

French EUFOR soldiers in Abeche, Chad, June 2008.

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Devils in Diversity

EXPORT CONTROLS FOR MILITARY SMALL ARMS

INTRODUCTION

Rigorous export controls are an essential tool in the fight against the illicit small arms trade. Under the United Nations *Programme of Action* on small arms, states have committed themselves to establishing effective export control systems and to assessing applications for export authorizations according to strict national regulations and procedures that are consistent with their existing responsibilities under relevant international law (UNGA, 2001, para. II.11). Many states claim to have developed strong, effective systems. It is clear, however, that legally traded weapons continue to reach the illicit market. Panels appointed to monitor UN Security Council arms embargoes regularly uncover violations, while expert groups continue to urge states to ensure their national systems and internal controls are at the highest possible standard (UNGA, 2008, para. 29). This begs the question: how well are states currently regulating small arms exports? What more needs to be done?

This chapter compares the export control systems in 26 states that have been consistently classified as ‘major exporters’ by the Small Arms Survey (TRANSFERS).¹ Its principal conclusions include the following:

- All the major exporters have export controls and licensing procedures in place, but these vary considerably in terms of procedure and content.
- Many states regulate the export of military and non-military small arms under separate mechanisms, but different countries do not categorize the same weapons in the same way.
- States apply varying levels of scrutiny to export decisions depending on the nature of and reason for the export.
- Many states require non-re-export undertakings as part of the licensing process, but there are indications that states seldom follow up on these.
- The decision to establish a ‘common market’ in the European Union for defence-related goods raises a number of concerns regarding the possible re-export and ultimate end use of such goods.

This chapter focuses on legislation and regulations governing the permanent export of *military* small arms. It does not analyse the licensing systems for non-military exports, except to the extent that they are governed by the same law as military exports. Nor does it analyse other components of transfer control systems, such as the regulation of import, transit, trans-shipment, or brokering.

The first section of this chapter provides an overview of the nature and purpose of export controls. It explains what is meant by the term ‘export’ and reviews the principal types of small arms and light weapons affected by export controls. The chapter then compares export licensing processes in the selected countries, with a focus on pre-licensing requirements, exceptions to licensing requirements, the types of licenses granted, and diversion-prevention mechanisms. The final section reviews the government ministries that are involved in decisions to export small arms, as well as the criteria that are applied to such decisions. Throughout, the chapter highlights the wide variations in national export control systems, identifying specific strengths and weaknesses.

OVERVIEW

This section introduces the basic concepts that will underpin the review of national export controls in the rest of the chapter. It outlines the various components of these systems and addresses such basic questions as the purpose and scope of export controls. It situates national controls against the backdrop of states' international commitments and examines the types of weapons covered by the systems under review.

What are export controls?

Export controls comprise the laws, regulations, and administrative procedures that a country uses to regulate the export of strategic goods, including military equipment. They seek to control: the destination of the strategic goods; the person or entity that ultimately takes control of and uses the goods (end user); and their ultimate use (end use). In most states, the export of strategic goods requires the permission of the government, obtained through a licensing process. Governments decide whether to authorize exports on the basis of applicable national legislation and policy.

There is no single model for an export control system; however, any export control system needs to have certain features to be effective, as identified in the *Handbook of Best Practices on Small Arms and Light Weapons* of the Organization for Security and Co-operation in Europe (OSCE). These include a legal basis, an export policy, a decision-making mechanism, and an enforcement mechanism (OSCE, 2003, part V, p. 2). Additionally, there should be effective oversight and scrutiny of the export control regime ensuring some minimum degree of transparency and allowing other branches of government (typically parliaments) to monitor national export policies.

Various multilateral arrangements attempt to regulate the export of arms, including small arms.² The nature and scope of these arrangements vary. Some, such as the UN *Firearms Protocol*, the *Convention against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives, and Other Related Materials* (CIFTA), and the *Protocol* of the Southern African Development Community (SADC), are legally binding; some, such as the 1996 *Disarmament Commission Guidelines*, establish non-binding guidelines; and others, such as the *Model Regulations*

of the Organization of American States, serve as templates. Some instruments cover all conventional weapons, such as the Wassenaar Arrangement and the European Union (EU) *Code of Conduct*;³ others cover small arms and light weapons only, such as the UN *Programme of Action*, the OSCE *Document on Small Arms*, and the Wassenaar *Best Practice Guidelines for Exports of Small Arms and Light Weapons*. Levels of regional activity and participation in the various instruments also vary. Table 2.1 contains a list of the instruments affecting small arms transfers to



Supplies ready to be transported to the Gulf region from the US military base at Ramstein, Germany, April 2003.

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Table 2.1 Small arms transfer instruments applicable to major exporting states

Instrument	Legally binding												
	CIFTA (1997)		UN Firearms Protocol (2001)		SADC Protocol (2001)	OSCE Principles Governing Conventional Arms Transfers (1993)	Disarmament Commission Guidelines (1996)	EU Code of Conduct (1998) ⁴	Letter of Intent (1998)	OAS Model Regulations (1998)	OSCE Document on Small Arms (2000)	UN Programme of Action (2001)	Wassenaar 'Best Practice Guidelines' (2002)
	Signed	Ratified	Signed	Ratified									
Austria			■			■	■	■			■	■	■
Belgium				■		■	■	■			■	■	■
Brazil		■		■			■			■		■	
Bulgaria				■		■	■	■			■	■	■
Canada	■		■			■	■			■	■	■	■
China			■				■					■	
Czech Republic						■	■	■			■	■	■
Finland			■			■	■	■			■	■	■
France						■	■	■	■		■	■	■
Germany			■			■	■	■	■		■	■	■
Israel							■					■	
Italy				■		■	■	■	■		■	■	■
Japan			■				■					■	■
Norway				■		■	■				■	■	■
Portugal			■			■	■	■			■	■	■
Republic of Korea			■				■					■	■
Romania				■		■	■	■			■	■	■
Russian Federation						■	■				■	■	■
Singapore							■					■	
South Africa				■	■		■					■	■
Spain				■		■	■	■	■		■	■	■
Sweden			■			■	■	■	■		■	■	■
Switzerland						■	■				■	■	■
Turkey				■		■	■	○			■	■	■
United Kingdom			■			■	■	■	■		■	■	■
United States	■					■	■			■	■	■	■

Notes: Shaded type indicates that instruments serve to guide states in deciding whether to grant an export licence (see 'Licensing criteria', below).

○ Candidate country

Box 2.1 Glossary of export control terms

Actors

Consignee (also known as the 'foreign consignee'): The consignee is a recipient of the exported goods. The goods may remain with the consignee (in which case the consignee is the end user), or they may be forwarded on to the end user. There may be several intermediate consignees who assist in effecting delivery to the end user, who is the ultimate consignee.

End user (also known as the 'ultimate consignee'): The person or entity in the importing state that ultimately receives and uses the exported items.

Exporting state (or 'country of origin'): The country from where the arms are exported; responsible for authorizing the export (granting the export licence).

Foreign intermediate parties: Entities involved in the transaction, such as freight forwarders, customs brokers, agents or representatives, and arms brokers.

Importing state (or 'country of final destination' or 'final destination country' or 'recipient country'): The country where the end user is located.

Activities

End use: Normally the licence application or associated documentation indicates how the end user (or 'ultimate consignee') intends to use the items being exported.

Export: The physical movement of goods from one state to another.

Re-export (or 're-transfer'): Generally, the export of goods that have been imported from another country (the 'country of origin'). In some jurisdictions, goods in transit are considered 're-exports' (or 'exports') when they leave the territory of the transit state.

Transfer: A transfer of arms, like an export, involves the physical movement of goods. However, technically the term 'transfer' is broader than the term 'export' because it covers not only the movement of goods from one state to another (i.e. international transfer), but also the movement of goods *within* a country.

Transit/trans-shipment: The transit of arms involves their movement from State A (exporting state) through State B (transit state) to State C (importing state), where (in contrast to trans-shipment) there is no change in the mode of transport. The arms may be deemed 'exports' and in some cases 're-exports' by the transit state when they leave its territory.

Documents

End-user certificate: An end-user certificate (EUC) is a document provided by the end user in the importing country. Practice varies, but generally the EUC contains details of the goods being exported, their value and quantity, and the parties involved in the transaction, notably the end user. It may also specify the end use of the goods and contain an undertaking on the part of the end user not to re-export the goods without the approval of or notification to the exporting state.

International import certificate: An international import certificate (IIC) is issued by the government of the importing state. It indicates that the latter is aware of and has no objections to the import of specified items and quantities of controlled goods. The importer obtains the IIC and provides it to the exporter, who in turn attaches it to their application for an export licence if required.

Delivery verification certificate: A delivery verification certificate (DVC) is a certificate provided by the government of the importing state that confirms the controlled goods have been delivered or have arrived in the importing state. The importer applies for the DVC and is required to provide evidence that the delivery has taken place, such as a bill of lading, airway bill, or a form endorsed by the customs authority of the importing state. Once obtained, the importer provides the DVC to the exporter. If the exporting state requires a DVC, it will generally appear as a condition on the face of the export licence, and the exporter will be expected to provide the DVC within a certain timeframe following shipment of the goods (e.g. 90 days in the United States⁵).

