



# Who's Buying?

## END-USER CERTIFICATION

### INTRODUCTION

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For as little as USD 200, an arms trafficker can buy a blank end-user certificate (EUC) from the right (corrupt) government official. After filling in the date, supplier name, and item description, the trafficker uses this document to procure and transport war material to the destination of his choice. The blank EUC has the necessary signatures and stamps. If no one checks its authenticity—often the case—he can ship his wares to the world's hot spots with minimal risk, for maximum profit.

EUCs and other kinds of end-user documentation constitute a key line of defence against the diversion of authorized small arms transfers to unauthorized—often illicit—end-users and end uses. These documents, however, are effective only in the context of a broader system that includes a thorough consideration of diversion risks at the licensing stage, the verification of end-user documentation, and complementary post-shipment controls.

The 2007 edition of the *Small Arms Survey* focused on the criteria states need to consider when authorizing transfers of small arms and light weapons in a responsible manner. These criteria, typically rooted in international law, include respect for international humanitarian and human rights law in the recipient state (Small Arms Survey, 2007, ch. 4). Yet this is only half of the story. At the time of licensing and even beyond, it is also important that states ensure that weapons and ammunition, once transferred outside their territory, are not diverted to unauthorized end-users and end uses. This chapter examines the task of ensuring 'effective control' over small arms transfers (UNGA, 2001b, para. II.12), with a specific focus on end-user systems and documentation.

The chapter's principal conclusions include the following:

- The basic components of systems designed to prevent small arms shipments being diverted to unauthorized end-users or used for unauthorized purposes appear to be in place in the world's leading exporting states.
- It is unclear, however, whether the discretion these systems tend to grant individual licensing officials aids or impedes the diversion prevention task.
- Most governments provide very little information on the policies and practices they use in assessing diversion risks at the time of licensing.
- Nor do states indicate whether they systematically verify end-user documentation in advance of export.
- While it may make sense to devote the lion's share of resources and attention to licensing, post-shipment controls help reinforce and improve pre-shipment risk assessment.
- Practice among the ten leading exporters, however, indicates that these measures are underutilized (delivery verification) or largely neglected (end-use monitoring).
- States have yet to demonstrate that they are fulfilling their commitment under the *UN Programme of Action* 'to ensure the effective control' of small arms transfers (UNGA, 2001b, para. II.12).

The chapter examines the problem of diversion in its first section, focusing on the manipulation of end-user documentation by illicit traffickers. In subsequent sections it outlines the main features of systems designed to prevent the diversion of authorized arms transfers, reviews relevant international standards and best practices, and analyses national practices among leading exporting states. The policy implications of this discussion are elaborated in the chapter's final section and in its conclusion. The chapter concentrates throughout on end-user documentation and other elements of end-user systems. As such, it complements the broader discussion of transfers diversion and diversion prevention found in Chapter 4 (TRANSFER DIVERSION).

### DIVERSION: A QUICK GUIDE

It is worth recapping some of the main features of diversion as it affects international arms transfers. These are discussed at much greater length in Chapter 4 (TRANSFER DIVERSION). While this chapter will mostly refer to the diversion of 'weapons' or 'small arms', this is merely shorthand for the diversion of small arms and light weapons, their ammunition, and parts and components.

For the purposes of this chapter, the term 'diversion' refers to a breakdown in the transfer control chain such that, either before or after arriving at their intended destination, exported weapons are transferred to unauthorized end-users or used in violation of commitments made by end-users prior to export. This definition of diversion covers both unauthorized possession and



Parts of a US-made AR-15 rifle are removed from a box at a customs warehouse in Manila as part of an investigation into an alleged coup plot, June 2005.  
© Pat Roque/AP Photo

use. As understood here, diversion is not simply the movement of arms from the legal to illicit spheres, but rather an *unauthorized* change in possession or use that has this result. A deliberate government decision to transfer, or allow the transfer, of legal arms to an illicit end-user would not count as ‘diversion’ under this definition. Diversion occurs, rather, when a state loses control over transferred weapons and thus inadvertently—but often negligently—fuels the illicit trade.

The arms transfer chain involves a shift in control at four distinct stages: licensing, in-transit movement, delivery, and post-delivery use and retransfer. An initial opportunity to combat—indeed prevent—diversion comes at the licensing stage. Licensing criteria, procedures, and documentation are all used for this purpose—while the weapons are still under the jurisdiction of the exporting state. Opportunities for transfer diversion arise once the weapons clear customs at the port of export.

Brokers and transport agents act as intermediaries and facilitators for much of the legitimate small arms trade. In certain cases, however, these actors intervene to divert weapons as they transit between the states of export and declared import—usually by exploiting gaps in national and international regulation. Although this chapter does not focus specifically on illicit brokering and transport, the diversion methods and preventive measures it discusses are as relevant to these activities as to other aspects of the illicit trade. The 2008 transfers chapter provides additional information on diversion techniques, including those used by brokers and transport agents (TRANSFER DIVERSION).<sup>1</sup>



The arms consignment's arrival at its intended destination, far from representing an end to diversion risks, opens up new possibilities. The authorized end-user may use the weapons in contravention of the agreement struck with the exporter or exporting state. The end-user may also—*intentionally*—retransfer the arms in violation of initial undertakings. Alternatively, poor stockpile management and security in the originating or destination countries, often exploited by corrupt officials, may result in an *unintentional* loss of control over the material and its consequent diversion to armed criminal or rebel groups (STOCKPILE DIVERSION).

As already mentioned, this chapter focuses on systems used at the licensing stage to confirm the intended (and actual) end-user, and thereby minimize the risk of diversion. It also discusses measures, such as delivery verification and non-retransfer undertakings, that are frequently incorporated in end-user commitments. Licensing offers exporting states their best opportunity to prevent the diversion of weapons and ammunition; yet this is also where illicit traffickers focus their attention. Once they obtain an export licence, it is usually relatively easy to get weapons past the customs authorities in the exporting country and transport them to the (undeclared) destination of their choice (Griffiths and Wilkinson, 2007, sec. 6.1).

When applying for an export licence, a small arms manufacturer or dealer normally provides the national licensing authority with an end-user certificate (EUC) or similar documentation detailing the basic elements of the proposed transaction, including the type and quantity of weapons for export, as well as the end-user and end use of the goods. Illicit traffickers use false end-user documentation, or falsify information in otherwise valid documentation, to obtain such licences. Illicit EUCs take three main forms: forged, government-issued without 'follow-up service', and government-issued with 'follow-up service'.

**Illicit traffickers use false or falsified documentation to obtain an export licence.** Forged EUCs. Despite appearances, forged end-user documents are not issued by the state or other (commercial) entity they are supposed to represent. The broker that diverted Nicaraguan arms to Colombian rebels in the Otterloo case apparently acquired a blank Panamanian Police purchase order, then forged the necessary signatures to produce the sham EUC used in that deal (OAS, 2003). Obvious forgeries can still be effective. A Polish licensing officer approved the sale of weapons to Yemen (in fact, Croatia) on the basis of an EUC that was supposed to have been issued by the 'People's Democratic Republic of Yemen', even though this country had ceased to exist two years earlier (UNSC, 2003, paras. 41–45, Annex V). In some cases a genuine EUC, provided by a friendly government, is used as a model to generate a series of forgeries (UNSC, 2000, paras. 43, 49, 55).

**Government-issued, no service.** A second type of illicit EUC is acquired from a corrupt government official with no provision for subsequent authentication by that official. Such an EUC is issued by a government authority and signed by an authorized official who knows it will be used to facilitate an illicit transaction, but will not pretend the document is valid if questioned by export licensing authorities. EUCs of this type have been widely used in illicit arms deals, especially in Africa, during the post-cold war period. In the experience of one observer, the fee exacted by corrupt officials for these EUCs has ranged from USD 200, in the case of a Rwandan-origin document, to USD 2,000 for an EUC signed by a government official in Chad (Johnson-Thomas, 2007).

