refers exclusively to export control law in the narrower sense, i.e. the Goods Control Act (GCA) and the War Materiel Act (WMA).

The GCA provides primarily for licence and reporting requirements, as well as supervisory measures, to ensure appropriate controls on the export, import and transit of dual-use goods without restricting trade any more than absolutely necessary. Activities that are inherently incompatible with the objectives of export controls are prohibited.

Grounds for refusing a licence are set out in Article 6 para. 1 letters a and b GCA. They apply in particular where there is reason to suspect that the goods that are to be exported:

a. Are intended for the development, manufacture, use, passing on or deployment of WMD
b. Will help to arm a state with conventional weapons to such an extent that will heighten regional tensions or instability, or exacerbate an armed conflict
c. Will not remain with the declared ultimate recipient.

Grounds for refusing a licence in accordance with Article 6 para. 1 letter b GCA may also exist where:

a. A partner state has already refused the export of a similar good to the same ultimate recipient
b. The state of origin notifies Switzerland that its consent is required to re-export the good, and this has not been given
c. The destination state forbids the import.

For the criteria for refusing an export licence under the Surveillance Goods Export Ordinance and Chemicals Control Ordinance, please refer to the applicable provisions (Art. 3 SGEO; Arts. 9, 10 and 20 ChCO).

The following licence criteria must be observed when granting licences for exports under Article 22 WMA and for contracts under Article 20 WMA:

a. The maintenance of peace, international security and regional stability
b. The domestic situation in the destination country; consideration should be given specifically to respect for human rights and to no use of child soldiers
c. Swiss development cooperation efforts, and in particular the possibility that the destination country is listed among the least developed countries in the current OECD-DAC list of official development assistance recipients
d. The conduct of the destination country towards the international community, especially where compliance with international law is concerned
e. The position of those countries that participate alongside Switzerland in international export control regimes.

Exports as described in Article 22 WMA for contracts in accordance with Article 20 WMA will not be granted a licence if:

a. The destination country is involved in an armed domestic or international conflict
b. The destination country systematically commits severe violations of human rights
c. There is a substantial risk that the war materiel that is to be exported will be deployed against the civilian population in the destination country, or
d. There is a substantial risk in the destination country that the war materiel that is to be exported will be passed on to an undesirable ultimate recipient.

Export control law is complex. It is also made highly technical by the goods control lists given in the annexes to the Goods Control Ordinance, the Surveillance Goods Export Ordinance and the Chemicals Control Ordinance, as well as Annex 1 to the War Materiel Ordinance. The exporter is also expected to be familiar and compliant with the applicable statutory provisions, and informed about the latest legislative developments, as well as changes to goods control lists. A company cannot rely on its employees to comply with these statutory provisions if they have not been given specific working instructions on how to do so. Only an internal compliance programme can ensure that applicable law will be followed systematically.

Avoid liability risks

Where they do not observe applicable law, companies and their employees who are engaged in international goods trading face a whole variety of – avoidable – liability-related risks that can have serious personal and financial consequences for both.

Violations of the Goods Control Act and the War Materiel Act are reported by the authority that determines the violation (e.g. SECO or the Federal Customs and Border Security Office) to the Office of the Attorney General of Switzerland and prosecuted under criminal law. In addition to financial penalties or fines for the exporter and the declaring party, and the prospect of imprisonment in serious cases, the company at fault will lose its export control privileges, i.e. its general export and basic licences will be revoked.

With these penalties in mind, it is crucial to have proof that an internal compliance programme has been instituted. In your own interests alone, you should take appropriate organisational precautions right from the start to counter the liability risks under both criminal and civil law that are described above. You can do so by setting up an internal compliance programme and ensuring that its requirements are met. We also recommend protecting your own position by including relevant clauses on export controls and sanctions in your contracts.