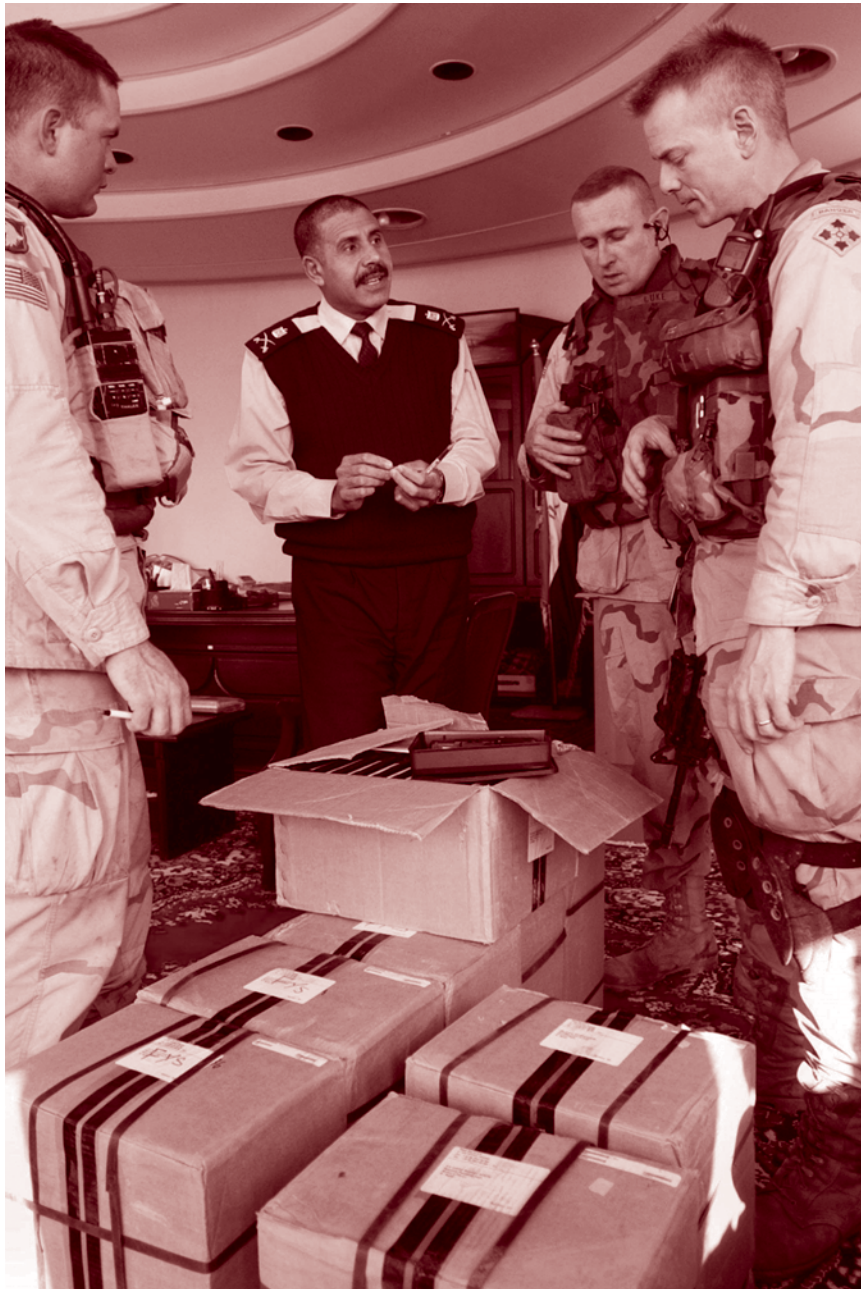
which major exporting states are parties or in which they are participants. In addition, there are international legal norms that apply to arms transfers, including UN Security Council arms embargoes prohibiting transfers to certain states or groups (Small Arms Survey, 2007, p. 130–32).⁶

Box 2.1 provides an overview of the terms commonly used to describe the actors involved in an export and their transactions. Additionally, there are two other conceptual issues that warrant analysis before embarking on a comparison of states' export controls: what is an 'export'? And what types of small arms are subject to export controls?

What is an export?

In simple terms, an export involves the physical movement of goods from one country (the 'exporting country') to another country (the 'importing country', 'recipient country', or 'country of destination'). Small arms may be exported in a variety of circumstances:

- **Permanent exports.** Permanent exports of small arms can occur through:
 - *Commercial sales:* a manufacturer in the exporting state sells its small arms to an entity in a foreign country. That entity could be a government or a fire-arms dealer in the importing state.
 - *Government-to-government sales:* the government of the exporting state sells small arms to the government of the importing state for use by its defence or police forces. These arms may be procured from the surplus stocks of the exporting government; they may be produced by a state-owned company; or the exporting government may procure them on behalf of the importing government from a private arms manufacturing company operating in the exporting state.
 - *Government donation:* the exporting government may give the arms to another government free of charge as part of a military assistance project.



Members of the US military deliver weapons and ammunition to the Salah Ad Din Provincial Police Headquarters in Tikrit, Iraq, February 2004. © Stan Honda/AFP

- **Temporary exports.** Small arms may be moved to another country on a temporary basis. These include military small arms that accompany the defence forces of an exporting state on a temporary peacekeeping assignment and are later returned to the exporting country, or weapons that are exported to another country for repairs or for display in trade fairs. Since ownership of these arms does not pass to the recipient country, such exports are not considered to be international transfers (TRANSFERS).⁷ Temporary exports also occur when individuals take their firearms on hunting expeditions in a foreign country.
- **Transit.** The arms are transported from State A ('exporting state'), through State B ('transit state'), to State C ('importing state').

States regulate these transactions in a variety of ways, with some providing exemptions from licensing requirements for certain transactions, especially temporary exports by their own armed forces or transfers to allies. In other words, states apply varying levels of scrutiny to export decisions depending on the nature of and reason for the export.

Types of small arms subject to export controls

The states reviewed for this chapter are classified by the Small Arms Survey as 'major exporters' based on the total value of *all* of their small arms exports, with no differentiation made as to whether they export military small arms, non-military small arms, or both. Given the chapter's focus on export control systems for *military* small arms, a few of the major exporters are thus less relevant for this review. Some of these countries predominantly and, in some cases, exclusively, export non-military firearms. In certain cases, this is a matter of policy. For example, **Japan** states that the export of 'arms' has been banned since 1976 (Japan METI, 2002), but excludes from this category 'hunting guns and sport guns' (Japan, 2008). Other countries, such as **Norway**, no longer produce military small arms although they do produce ammunition for such weapons (Weidacher, 2005, p. 59; Norway, 2008, p. 3).

States apply varying levels of scrutiny to export decisions.

Many states regulate the export of military equipment or so-called 'war material'⁸ under a legislative and administrative framework that is distinct from the one governing the export of commodities without strategic applications. Small arms straddle both categories since they can be used for both military and non-military purposes. Accordingly, in many jurisdictions, separate legislation and procedures govern the export of military small arms vs. non-military small arms. Moreover, since not all states use the same classification system, certain arms may be considered *military* arms in one state and *non-military* arms in another.

Separate regulation of the export of military and non-military small arms is consistent with the fact that export control regimes, such as the Wassenaar Arrangement and the EU *Code of Conduct*, were established to govern the export of *military* equipment, including small arms for military use. This focus is reflected in the control lists associated with these regimes: the Wassenaar Munitions List and the EU Common Military List (WA, 2008; EU, 2008b). Both control lists cover the same broad range of conventional arms and dual-use equipment, including most small arms, all light weapons, and their ammunition (see Box 2.2). Small arms that are not covered include: (1) smooth-bore weapons used for hunting or sporting purposes that are not specially designed for military use and are not fully automatic (most types of shotgun); and (2) weapons using non-centre fire cased ammunition and that are not fully automatic, such as modern pistols and rifles primarily designed for sport shooting.⁹

As illustrated by Table 2.1 many of the major exporters are members of the EU and/or participate in the Wassenaar Arrangement. Not surprisingly, most have harmonized their national control lists with the EU Common Military List or the

Box 2.2 Small arms-related categories in the Wassenaar Munitions List and EU Common Military List

ML1¹⁰ Smooth-bore weapons with a calibre of less than 20 mm, other arms and automatic weapons with a calibre of 12.7 mm (calibre 0.5 in.) or less and accessories, as follows, and specially designed components therefor:

- a. Rifles, carbines, revolvers, pistols, machine pistols, and machine guns;
- b. Smooth-bore weapons, as follows:
 1. Smooth-bore weapons specially designed for military use;
 2. Other smooth-bore weapons, as follows:
 - a. Of the fully automatic type;
 - b. Of the semi-automatic or pump-action type;
- c. Weapons using caseless ammunition;
- d. Silencers, special gun-mountings, clips, weapons sights, and flash suppressors for arms controlled by sub-items ML1.a., ML1.b., or ML1.c.

(The notes to ML1 state: 'ML1 does not control smooth-bore weapons used for hunting or sporting purposes.')

ML2 Smooth-bore weapons with a calibre of 20 mm or more, other weapons or armament with a calibre greater than 12.7 mm (calibre 0.50 in.), projectors and accessories, as follows, and specially designed components therefor:

- a. Guns, howitzers, cannon, mortars, anti-tank weapons, projectile launchers, military flame throwers, rifles, recoilless rifles, smooth-bore weapons, and signature reduction devices therefor;
- b. Military smoke, gas and pyrotechnic projectors or generators;
- c. Weapons sights.

Source: WA (2008)

Wassenaar Munitions List (which are equivalent) or are in the process of doing so.¹¹ Even some states that do *not* participate in either arrangement have adopted one of these lists. For example, **Israel** and **Singapore** have harmonized their control lists with the Wassenaar Munitions List even though they do not participate in the arrangement (Israel, 2007;¹² Singapore, 2007, sch., part I, div. 2).

Some states, such as **South Africa** and **Spain**, have simply annexed one of the lists in their entirety to the relevant regulations (South Africa, 2004; Spain, 2007b). Others have adapted the Wassenaar Munitions List slightly, with most countries—such as the **Czech Republic** and **Switzerland**—expressly excluding weapons for hunting and sporting purposes or, as is the case for **Sweden**, emphasizing that only small arms designed or adapted for combat purposes are covered by the control list (Czech Republic, 1994b, annexe; Switzerland, 1998, annexe 1). In other words, it is clear from their control lists that their export controls governing the export of strategic and military equipment are only intended to regulate the export of *military* small arms, while non-military exports are subject to a different regulatory regime.

Yet some states, such as **Canada** and the **United Kingdom**, use adapted versions of the Wassenaar Munitions List that do not exclude hunting and sporting or non-military weapons (Canada, 2006, p. 49; UK, 2009). Accordingly, the same controls apply to exports of military and non-military small arms, although the range of exclusions and exceptions to the licensing of non-military exports is correspondingly larger. This means that the same licensing authority regulates the export of military and non-military small arms and that they are subject to the same foreign policy considerations and transfer criteria. In contrast, **Finland** includes some items from the Wassenaar list but excludes 'non-automatic rifles, carbines, revolvers and pistols and smooth-bore weapons', which it classifies as civilian firearms, whose export is licensed under a separate regime (Finland, 2008).

It is common for one licensing authority to authorize exports of military small arms, and for a different government agency to approve the export of non-military arms. For example, in both **Finland** and **Portugal**, the Ministry of Defence has primary responsibility for licensing exports of military small arms, but the Ministry of Interior is

responsible for licensing exports of non-military arms. In the **Republic of Korea** and **South Africa**, the national police service makes the decision to license exports of non-military small arms, and different agencies authorize military exports (see Table 2.3). If, however, a proposed export involves more than ten firearms or 20,000 rounds of ammunition, the National Commissioner of the South African Police Service must submit the licensing application to the interagency committee charged with licensing military exports—the National Conventional Arms Control Committee (NCACC)—for consideration (South Africa, 2004, sec. 7). In other countries, certain transactions of non-military small arms are also subject to the same scrutiny as military exports.