The Rwandan EUC just referred to features in a story of pseudo-illicit trafficking recounted elsewhere in this volume (COMIC STRIP). Acquired in 2003, the document was issued on Rwandan Defence Ministry letterhead and signed by an authorized representative of the ministry with crucial information omitted, including contract number, date, supplier name, and a description of the material (Johnson-Thomas, 2007). Arms traffickers subsequently fill in these details when arranging a sale to a buyer other than that declared on the EUC. The same EUC, if copied, can

also be used to fill more than one order, a task made easier by the simplicity of the document in question. The Rwandan EUC, with its uncomplicated letterhead and language, is similar to those issued by several other developing country defence ministries and armed forces (see Griffiths and Wilkinson, 2007, sec. 6.1).

An exporting state can easily ascertain the illicit nature of the two types of EUCs described above (forged and government-issued, no service) provided it checks the information with the declared country of import. Verification is more difficult for a third category of illicit EUC.

**Government-issued, full service.** This last type of illicit EUC is also procured from a corrupt government official, but in this case a full ‘follow-up service’ is included in the package. Though perfectly aware of the illicit nature of the transaction, the official undertakes to reassure any exporting country officials that seek such assurances that the proposed transaction is legitimate and for the benefit of the state that has issued the EUC. In these, much rarer, cases the fee for the corrupt official is far higher—in some cases a percentage of the total value of the proposed deal (Johnson-Thomas, 2007).

**Simple checks with the declared country of import will unmask many illicit EUCs.**

## CONTROL MEASURES

In this section, the chapter presents norms, instruments, and systems designed to prevent the diversion of small arms transfers, with a specific focus on end-user certification and verification. It begins, however, by sketching out the basic features of transfer control systems. Although the chapter provides background information on diversion prevention measures, readers should consult Chapter 4 for a more detailed treatment (TRANSFER DIVERSION).

### Transfer control basics

Before grappling with the details of end-user documentation and procedures, it is useful to situate them in broader context. Under the *UN Programme of Action* states have agreed:

*to establish or maintain an effective national system of export and import licensing or authorization, as well as measures on international transit, for the transfer of all small arms and light weapons.* (UNGA, 2001b, para. II.11)

The OSCE *Handbook of Best Practices*, while noting that ‘[t]here is no single model for an export control system’, identifies ‘certain features which any export control system needs to have to be effective: a legal basis, an export policy, a decision-making mechanism, and an enforcement mechanism’ (OSCE, 2003, ch. V, p. 2).

**Legal basis.** National transfer control systems should be based in law. This is reflected in paragraph 2, section II of the *Programme of Action*, which requires states ‘[t]o put in place, where they do not exist, adequate laws, regulations and administrative procedures to exercise effective control . . . over the export, import, transit or retransfer’ of small arms and light weapons (UNGA, 2001b).

**Export policy.** National laws and regulations should reflect the state’s international obligations and commitments. Additional policy guidance is incorporated in national legislation and/or policy documentation. Both the Nairobi and OSCE best-practice guides underline the importance of transparency in the formulation and implementation of

national export policy. National parliaments and civil society also have a role to play in its formulation (*Nairobi Best Practice Guidelines*, 2005; OSCE, 2003).

**Decision-making mechanism.** The two best-practice guides state that a licence or permit should be required for any transfer of small arms or light weapons. They recommend keeping exceptions to a minimum. In such exceptional cases, a simplified licensing procedure is preferable to a complete exemption. Among their key recommendations:

- That the authorizing state ensure it receives from the state of import an import licence or other official authorization. The transfer of small arms and light weapons is, fundamentally, a shared responsibility between exporting and importing states;
- That the authorizing state ensure that appropriate transit authorizations have been issued; and
- That licensing decisions are shared across government, with all competent authorities involved (*Nairobi Best Practice Guidelines*, 2005; OSCE, 2003).

The best-practice guides underline the need for information exchange and cooperation.

**Enforcement mechanism.** The Nairobi and OSCE best-practice guides note that national transfer control legislation should provide for the investigation, prosecution, and punishment of transfer control violations. This requires effective penalties—which, depending on the case, may involve the revocation of licences, fines, and/or criminal sanctions—as well as customs supervision. Customs authorities intervene, not only at the point of import, but also when the weapons leave the state’s territory. The best-practice guides underline the need for information exchange and cooperation between arms licensing and enforcement officials, and also among the different agencies dealing with enforcement within the state. Cooperation among enforcement agencies in different countries is also important to the effective prosecution of transfer control violations (*Nairobi Best Practice Guidelines*, 2005; OSCE, 2003).

### Preventing diversion

No matter how sophisticated a country’s transfer licensing system, the job is only half done if it takes no steps to prevent weapons shipments from being diverted to unauthorized end-users or used for unauthorized purposes. After presenting the normative framework at the multilateral level, this section outlines the main features of national systems designed to prevent diversion.

#### Multilateral measures

Section II, paragraphs 11–13 of the *UN Programme of Action* set out the basic commitments in this area (UNGA, 2001b). Paragraph 11 requires states to take account of diversion risks in authorizing small arms exports. Paragraph 12 underlines the need for ‘effective control’ over small arms exports and transit, making specific reference to ‘the use of authenticated end-user certificates’, while paragraph 13 relates to the retransfer of weapons by an initial recipient.

These provisions, applicable to all UN member states, provide a useful normative framework for the prevention of diversion. Yet they lack the level of detail and operational specificity that would foster their translation into national laws, regulations, and administrative practices (Greene and Kirkham, 2007, p. 10). There is, however, nothing more specific at the universal level in relation to small arms. Proposals for the establishment of a UN group of governmental experts on end-user certification, made at the 2006 UN Programme of Action Review Conference, did not gain consensus support despite broad acknowledgment of the issue’s importance (see *Small Arms Survey*, 2007, p. 123).

More detailed, operationally oriented norms can be found in some regional and (non-universal) multilateral instruments. With respect to the prevention of diversion generally, these include: the *Illicit Firearms Convention* and

*Model Regulations* of the Organization of American States (OAS, 1997; 1998); the *OSCE Document* (OSCE, 2000); the *UN Firearms Protocol* (UNGA, 2001a);<sup>2</sup> the *Nairobi Protocol* (2004); and best-practice documents produced by the Wassenaar Arrangement (WA, 2000; 2002), the Organization for Security and Co-operation in Europe (OSCE, 2003), east African states (*Nairobi Best Practice Guidelines*, 2005), and the European Union (EU Council, 2007).

States have agreed to exercise especially close scrutiny over the export of man-portable air defence systems (MANPADS). Instruments adopted by the Wassenaar Arrangement (WA, 2003a), OSCE (2004a), and OAS (2005) mandate strict controls over the international transfer of MANPADS in order to minimize the risk of their diversion (see *Small Arms Survey*, 2005, ch. 5).

Multilateral measures focusing on end-user certification are few in number, yet important. They include the *OSCE Handbook of Best Practices* (2003, ch. V) and *Standard Elements* (OSCE, 2004b), the *Nairobi Best Practice Guidelines* (2005, sec. 2.1.e), the Wassenaar Arrangement *Indicative List* (WA, 2005), and the *EU User's Guide* (EU Council, 2007, ch. 2). The chapter does not review these instruments in detail, but instead refers to them selectively as it completes its mapping of systems—especially end-user systems—designed to prevent diversion.



Men exchange money for weapons over tea in a Baghdad home, June 2007. © Karim Kadim/AP Photo



### National systems<sup>3</sup>

This section reviews the constituent elements of national systems designed to verify the identity of end-users and prevent arms transfer diversion. It draws on elements of (good) national practice, as well as multilateral norms and instruments.

Arms transfer licensing is instrumental in preventing diversion further down the transfers chain. An important part of the licensing task involves the thorough consideration of diversion risks before any transfer authorization (UNGA, 2001b, para. II.11). Industry has a contribution to make to such assessments (GRIP et al., 2006; WA, 2003b). Diversion risks that need to be considered at the licensing stage relate to: the intermediaries involved in the transaction, including brokers and transport agents; the capacity of the end-user and importing state to retain control over the weapons; and the intentions of the end-user regarding weapons end use and retransfer (Greene and Kirkham, 2007, p. 13). Concerns surrounding potential diversion may be sparked, for example, by an application to export weapons that are not known to be used by an importing state's armed forces, or if prospective destination countries or end-users are known—or suspected—to have illicitly trafficked arms or violated retransfer restrictions.<sup>4</sup>

As part of its licence application, an arms exporter normally provides the national licensing authority with documentation—such as an EUC—identifying the material to be transferred, destination country, end-user, and end use (see EU Council, 2007, sec. 2.1.2; OSCE, 2004b, para. 1). These documents often also include undertakings by the end-user regarding the use and retransfer of the weapons it receives.