Licence procedure

The issue of individual and general export licences for dual-use goods may be made conditional upon the fulfilment of objective and personal requirements, in particular the reliability of the applicant. Since the Goods Control Ordinance (GCO) underwent a complete revision, proof of a reliable internal compliance programme has been included under these licence issue conditions. The same is also true of the Surveillance Goods Export Ordinance (SGEO), and more recently also of the Chemicals Control Ordinance (ChCO). From 1 November 2021, under Article 12a para. 2 War Materiel Ordinance (WMO) proof of a reliable internal compliance programme for the provisions of legislation on war materiel must now also be supplied before a legal entity may be granted a licence. The format of this proof is not prescribed in detail so that scope for company-specific administrative procedures remains in the future (Art. 5 para. 2 GCO, Art. 19a para. 2 ChCO, Art. 12a para. 2 WMO). The exporter must ensure by means of suitable organisational and operational structures that all bans and licence and other obligations (e.g. retention) can be observed. It must consistently establish an internal export control system.

An internal compliance programme cannot function effectively unless someone at executive board or middle management level is nominated as responsible for it and given the role of export control officer. The duty to organise such a system lies with them, as does responsibility for staff selection and mandatory training, and the obligation to supervise those employees who carry out the statutory provisions on export controls.

The export control officer is the key figure in the export control organisation within the company. Along with the executive board, they bear responsibility for compliance with statutory requirements. They institute all of the necessary measures and set up an internal compliance programme to ensure that the company is able to satisfy the provisions of legislation on international trade. Failure to comply with these

obligations has severe financial and legal consequences, and calls the reliability of the company as a whole into question.

Use procedural simplifications under the GCO and ChCO

General export licences under the Goods Control Ordinance and the Chemicals Control Ordinance are a preferential procedure that simplify practical matters considerably. The Surveillance Goods Export Ordinance provides only for individual licence procedures. General licences permit the exporter to execute many exports of many controlled goods to a variety of recipients in different countries without having to go through the individual authorisation procedure every time. These authorisations are set out in broad terms, so exporters must satisfy special requirements with regard to their reliability. When applying for a general export licence it is not enough for the exporter to declare that they take all of the necessary measures to comply with the regulations. As the licensing authority, SECO may verify in written proceedings and an on-site inspection that your company genuinely does have an internal control programme that ensures that export controls are handled properly.

Improve operational effectiveness and avoid unnecessary expense

An efficient ICP can avoid unnecessary expense. For example, negotiating with business partners or being in production without first having established that you meet the applicable export control conditions will cost you time and money, especially if you are then unable to go through with your plans. This can be prevented by a fully functioning internal compliance programme.

II. What requirements must an ICP meet?

Own interests and binding legal requirements

Having an internal compliance programme pays off in a variety of respects. One example is where your company is able to use general export licences under the Goods Control Ordinance or the Chemicals Control Ordinance because you can provide proof of a functioning ICP and can therefore guarantee that all rules and regulations are observed. At the same time, in many areas it is also required by law, and expected, that you will have an effective ICP that provides a certain minimum framework.

Principles for reviewing exporter reliability

The general requirements that an ICP should fulfil are derived from the provisions of the Goods Control Act and the War Materiel Act. These state that an ICP should ensure systematically that the following responsibilities are fulfilled:

Staff selection:
The export control officer must select a sufficient number of suitable staff to handle internal export controls, and must ensure that the individuals concerned are reliable and appropriately qualified.

Staff training:
Employee qualification levels must be maintained by means of regular training, such as internal courses and participation in external seminars. This also includes purchasing and updating the necessary tools and aids.

Organisation:
The export control officer must determine responsibilities and authorities for export controls within the company (organisational structure), and organise workflows in such a way that breaches of the Goods Control Act and War Materiel Act can be prevented (operational structure). Experience shows that a single central coordination unit for internal export controls is both necessary and practical. This central unit must hold sufficient internal authority to provide information and issue instructions to all of those involved in exports.

Supervision:
The export control officer must take appropriate action to check that instructions concerning the operational structure are actually being complied with, and must regularly review and update the functional capability of their ICP. In particular, the materials used must be checked to ensure that they do not appear on the goods control list, and the customer base must be checked to ensure that no customer is subject to sanctions.