In **Sweden**, military equipment has been divided into two separate categories for the purpose of export controls: military equipment for combat purposes (MEC) and other military equipment (OME). Barrelled weapons with a calibre of less than 20 mm are classified as MEC if they are ‘designed for combat’, while those ‘designed for hunting and sport purposes’ are classified as OME. Barrel weapons over 20 mm calibre are classified as OME if they are ‘designed for the launching of non-destructive ammunition’ (Sweden, 1992b, annexe). The same licensing authority controls the export of both categories, but different export criteria are applied (see below).¹³

Exports of non-military small arms are also at risk of diversion and misuse.

The question of whether states subject their exports of non-military small arms to the same scrutiny and foreign policy considerations as their exports of military small arms is important since exports of non-military small arms are also at risk of diversion to and misuse by unauthorized end users (Small Arms Survey, 2008, ch. 2).¹⁴ It is difficult to quantify the scale or proportion of non-military arms exports relative to military small arms exports, largely due to the lack of comprehensive data on the small arms trade. However, United Nations Commodity Trade Statistics Database (UN Comtrade) data suggests that in 2006, for example, sporting and hunting shotguns and rifles accounted for almost half (49 per cent) of all firearms exported that year (TRANSFERS). To this figure must be added handguns, which remain in wide demand among civilians.

Source of exported arms

The small arms that states export may be new weapons produced by the arms industry (state- or privately owned), or they may be sourced from surplus stockpiles belonging to the state.¹⁵

Industry. The size and nature of the arms industry in each of the major exporters varies. In the **Russian Federation**, for example, the industry consists of one wholly state-owned corporation, Rostekhnologii (Pyadushkin, 2008). In **Romania**, the core of the arms industry also remains state-owned, with the two principal companies being RomArm and the trade company RomTehnica; however, the government has encouraged limited privatization and the creation of joint ventures with foreign partners (Wood, 2007, p. 12).

Brazil's arms industry is made up of both state-owned and private companies. Indeed, the industry in Brazil is dominated by two private companies—Forjas Taurus S.A. and the Companhia Brasileira de Cartuchos—and a public company—IMBEL—administered by the Ministry of Defence (Dreyfus, Lessing, and Purcena, 2005, p. 50). **France** also has both private and state-owned corporations, with the retention of one state-owned corporation, Nexter (formerly GIAT Industries) (Elluin, 2008). Other states have privatized the industry completely, such that there are no state-owned entities engaged in production (e.g. **Austria** and the **United Kingdom**).

State stockpiles and surplus. Some of the major exporting states, such as **Norway** and **Portugal**,¹⁶ no longer produce military small arms (Weidacher, 2005, pp. 59–61 ; Portugal, 2008, p. 2; Teixeira, 2007). Consequently, exports of military small arms from these countries consist of transfers of surplus stocks, transfers to peacekeeping and defence forces or weapons in transit.

Indeed, despite the presumption in favour of the destruction of surplus stocks in the *Programme of Action*, the OSCE *Document on Small Arms*, and a European Council Joint Action of 2002, many of the major exporters indicate in their national reports on *Programme of Action* implementation that they still export their surplus small arms to other states.¹⁷ This is the case for: **Canada**, the **Czech Republic**, **Finland**, **Germany**, **Israel**, **Portugal**, and the **Russian Federation** (Cattaneo and Parker, 2008, p. 83). Other states also export their surplus small arms—including the **United Kingdom** (UK, 2008b, sec. 4.1) and the **United States** (US, 2005b, sec. 516)—although they may not mention this in their national reports.

The Wassenaar *Best Practices for Disposal of Surplus/Demilitarised Military Equipment* stipulate that surplus military equipment, including small arms and light weapons, should remain subject to the same export controls as new equipment (WA, 2000).¹⁸ Similarly, the OSCE *Document on Small Arms and Light Weapons*—while expressing a preference for the destruction of surplus arms—notes that: ‘if their disposal is to be effected by export from the territory of a participating State, such an export will only take place in accordance with the export criteria’ set out in the document (OSCE, 2000, sec. IV.C.1). **Israel** asserts that the export of surplus small arms and light weapons ‘is followed by the exact same stringent export control and authorization procedures, including marketing and export licenses’ that govern the export of new firearms (Israel, 2008). However, as discussed below, some states exempt exports by state agencies from export licensing and authorization procedures; presumably this includes exports of state surplus.

Many major exporters export their surplus small arms instead of destroying them.

THE LICENSING PROCESS

In general terms, the process for authorizing arms exports is virtually the same in all states under review. Prospective exporters must obtain an export licence. A designated government ministry or department decides whether to grant the licence in consultation with other ministries, based on the country’s legislation and specific political and security considerations.

However, the question of *what* arms are subject to control, *how* the licensing process operates, *who* makes the decision, and *how* that decision is made (including the criteria that are considered) varies from state to state. Table 2.2 provides a comparative overview of the major elements of the licensing process.

Pre-licensing requirements

In many states, companies or persons wishing to export arms must complete certain administrative steps before they can apply for a licence to export a specific shipment. In some states, they are simply required to register themselves on a national register by lodging certain information regarding their activities and operations. In other states, they must seek prior authorization before entering into contractual negotiations for a specific transfer or some other form of preliminary licence. Some states require both registration and another form of authorization before an export licence can be sought. In most cases, registration or authorization is valid for a limited time, and thereafter must be renewed (see Table 2.2). In some states, such as **Spain**, however, once a company is registered to trade in military equipment, there is no need to reregister.

State agents such as the police and defence agencies are generally not required to register or seek any special authorization to export arms. In some states, state agents are also exempted from having to obtain an export licence, as is discussed below.

Table 2.2 Overview of pre-licensing and licensing systems of major exporters

State	Pre-licensing				Types of licences							Licensing requirements		
	Registration	Transaction authorization	Requirements for exporter	Duration of exporter's pre-licensing authorization	Required	Exceptions	Individual	General	Global	Duration	EUC	No re-transfer	Import certificate	DVC
Austria	■		Licence to trade.		■		■	■			■	■	■	■
Belgium	■	■	Accreditation as an 'arms dealer' and 'preliminary licence'.	Registration and accreditation: indefinite.	■	■	■			1 year.	■	■	■	■
Brazil		■	Authorization to initiate preliminary negotiations.	2 years.	■		■				■	■	■	
Bulgaria	■	■	'Activities authorization' required.	First authorization: 1 year; subsequent authorizations issued for 3 years.	■	■	■			Up to one year and may be prolonged only once for up to 6 months.	■	■	■	■
Canada	■			5 years.	■	■	■	■		Individual licences are issued for a single shipment. The export becomes invalid after the first shipment is made even if the shipment is only a partial one.	■	■	■	
China	■	■	Authorization to engage in military export activities.		■		■				■	■		





Country	Record-keeping: duration	Penalties for exporting without a licence	
		Fine ^d	Imprisonment
Austria	Licensee: 3 years.	Up to 360 units of net daily income.	Up to 2 years.
Belgium		EUR 1,000-1,000,000 (USD 1,400-1,400,000).	Up to 5 years (penalties are doubled in case of a second conviction).
Brazil		n/a	4 to 8 years.
Bulgaria	Licensee must keep a separate register for the transactions concluded and keep the commercial and shipping documents and info relating to the transactions for at least 10 years.	A fine of BGN 5,000-50,000 (USD 3,500-35,000) for natural persons and company officials; a property sanction of BGN 25,000-250,000 (USD 17,400-174,000) for legal persons and sole proprietors; a fine or a property sanction of BGN 50,000-500,000 (USD 35,000-350,000) for repeated infringement.	1 to 6 years; extended to 2-8 years if the act is committed by an official or for a second time; where it involves a large amount, increase to 3-10 years; and where for a particularly large amount and the case has been especially grave: 5-15 years.
Canada	All those registered must keep and maintain records of transactions during the period of registration and for a period of 5 years after the day on which the person ceases to be registered.	Offence punishable on summary conviction: fine up to CAD 25,000 (USD 21,000); indictable offence: court has discretion to set fine.	Offence punishable on summary conviction: up to 12 months; indictable offence: up to 10 years.
China	China reports that since 2006, all companies are required to register detailed information on small arms exports with the competent authority. These records are retained on a long-term basis by the authority.	CNY 100,000-500,000 (USD 15,000-73,000).	Depends on whether the offence violates criminal law.
Czech Republic		Up to CZK 5 million (USD 260,000). If the violation has caused damage to the Czech Republic or important policy, commercial, or security interests, the fine may be up to CZK 30 million (USD 1.6 million).	1-8 years; 3-10 years if in collusion with an organized group, if committed during state emergency; repeat offence; if the person has 'gained considerable benefit' from the act, or if it has caused great damage.
Finland		Minimum penalty is a fine (not specified).	Maximum penalty is 4 years; Penal Code also contains provisions concerning forfeiture of the economic benefit produced by the crime.



France	Licensee: records must be kept (duration unspecified).	EUR 100,000 (USD 140,000); increased to EUR 500,000 (USD 700,000) when the offence is committed by an organized gang.	7 years (increased to 10 years when the offence is committed by an organized gang).
Germany		Fine (not specified).	Up to 5 years; up to 10 years for serious cases.
Israel	Licensee: 10 years from date of completion of the defence export.	30 times greater than fine set out in the Criminal Code; 50 times greater if 'severe circumstances' apply (e.g. exporting to the enemy).	3 years (5 years if 'severe circumstances' apply, e.g. exporting to the enemy).
Italy	Licensee: 5 years (10 years for some information, e.g. details acquired from carriers and transport agents on the transport route and arrangements).	EUR 2,500-250,000 (USD 3,400-340,000).	3-13 years.
Norway	Licensee: at least 10 years after expiry of the licence.	Fine can be imposed, size depends on discretion of judge (and degree of violation).	Prison sentence may be imposed, term depends on discretion of judge (and degree of violation). Intentional violation: up to 5 years; negligent violation of regulations: up to 2 years.
Portugal ^e		A company involved in the unlawful possession or sale of forbidden firearms (including military firearms) could be fined EUR 12,000-7,200,000 (USD 16,000-9,800,000).	Imprisonment from 2 to 10 years, in ordinary cases, but could be aggravated to 4 to 12 years if: a) the offender is a police officer; b) the weapons were destined for use by criminal gangs or criminal organizations; or c) if this constitutes the seller's livelihood or main income.
Republic of Korea		Fine of less than KRW 50 million (USD 38,000).	Maximum of 10 years.
Romania			2-7 years.
Russia	Not specified, but must submit quarterly reports to the Federal Service on Military-Technical Cooperation.	Up to RUB 1 million (USD 34,000) or an annual income for 5 years as a possible supplement to a prison sentence (plus termination of permit to export weapons for a company).	3-12 years (for a private person).
Singapore	Licensee: 5 years from end of calendar year in which authorized transaction took place.	Fine not exceeding SGD 100,000 (USD 67,000) or 3 times the value of the goods (SGD 200,000; USD 135,000); or 4 times value for a second or subsequent conviction.	Imprisonment not exceeding 2 years (and/or fine); 3 years for a second or subsequent conviction.