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In relation to end use, the recipient typically undertakes not to use the weapons for other than declared purposes (see *Nairobi Best Practice Guidelines*, 2005, sec. 2.1.e; WA, 2005). As reflected in national practice and various international instruments, undertakings concerning retransfer take a variety of forms. From most to least restrictive, these include: an absolute ban on re-export; subjecting any re-export to the prior authorization of the exporting state; allowing re-export without the authorization of the exporting state, but only to certain countries; allowing re-export provided it is authorized by the export licensing authorities in the end-user state; and mere notification of the exporting state in case of re-export (EU Council, 2007, sec. 2.1.3; *Nairobi Best Practice Guidelines*, 2005, sec. 2.1.e; OSCE, 2004b, para. 1; WA, 2005).<sup>5</sup>

Such undertakings tend to feature in small arms and light weapons exports to foreign state entities. Export agreements with commercial entities, on the other hand, may stipulate that transferred weapons are to be resold only on the domestic commercial market or in states identified as part of the transfer authorization.

End-user documents may originate in either the country of export or the country of import. They are signed and stamped by the prospective end-user and/or importing state government. Verification of such documentation, along with the information it contains, is an essential aspect of the licensing process (*Nairobi Best Practice Guidelines*, 2005, sec. 2.1.e; OSCE, 2004b, para. 3). A failure to verify end-user documentation and information is the primary facilitator of many cases of diversion (Griffiths and Wilkinson, 2007, sec. 6.1).

As explained earlier, an EUC may be forged or, though genuine, may not reflect the actual end-user or end use of transferred weapons. For these reasons, national licensing authorities need to check that end-user documents have been issued and signed by the right agencies. This assessment may be carried out by the exporting state's diplomatic mission in the country of prospective import (see Greene and Kirkham, 2007, p. 17). For commercial exports, licensing authorities often try to confirm that the end-user is operating a legal and reputable business in accordance with the laws of the importing state.<sup>6</sup> Even when thoroughly vetted, however, end-user documents cannot substitute for a broader consideration of diversion risks at the licensing stage (Anders, 2005, sec. 4.2).

### Box 5.1 Common end-user documentation

Documentation required by national export authorities in support of a licence application usually depends on the type, destination, and end-user of transferred weapons. If small arms and light weapons are to be exported to a foreign state entity, the latter is often asked to submit an 'end-user' (or 'end-use') certificate. Any restrictions on retransfer contained in the certificate apply to the importing state. Exports of small arms to commercial markets often necessitate the prior provision of an 'international import certificate' and sometimes an 'end-use statement'.

International import certificates are signed and stamped by the authorities of the importing state. They confirm that the importing government is aware of, and does not object to, the proposed transfer to the commercial entity or individual. The importing state does not commit to any restrictions in relation to such weapons. 'End-use statements' are signed and stamped by the commercial importer. Any retransfer restrictions they contain apply to the commercial importer.

National export authorities may also ask a licence applicant to submit proof of delivery to the authorized end-user or importer. A 'delivery verification certificate', confirming this, is issued to the exporter by the customs authorities of the importing state. Most often, such a certificate is requested, along with an international import certificate, for exports of small arms to a foreign commercial importer.

Source: Anders (2007)

Diversion risks are further minimized by securing, in advance of export, the cooperation of interested states. For example, States Parties to the OAS *Firearms Convention* and the *UN Firearms Protocol* must ensure, before exporting firearms, that the import and transit states approve the transfer, or at least indicate they have no objection to it (OAS, 1997, art. IX; UNGA, 2001a, art. 10(2)).

Diversion remains an issue long after the transfer is authorized. Post-shipment controls, such as delivery verification and end-use monitoring, help ensure that weapons arrive at their intended destination and that end-users comply with any restrictions on use or retransfer imposed in connection with the export. Licensing systems can play a role here as well, establishing a framework for cooperation between exporting and importing countries after the weapons have been exported. End-user documentation may stipulate that delivery be confirmed (EU Council, 2007, sec. 2.1.3; OSCE, 2004b, para. 1; WA, 2005). A few exporting countries also use these documents to secure permission to verify the possession and use of exported weapons in the recipient state.

Delivery verification allows exporting states to check whether weapons have been diverted en route to the importing country. It can also serve to deter such diversion. Yet it offers no protection against diversion occurring after the time of delivery. End-use monitoring can be used for this purpose, but, as the next section demonstrates, is quite exceptional in practice. When used at all, end-use monitoring tends to be ad hoc and dependent on voluntary cooperation from the importing state. Only a small number of countries systematically provide for end-use monitoring at the licensing stage.

Ad hoc end-use checks are usually initiated in response to allegations that a specific end-user is not respecting restrictions on end use or retransfer. This information may come from government sources, NGOs, or the media. End-use checks may include a request by the exporting state to the importing state to clarify in writing the actual use of exported weapons.<sup>7</sup> Unless end-use undertakings are included in the contract between exporter and importer, there is often no legal remedy if they are violated. Most often, end-user undertakings take the form of a 'declaration of honour'. The principal sanction available to export authorities when commitments of this type are breached is to deny future export licences for the same destination or end-user. As indicated below, a few countries have made this national policy.

ANEXO XXXI  
 ARMAS DA REPÚBLICA  
 MINISTÉRIO DA DEFESA  
 EXÉRCITO BRASILEIRO  
 DEPARTAMENTO LOGÍSTICO  
 DIRETORIA DE FISCALIZAÇÃO DE PRODUTOS CONTROLADOS  
 CERTIFICADO DE USUÁRIO FINAL/END USER CERTIFICATE  
 Nº \_\_\_\_\_-53  
 AO GOVERNO \_\_\_\_\_/TO GOVERNMENT OF \_\_\_\_\_

|   |   |
|---|---|
| 1. Importador / Importer<br>Nome/Name: _____<br>Endereço/Address: _____             | 2. Exportador / Exporter<br>Nome/Name: _____<br>Endereço/Address: _____ |
| 3. Comprador Final / Final Purchaser<br>Nome/Name: _____<br>Endereço/Address: _____ | 4. Destinação Final / Final Destination:<br>_____                       |
| 5. Contrato / Contract Nr.: _____   | Data / Date: _____  |

| ITEM<br>ITEM  | QUANTIDADE<br>QUANTITY | DESCRIÇÃO<br>DESCRIPTION | VALORES<br>VALUE US\$ |
|---|------------------------|--------------------------|-----------------------|
| O Comprador final especificado no item 3, por meio de seus representantes legais, certifica que o material acima descrito, terá a destinação constante do item 4. The final purchaser named in item 3, through its legal agents, certifies that the above material will have the final destination described in item 4. |                        |                          |                       |
| O Exército, por meio de seu representante legal, certifica o acima descrito. The Brazilian Army, through its legal representative, hereby certifies the above.  |                        |                          |                       |

Brasília, DF, \_\_\_\_/\_\_\_\_/\_\_\_\_  
 Diretor da DFPC

## NATIONAL PRACTICE

This section looks at the extent to which states are using the norms, instruments, and systems described earlier for purposes of verifying end-users and preventing diversion. The chapter uses the term ‘national practice’ to refer to relevant legislative frameworks (laws and regulations), as well as administrative practices.

### Ten-country study<sup>8</sup>

This section reviews (in alphabetical order) end-user certification practices in the world’s leading exporters of small arms and light weapons: Austria, Belgium, Brazil, Canada, China, Germany, Italy, Japan, the United Kingdom, and the United States (Small Arms Survey, 2007, p. 74).<sup>9</sup> Given the volume of their annual exports, one would expect these countries to have relatively well-developed end-user certification systems. Whether they do is the subject of the following study. Any shortcomings, especially if systematic, are likely indicators of problems among other exporters.