There is no model ICP that you can simply copy and apply 1:1 to your own company. Depending on the size of your organisation and the sectors in which you operate, you will have to analyse risk and the degree to which you are affected to get a picture of what individual requirements your ICP must fulfil..

When appointing your company's export control officer, remember that export control is a management matter. It is an integral part of the company's independent responsibility in international goods trading. Ideally, the executive board would therefore clearly and unequivocally recognise the importance of the export control function in the company's objectives or its mission statement. With this in mind, the export control officer should themselves be a member of the company's senior management. They can then delegate the actual delivery of goods subject to licence to the regular operations of the relevant units in the company. They must, however, personally organise internal export controls and instruct the employees in charge of them, thereby properly fulfilling their export control officer remit.

III. Characteristics of an ICP

The following recommendations for an effective internal compliance programme are based on international standards for export control regimes, such as the Wassenaar Arrangement.

There is no perfect, one-size-fits-all ICP. The specific requirements that your ICP must be able to fulfil largely depend on the size, structure and business volume of your company and, crucially, the nature of your business. The ICP need only cover those business areas that are deemed high risk, i.e. those affected by export control regulations. However, since there may be changes in the degree to which operations are affected, companies also have a responsibility to monitor the risk situation and to amend their ICP as necessary

1. Staff and technical resources to process exports

1.1. Staff resources

The company must exercise particular care in selecting the employees who are responsible for its export controls. It must ensure that all areas of the company that are associated with international trade have enough employees who can demonstrate the relevant specialist (legal and technical) knowledge, and who are personally reliable. A variety of factors affect how the internal export control function is staffed. Particularly important here are the size of the company, its product range, business partners, staff capabilities, and the proportion of output that is exported. At least one person must be employed in export control. Depending on average order volume, the person concerned may complete the tasks required by export control law on an occasional basis. They must also have a deputy to cover absences owing to holidays or illness. This deputy must be equally qualified to handle export controls.

1.2. Technical resources

There are no mandatory specifications for what technical resources a company needs to comply with its obligations under export control law.

It is unrealistic today to believe that a company will work without any IT systems at all. It no longer makes sense for any business to do so given the increasing complexity of legislation on international trade and the recent introduction of electronic communication processes such as the Elic licence platform and e-dec electronic customs declarations. An electronic system to process exports is therefore recommended. Your company's industry associations and chambers of commerce are just two of the sources that can provide information on available software.

1.3. Tools and compliance manuals

The staff handling export controls must be able to access the relevant legal texts, including lists of goods and individuals, at all times.

These texts, and official announcements, are published on the SECO website and elsewhere.

Requirements, amendments, information sheets and publications on various topics under legislation on international trade, forms, checklists and further links can all be found on the SECO website.

Furthermore, as a rule the company should produce manuals that set out the operational and organisational procedures that export control staff must follow. These staff must also be notified of amendments to these manuals, and of their entry into force. It is recommended that these manuals be revised annually.

Manuals should include the following content, as a minimum:

- A clear statement from the company's senior management on compliance with the provisions of legislation on international trade
- The entire process, from receiving an order to assessing the applicability of regulations under export control law, then compliance with the relevant provisions through to delivery of the product or service
- Instructions with regard to sanction lists, intangible technology transfer (ITT) and technical support
- Monitoring of compliance with authorisation conditions
- Interaction with external actors and, in certain cases, with other company departments concerned, such as legal affairs, purchasing and sales
- The coordination of all employees who work in export control or are in some way affected by it
- Coordination and any information-sharing with the competent authorities, such as the reporting of suspicious export orders, whether or not there is a voluntary disclosure policy, etc.

It is recommended that the manuals are available not only to export control staff but also to all employees at least in electronic form, such as on the company's intranet. The management declaration on compliance with the provisions of legislation on international trade, especially, should be communicated clearly and repeatedly to employees to promote conformity with export controls.