South Africa	Not specified. Regulations merely stipulate that a person trading in conventional arms must keep full records and permits of all trade activities.	Fine.	Maximum 25 years (and/or fine). Seizure and disposal of the goods is also possible.
Spain	Licensee: 4 years following date of expiration of authorization.	Smuggling (export without a permit) is punishable by a short-term prison sentence and a fine ranging from twice to four times the value of the goods.	Smuggling (export without a permit) is punishable by a short-term prison sentence.
Sweden	5 years.	If the offence is deemed 'petty' a fine (unspecified) will be imposed.	Grave smuggling: imprisonment for 6 months to 6 years; gross negligence: fine (unspecified) or imprisonment for up to 2 years.
Switzerland	Licensee: at least 10 years.	Wilfully: up to CHF 1 million (USD 900,000) or term of imprisonment; serious cases: penal servitude up to 10 years and fine up to CHF 5 million (USD 4,500,000); and negligence: imprisonment up to 6 months or fine up to CHF 100,000 (USD 90,000).	
Turkey	Exporters provide information on exports to the Ministry of National Defence every 3 months. The Ministry keeps export records for 5 years.	Fine.	1-5 years imprisonment. Ministry of Defence reserves the right to apply to the Court of Justice with a request for closure of enterprises that are deemed to be unfit for functioning in this sector.
United Kingdom	Licensee: 3 years.	On summary conviction: fine is the prescribed sum or 3 times the value of the goods, whichever is greater; conviction on indictment, to a penalty of any amount.	Summary conviction: up to 6 months; conviction on indictment: up to 10 years.
United States	5 years from expiration of licence or date of transaction.	No more than USD 1 million.	Not more than 10 years.

Notes: This table collects information from legislation and other publicly available sources, including national reports on implementation. Blank cells reflect gaps in information deriving from those sources. In practice, however, states may include elements in their export controls that are not reflected in their national legislation or other publicly available sources.

* Although Japan is one of the countries reviewed, it does not form part of this table on licensing systems for military small arms exports because of Japan's declared policy of not exporting arms other than hunting and sport guns (Japan, 2008).

^d In Portugal, the commercial manufacture and export of military small arms is prohibited, but exports of surplus military small arms may take place subject to a permit issued by the Ministry of Defence (Teixeira, 2007; Portugal, 2008).

^b The National Conventional Arms Control Amendment Bill includes a proposed amendment that would exempt the South African Police Service or the South African National Defence Force from the provisions of the National Conventional Arms Control Act in cases of an emergency or special operations (South Africa, 2008, art. 25A).

^c In Switzerland, the EUC must include a pledge that the Swiss authorities have the right to verify the end use and end-use location of any supplied item at any time on their demand. Although no delivery verification certificate, as such, is required, the Federal Office of the Police Central Office for combating illegal transactions in war material is responsible for the monitoring of the arrival of deliveries (Liatowitsch, 2008).

^e The financial penalties were converted from the national currency to US dollars using currency conversion rates as of 8 January 2009. These amounts have been rounded.

^f Portugal prohibits the export of military small arms (which are included in the category of 'class A' weapons, whose possession, use, and transfer are forbidden). The penalties described here apply to the unlawful possession or transfer of prohibited firearms (including 'class A' weapons) in a domestic setting.

Source: Parker (2009)

In some cases, the precondition to the issuance of a licence takes the form of an authorization to initiate and conduct contractual negotiations to export arms. For example, in **Brazil**, when a commercial opportunity appears, companies must ask the Ministry of Foreign Affairs for authorization to initiate preliminary negotiations. If the ministry has no objections then negotiations are authorized for a period of two years. In **France** an exporter must go through several preliminary steps before an export licence may be sought: authorization to trade (valid for up to five years) must first be obtained from the Ministry of Defence. Once a potential commercial opportunity has been identified, the exporter must then seek two preliminary agreements from the prime minister: one at the ‘negotiating phase’ to negotiate the contract and a second at the ‘signature phase’ (Aubin and Idiart, 2007, p. 139).

In **Belgium**, in addition to being included on the national database of registered exporters, anyone wanting to export small arms must obtain two kinds of accreditation before applying for an export licence. The first one is an accreditation as an ‘arms dealer’ issued by the governor of the province where the company is located,¹⁹ the second is a preliminary licence issued by the minister of justice (called ‘licence of integrity’) as a proof of integrity (Moreau, 2008).

Pre-licensing
registration offers
an additional layer
of scrutiny.

In **Switzerland**, in addition to an ‘initial licence’, any individual or entity wishing to trade in war material (including military small arms) but not manufacturing such weapons must obtain a ‘trading licence’ before applying for an export licence (Switzerland, 1996b, art. 16a). In the **United States**, in addition to a requirement that exporters be registered before receiving an export licence, prior approval of or prior notification to the Directorate of Defense Trade Controls is needed before making certain proposals to a foreign person if the proposal involves the sale of ‘significant military equipment’ (defined as including small arms and light weapons) valued at USD 14 million or more for use by the armed forces of a country other than a NATO member or Australia, New Zealand, or Japan (US, 2007, sec. 126.8).

The number of individuals and companies authorized to trade in military equipment varies considerably among the major exporters. The **Czech Republic**, for example, reports that as of the end of 2007, 155 business entities held trading permits for military equipment (Czech Republic, 2007a, p. 5); data for 2006 indicates that in the **United States**, more than 5,000 entities were registered to manufacture, export, or broker defence articles or services (US, 2006). In both cases the number of entities authorized to export small arms is not specified. **China**, on the other hand, reported in 2008 that only 10 companies were authorized to engage in arms export activities and only four of these were authorized to *export* small arms (China, 2008, p. 10).

There are obvious benefits associated with a pre-licensing registration system. It offers an additional layer of scrutiny, providing an opportunity to vet potential exporters before they apply for a licence and to inform traders about applicable legislation. Depending on the country, the registration or authorization process may also provide information on the legal status of the exporter, the nature of its business activities, and details of any foreign ownership. In many states registration also entails reporting and record-keeping obligations beyond those required as part of the licensing process, thus bolstering existing checks and balances.

The **United Kingdom**, however—after considering the possible introduction of pre-licensing registration in 2007—remains ‘unconvinced’ that such a system adds anything to the licensing process. In the British case, exporters must provide full details of the proposed transaction as part of their licence application, and licences may be revoked or refused by the government at that stage (UKBERR, 2007, p. 38).

Interestingly, **France** is examining the possibility of moving to single prior approval by merging its ‘negotiating’ and ‘sale’ steps (France, 2007, p. 10). This is seen as a way of reducing administrative burdens and taking account of the fact that, due to the changing nature of the arms industry—which increasingly involves subcontracting to

Box 2.3 Free trade in arms within Europe?

On 16 December 2008, the European Parliament and the Council of the European Union adopted a directive that allows the free movement of defence products, including small arms and light weapons, among EU member states. At this writing, the directive was set to enter into force 20 days after its publication in the *Official Journal of the European Union* in the first half of 2009 (EC, 2008, art. 18).

The European Commission proposed the directive to simplify transfers of defence-related products within the European Community in December 2007, following the publication of a study on obstacles to intra-community transfers in 2005 and a consultation process involving the public and member states in 2006 and 2007 (EC, 2007c). Carried out by Unisys on behalf of the European Commission to assess obstacles to intra-community transfers, the study concludes that the diverse licensing requirements of EU countries impose a significant administrative burden on companies and 'appear to be out of proportion with actual control needs', especially in the light of the fact that 'license applications for intra-community transfers are almost never rejected' (Unisys, 2005, p. 5).

The Commission cited this finding in its explanatory memorandum to the proposed directive and noted that the aim of the directive was to reduce the obstacles to the circulation of defence-related products created by the patchwork of licensing schemes and to diminish the resulting distortions in competition (EC, 2007a, p. 2). The broader aim is to increase the competitiveness of the European defence industry and make it economically more efficient. The concern is that if better cooperation and integration are not promoted in Europe's defence industry, it will cease to be competitive on the world market, which will not only have economic costs, but will also hamper the pursuit of the European security and defence policy (EC, 2007b, p. 6).

The directive seeks to achieve these objectives using a twin-track approach. First, in order to simplify intra-community transfers, it encourages the use of general and global licences for transfers of defence products, envisaging only exceptional use of an individual licence, specifically:

- a. where the request for a licence is limited to one transfer;
- b. where it is necessary for the protection of essential security interests, or the protection of public policy;
- c. where it is necessary for compliance with international obligations and commitments of Member States;
- d. where a Member State has serious reasons to believe the supplier will not be able to comply with all the terms and conditions necessary to grant it a global licence (EC, 2008, art. 7).

Second, in order to harmonize EU transfer policies, the directive requires states to establish general licensing systems for transfers to the armed forces of EU member states and to *certified companies* in other EU countries (as well as in cases where items are being transferred for exhibitions or repairs in another member state) (EC, 2008, art. 5). Member states will be responsible for certifying recipients of defence-related products within their territories. This certification establishes that the company in question can be relied on to observe any export limitations imposed as part of the transfer licence, that is, limitations on the ability to export the goods to a country that is outside the European Community (EC, 2008, art. 9).

As noted, part of the reasoning behind the decision to simplify intra-Community transfers is the claim that licensing requirements appear to create a disproportionate administrative burden compared to the actual control needs. The evidence given to support this conclusion is the fact that no intra-community transfer of defence equipment has been denied since 2003, as reported in the impact assessment that accompanied the proposed directive (EC, 2007b, p. 15). However, the impact assessment only includes data for 2003, 2004, and 2005. Subsequent annual reports on the EU *Code of Conduct* indicate there have been at least 3 denials of intra-community export licences since 2003, and at least one of these pertained to small arms (EU, 2007; 2008a).

The impact assessment also notes that all the 15 denials registered in 2003 concerned exports to three Baltic states that were not yet EU members, and rather dismissively claims that the refusals were primarily linked to a lack of awareness of the legislation in the new member states and a 'lack of established trust concerning the actual enforcement of re-exportation controls by these new occasional buyers' (EC, 2007b, p. 15). Most importantly, the report notes that the 'categories where refusals occurred (small, light arms) concerned equipment with a potentially higher risks (sic) of uncontrolled dissemination (re-export)' (EC, 2007b, p. 15, emphasis added).