#### Austria

In Austria, the *Kriegsmaterialgesetz* (*War Material Act*; Austria, 2005a) regulates exports of ‘war material’, a category which encompasses semi-automatic carbines and rifles, all automatic small arms, and all light weapons (Austria, 1977, arts.1–4). Exports of weapons not considered war material, such as revolvers and semi-automatic pistols, are regulated by the *Aussenhandelsgesetz* (*Foreign Trade Act*; Austria, 2005b). Under both regimes, an export licence may be made subject to the submission of an end-use statement (Austria, 2005a, art. 3.2; 2005b, art. I, para. 28.2.1). For non-war material, a delivery verification certificate may also be required (Austria, 2005b, art. I, para. 28.2.1). Austrian licensing authorities decide whether to certify end-users or delivery on a case-by-case basis, depending on the type, quantity, or destination of the equipment, as well as any concerns that may exist in relation to end use (Austria, 2006, p. 3; EU Council, 1998).

The end-use statements submitted to the Austrian export control authorities include: a detailed description of the goods to be exported, their quantity and value, details of the supplier, the country of final destination, and details of end use, purchaser, and/or ultimate consignee (end-user). These statements are signed by the purchaser and end-user who undertake, in particular, to use the goods only as indicated in the statement and not to re-export them to third countries

Anexo 1  
 Regulamento EUC de Exportação e Importação Armamento da Tab. 1  
 Anexo A de AL (other Technology)

Licenciado do fornecedor no país de origem  
 Name/Address of the supplier in the Federal Republic of Germany

**END-USE CERTIFICATE**  
 for presentation to the Export Control Authorities of the Federal Republic of Germany

In accordance with the regulations of the Federal Republic of Germany which state the prohibition of an individual export licence in accordance with the provisions of an end-use certificate, we (I) certify that the goods supplied by

Name of the supplier \_\_\_\_\_  
 Description of the goods \_\_\_\_\_  
 Quantity/Weight \_\_\_\_\_  
 Value (US\$) \_\_\_\_\_

we intended the consignees will remain in \_\_\_\_\_ (country of final destination) and will only be used for \_\_\_\_\_

or

we intended for the production report of \_\_\_\_\_ which is in \_\_\_\_\_ (country of production/report) and belongs to \_\_\_\_\_ and will finally remain in \_\_\_\_\_ (country of final destination)

We (I) certify that we (I) will not provide the goods to third countries without the approval of the Federal Office of Economic and Export Control (EUC) of the Federal Republic of Germany.

Place, Date \_\_\_\_\_ Original signature of the end-user/government official \_\_\_\_\_  
 Company stamp (official seal) \_\_\_\_\_ same and clear of stamp in black letters \_\_\_\_\_

UNITED STATES OF AMERICA  
**NON-TRANSFER AND USE CERTIFICATE**

This certificate is submitted to \_\_\_\_\_  
 Department of State, Bureau of Economic and Business Affairs, Office of Non-Transfer and Use Control, Washington, DC 20520-0001

I, \_\_\_\_\_, hereby certify that the goods described in item 1 of the following certificate are the property and shall remain the property of \_\_\_\_\_

Quantity: \_\_\_\_\_ Article/Serial No. Description: \_\_\_\_\_ Value: US \$: \_\_\_\_\_

A. Description of transfer equipment:  
 Make: \_\_\_\_\_ Department of Official Designation: \_\_\_\_\_ Date: \_\_\_\_\_  
 Type or part: \_\_\_\_\_ Name and Title of Signer: \_\_\_\_\_ Date: \_\_\_\_\_

B. Description of recipient:  
 Name: \_\_\_\_\_ Department of Official Designation: \_\_\_\_\_ Date: \_\_\_\_\_  
 Type or part: \_\_\_\_\_ Name and Title of Signer: \_\_\_\_\_ Date: \_\_\_\_\_

C. Description of end use:  
 Name: \_\_\_\_\_ Department of Official Designation: \_\_\_\_\_ Date: \_\_\_\_\_  
 Type or part: \_\_\_\_\_ Name and Title of Signer: \_\_\_\_\_ Date: \_\_\_\_\_

D. Description of ultimate recipient:  
 Name: \_\_\_\_\_ Department of Official Designation: \_\_\_\_\_ Date: \_\_\_\_\_  
 Type or part: \_\_\_\_\_ Name and Title of Signer: \_\_\_\_\_ Date: \_\_\_\_\_

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Sample EUCs of Brazil, Germany, and the United States.

without the approval of the Austrian government. Weapons that are not considered ‘war material’ may be re-exported without Austrian government approval to EU member states, plus Australia, Canada, Iceland, Japan, New Zealand, Norway, Switzerland, and the United States (Austria, n.d.).<sup>10</sup> Austria rarely undertakes post-delivery checks of exported weapons.<sup>11</sup>

## Belgium

Belgian legislation governing small arms and light weapons exports requires that licence applications be accompanied by an international import certificate or end-use certificate (Belgium, 2003b, art. 5.1). Those exporting from Belgium must also provide the exporting state<sup>12</sup> with proof of delivery to the destination country and importer within three months of such delivery. This may take the form of a certificate in which the customs authorities of the importing state attest that the importer has received the exported equipment (Belgium, 2003b, art. 7). The legislation also specifies that export licences may be made conditional on a commitment of no re-export without prior approval, and further that licence requests must be rejected if recipients in the country of destination have failed to comply with such commitments in the past (Belgium, 2003a, arts. 3, 4.4.e).

In practice, Belgian export authorities do not require an end-use certificate if the destination country is an EU or North Atlantic Treaty Organization (NATO) member. For exports of small arms and light weapons to these states, as well as some additional states, such as South Africa,<sup>13</sup> an international import certificate must be supplied. For other countries, end-use certificates must be produced by the authorities of the recipient state. These may be verified by Belgium’s diplomatic services abroad, and often include a commitment not to re-export the weapons without first notifying the Belgian authorities (Belgium, Walloon Government, 2006, p. 18; EU Council, 1998). Belgian export officials have some discretion in their choice of procedures and requirements. Verification of EUCs and inclusion of no-re-export clauses are required, in principle, but exceptions are made on a case-by-case basis.<sup>14</sup>

Belgian export officials have some discretion in their choice of procedures and requirements.

## Brazil

Under Brazil’s *Decreto no. 3.665* (Brazil, 2000a), all exports of small arms and light weapons must be authorized by the Brazilian army. Export licence applicants need to supply an end-user certificate, international import certificate, or confirmation by Brazil’s diplomatic missions abroad that the import is not subject to legal restrictions in the importing country (Brazil, 2000a, art. 178.1–2; 2005, pp. 9–10). The army determines when an end-user or international import certificate is required (see Dreyfus, Lessing, and César Purcena, 2005, p. 57). End-user certificates must indicate the quantity, description, and value of the exported equipment, as well as the exporter, importer, final purchaser, and final destination. The final purchaser certifies that the imported equipment will be used only for the purposes stated in the certificate (Brazil, 2000b).

Exports of military small arms and light weapons are subject to additional controls under the *Política Nacional de Exportação de Material de Emprego Militar* (Brazil, 2005, p. 10). It is again the army that determines whether weapons are military or civilian in nature (see Dreyfus, Lessing, and César Purcena, 2005, p. 57). Information on these additional controls is not publicly available.

## Canada

Canadian legislation on small arms exports derives from the *Export and Import Permits Act* (Canada, 2007a) and the related *Export Permits Regulations* (Canada, 2007b). End-use documentation is required for all licence applications. It may take the form of an end-use certificate, an international import certificate, or an import permit issued by the

government of the importing country. Irrespective of the form the document takes, it must identify the exporter, importer, final consignee (recipient), and intended end use of the exported equipment (Canada, 2007b, sec. 3.1.j).

End-use statements from commercial businesses in the importing country are accepted for 'sporting' (non- and semi-automatic) firearms. Canada's diplomatic missions abroad verify whether the business is 'reputable' (Canada, 2006b, p. 9). These end-use statements must provide full information about the goods, their end-user, and intended

### Box 5.2 State-to-state transfers

Governments often sell or supply small arms and light weapons directly to other governments, especially those that are surplus to national requirements. They may also facilitate the sale of arms to foreign governments from companies within their territory. How are end-users certified in such cases?

The following text represents a preliminary attempt to answer this question. Although its findings appear valid for the majority of EU and Wassenaar Arrangement states, no firm conclusions can be drawn in relation to the much broader range of arms-exporting countries worldwide. The research task is complicated by the fact that law and practice governing state-to-state transfers is sometimes distinct from that regulating private commercial exports. In some cases state-to-state transfer is conducted, above all, on the basis of government policy, which is less easily accessed by the public than is legislation.