2. Organisational structure/allocation of responsibilities

Overall responsibility for export controls within the company must be set out in writing and clear to all. In the case of companies that export listed goods or war materiel, this responsibility lies with the export control officer. Further responsibilities must also be determined and made clear to all, in the company's organisational chart, for example. This document must be kept up to date. The description of the hierarchy of responsibilities must contain details of how those responsibilities are delegated, as well as the usual procedures that apply if the person holding overall responsibility is absent.

Whether export controls are handled in a separate shipping department or at head office, or whether there is a separate export control department, depends on the size and structure of the company.

However things are organised, one thing is particularly important: that employees in export control should have maximum independence. The fewer staff the company has available, the more difficult this is. Priority should nonetheless be given to ensuring that control staff are protected as far as possible from conflicts of interest. The potential for such conflicts is particularly great if employees in export control are also responsible for sales, for example. It is therefore recommended that export control be structured to be as independent as is feasible.

Export control staff should have the power to stop an export. Alternatively, they must have the authority to report directly to the export control officer if they need permission to stop an export.

3. Audits/supervision

The ICP must provide for control mechanisms that are embedded in daily operating processes. This might take the form of double sign-offs on the release of exports, or random checks.

In addition to these process-based controls, the design, fitness for purpose and effectiveness of the ICP must be reviewed regularly.

Ideally, there will be internal ICP system audits once a year, because the control parameters laid down in the annexes to goods control legislation and in sanctions, as well as in Annex 1 to the War Materiel Ordinance, may change from time to time

If the audit is conducted internally, it should be assigned to one of the following employees:

- A senior employee in the hierarchy of responsibilities for controls/internal audit
- The quality manager
- The finance manager or accountant, or
- Another individual from middle or senior management who is not directly involved in the everyday work of the export control staff.

The audit may also be conducted by suitably qualified external specialists, such as lawyers, management consultants or financial auditors.

Since a system audit includes the actual processes and review procedures that make up the internal export control function, it must inspect the entire internal compliance programme. This includes the relevant working and organisational instructions, training, and the way in which internal export controls are documented and retained.

The audit criteria should be determined in writing in advance, and the audit findings also documented in written form. The audit should cover the following questions as a minimum:

- Are the applicable export restrictions complied with? (Evaluated by means of random samples)
- Are there updated procedures that ensure compliance with all of the requirements of legislation on international trade?
- Are there regular training sessions and awareness-raising measures?
- Are records complete and easily accessible?
- Is there information about the life cycle of the products in question, from their source to their destination?
- How does the company approach any changes that might be necessitated by changes in the law?

To ensure that a representative number of exports is audited, checks should be made on at least one delivery per customer or destination, or at least one delivery per project.

Should the system audit find that the company may not have complied fully with requirements, the suspected breaches, the corrective action recommended to rectify them and an assessment of how effective this action is in reality should be documented in writing. These records must be retained. Companies are not required to make voluntary declarations of any breaches that are found. Employees must be provided with written instructions on the procedure to follow in the event of breaches of the law, including internal escalation and emergency procedures.

4. Operational structure/operational procedures and general awareness-raising

4.1. Process manual

Operational and organisational procedures should be set out in writing and should contain instructions and guidelines on the following points:

- The entire process, from receiving an order to assessing the applicability of statutory export control regulations and compliance with the relevant provisions, through to final processing, with a final compliance check conducted before shipping; ideally, this process will be tied in with existing processes such as sales, purchasing, etc.
- Monitoring of compliance with authorisation conditions
- Interaction with external actors and, in certain cases, with other company departments concerned, such as legal affairs and sales
- Coordination of all employees who work in export control or are in some way affected by it. For example, sales staff should be instructed to notify export control staff of any doubts they may have, and employees should be informed that an order will not be processed until it has been authorised by the export control staff

- Coordination and any information-sharing with the competent authorities, such as the reporting of suspicious export orders, whether or not there is a voluntary disclosure policy, etc.