The European Union has grown considerably in recent years, with ten new member states admitted in 2004 and two in 2007.²⁰ Three candidate countries are awaiting admission: Croatia, the former Yugoslav Republic of Macedonia, and Turkey. Many of these new and candidate countries are exporters of small arms and other conventional weapons. Clearly, whatever the sophistication of their export control systems, these states do not have the same experience as older EU members in implementing the EU *Code of Conduct*. This, plus the acknowledged risk of diversion for small arms exports, raises questions about the desirability of the proposed market liberalization (Saferworld, 2006, para. 12(v)).

subsidiaries in other countries and increased cooperation—‘growing interdependence among control systems is unavoidable’ (France, 2007, p. 9). This emphasis on the need for increased overall efficiency among European partners is shared by other states and underpins a proposal to allow the free movement of defence products within the European Union (see Box 2.3).

Exceptions to the licensing requirement

As noted, all the major exporters of small arms require a licence to export military small arms. There are a range of exceptions to this requirement that are dependent on the nature of the exporter, the end user, and the end use.

Nature of exporter

Exceptions to licensing requirements depend on the exporter, end user, and end use.

Government exports. Many states expressly exempt arms exports by their own state agencies from relevant export controls. In some cases, an exemption is granted for government-to-government sales. **Israel** exempts state exports of defence equipment to another state from the provisions of its export control laws and subjects them to a separate procedure (Israel, 2007, sec. 47(b)). **Spain** exempts ‘exports or concessions between governments for the purposes of military aid, under the terms of international agreements’ from export controls (Spain, 1990, sec. 9(b)). **Norway** exempts exports by the Norwegian defence authorities if the recipient is a defence authority in a NATO or EU member state (Norway, 2007, sec. 3(i)), while the **United States** exempts exports related to its foreign assistance or government sales programmes and subjects them to a separate process (US, 2007, sec. 126.6).²¹

Nature of the end use and end user

Peacekeeping and humanitarian activities. In some instances the exemption for government exports is limited to temporary exports conducted for a specific purpose. For example, many states exempt from regulation or automatically grant authorization to exports of military equipment destined for use by their own or other armed forces in operations overseas, such as peacekeeping operations, humanitarian activities, and other international exercises authorized by the UN or regional organizations such as the OSCE. **Bulgaria**, the **Czech Republic**, **Finland**, **Italy**, and **Spain** fall into that category.²²

Participants in export control regimes and regional arrangements. Some states waive the requirement for an export licence if the recipient country is a member of a particular export control regime or regional arrangement. For example, transfers to NATO members are entirely exempt from the licensing regime in **Romania** and **Finland** (Wood, 2007, pp. 9, 21; Finland, 1990, art. 3).

Other states grant something akin to preferential treatment in such circumstances. If prospective recipients are members of international export control regimes and ‘conduct a responsible export policy’, **Finland** does not seek foreign and security policy advice when making a licensing decision (Finland, 2008). Similarly, in **Germany**, exports of war weapons and other military equipment to NATO and EU member states as well as ‘NATO equivalent countries’ such as Australia, Japan, New Zealand, and Switzerland are not subject to restrictions ‘unless in specific cases this is warranted on particular political grounds’ (Germany, 2008). **Canada** also reports that it has a fast-track procedure for most members of NATO and the Organisation for Economic Co-operation and Development (OECD), where there are fewer *prima facie* concerns about export control regimes and the risk of diversion (Canada, 2008).

Other states, such as **Sweden**, seem to take a more general approach, noting that:

There are no foreign policy obstacles in relation to co-operation with or exports to the Nordic countries and traditionally neutral countries in Europe. . . . As co-operation with other countries within the European

Community expands, the same principles for overseas co-operation and exports should be applied where these countries are concerned. (Sweden, n.d.a)

Such preferential treatment is common among EU member states, and in fact the complete removal of restrictions on exports between EU members is under consideration (see Box 2.3).

Country lists. Some states keep lists of countries to which preferential treatment is given in the context of arms exports. This either involves an expedited process or no licence requirement at all. For example, arms transfers between Benelux countries (**Belgium**, the **Netherlands**, and **Luxembourg**) do not require a licence. In the **Russian Federation**, the Ministry of Foreign Affairs prepares a list of states to which military items may be transferred, while transfers to all other states are subject to a presidential decree (Russian Federation, 2007, p. 12). In **Switzerland**, a pre-licensing 'trading licence' is not required if the transaction involves one of 25 specifically listed countries (Switzerland, 1998, annexe 2).²³ In **Canada**, a permit to export arms to the United States is only required if it involves prohibited firearms (such as sawn-off shotguns and automatic firearms). In fact, Canada only allows these firearms to be exported to countries it lists in its Automatic Firearms Control List (Canada, 2006, p. xix).

At the same time, many states keep lists of countries to which exports of arms or military equipment are banned. These correspond with arms embargoes imposed by the UN Security Council or regional bodies such as the EU or the OSCE; they may be included in an annexe or schedule to states' legislation or posted on government Web sites.²⁴

Types of licences

States issue three main types of export licences: individual, general, and global.

Individual licence: An individual licence authorizes the shipment of specified goods to a specified consignee or end user. It is a single, one-off authorization that may lapse after a specified period of time or when a specified quantity or value of goods has been delivered.

General licence: Offering a simplified procedure, a general licence can take one of several forms. It is a broad grant of authority to all exporters for certain categories of goods to almost all destinations. If a general licence has been granted with respect to a certain item, exporters do not need to apply for a licence to export that item, but they will usually need to register with the relevant authority to indicate that they will be using the general licence. General licences remain in force until they are revoked by the relevant authority.

Global licence: A global licence is granted to a specific exporter and allows for the export of an unlimited quantity of goods to one or several destinations, consignees, or end users. This is a more flexible means of licensing and is often used as a means of preventing an undue administrative burden for the exporter if an unusually large number of licences would otherwise be required. A global licence will be granted for a specific period of time.

All of the major exporters of small arms issue individual licences for the export of small arms and light weapons, and some stipulate that they *only* issue individual licences for small arms exports (e.g. **Czech Republic**, **Finland**, **Germany**, **Norway**, and **Turkey**).²⁵ Few of the states reviewed permit the use of general licences for exports of military equipment, including small arms. For example, the **United Kingdom** grants Open General Export Licences (OGELs), which allow an exporter to export specified items without having to apply for an individual licence, provided the exporter has registered to use the open licence and that conditions of the licence are met.²⁶

At this writing, the United Kingdom appears to be the only state offering a general licence for military small arms. This OGEL covers small arms and other defence equipment being transferred to certain countries as part of a UK

Some states only issue individual licences for small arms exports.

Government Defence Contract.²⁷ The United Kingdom also has an OGEL that allows an individual who holds a firearms certificate to export up to six rifles, smooth-bore weapons, and related ammunition for sporting purposes from the United Kingdom to Uganda or Tanzania, provided that the person returns the firearms to the United Kingdom within three months.²⁸

Global licences for exports of military equipment are generally only issued for the export of dual-use goods. However, six states—**France, Germany, Italy, Spain, Sweden,** and the **United Kingdom**—signed a letter of intent in 1998 and a follow-up Framework Agreement (FA) in 2000 that established a framework for cooperation regarding the production and export of military equipment. Global project licences (GPLs) were introduced as part of this framework. These simplify the arrangements for licensing military goods and technologies between FA states that are collaborating in defence projects. Each FA state issues its own GPL that permits multiple exports of specified goods and technology needed for a project or intended for the armed forces of another FA state. In practice, these have not been extensively utilized by FA partners.

The system for strategic goods control in **Singapore** establishes three ‘tiers’ of licences or permits for exporting strategic goods, including military small arms (Singapore, 2008). Tier 1 permits are equivalent to individual licences in that they authorize single, one-off transactions; Tier 2 permits allow the export of a specific product to multiple destinations or multiple products to a single end user; and Tier 3 permits allow multiple products to be exported to

Box 2.4 Tracker: software for processing, recording, and monitoring export licences

The United States has developed software that allows licensing bodies to process export licence applications. The so-called ‘Tracker’ system acts as a central location for governments to input, process, track, review, and approve or reject licence applications. It also facilitates electronic submission and monitoring of licence applications by applicants.

The software aims to increase the efficiency of pre-licence review, licensing, and post-licence procedures by:

- Storing information about organizations, individuals, products, and locations involved in exports and allowing searches to be conducted in any field;
- Providing secure information exchange for departments engaged in the licensing decision;
- Supporting enforcement activities by providing customs officers at remote sites with access to licence data. Photographs of suspicious items can be uploaded into Tracker at the customs point and reviewed by technical experts at other locations;
- Assisting with generating reports to satisfy domestic and international reporting requirements. For example, data from Tracker can be exported into other reporting software.²⁹ Accordingly, it is hoped the Tracker system will reduce administrative burdens and promote national reporting (e.g. under the UN Register of Conventional Arms and the EU *Code of Conduct*).