In many EU and Wassenaar Arrangement states, state-to-state transfers are treated no differently from private commercial sales. Export licences are issued upon fulfilment of the same end-user certification requirements that apply to commercial exports. These requirements may be waived or relaxed for certain reasons (for example, when the purchaser is a 'friendly' government), but this is not typically influenced by the nature of the transaction, whether state-to-state or commercial.

Two cases, drawn from the principal exporters list, give some sense of current practice in this area.

#### United States

The United States allows foreign states to acquire US military systems or defence items by:

- purchasing items from the US government (USG) through the foreign military sales programme (FMS); or
- purchasing items directly from arms-producing companies in the United States (direct commercial sales /DCS).

Only certain states are deemed FMS eligible by the US president, and some sensitive items are designated 'FMS only', meaning they can be acquired only through that programme. The US Department of Defense provides items acquired under FMS contracts from its own stocks<sup>15</sup> or procures them from private contractors.

In practice, there is little difference between DCS and FMS transactions with respect to end-use or end-user undertakings. As part of their export licence application, DCS exporters must ensure that a statement is incorporated in the sales contract confirming that the items to be exported will not be transferred, transhipped, or otherwise disposed of without the prior written approval of the US government. No export licence is required for an FMS transfer, but the Letter of Acceptance (LOA) that authorizes the transaction includes a commitment from the purchaser not to transfer or dispose of the items, nor use or permit their use, for purposes other than those authorized without the written consent of the US government. In the LOA, the purchaser also agrees to permit scheduled inspections of physical inventories upon US government request, except when other forms of end-use monitoring have been mutually agreed.

#### Canada

Canadian government-to-government sales sometimes also involve the supply of arms that are not simply surplus to Canadian defence force requirements. The companies involved, however, must still apply for export permits and provide end-use certificates.

Most of Canada's government-to-government sales are with the United States. Under the terms of the Defence Production Sharing Agreement (DPSA), signed by Canada and the United States in 1956, an export licence is not required for many items on Canada's export control list if the final destination is the United States. Nevertheless, an export licence is required for the export of small arms and light weapons<sup>16</sup> to the United States. The end-use certification requirements applicable to commercial sales apply equally to state-to-state sales of such weapons.

end use. They may include a declaration by the final consignee that the goods will not be re-exported or that any retransfer will respect the legislation of the country of final destination. Export authorizations for small arms and light weapons may be conditioned on the provision of a delivery verification certificate (Canada, 2006a, pp. xv–xvi).

### China

China's *Arms Export Regulations* require end-use certification from the importing state for all small arms and light weapons exports (China, 2002, art. 15; 2003a, p. 4). Chinese export officials may require that the end-user and/or importing country issue end-user certificates and international import certificates for this purpose. These documents are authenticated by China's diplomatic missions abroad. They must identify the end-user and intended end use of the equipment, and may include an undertaking not to modify the end use from that stated in the certificate or transfer the goods outside the state of final destination without the permission of the Chinese government (see China, 2003b).<sup>17</sup>

### Germany

German export control legislation distinguishes between 'war weapons'—which include semi-automatic rifles, all automatic firearms, and light weapons—and small arms, such as non-automatic pistols and revolvers (Germany, 2007a; 2007b). Applications for the export of all small arms and light weapons must include documentation identifying the recipient, the final consignee or end-user, and the end use (Germany, 2007b, arts. 5.1, 17.2). The form this documentation takes depends, in particular, on the nature of the weapons being exported. German export authorities may also require that a delivery verification certificate be provided (Germany, 2005, p. 29). Political guidelines on arms exports stipulate that licence applications to export war weapons to states that have previously failed to respect end-user undertakings will be denied until the risk of diversion has been removed (Germany, 2000, para. IV.4).

Those seeking to export war weapons must submit an end-use certificate that is provided by the government of the importing state (Germany, 2000, para. IV.2; 2005, p. 29). End-use certificates must identify the goods, their quantity and value, the supplier, and the final consignee. They include a declaration by the final consignee that the goods are for the consignee's own use, will remain in the country of final destination, and will be used only as stated in the document. They also prohibit re-export without the approval of the German government (Germany, n.d., sample form 1; 2000, para. IV.2; 2005, p. 29).

For exports of non-war weapons, Germany requires that the commercial importer furnish an end-use statement, with the importing country issuing a complementary international import certificate.<sup>18</sup> As provided in the end-use statement, non-war weapons can be re-exported, without German government approval, to EU member countries, Australia, Canada, Japan, New Zealand, Norway, Switzerland, and the United States (Germany, n.d., sample form 2).<sup>19</sup>

### Italy

Legislation governing the export of small arms and light weapons from Italy obliges licence applicants to submit information identifying the type, quantity, and value of the equipment, the country of final destination, and the final consignee (Italy, 1990, art. 11.2.a–b). Applications for exports to states with which Italy has a 'reciprocal arms export control agreement' (those belonging to NATO and the Western European Union, WEU) are conditional on an international import certificate (Italy, 1990, art. 11.3.c.1). Applications for exports to all other states require the submission of an end-use certificate that is issued by the importing country (Italy, 1990, art. 11.3.c.2; 2003, sec. 3d). These EUCs include a declaration by the consignee that the country of final destination and the end use of the imported equipment are as stated on the certificate. They may also contain a clause prohibiting re-export without Italian government

Officials in Canada and Germany may require provision of a delivery verification certificate.

authorization. Italian diplomatic missions abroad have the task of verifying these documents (Italy, 1990, arts. 11.3.c.2, 11.4; 2003, sec. 3i).

Italian legislation also stipulates that small arms and light weapons exporters, irrespective of the destination, have to provide, within 180 days of delivery, a delivery verification certificate. The latter attests to the receipt of the exported equipment by the consignee in the country of final destination (Italy, 1990, art. 20.1.b). It appears Italy conducts no end-use monitoring after the time of delivery (Italy, 2003, sec. 3j).



An Italian policeman inspects a container after the seizure of more than 8,000 Kalashnikovs and other weapons on a ship at the southern Italian port of Gioia Tauro, April 2004. © Antonio Condorelli DJM/WS/Reuters

## Japan

Under long-standing policy, Japan bans the export of small arms and light weapons for military use (Japan METI, 2002a). In practice, this means that Japan does not authorize the export of military small arms and light weapons to foreign governments or commercial importers. The export of non-military small arms is regulated by the *Foreign Trade and Exchange Law* (Japan, 1997) and its associated ordinance (Japan, 2006). Such exports require prior authorization (Japan, 1997, art. 48.1; 2006, art. 1.1). Licence applicants must submit information identifying the type of small arms for export, along with their intended end use, consignee/end-user, and country of final destination. Applicants may also be asked to submit a 'letter of assurance' from the consignee (end-use statement) regarding the country of final destination and intended end use (Japan METI, 2002b). Formal end-user certificates, signed by the authorities of the importing state, are not required (Japan, 2007, p. 11).

## United Kingdom

The *Export Control Act* (UK, 2002) and its implementing orders<sup>20</sup> furnish the legislative framework for UK exports of small arms and light weapons. Export licence applicants must submit information identifying the exporter, consignee, exported equipment, intended end-user, and end use (UK, n.d.). Required end-user documentation may include end-user and international import certificates. The export of small arms and light weapons generally requires an end-user undertaking in which end-user and consignee provide certain written assurances concerning end use and retransfer. The consignee, for example, either certifies that the goods will not be re-exported from the country of final destination, or lists the countries to which the arms 'are likely to be transferred' (UK, n.d.). Exports of small arms to EU member states require an import permit in which the importing country confirms it has no objection to the importer's acquisition of the arms (UK, 2005, p. 12).

UK export policy requires that licensing authorities consider the 'risk that the equipment will be diverted within the buyer country or re-exported under undesirable conditions' (UK, 2000, criterion 7). The United Kingdom's strategy for preventing diversion emphasizes, above all, 'a thorough risk assessment at the licensing stage' rather than non-re-export clauses and end-use monitoring. UK licensing officials carry out checks to satisfy themselves of 'the end-user's reliability and integrity' before authorizing the export (UK, 2005, p. 13).