4.1.1 Operational and organisational procedures: pre-authorisation phase

Embargoes	How does the company observe embargoes?	If a delivery is planned to a destination country that is subject to an embargo, the company should have regulations for checking the relevant sanction rulings. This check should cover the following minimum points: • Compliance with supply bans • Deliveries banned on the basis of the sanction ruling • Check of the products that are to be delivered against the list of goods subject to embargo • Additional licence criteria for certain services, such as technical support

Sanction lists	How does the company observe sanction lists?	The names and identities of the recipient legal entities and natural persons must be checked against the relevant sanction lists. Visit the SECO website to use the SESAM tool to search for those subject to sanctions. You can search for the full name or parts of it, as well as for (English) text contained in the additional data, such as addresses, grounds for the sanction, and supplementary information. You can also filter sanction data by sanction programme and/or type of subject.
	What degree (or percentage of certainty that a match has been found is required to produce a hit when searching for an identity in the sanction list?	There should be written rules of procedure that state for each case how probable matches and hits are to be treated. For example, if a match has been found it should be reported to the competent authority.
	What procedures apply if a name matches an entry in the list?	

Services	According to the Federal Act on Private Security Services Provided Abroad (PSSA) and the corresponding ordinance, companies that wish to provide private security services abroad from a base in Switzerland are subject to a **prior declaration requirement**. These include logistical	The Export Controls and Private Security Services Section (ECPS) of the Federal Department of Foreign Affairs (FDFA) is responsible for implementing the PSSA: https://www.eda.admin.ch/en/federal-act-on-private-security-services-provided-abroad-pssa **FDFA ECPS contact details** Tel.: +41 (0) 58 46 469 88 email: sts.seps@eda.admin.ch

	support services, such as the servicing, maintenance and repair of the goods that have been exported, as well as advice and training.	Exceptions to the reporting obligation apply for certain services provided in close connection with an export. It is worth contacting the FDFA (ECPS) to check whether or not a service must be reported. SECO will be happy to serve as a point of contact.

Control of listed goods under the GCO, SGEO, ChCO and WMO	Questions about internal procedures to ensure that a controlled good featuring in the annexes to goods control legislation or Annex 1 to the WMO cannot be exported without a licence:	
	Are the goods received or manufactured by the company classified with the aid of an IT system?	Goods should be classified with the aid of appropriate IT. Changes to the goods control lists should be entered in the system immediately. 'Classification' in this context refers to how the goods are grouped under the export control numbers listed in the annexes to goods control legislation, and to categories of war materiel as listed in Annex 1 to the WMO.
	How are all goods that are subject to the licence procedure classified and recorded, and who is responsible for this? What procedures are in place to ensure that goods classifications are kept up to date, and how is this documented?	Export control staff should be responsible for recording and classifying the goods, where necessary in consultation with technical experts. Checks conducted in the event of changes to the relevant lists should be documented in the system.
	How are the end use of those goods by the recipient, and the recipient's reliability, assessed?	The export control staff should be responsible for verifying the reliability of the recipient. Particular attention should be paid here to the end use of the goods, and the risk of their being diverted. Should the control staff find that the recipient is in breach of export control regulations, they should notify SECO. It is particularly important to verify the recipient's honesty if they are a new customer, if the identity of the customer is not clear, or if there are doubts concerning the stated end use of the goods. This might be the case if the recipient has ordered unusual quantities, or has specified special and unusual transit routes.

Intangible technology transfer (ITT)	How does the company ensure compliance with ITT regulations, such as those governing email, **cloud computing** and intranet access from abroad, courses and professional training programmes)?	The company should have issued clear written instructions for ITT via email, fax, intranet and internet. These also cover cloud computing. The provision or transfer of technology should be permitted only if licence requirements have been checked and, if a licence is required, whether it has been obtained so that the transfer can go ahead.