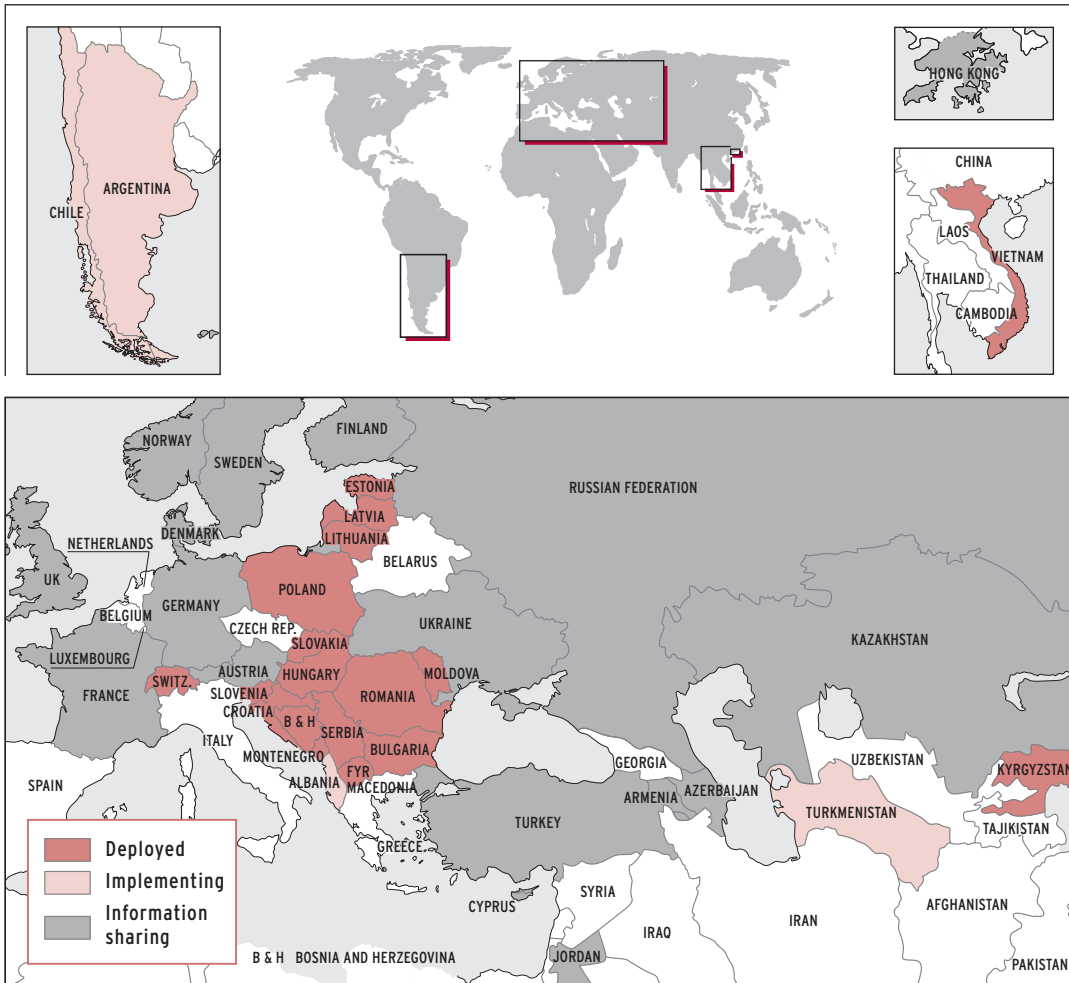
New developments

- An Internal Compliance Program is being integrated to help the industry develop internal procedures to ensure compliance with export legislation;
- A tool that provides automatic feedback on end users of potential concern is being incorporated;
- A Licensing Officer Information System that provides a training tool for licensing officers is being incorporated; and
- A search tool called the Product Identification Search Engine (PISE) is being introduced; it links items on the country’s National Control List with images and descriptions of the items.³⁰

Who has it?

The US State Department’s Export Control and Related Border Security (EXBS) programme has been working in cooperation with other governments to improve strategic trade control systems; it has shared the Tracker system software with more than 20 countries. Map 2.1 shows the countries where the Tracker system has been deployed or is being implemented, and where information sharing is taking place.

Map 2.1 Countries using the Tracker system software



Source: www.trackernet.org

pre-approved destinations. Eligibility for Tier 2 and 3 permits depends on the nature of the goods being exported (for instance, goods intended or likely to be used for weapons of mass destruction can only be exported under Tier 1 permits) as well as the exporter's compliance record with Singapore Customs and implementation of an effective internal (export control) compliance programme. Internal compliance programmes must include such elements as record-keeping, audits, and end-user screening (to ensure exports are to known legitimate customers or end users).

Licensing bodies in more than 20 countries currently use the US software 'Tracker' in processing export licence applications (see Box 2.4).

Licensing requirements

End-user certification

As part of the licensing process, applicants are normally required to provide the relevant licensing authority with documentation, such as an end-user certificate (EUC), identifying the goods to be exported, the recipient country,

the end user, the end use, and, in some cases, the value of the goods and the identity of other parties involved in the transaction. As illustrated by Table 2.2, all the major exporting states include the provision of an EUC as part of the licensing application (with the exception of **Japan**, which has a declared policy of not exporting military small arms). Some states insist on an EUC for *all* exports, while others *may* request an EUC depending on the circumstances. In some cases, for example, an import certificate provided by the recipient state may be provided in lieu of an EUC if the recipient state is an EU member state, NATO ally, or other ‘friendly’ country.

Given the risks of diversion, it is important that the exporting state obtain some kind of confirmation that the importing state is aware of and authorizes the weapons transfer (Small Arms Survey, 2008, chs. 4–5). Good practice dictates that states verify the information contained in EUCs when considering licence applications, ensuring, in particular, that recipient state authorizations are genuine (OSCE, 2004, para. 3). While some states say they conduct such verification through their local embassies in recipient states, for example, it is unclear to what extent small arms exporters, as a whole, do so (Small Arms Survey, 2008, p. 172).

Additional information—such as a commitment by the final consignee to provide a delivery verification certificate (DVC)—may also be included in an EUC (OSCE, 2004, para. 1). Table 2.2 indicates which major exporters seek the provision of DVCs as part of export licensing. While checks applied at the licensing stage offer exporting states the most cost-effective means of preventing arms diversion, post-shipment verification is also useful in deterring unauthorized changes in end user or end use, and in bolstering the assessment of diversion risks prior to export (Small Arms Survey, 2008, pp. 173–76). In this spirit, the OSCE *Document on Small Arms* suggests that states conduct physical inspections of shipments at the point of delivery to ensure the arms have been delivered securely, as a means of preventing illegal diversion (OSCE, 2000, sec. III.6). The European Parliament has echoed this recommendation by issuing a ‘demand to set up a transfer verification and post-export monitoring system that should include systematic physical inspections at points of transfer and of stockpiles by the competent national authorities’ (EU, 2004).

It is unclear to what extent small arms exporters conduct verification.

Some states, such as **Bulgaria** and the **United States**, specifically make reference to physical inspections as part of their delivery controls (Bulgaria, 2007a, art. 71.6; USDoS, 2008, p. 7). Other states, such as Ukraine, include ambiguous provisions in their laws that might include physical checks: ‘the duly authorized state export control body . . . shall be entitled to conduct . . . verification of delivery or end-use of goods at any stage of the international transfer and after actual delivery to the end-user’ (Ukraine, 2003, art. 19). In practice, however, it seems that few states other than the United States conduct significant physical and post-delivery checks (Macalesher and Parker, 2007, p. 23; Small Arms Survey, 2008, pp. 171–73).

Re-export provisions

Re-export (or re-transfer) notification requirements are another important means of preventing diversion.³¹ The *Programme of Action*, the Wassenaar *Best Practice Guidelines for Exports of Small Arms and Light Weapons*, and the OSCE *Document on Small Arms* all encourage states to notify the original exporting state before they re-export imported weapons (UNGA, 2001, para. II.13; WA, 2002, para. I.3; OSCE, 2000, sec. III, (2)(B)(5)). These instruments, however, fall short of best practice as they fail to stipulate that the original exporting state *consent* to the re-export, requiring merely that it be notified. Nevertheless, in practice states often require that their written authorization be obtained before any re-export.

As indicated in Table 2.2, at least 22 of the major exporters reviewed have restrictions on the re-export of arms. These usually take the form of a requirement that a clause be included in the sales contract that the importer and/

or end user will not re-export the arms without the prior written consent of the exporting state, as is the case in **Bulgaria** and the **United States** (Bulgaria, 2007a, art.70(1); US, 2007, sec. 123.9(b)); or the inclusion of an undertaking in the end-user certificate that the arms will not be re-exported without the authorization of the exporting state (e.g. **Brazil, France, Germany, Italy, Romania, the Russian Federation, South Africa, Spain**).³² Re-export provisions are not automatic; typically they *may* be required depending on the circumstances of the transaction and the identity of the end user.

In some cases, as in **Bulgaria** and **Romania**, the undertaking not to re-export has to be made by the importer or end user (Bulgaria, 2007a, art. 70(1); Wood, 2007, p. 24). In **Canada** the export licence applicant must submit a declaration that, to the best of the applicant's knowledge, the goods will enter into the economy of the recipient country and will not be trans-shipped or diverted from that country (Canada, 2001, sec. 3(2)(a)). In other cases, as in **Switzerland**, the recipient state undertakes not to authorize the re-export of the arms without the consent of the original exporting country (Switzerland, 1996b, art. 18). In the case of **France** the end user and the government of the recipient country may be required to declare that they will not re-export or authorize a re-export (respectively) without the prior written approval of the French government (France, n.d.).

In almost all cases where prior consent is required in advance of re-export, it is the consent of the original exporting state that is meant. **Bulgarian** regulations, however, provide that the consent to re-export may be given by the national competent authority of the recipient state if it is a Wassenaar member (Bulgaria, 2007a, art. 70(1)).³³ Clearly, this removes any control the original exporting country may have over the final destination of the small arms. In theory, participating states in the Wassenaar Arrangement may apply the same criteria to exports of small arms, but in practice their assessment of the risks involved in a particular export will often differ.

Once the original exporting state has surrendered physical control of the arms, it is difficult to monitor their use and any subsequent transfer. Costs are one factor, problems in securing cooperation from recipient governments another. Nevertheless, post-shipment controls, including the selective use of end-use monitoring, constitute essential—and cost-effective—tools in the diversion-prevention arsenal.³⁴

Problems associated with the extraterritorial application of laws, and the fact that the original exporter surrenders legal ownership of the weapons it exports, mean that non-re-export clauses have a political rather than a legal effect. The strongest response to a breach of such provisions is to refuse future exports to the offending state. Such is the response adopted by **Sweden** and **Germany**, which do not allow future exports of military equipment to states that have permitted or failed to prevent the re-export of military arms in breach of previous undertakings (Sweden, n.d.a; Germany, 2000, para. IV). Unauthorized re-transfer will also, in many cases, lead exporting states to conclude that the recipient presents an unacceptably high risk of diversion for any future arms transfers.

In principle, the onus is on the recipient state to notify the original exporting country that it is contemplating a re-export of arms. Some insight into the question of whether any of the major exporters do this can be gleaned from their national reports. **Norway** comments that it has 'no experience with such cases' (Norway, 2008). **Sweden** notes that it depends on the type of small arms. So, for example, if hunting rifles were involved, it would not usually notify the original exporting state unless the exporting state required it, but if man-portable air defence systems, or MANPADS, were to be re-exported, the original exporting state would be notified for approval (Sweden, 2008).