The UK will, however, conduct post-shipment monitoring of exported equipment, on a case-by-case basis, where it believes this 'can add value' (UK, 2005, p. 13). Desk officers in London are instructed to advise missions abroad of 'any approved arms licence that it is felt should be monitored post-export', while overseas missions have orders to inform London of 'any suspected mis-use, or diversion, of UK arms exports' (O'Brien, 2003). The UK, for example, has monitored the end use of military equipment exported to India and Israel on the condition that it not be used in Kashmir and the Palestinian territories, respectively. Diplomatic missions used information received from the UK government and other sources to determine whether any violation of end-use restrictions was occurring.<sup>21</sup>

The UK conducts post-shipment monitoring where it believes this 'can add value'.

## United States

The *Arms Export Control Act* (US, 2005) and accompanying *International Traffic in Arms Regulations* (US, 2007) regulate the export of small arms and light weapons from the United States. Licence applicants must submit information identifying the quantity, type, and value of the equipment to be exported, the country of final destination, and the consignee, end-user, and intended end use (USDoS, 2005). Applicants must also furnish a written statement from the foreign purchaser confirming the specified end-user and end use (USDoS, 2005, p. 2). Like other leading exporters, US authorities screen licence applications with a view to identifying those exports at greatest risk of diversion or misuse. 'Indicators of concern' for the US include:

*unfamiliar foreign parties, unusual routing, overseas destinations with a history of illicit activity or weak export/customs controls, [and] commodities not known to be in the inventory of the host country's armed forces.* (USDoS, 2007b, p. 2)

Under US legislation, contracts between arms exporters and consignees must include a clause prohibiting retransfer to a third country or a change in end use without the prior written approval of US authorities (US, 2007, art. 123.9). Export licences for fully automatic firearms, rifles with a calibre of .50 inches or greater, and other types of firearms in quantities of 50 or more require the submission of a 'nontransfer and use certificate' (USDoS, 2007a, pp. 3–4). This certificate includes commitments by the final consignee and end-user not to retransfer the exported equipment



without the prior written approval of the US government (USDoS, n.d.). Export licences for small arms also require an import authorization issued by the government of the importing state (USDoS, 2005, p. 3; 2007a, pp. 2–3).

US law also allows for the use of delivery verification certificates to confirm the receipt of small arms by commercial consignees (US, 2007, 123.14.b). In principle, the end use of exported small arms and light weapons is monitored to 'provide reasonable assurance' that recipients are complying with retransfer and end-use restrictions (US, 2005, subchapter III-A, sec. 2785.a.2.B). In practice, US authorities consistently monitor only certain types of exported light weapons. Specific measures are agreed in the export contract and can include the physical inspection of end-user stockpiles. For most types of small arms and light weapons, US export authorities initiate post-delivery checks only in response to allegations of a violation of retransfer or end-use restrictions. These are conducted in cooperation with the government of the importing state (see Box 5.3).

### Box 5.3 End-use monitoring of US-origin arms

#### **The Golden Sentry programme**

Small arms and light weapons manufactured in the United States and exported to the armed forces of a foreign state may be subject to pre-licence and post-delivery controls under the Golden Sentry end-use monitoring programme. The programme is implemented by the US Department of Defense for the purposes of ensuring the recipient's compliance with restrictions on the re-export, retransfer, and end use of the equipment. The scope and intensity of verification activities are tailored to the weapons system and country of import. Certain equipment exported to 'trusted partners' may be subject to 'routine' end-use monitoring, while other equipment and destinations may require 'enhanced' monitoring. Verification activities can include visits to end-user facilities, a review of end-user records, and regular inventories of US-exported equipment. Enhanced end-use monitoring may also include physical inspections of the stockpiles where US-exported equipment is stored (USDoD, 2003, pp. 321–36).

#### **End-use monitoring of US-manufactured MANPADS**

US-exported man-portable air defence systems (MANPADS) are subject to enhanced end-use monitoring. Recipients must agree to specific verification measures in the LOA they sign for the purchase of US-origin MANPADS. US army personnel typically inspect the physical security arrangements for the MANPADS in the importing state prior to delivery. Within 30 days of delivery, the recipient and a US government representative, by means of an inspection and/or inventory, must verify receipt of the missiles, grip stocks, and other essential components by serial number. US officials also conduct an annual physical check of all imported MANPADS that includes a review of inventory records that the recipient must establish on a monthly basis (USDoD, 2003, p. 337).

#### **The Blue Lantern programme**

Commercial exports of US-manufactured small arms may be subject to pre-licence or post-shipment controls under the Blue Lantern end-use monitoring programme that is implemented by the Department of State. The controls may include requests for information and investigations by US diplomatic missions in the country of import to verify the delivery and proper end use of the equipment. Post-delivery controls may, for example, be initiated following receipt of information received post-export regarding a particular end-user and end use of US-manufactured small arms (USDoS, 2007b, pp. 1–2).<sup>22</sup>

The Department of State considers the programme useful to its efforts to deter diversion, assist in the disruption of illicit supply networks, and contribute to informed export licensing decisions. It cites, in particular, the effectiveness of Blue Lantern end-use checks in combating the use of fraudulent export documentation and other forms of misrepresentation for purposes of obtaining US equipment for retransfer to unauthorized end-users. During fiscal year 2006, US authorities conducted 613 Blue Lantern end-use checks, representing a little less than one per cent of all licence applications and other export requests received during that period.<sup>23</sup> An 'unfavorable' determination was reached in 94 of the 489 Blue Lantern cases closed in 2006 (19 per cent). Thirty-eight per cent of these 'unfavorable' checks related to applications for exports to the Americas. Firearms and ammunition were involved in over 70 per cent of the 'unfavorable' Americas cases (USDoS, 2007b, pp. 1–6).

## Ten-country assessment<sup>24</sup>

What are the key similarities and differences in the systems used by the world's principal exporters to certify end-users? The preceding study illustrates that much, in fact, depends on the type of weapons for export, as well as the destination country. Moreover, in many of these countries export licensing officials have some discretion over whether to employ various requirements and control measures.

With these caveats in mind, one can conclude that the leading exporting states typically require that export licence applicants submit information identifying the type, quantity, and value of weapons for export, as well as the country of final destination, end-user, and end use. Such documentation may be issued by the authorities of the importing state (end-user or international import certificates) and/or the end-user (end-use declarations or statements). Exports of small arms and light weapons to the armed forces of another state are often made conditional on an end-user certificate that is issued by the relevant department of the importing country. Exports of small arms to foreign commercial importers normally require an import certificate in which the importing state confirms that it does not object to the transfer, along with an end-use statement from the foreign commercial importer.

Most of the sample countries also report imposing restrictions on the retransfer of exported small arms and light weapons. In many cases these governments stipulate that exported weapons not be retransferred without their prior approval. Those imposing non-retransfer restrictions, either systematically or selectively, are Austria, Belgium, Canada, China, Germany, Italy, the UK, and the United States. US legislation stipulates that a non-retransfer clause be included in the contract between the exporter and the consignee (US, 2007, 123.9.a–b, d). Austria, Belgium, Canada, Germany, Italy, the UK, and the United States may (selectively) require the submission of a delivery verification certificate. In Belgium and Italy, delivery verification certificates are required, by law, for all small arms and light weapons exports (Belgium, 2003b, art. 7; Italy, 1990, art. 20.1.b).

States also differ in their employment of end-user and international import certificates. The decision to require one or the other is made on a case-by-case basis, at the discretion of export authorities in, for example, Austria and Brazil (Austria, 2006, p. 3; Dreyfus, Lessing, and Purcena, 2005, p. 57). In other states this is determined by national export policy. Germany requires an end-use certificate for all exports of 'military' small arms and light weapons, but an import certificate for all exports of 'non-military' small arms (Germany, n.d., sample forms 1–2). The Belgian and Italian governments require an end-use certificate for the export of all types of small arms and light weapons to non-EU or non-NATO countries and an import certificate for small arms and light weapons exports to EU or NATO states (Belgium, Walloon Government, 2006, p. 18; EU Council, 1998; Italy, 1990, arts. 11.3.c.2, 11.4). The United Kingdom generally requires an end-user undertaking for its small arms and light weapons exports. It uses import certificates only for the export of non- and semi-automatic small arms to EU member states (UK, 2005, p. 12).