Control of unlisted goods (Art. 3 para. 4 GCO; also referred to as the 'catch-all')	How does the company assess whether it must apply for a licence for an unlisted good? Is there a procedure for deciding when and how to notify SECO?	There should be a procedure in place for checking the end use of the goods and their final recipient. Specifically, the export control staff should check whether any government warnings have been issued (by SECO, the Federal Intelligence Service (FIS), cantonal offices, etc.), as well as internal risk profiles for critical final users and recipients. The latter might be done by creating internal alert lists and blacklists. If it is known that the goods are destined for a sensitive end use in connection with WMD programmes, SECO is notified and a licence obtained prior to their export. SECO will issue such licences only if the goods are covered by the annexes to goods control legislation and are thus subject to licence under the GCO, SGEO or ChCO or if, as described in Art. 3 para. 4, the exporter knows or has reason to believe that their goods are intended for the development, manufacture, use, passing on or deployment of nuclear, biological and chemical weapons, and only a review by SECO can rule out such unlawful use. **If the goods are not associated with weapons of mass destruction, and their use for this purpose can be ruled out on technical grounds, such as in the case of foodstuffs and medicines, the 14 export does not have to be submitted to SECO for approval** Provisions on sanctions remain reserved. SECO should be contacted in the event of doubt.

Technical support	How does the company guarantee compliance with regulations governing technical support?	The company should have a compliance procedure relating to technical support by: • Foreign visitors and employees • Employees (e.g. engineers) working abroad • Conferences, seminars held in Switzerland with attendees from abroad, and seminars held abroad.

Trading and brokerage business	How does the company check the regulations on trading and brokerage business?	Where such business is conducted, there are rules on checking trading and brokerage transactions to determine whether: • Deliveries are being made from one third country to another • The delivery includes listed goods. Anyone wishing to broker goods that they know or have reason to believe are intended for the development, manufacture, use, passing on or deployment of nuclear, biological and chemical weapons must apply to SECO for a licence. A

		licence must also be obtained from SECO if the goods are classified as war materiel.

Operational and organisational procedures: authorisation phase	How does the company ensure that it submits complete and comprehensive export licence applications?	The company should be capable of complying fully with the licence procedure and the corresponding regulations. The documents that are to be submitted must be completed properly and in full. For individual licences, SECO may require the following enclosures, in particular: company profiles; order confirmations, purchase agreements, plans/drawings or invoices; import certificates or licences from the recipient state, miscellaneous confirmations; end user certificates from end users (also applies to OEM and integrators).

End user certificates (EUC)	There are the following templates for end user certificates: • EUC for war materiel • EUC for industrial goods

Operational and organisational procedures: **post-licence issue phase**	What internal procedures are used to ensure compliance with the conditions of the licence?	Prior to actual delivery, there should be an exhaustive review of control requirements to ensure that the conditions of the licence have been met in full. The company should set these licence conditions down in writing and review them regularly. The company must do everything in its power to ensure that the data entered in the Elic electronic licensing system are correct and complete, especially where goods are deleted.

General export licences under the Goods Control Act	What internal procedures are used to ensure that exports under general export licences go to reliable recipients only?	You must be able to demonstrate credibly at all times that your recipient, end user or buyer is reliable. That is why you must verify your customer's reliability, in particular with regard to their compliance with the intended use and final destination of the good. Under certain circumstances you must also notify SECO of the outcome of this check. General export licences may not be used if there are indications, or you know, that the goods are being passed on to an unreliable end user and/or are being or will be re-exported without SECO approval. SECO recommends that you always obtain an end user certificate.

Licences under the War Materiel Act	What internal procedures ensure that SECO receives all of the information about an export in full?	All of the information that is important to the grant or refusal of an export licence is available.

4.2. Staff selection

Export control staff should be familiar with:

- Legislation on international trade
- The application procedure
- The company's production and structure.

Export control staff must have the knowledge they need to do their job, for example by means of initial training plans. They must have a suitable introduction to their role and, where necessary, they must be prepared for their work with specialist external training course on export controls.