Other states, such as **Austria** and **Germany**, note that it depends on the re-export clauses in the original documentation (Klob, 2007; Germany, 2008). **Switzerland** indicates that the federal law on war material 'does not

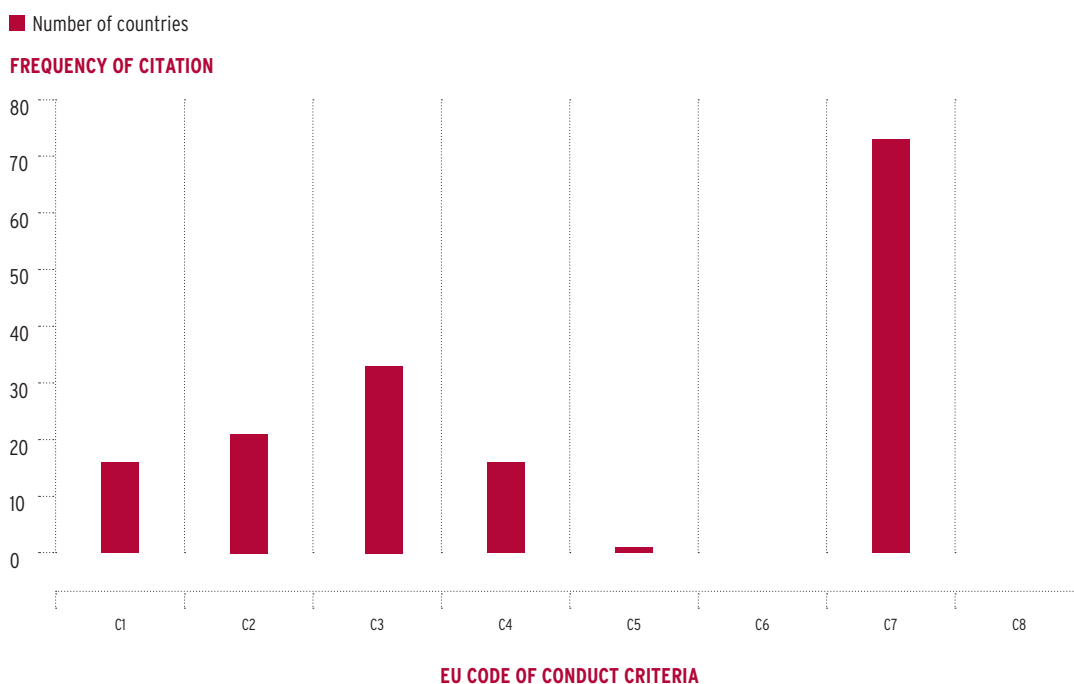
Post-shipment controls are essential tools in the diversion-prevention arsenal.

expressly require Switzerland to notify the original exporting State when re-exporting [small arms and light weapons]'. However, the federal law on the control of dual-use and specific military goods, which include some light weapons, 'stipulates that there must be consultation with the original exporting State if the latter insists on its formal consent in all cases of re-exporting. Consequently the export permit may be denied in the absence of approval by the original exporting State' (Switzerland, 2005). **Israel**, for its part, notes that the re-export of surplus small arms and light weapons that are of foreign origin 'will require re-export approval by the country of origin, as appropriate' (Israel, 2008).

The **Bulgarian** regulations provide that, where an export licence application pertains to the re-export of arms, the applicant must submit a licence for re-export issued by the original exporting state or, where the original exporting state does not issue such licences, the foreign forwarder must issue a statement certifying that no prohibition on re-export has been imposed (Bulgaria, 2007b, art. 6). In other words, the onus is on the exporting company rather than on the licensing authority to confirm that re-export authorization is not required.

It is difficult to get a clear picture of how and indeed whether exporting states monitor end use with a view to identifying unauthorized re-transfer. It is clear, however, that states do seriously consider the risk that arms might be re-exported when making a licensing decision. Concern that equipment might be diverted within the buyer country or re-exported under undesirable conditions—Criterion 7 of the EU *Code of Conduct*—was the reason EU member states most often gave for refusing an export licence for small arms in 2007. Figure 2.1 shows that Criterion 7 was invoked 73 times out of a total of 160 reasons provided (46 per cent).³⁵

Figure 2.1 **Frequency with which EU member states cite EU Code of Conduct criteria to refuse export licences, 2007 (n=160)**



Legend: C1=respect for international commitments of EU member states; C2=respect for human rights in the country of final destination; C3=the internal situation of the country of final destination; C4=preservation of regional peace, security, and stability; C5=the national security of the member states and of territories whose external relations are the responsibility of a member state; C6=the behaviour of the buyer country with regard to the international community (especially its attitude towards terrorism); C7=concern that equipment might be diverted within the buyer country or re-exported under undesirable conditions; C8=compatibility of the export with the technical and economic capacity of the recipient country.

In fact, the consultation carried out by the European Commission as part of the preparations for the directive on intra-community transfers reveals that ‘the main justification for applying export control systems to the transfer of defence-related products to other Member States was the *risk of re-exportation* outside the Community after the transfer to another Member State’ (EC, 2006, p. 6, emphasis in original). The directive acknowledges that there is a risk that less stringent controls and a reduction in the number of individual licences in favour of general licences may weaken re-export controls. To compensate for this, the proposal notes the need to create conditions for mutual confidence and trust through the inclusion of guarantees that ensure that defence-related products are not exported to third countries in violation of transfer restrictions (EC, 2008, recital 29).

Indeed Article 10 of the directive on intra-community transfers of defence-related products provides that member states must ensure that, if recipients of defence-related products are attempting to export items originally transferred from another member state, the recipients have respected any export limitations attached to them; if the consent of the originating member state is required but has not been obtained, the member state shall consult the originating member state (see Box 2.3). The directive does not, however, incorporate a proposed amendment to Article 10 stipulating that if the consent of the originating member state is not obtained, the export shall not take place (EP, 2008, amend. 18). Nor did the directive incorporate the suggestion that member states should establish, *as a criminal offence*, the re-export to third countries of defence-related products in breach of conditions attached to their use (EP, 2008, amend. 23).

As discussed earlier, despite the presumption in favour of destruction, some states continue to sell their surplus small arms. One way an exporting state can ensure its weapons are not re-exported is to review the importing state’s policy with regard to surplus. If the original exporter only transfers military small arms to states that *destroy* surplus as a matter of national policy, this can help ensure the arms are not re-exported.

Indeed, the *User’s Guide* to the EU *Code of Conduct* suggests posing the following question when assessing the risk that arms might be diverted or re-exported to unauthorized end users (Criterion 7): ‘Does the country of stated end use have any history of diversion of arms, including the re-export of surplus equipment to countries of concern?’ (EU, 2006, p. 48). Moreover, the version of the *Code* adopted as the Common Position in December 2008 contains an amended version of Criterion 7 that calls on states to consider ‘the record of the recipient country in respecting any re-export provision or consent to re-export’ (EU, 2008c).

Another consideration often overlooked in the context of re-exports is the issue of re-transfers *within* the recipient state. Non-re-export undertakings tend to focus on the re-sale of arms to other *states*, but the re-transfer of arms within the recipient state may also warrant attention—in particular, the possible transfer of military small arms to the civilian population.

Enforcement

The enforcement of export control violations involves several agencies. Generally, customs authorities have responsibility for inspecting export shipments and detecting licence violations or attempts to export without a licence (smuggling). When violations are detected, customs and police authorities will be involved in an investigation, which may lead to civil or criminal prosecution. It is beyond the scope of this chapter to explore the specific powers granted to enforcement agencies in the states under review, or to compare the number of licence violations or prosecutions that take place in each state, but a comparison of administrative and criminal penalties linked to export control offences shows they vary considerably in terms of type and scale (see Table 2.2).

The re-transfer of arms within the recipient state warrants attention.

The decision to export military equipment involves economic, defence, security, and foreign policy considerations.

Administrative penalties include fines, confiscation of the goods to be exported, and/or revocation of licences or trading permits. The amount of administrative fines varies considerably among the states reviewed. Some countries use a formula to calculate the fine based on the value of the goods (e.g. **Japan, Singapore, Spain, United Kingdom**³⁶); others, such as **Austria** and the **Russian Federation**, base the fine on the income of the offender (Klob, 2007; Pyadushkin, 2008). Other states prescribe a set fine, with minimums ranging from EUR 1,000 (USD 1,355) in **Belgium** to CHF five million (USD 4.5 million) in **Switzerland** (Moreau, 2008; Switzerland, 1996b, art. 33(2)). In some states, aggravating factors may serve to increase the fine imposed. For example, in **France**, the fine will be increased from EUR 100,000 (USD 135,000) to EUR 500,000 (USD 680,000) if the offence is committed by an organized gang (Elluin, 2008). In **Israel**, the fine imposed will be 50 times greater in 'severe circumstances', such as if the end-user is an enemy of the state (Israel, 2007, sec. 33(1)).

With respect to sentencing, among the states reviewed imprisonment for exporting without a licence ranges from 6 months (e.g. **Sweden, Switzerland, the United Kingdom**) to 25 years (**South Africa**).³⁷ Again, aggravating factors may serve to increase the sentence in a few cases: if it involves an intentional as opposed to a negligent violation (e.g. **Norway, Sweden, Switzerland**); if the offence has been committed for a second time (e.g. **Belgium, Bulgaria, Singapore**); or if the violation has caused damage to foreign policy, commercial, or security interests of the state (**Czech Republic**).³⁸

LICENSING AUTHORITY: WHO DECIDES?

Each of the major exporters has appointed a particular department or ministry to manage the export licensing process, although in most cases the actual decision to grant an export licence involves consultation across a number of agencies. As indicated in Table 2.3, most export control authorities are located in the Ministry of Economy and/or Trade or its equivalent, while consultations with the Ministries of Foreign Affairs, Defence, or the Interior form part of the decision-making process.

This reveals two important points. First, it highlights the fact that the decision to export military equipment, including small arms, is a complex one that involves economic, defence, security, and foreign policy considerations, hence the need for interagency consultation. Second, and perhaps more surprising, given that the central organ responsible for export licensing in most of the major exporters is the Ministry of Economy and/or Trade, it may be inferred that states see this process primarily as an economic issue.

The influence of the representatives of different ministries during the interagency consultancy process varies. For example, in **Bosnia and Herzegovina**, while the Ministry of Foreign Trade and Economic Relations is the main agency responsible for licensing decisions, the Ministries of Foreign Affairs, Defence, and Security must all give their consent to a licence, and accordingly each has the power to veto a licensing decision.³⁹ In contrast, in **Romania**, although licence applications are submitted to the Inter-Ministerial Council for Export Control for review, decisions do not have to be made on the basis of consensus, and the president of the National Agency for Export Controls (ANCEX) has the final say (Wood, 2007, p. 16). As Saferworld points out, the power held by the president of ANCEX in the licensing process is of concern, not only because it diminishes interagency cooperation, but also because the president of ANCEX is appointed directly by the Romanian prime minister, which could allow the latter to unduly influence the final decision (Wood, 2007, p. 16).

The **Bulgarian** system seems to have found a middle ground whereby licensing decisions are adopted by a two-thirds majority of all Inter-Ministerial Commission members when representatives of all ministries and agencies represented on the Commission are in attendance. If not all representatives are present, decisions must be unanimous (Bulgaria, 2007a, art. 30(7)). In **Israel**, if the representative of the Ministry of Foreign Affairs participating in an advisory committee on a commercial export licence makes a recommendation or reservation that is not accepted by the committee, the matter is put to senior members of the Ministries of Defense and Foreign Affairs for their joint deliberation. If a conclusion still cannot be reached, the matter is resolved by the subcommittee of the Ministerial Committee for National Security, which is responsible for considering government-to-government exports (Israel, 2007, secs. 24, 47(c)). In

Sweden, the Export Control Council, composed of representatives of all parliamentary parties, assists the director-general in interpreting and applying the export control guidelines in place. The Council has an advisory role only, and it is ultimately up to the director-general to decide whether to grant an export licence (Sweden, 2007, p. 20; 2008, p. 15).