Non-retransfer practices also show important variations. The Austrian and German governments, for example, waive the requirement that foreign importers obtain prior authorization if retransferring 'non-military' small arms to EU countries and certain other states (Austria, n.d.; Germany, n.d., sample form 2).

The United Kingdom and the United States are the only countries that report monitoring small arms and light weapons exports after delivery, albeit quite selectively in the UK case (O'Brien, 2003; USDoD, 2003, ch. 8). The United States, alone, indicates that it conducts physical inspections of end-user stockpiles following export of US-manufactured MANPADS. These inspections are stipulated in the associated export licence (see Box 5.3).

States differ in their employment of end-user and international import certificates.

**Table 5.1 End-user documentation required for small arms and light weapons exports**

|         | Requirement for end-user certificates | Requirement for international import certificates  | Re-export and end-use restrictions                                       | Requirement for delivery verification certificate |
|---------|---------------------------------------|--|--|---|
| Austria | Can be requested                      | Can be requested                                   | Waived for re-export of non-military SALW to EU and certain other states | Can be requested                                  |
| Belgium | For exports to non-EU/NATO states     | For exports to EU/NATO states                      | For re-exports to non-EU/NATO states                                     | Required for all exports                          |
| Brazil  | Can be requested                      | Can be requested                                   | Can be requested   | Not known   |
| Canada  | Can be requested                      | Can be requested                                   | Can be requested   | Can be requested                                  |
| China   | Can be requested                      | Can be requested                                   | Can be requested   | Not known   |
| Germany | For military SALW                     | For non-military SALW                              | Waived for re-export of non-military SALW to EU and certain other states | Can be requested                                  |
| Italy   | For exports to non-NATO/WEU states    | For exports to NATO/WEU states                     | Can be requested when authorizing exports to non-NATO/WEU states         | Required for all exports                          |
| Japan   | No (ban on military exports)          | Not known  | Not known  | Not known   |
| UK      | Can be requested                      | For export of non-military small arms to EU states | Can be requested   | Can be requested                                  |
| US      | For military SALW                     | For non-military SALW                              | For all SALW   | Can be requested                                  |

Notes: In their export control systems, some states distinguish between 'military' small arms and light weapons on the one hand, and 'non-military' small arms on the other. While there is no common definition of these categories, 'non-military' small arms usually denote non- and semi-automatic firearms,<sup>25</sup> whereas military small arms and light weapons typically refer to fully-automatic small arms (firearms) and all light weapons.

Overall, the legislative framework required to ensure 'effective control' over small arms and light weapons transfers (UNGA, 2001b, para. II.12) appears quite complete in nearly all of the leading exporting states. Yet this legislation tends to leave much to the discretion of export control officials, allowing them to decide, for example, when to require certain types of end-user documentation or impose retransfer or end-use restrictions on a particular end-user. It is unclear how such discretion is exercised in practice.

With rare exceptions, the ten countries reviewed in the chapter provided no information on the practical implementation of their transfer control systems. We do not know, in particular:

- what policies and practices states employ to assess diversion risks at the licensing stage (e.g. warning flags that trigger a denial of licence or a higher level of scrutiny);<sup>26</sup> nor
- the extent to which governments verify end-user documents and the information they contain before authorizing a transaction.

Future research, combined with greater transparency from governments, will, one hopes, lead to a better understanding of national practice. Each of the measures just mentioned is critical to an effective transfer controls (diversion prevention) system. No news is not, in this case, good news.

Despite the uncertainties that exist, this study of national practice has generated some clear findings. First, the world's leading small arms exporters employ a wide range of documents and procedures for purposes of certifying end-users. These vary, in particular, as a function of the type of material that is to be exported (especially whether military or non-military in nature) and the destination country. Second, looking past the licensing stage, the study has revealed that, while the ten principal exporters often require that the importing country confirm receipt of exported weapons by issuing a delivery verification certificate, this is not uniform practice.

Delivery verification is, in any case, no panacea. Many opportunities for diversion arise after weapons have been delivered to their intended destination; yet exporting states rarely conduct any checks beyond this point—the study's third major finding. Among the ten countries reviewed here, only two monitor the end use and retransfer of weapons that they export—specifically the United Kingdom (very selectively) and the United States (more often, but not consistently). While end-use monitoring may, in theory, figure in the control 'arsenals' of other leading exporters, it is not employed in practice. This finding echoes a study of national practice worldwide (BtB with IANSA, 2006. p. 162).

## POLICY IMPLICATIONS

In its examination and assessment of national practice, the chapter has focused on the ten leading exporters of small arms and light weapons. What are the implications for the world as a whole? First, one should note that a high volume of exports does not necessarily translate into a more sophisticated end-user system. Examples of good practice situated outside the principal exporters' list include Swedish practices designed to prevent EUC forgery (discussed below), as well as Switzerland's use of selective end-use monitoring.<sup>27</sup> It seems likely, however, that gaps in control among the ten leading exporting countries are shared by many other states. Moreover, regulatory weaknesses anywhere in the world are cause for concern given the proven ability of arms traffickers to exploit them.<sup>28</sup>

### Setting priorities

Transfer control systems have significant resource requirements. Necessary personnel must be recruited, trained, and paid. Systems for the acquisition, dissemination, and retention of crucial knowledge have to be established and maintained. Time is often in short supply. Resources for diversion prevention must compete with other pressing needs. States cannot eliminate the risk that the weapons they authorize for export will be diverted or misused. Yet careful priority-setting, coupled with the effective use of existing policy instruments such as end-user certification, can reduce this risk considerably at reasonable cost.

As the discussion of national practice has demonstrated, in tackling the problem of diversion states concentrate most of their efforts on the licensing stage. Interventions at this point are much easier for the exporting state (the weapons are still on its territory) and, as a rule, less costly (TRANSFER DIVERSION). And they have the important advantage of preventing diversion rather than discovering it after the fact. It is not surprising, then, that states like the UK, while retaining a role for end-use monitoring, emphasize the thorough assessment of diversion risks at the licensing stage.

Post-shipment controls present various complications. It may be politically difficult—even impossible—for the exporting country to intervene once the weapons have left its jurisdiction. The cooperation of the state of import will invariably be needed for reasons of sovereignty. Resources are also an issue. The exporting state may lack diplomatic

**Exporting states rarely conduct any checks beyond the point of delivery.**

representation in the recipient state. More often, existing diplomatic personnel may lack the time and/or expertise needed for routine end-use monitoring. For this reason, there is a temptation for states to rely on licensing alone to weed out diversion risks.

Post-shipment controls, including delivery verification and end-use monitoring, are, however, an indispensable component of the broader transfer controls (diversion prevention) package. Delivery verification can uncover and ultimately deter the diversion of weapons while en route to the importing state. End-use monitoring, where a condition of the export licence, can also exert a powerful deterrent effect on potential transgressors. By testing the reliability of the end-user, it also helps to reinforce and improve risk assessment at the time of licensing. If a state makes no attempt to verify possession and end use after export, there is a strong chance that any diversion that does occur will go undetected. Unless the diversion is revealed by other means, nothing prevents the state from approving further exports to the same end-user (Anders, 2007).

The resource arguments against end-use monitoring, though important, are less compelling than might first appear. The goal is not to monitor the end use of each and every export, but rather to deploy this measure periodically and selectively, paying special attention to cases presenting greater diversion risks. Developing countries may face capacity constraints, not only on post-shipment verification, but also on assessing diversion risks at the licensing stage. But these can be addressed in a variety of ways, most notably through the pooling of information and resources (GRIP et al., 2006).

The conclusion, then, is that while it may make sense to devote the lion's share of resources and attention to licensing, post-shipment verification—including some degree of end-use monitoring—is also essential to national efforts to combat diversion. Practice among the ten leading exporters, however, indicates that these measures are underutilized (delivery verification) or largely neglected (end-use monitoring).