4.3. Awareness-raising, training and information

The export control officer must keep up to date about their obligations to abide by compliance and organisational regulations.

Export control staff must also be kept up to date when important regulations and procedures change. They should have the opportunity at least once a year to attend further training on exports controls, whether internally or externally.

Employees who are affected by export operations must be taught during their introductory period about the internal compliance programme, by means of online training or seminars, for example.

Every year, export control staff or external service providers must raise awareness about government warnings and the company's internal risk profiles.

In addition, all employees should have access to the export control-related organisational and operational procedures referred to above.

All employees must be notified of who to contact with questions about export controls. A list of contacts must be easily accessible.

5. Physical and technical security

Security measures to protect export/shipment records and procedures should be in place. These might include anti-climb fencing around the full perimeter of the company site, secure entry points, 24-hour surveillance of the premises, and a separate entrance for deliveries and collections.

There should also be security measures to protect software and technology, such as password-protected systems, a firewall, and controls on electronic devices and emails.

6. Records/retention

Export-related documents from all phases of the application process must be archived in accordance with statutory requirements. Following customs clearance, all of the major documents relating to the export must be retained for ten years and presented to the competent authorities upon request during that time (Art. 18 para. 4 GCO; Art. 24 ChCO, Art. 27 WMA, Art. 17 WMO).

All proof of training must also be archived. This should be included in the personnel files of the employees concerned, for example.

Records must be made available to the competent authorities. It should be possible to provide such records electronically. An on-site visit will be necessary in a small number of cases in which access to a secure intranet is required. In other cases, records may be transferred for the purpose of remote verification. Records may also be provided in paper form and in some cases also as scans.

The individual steps in the control process should be precisely documented at all stages of an export project. Should the export control function conclude that no application need be made to SECO under goods control or war materiel legislation, this should be documented with particular care.

In this context there should also be rules in place about who manages the authorisations that have been granted. Transit and temporary licences with ATA Carnets, or ZAVV customs declarations for temporary admission for war materiel, which have not been used or that have expired must be returned to SECO. Export restrictions should be linked with the subsequent shipments/exports in one or more of the following ways:

- Electronic file or email folder containing information about imports and subsequent movements
- As part of a management system
- A project or supplier-related folder in which all of the information is stored together, or
- An archive system based on the structure of the folder system.

IV. Warnings

The knowledge present within the industry plays a key part in combating proliferation. Government export controls can only be effective if they are actively supported by all of the parties concerned – manufacturers, exporters, engineers, etc. They must work together closely to fight the spread of weapons of mass destruction. An appropriate awareness of the risks associated with sensitive goods and the dangers of their misuse is crucial here.

The information given below is intended to help companies assess the risk of their becoming inadvertently caught up in a WMD programme, and to determine those cases in which to seek advice. These indications do not automatically mean that you must apply for authorisation under the Goods Control Act or War Materiel Act.

1. Attempts to procure goods

Any party that handles dual-use goods may unwittingly be assisting in the planning or execution of a WMD programme. Special attention is needed to detect direct or indirect attempts to purchase such goods.

Examples:

- Enquiries from new or unfamiliar customers: their identity remains vague and when asked about their identity their answers are obviously evasive, or they are unable to provide any convincing references.
- The customer does not give satisfactory answers, if any, to questions about the destination or intended use of the goods.
- The customer does not ask any of the business-related or technical questions that are to be expected in business negotiations or in the relevant documents.
- The customer demands an unusual and excessive level of confidentiality about the destination or the products that are to be supplied.
- The potential buyer offers unusually favourable payment terms. They may be willing to pay a large amount in cash up front, for example.
- The customer asks the company to complete a project that has been started by another supplier.
- The description of the goods is vague or meaningless, or their specification seems unnecessarily high.
- The stated value of the goods does not correspond to normal business practice.
- The customer demands a level of security which seems excessive in relation to the intended use of the goods. Packaging instructions do not make sense. For example, the customer may want seaworthy packaging for a delivery within Europe.
- The equipment in question does not fit with the factory in which it is to be used. The customer clearly does not know what security precautions are usual in handling the goods that they have ordered.
- The customer requests strange labelling, marking or lettering.
- The seller is denied access to parts of the facility for implausible reasons.
- Without reason, the customer splits one contract for a single, cohesive order into several individual contracts.

