

**Security Council Committee established
pursuant to resolution 1718 (2006)**

7 February 2014

**Implementation Assistance Notice No. 4: Proper implementation of paragraph 22 of
resolution 2094 (2013)**

The Security Council Committee established pursuant to resolution 1718 (2006) believes that the following information may be useful to Member States in implementing their obligations pursuant to resolutions 1718 (2006), 1874 (2009), 2087 (2013), and 2094 (2013).

In paragraph 22 of Security Council resolution 2094 (2013), the Security Council:

"Calls upon and allows all States to prevent the direct or indirect supply, sale or transfer to or from the DPRK or its nationals, through their territories or by their nationals, or using their flag vessels or aircraft, and whether or not originating in their territories of any item if the State determines that such item could contribute to the DPRK's nuclear or ballistic missile programmes, activities prohibited by resolutions 1718 (2006), 1874 (2009), 2087 (2013), or this resolution, or to the evasion of measures imposed by resolutions 1718 (2006), 1874 (2009), 2087 (2013), or this resolution, and directs the Committee to issue an Implementation Assistance Notice regarding the proper implementation of this provision;"

The Committee reiterates that the sanctions are not intended to affect economic activities unrelated to the DPRK's illicit programs or activities, the supply, sale or transfer of all items unrelated to the DPRK's illicit programs or activities, the normal, non-prohibited exchanges of other countries with the DPRK, including any activities of diplomatic missions in accordance with the Vienna Convention on Diplomatic Relations, and activities of UN and humanitarian agencies in the DPRK in accordance with their mandate, or to impose a negative humanitarian impact on the DPRK or any country.

To improve implementation of paragraph 22 of resolution 2094 (2013), consistent with the above-mentioned principles, the Committee makes the following observations:

1. It is the responsibility of the State to make its own determination, in accordance with its national administrative and legal processes, whether an item falls under the scope of paragraph 22 of resolution 2094 (2013).
2. To make this determination, the State should assess prudently the totality of the circumstances, based on all accurate and available comprehensive information, through conducting its own adequate research and appropriate diligence with respect to shipments, and consulting with relevant States as appropriate.
3. Keeping in mind the objectives set forth in the relevant resolutions, States may wish to consider the following technical factors in making this determination:

- a) There may be supplies, sales, or transfers of items with technical specifications just below those provided in current lists of prohibited ballistic missile-, nuclear-, and other weapons of chemical- and biological- weapons-related items. These lists may be found at: http://www.un.org/sc/committees/1718/xportimport_list.shtml. As some of these items may be dual-use (i.e., have both civilian and military functions), States are encouraged to take into account the specific circumstances of each case, such as relationship to the DPRK's known procurement priorities, and carefully determine the nature of such items on a case by case basis. As an established exercise, proper end-use/end-user arrangements should be taken into account to lift concerns.
 - b) Individuals and entities known to have participated in prohibited programs or activities are frequently involved in the supply, sale or transfer of items that could contribute to such programs or activities, or to the evasion of measures, and may be the originator, intended recipient or facilitator. The use of front companies, which are often established for the sole purpose of facilitating illicit activity and have little or no legitimate purpose or physical presence, is common for transfers of prohibited items and facilitation of related payments. In this regard, the Committee emphasizes that information on such individuals and entities should be carefully studied and encourages States to share and verify relevant information, especially in light of previously verified attempts to obscure or conceal the true originator, recipient, or facilitator.
 - c) Deceptive labeling or documentation, as well as attempts to conceal the origin, destination, or ultimate end-use or end-user of items, have all been associated with the supply, sale, or transfer of items that could contribute to prohibited programmes or activities or to the evasion of measures. In previous violations, illicit cargo has been concealed in vessels.
4. The previous work of the Committee and its Panel of Experts (POE) may also be a source of additional useful information to help States determine whether an item's supply, sale, or transfer should be prevented. Documentation from the Committee and Panel often includes information regarding risk factors, patterns of sanctions evasion, and procurement priorities that may assist States in their analysis. States should be aware that in its publications the Panel provides the Committee with its personal technical analysis, which may not be shared by all Committee members.
 5. In many circumstances, taking appropriate action to prevent the supply, sale, or transfer of items that could contribute to prohibited programmes or activities, or to evasion of measures, may involve dealing with complex legal, commercial, or contractual arrangements. In these situations, the Security Council has, in paragraph 22 of resolution 2094 (2013), explicitly called upon and allowed States to take action.
 6. There may be cases in which a Member State may determine that a seized item does not fall within the scope of paragraph 22 of resolution 2094 (2013). In these situations, the State is encouraged to consult with relevant States for an appropriate solution.

The Committee notes the sensitivities and complexities of the implementation of this provision. This provision should be implemented and interpreted in a consistent and non-arbitrary way and within the scope of relevant resolutions. The Committee stands ready to answer any further inquiries for Member States regarding proper implementation of paragraph 22 of resolution 2094 (2013).

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