A SWAT team provides back-up for police officers arresting a suspected illegal arms trafficker, near Yabucoa, Puerto Rico, September 2007. © Brennan Linsley/AP Photo



### Enhancing end-user certification

Although governments are devoting far greater attention to licensing and end-user certification than to post-shipment control measures, the quality of that attention is something of a question mark. On paper, it appears the norms, instruments, and systems needed to combat diversion are in place among the world's leading exporting states. Yet whether and how this framework translates into effective action remains unclear in the vast majority of cases.

As noted earlier, all of the principal exporters undertake some form of end-user certification when licensing small arms and light weapons exports, but the kinds of documents and procedures they use vary widely. This is not, in and of itself, a problem. Licensing decisions are, and are bound to remain, the prerogative of individual governments. The variation in end-user documents and procedures reflects differing national approaches to arms transfer licensing and, in particular, different perceptions of risk and acceptable risk. International instruments and best-practice guidelines, including those mentioned earlier, help raise standards across the board and ensure that certain minimum requirements are met when governments authorize small arms transfers. It is,

however, neither helpful nor realistic to expect governments to use the same documents and procedures for end-user certification.

Certainly much more could be done to make the forgery of end-user documentation more difficult. Sweden, for example, prints the document it uses for state-to-state transfers ('Declaration by End User') on banknote paper precisely for this reason (Sweden ISP, 2005).<sup>29</sup> As for content, exporting states around the world could undoubtedly do more to ensure, pursuant to international best practice,<sup>30</sup> that end-user documents contain complete information, including details of the material to be transferred, destination country, end-user, and end use. Yet, whatever the form and content of end-user documents, they are worth little more than the paper they are written on if the documents themselves and the information they contain are not verified in advance of export.

Placing a phone call to an official who has signed an EUC is of little use if that individual has been bought off by an illicit trafficker (see above). Additional checks are needed. That said, a simple phone call can catch any forgery and any illicit EUC acquired from a government representative without ‘follow-up service’ (an official prepared to lie about a document’s validity; see above). It is unclear, however, whether exporting states are systematically verifying end-user documents, even though this is vital to the exercise of ‘effective control’ over small arms transfers (UNGA, 2001b, para. II.12).

## CONCLUSION

This chapter has reviewed national practices in the world’s leading exporting states with a view to determining how well these countries meet their commitments, notably under the *UN Programme of Action*, to exert ‘effective control’ over small arms transfers (UNGA, 2001b, para. II.12). The best time to prevent the diversion of small arms and light weapons is obviously in advance of export, at the time of licensing. At this stage, diversion risks can be thoroughly assessed and end-users carefully vetted. Licensing alone, however, is insufficient. Post-shipment controls, including delivery verification and end-use monitoring, help detect (and deter) actual cases of diversion and ultimately reinforce licensing itself.

The challenges are clear, much less so the extent to which states are meeting them. The basic components of effective transfer control (diversion prevention) systems appear to be in place in the principal exporting countries; yet these systems leave much to the discretion of individual licensing officials, allowing them to decide when to increase or decrease the level of scrutiny required for a particular transaction. It is unclear, in particular, how thoroughly diversion risks are being assessed at the licensing stage, or how systematically end-user documentation is being verified.

It is quite clear, however, that post-shipment controls are being neglected. Many governments require that the delivery of weapons at destination be verified, but this is not uniform practice. Equally important, with rare exceptions verification stops at the time of delivery. As a rule, governments do not monitor the end use of exported weapons, not even selectively. They do not know, in other words, whether their decision to export weapons to a specific end-user was correct.

Rigorous licensing and end-user certification, coupled with targeted post-shipment controls, are obviously not the end of the story. These measures cannot eliminate diversion; yet, in concert with other policy instruments—such as the control of brokering and transport, plus systematic tracing—they would make it vastly more difficult. States have yet to demonstrate they are doing what is needed. ■

## LIST OF ABBREVIATIONS

|         |                                    |      |                                 |
|---------|------------------------------------|------|---------------------------------|
| EU      | European Union                     | OAS  | Organization of American States |
| EUC     | End-user certificate               | OSCE | Organization for Security and   |
| LOA     | Letter of Acceptance               |      | Co-operation in Europe          |
| MANPADS | Man-portable air defence system    | SALW | Small arms and light weapons    |
| NATO    | North Atlantic Treaty Organization | WEU  | Western European Union          |

## ENDNOTES

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- 1 See also UNGA (2007); Griffiths and Wilkinson (2007, secs. 6.2, 6.4, 6.5); Cattaneo (forthcoming).
- 2 Note that, in contrast to the *UN Programme of Action*, the *UN Firearms Protocol* is not an instrument of universal application as it binds only those states that have ratified, or otherwise adhered to, this treaty. For a list of States Parties to the *Firearms Protocol*, see <<http://www.unodc.org/unodc/en/treaties/CTOC/countrylist-firearmsprotocol.html>>
- 3 This section is partly based on Anders (2007).
- 4 Interviews by Holger Anders with arms export officials from various states, April–September 2007 (Anders, 2007).
- 5 The *UN Programme of Action* is exceptionally weak on the question of retransfer. It merely recommends that importing states notify the original exporting state before any retransfer (UNGA, 2001b, para. II.13).
- 6 Interviews by Holger Anders with arms export officials from various states, April–September 2007 (Anders, 2007).
- 7 Interviews by Holger Anders with arms export officials from various states, April–September 2007 (Anders, 2007).
- 8 This section is based on Anders (2007).
- 9 See also Chapter 3, Annexe 3.1, available online at <<http://www.smallarmssurvey.org/files/sas/publications/yearb2007.html>>
- 10 Telephone interview by Holger Anders with an Austrian arms export official, October 2007.
- 11 Telephone interview by Sarah Parker with an Austrian arms export official, February 2008.
- 12 Depending on the export, this could mean the Belgian federal government or the government of one of the three regions (Brussels, Flanders, Wallonia).
- 13 There is no fixed list of these additional states; Belgian licensing authorities have some discretion in this area. Telephone interview by Holger Anders with Walloon arms export official, October 2007.
- 14 Telephone interview by Holger Anders with Walloon arms export official, October 2007.
- 15 Note: this is different from the Excess Defense Articles (EDA) programme administered by the Defense Security Cooperation Agency, under which defence articles declared as excess by US military departments can be offered to foreign governments or international organizations in support of US national security and foreign policy objectives.
- 16 The categories of weapon requiring an export licence include items 2-1, 2-2, and 2-3 of the Canadian Export Control List, echoing items ML1, ML2, and ML3 of the Wassenaar Munitions List. See Canada (2006a, p. 49).
- 17 The White Paper refers, above all, to weapons of mass destruction. Chinese export authorities can, however, apply the same end-use controls to small arms and light weapons exports. Interview by Holger Anders with Chinese official, August 2007.
- 18 Interview by Holger Anders with German arms export official, July 2007.
- 19 As of October 2007, new EU members Romania and Bulgaria were not yet included on the list of countries benefiting from the waiver relating to the re-export of non-war weapons. Germany was, however, in the process of updating its regulations for this purpose. Interview by Holger Anders with German arms export official, October 2007.
- 20 Available at <<http://www.berr.gov.uk/europeandtrade/strategic-export-control/legislation/export-control-act-2002/eca-2002-orders/index.html>>
- 21 Interview by Holger Anders with British arms export official, August 2007 (Anders, 2007).
- 22 Interview by Holger Anders with US arms export official, August 2007.
- 23 ‘Blue Lantern checks are not conducted randomly, but are rather the result of a careful selection process to identify transactions that appear most at risk for diversion or misuse’; USDoS (2007b, p. 2).
- 24 This section is partly based on Anders (2007).
- 25 Some states define semi-automatic carbines and rifles as military weapons, however. See Austria (1977, art. 1).
- 26 For information on the US system, see Chapter 4 (TRANSFER DIVERSION).
- 27 In cases of concern, Switzerland verifies weapons exports post-delivery. It estimates that ‘up to 5% of total exports (value)’ undergo such verification. Written correspondence with Swiss export control authorities, February 2008.
- 28 See, for example, Griffiths and Wilkinson (2007).
- 29 See also Sweden ISP (n.d., ‘Declaration by End User’; n.d., *National Practices*).
- 30 See EU Council (2007, sec. 2.1.2); *Nairobi Best Practice Guidelines* (2005, sec. 2.1.e); OSCE (2003, ch. V, sec. IV.6); OSCE (2004b); WA (2005).



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