2. Attempts to procure expertise

Business alliances can also be abused to obtain technical knowledge that is then used to develop and manufacture weapons of mass destruction. Free access to universities and other institutes of science and technology for scientists, students and engineers from countries suspected of conducting WMD programmes enables these individuals to gain detailed expertise in high-tech fields.

Knowledge may be transferred in the context of national and international conferences, trade fairs, special exhibitions, workshops, meetings, symposia, joint research and development projects and training programmes. These events also offer an opportunity to establish personal contacts, thereby allowing specialist knowledge to be gained on an informal basis that will not normally arouse suspicion. Knowledge transfer also includes scientific and academic exchange programmes between industrialised nations and those that are believed to be running nuclear, biological and chemical weapons programmes. Moreover, private initiatives offer plenty of opportunity for networking and information-sharing. Another means of acquiring specialist knowledge is to approach experts and/or the technical staff involved while production facilities are being installed or maintained, for instance.

Examples:

- Enquiries from individuals whose identity remains unclear because their letterhead is incomplete or has been photocopied into the letter, for example.
- Statements in response to questions about relevant business or technical aspects of a process indicate that the individual making the enquiry does not have the technical knowledge that is normally required for such projects.
- The individual cannot explain satisfactorily, if at all, why the knowledge transfer or a training course is necessary.
- The project is split into several sub-projects without reason or plausible explanation.
- The individual decides against further support for the project, and does not wish to pursue collaboration.
- The individual declines the expert assistance or training for employees that is typically necessary or usually requested for this type of project.
- The individual requests assistance and advice in a specific field of technology.
- The individual gives a shielded secure area as the destination for the goods, for example an area close to military installations or one to which access is limited to a strictly controlled group of people.
- Enquiries from individuals who can be reached via a post office box or mobile phone only.
- Enquiries from individuals who give transport routes that make no sense, either geographically or economically.
- Enquiries from individuals who cannot plausibly explain where deliveries to date are being kept or used.

V. Official ICP audits

In certain groups of cases, SECO has the official authority to audit a company's internal export control system.

1. Individual licence

The company's management must take action to ensure that the company is able to comply with its obligations under export control law. SECO audits the internal compliance programme if there is good reason to believe that it is not operating as it should. A reliability audit will be instituted if this is the case. The applicant will first be asked to explain the facts of the case, and to state their position. Application assessments may be suspended until these circumstances have been clarified. Individual licences may have reporting conditions attached, such as an installation report, or an obligation to re-import the goods concerned if they have been exported temporarily for demonstration purposes.

2. General export licences under the Goods Control Act

A general export licence represents significantly privileged treatment compared with the individual licence procedure, and is therefore granted only to especially reliable companies. These companies thus bear far greater responsibility than those awarded individual export licences. With this in mind, before granting a general export licence SECO will check whether the company is capable of fulfilling this special responsibility. An effective internal export compliance programme is crucial here. SECO may audit the ICP on site, and may also conduct audits at regular intervals while the general export licence is in effect. These audits will concentrate on the operational IT system that must be in place without exception before a company can apply for a general export licence. General export licences may also have reporting conditions attached. They are awarded exclusively to legal entities that are entered in the commercial registers of Switzerland or Liechtenstein. Higher education and public institutions are exempt from this requirement. In the two years prior to the application, the applicant (natural person or the members of the governing and executive bodies of the legal entity concerned) may not have had any legally enforceable convictions for violations of the GCA, the WMA, the Weapons Act (SR 514.54), the Nuclear Energy Act (SR 732.1) or the Federal Act on International Trade Measures (SR 946.201).