The use of interagency consultation in the licensing process helps ensure that all state interests are reflected and represented. Generally speaking, the Ministry of Foreign Affairs will offer guidance based on the country's international export control commitments (e.g. the EU *Code of Conduct* or the OSCE *Document on Small Arms*), while the Ministry of Defence will advise on the security aspects of the proposed trade. Of course, while such a process helps bring all government perspectives into the licensing mix, it will not prevent a single interest (e.g. economic) from overriding others (e.g. security or human rights concerns) if decision-making power is concentrated in a single department.

In addition to the competing *national* interests represented by the different agencies and ministries involved in an export licensing decision, the *personal* interests of representatives may also influence the decision. For this reason, **South African** legislation stipulates that any member of the licensing committee or any other person involved in the decision-making process who has a financial or other interest that might conflict with relevant professional duties must disclose that interest and may not take part in the decision (South Africa, 2002, sec. 25). A failure to disclose such an interest may lead to a fine or imprisonment of up to ten years (sec. 24(2)(c)).



A technician holds a Beretta 92S semi-automatic pistol at the Beretta manufacturing plant in Gardone Val Trompia, Italy, January 2007. © Andreas Solaro/AFP

Table 2.3. Overview of licensing agencies and interagency consultations

Country	Licensing agency	Ministry of Foreign Affairs	Ministry of Economy	Ministry of (Industry and) Trade	Ministry of Interior	Ministry of Defence	Other ministries consulted
Austria*	Items under the War Material Act: Ministry of the Interior.	c			L		
	Items under the Foreign Trade Act: Ministry of Economics and Labour.	c	L				
Belgium**	Federal: Ministry of Economy.	c	L			c	
	Wallonia: Economy and Employment Department.	c	L			c	Ministry of Justice, Customs Service, and semi-public organization Wallonie-Bruxelles International, which manages the international relations of the Walloon Region and the French-speaking Community.
Brazil	Brussels Capital Region: International Relations Department.	L				c	Ministry of Justice and Customs Service.
	Flanders: Flemish Ministry of Economy, Business, Science, Innovation and Foreign Trade.	c	L			c	Ministry of Justice and Customs Service.
Brazil	Ministry of Defence.	c	c			L	Ministry of Development, Industry, and Foreign Trade, Ministry of Science and Technology.
Bulgaria	Export Control and Weapons of Mass Destruction Non-Proliferation Interministerial Commission, within the Ministry of Economy and Energy.	c	L		c	c	
Canada	Ministry of Foreign Affairs.	L		c		c	May consult: Industry Canada, the Royal Canadian Mounted Police, the Canadian Security and Intelligence Service, the Communications Security Establishment, Customs and Excise.
China	State Administration for Science, Technology and Industry for National Defence, within the Ministry of Industry and Information Technology.						'Relevant departments of the State Council' and the Central Military Commission (China, 2002, art. 14).
Czech Republic	Ministry of Industry and Trade.	c		L	c	c	



Finland	Ministry of Defence.	c																National Board of Customs and the Security Police.
France	Director-general of Customs acting in the name of the Minister of the Economy, Finance and Industry, after approval of the Ministries of Defence and Foreign Affairs and transmission to the National Defence General Secretariat acting on behalf of the prime minister.	c	L															
Germany	Federal Ministry of Economics and Technology (for 'war weapons').	c	L															
Israel	Commercial sales: director-general or head of the Defence Export Control Division, Ministry of Defence.	c																Advisory Committee (incl. employees of the Ministries of Defence and Foreign Affairs and defence forces plus Ministry of Industry, Trade and Labor if dual-use item is involved).
	Government-to-government exports: Ministry of Defence.	c	c															Must be submitted for approval to sub-committee of the Ministerial Committee for National Security (chaired by the prime minister and including the ministers of Foreign Affairs, Justice, and Finance).
Italy	Ministry of Foreign Affairs: Armaments Authorization Unit.	L	c															Environment, Industry, Foreign Trade, and Finance.
Japan	Minister of Economy, Trade and Industry.	c	L															
Norway	Ministry of Foreign Affairs.	L																
Portugal	Ministry of Defence.	c																
Republic of Korea	Defence Acquisition Program Administration, reports to Ministry of National Defence.	c																National Intelligence Service.
Romania	National Agency for Export Controls (ANCEX), activities coordinated by Ministry of Foreign Affairs.	L	c															Ministry of Administration and Interior, National Customs Authority, Romanian Intelligence Service, and the Foreign Intelligence Service.
Russian Federation	Federal Service on Military-Technical Cooperation with Foreign States, operating under the authority of the Ministry of Defence.																	President (the Ministry of Foreign Affairs may also be involved, but this is unclear).

Singapore	Singapore Customs, Strategic Goods Control Branch.								Unknown.
South Africa	National Conventional Arms Control Committee (NCACC).	***		***			***		South African Police Service, National Intelligence Agency, and South African Secret Service.
Spain	Inter-Ministerial Regulatory Board on Foreign Trade in Defence or Dual-Use Items, attached to the Ministry of Industry, Tourism and Trade.	c		L		c	c		National Centre for Intelligence, Department of Customs and Excise Duties of the National Tax Administration Agency.
Sweden	MEC and OME destined for non-OECD countries: National Inspectorate of Strategic Products, answers to Ministry for Foreign Affairs. OME destined for OECD countries: Swedish Police Service.	c					c		Export Control Council (11 members of parliament representing all parties).
Switzerland	State Secretariat for Economic Affairs, within the Federal Department of Economic Affairs.	c	L						
Turkey	Ministry of National Defence.	c					L		Turkish General Staff.
United Kingdom	Export Control Organisation, Department for Business, Enterprise and Regulatory Reform (BERR).	c		L			c		Department for International Development may be consulted if application is to developing countries eligible for concessional loans from the World Bank International Development Association.
United States	Government-to-government sales: Defense Security Cooperation Agency, Department of Defense.						L		Department of State; approval of Congress is also required for certain exports.
	Commercial sales: Directorate of Defense Trade Controls, within the Bureau of Political-Military Affairs in the Department of State.						c		Approval of Congress is also required for certain exports, including firearms valued at USD 1 million or more.

Notes:

c: the ministry in question is consulted or participates in the interagency decision-making process.

L: the ministry in question is the lead agency responsible for processing the licensing application and, in some instances, the ultimate decision-maker.

** The Austrian legislation distinguishes between war material (governed by the War Material Act) and all other military items on the EU Common Military List that fall under the Foreign Trade Act.

*** Under the Special Act of 12 August 2003, the three regions of Belgium (Brussels capital, Flanders, and Wallonia) were given jurisdiction over the import, export, and transit of arms, munitions, and equipment intended for military use or law enforcement and associated technology as well as dual-use items and technology. Each region has created an Arms Unit to exercise these powers. Note that the Belgian federal authority (Ministry of Economy) retains authority for export licences issued to the Belgian armed forces and federal police; it is also responsible for combating illicit arms trafficking.

*** The NCACC consists of ministers and deputy ministers appointed by the president (South Africa, 2002, sec. 5). In practice, it includes the ministers for Foreign Affairs, Defence, and Trade and Industry, although ministers who do not have a line-function interest in the trade in conventional arms are also included. The composition of the NCACC in 2003, for example, included the ministers for the Intelligence Services; Transport, Housing; Health; and Science and Technology (South Africa, 2003, p. 2).

LICENSING CRITERIA: TO SELL OR NOT TO SELL?

Fundamental to any export control system are the principles or criteria states apply when authorizing an export.

In addition to general considerations of international and regional peace and security, and national interests as a whole, the issues states consider in deciding whether to permit the export of small arms can be broadly categorized as follows:

- *Considerations based on existing international and regional commitments:* whether the proposed export would be contrary to applicable regional instruments, the UN Charter, arms embargoes, or other existing legal and political commitments;
- *Considerations based on the likely user of the arms:* whether the arms to be exported might be used by terrorists, criminals, or insurgent groups, or diverted to such groups;
- *Considerations based on the likely use of the arms:* whether the arms to be exported might be used to commit human rights violations, violations of international humanitarian law (IHL), or acts of genocide;
- *Considerations based on the likely impact of the arms transfer:* whether the proposed export might contribute to regional or internal instability, exacerbate an existing conflict, or undermine sustainable development; and
- *Considerations based on other features of the recipient country:* such as their record of compliance with international obligations or their legitimate defence needs.

These categories are derived from the instruments shaded in red in Table 2.1; these contain principles or guidelines that states have agreed to take into account when deciding whether to grant an export licence. All of the instruments in Table 2.1 that contain detailed transfer criteria are politically rather than legally binding, except the EU *Code of Conduct*, which became legally binding in December 2008. Regardless of whether these undertakings are legal or political in nature, states have committed themselves to fulfilling them.

The OSCE *Document on Small Arms*, the EU *Code of Conduct*, and the Wassenaar *Best Practice Guidelines for Exports of Small Arms and Light Weapons* are of particular relevance to this chapter since they contain extensive, similar lists of export criteria to be applied to the export of military small arms. All but three—**Brazil**, **China**, and **Israel**—of the major exporters under review participate in at least one agreement. According to the tenth annual report on the EU *Code of Conduct*, **Canada** and **Norway** have also aligned themselves with the EU *Code of Conduct* (EU, 2008a, p. 2).

In some cases, details of the transfer criteria applied by states to export licensing decisions are reflected in their national legislation; examples include **China**, the **Republic of Korea**, **South Africa**, and **Switzerland**.⁴⁰ Some EU member states have incorporated the EU *Code of Conduct* in their national legislation; these include **Belgium**, **Bulgaria**, **Italy**, and **Spain**.⁴¹ However, transfer criteria are not always specified in main legal instruments and often appear in guidelines or policy documents instructing government agencies as to how they should decide on licence applications. For example, **Finland** has established a set of guidelines that specifically refer to and annexe the EU *Code of Conduct* and the OSCE *Principles Governing Arms Transfers* (Finland, 1995, sec. 1(2.2)).

Table 2.4 provides an overview of the different transfer criteria applied by states. The list of criteria is based on the EU *Code of Conduct* and is supplemented by additional criteria derived from the OSCE *Document on Small Arms* and the Wassenaar *Best Practice Guidelines for Exports of Small Arms and Light Weapons*. The list is by no means exhaustive and states do of course apply other criteria to their export licensing decisions that are not reflected in the table. A distinction has been made between the criteria each country has committed to by virtue of its participation in

Transfer criteria are not always specified in main legal instruments.

a relevant instrument or arrangement (reflected in the row marked ‘Commitment’) and the criteria incorporated by each country in its export controls system according to publicly available sources (reflected in the row marked ‘Control system’). Information is derived from a variety of sources, including states’ national legislation, their national reports, and policy statements reflected in annual reports and government Web sites. Grey shading indicates the information was sourced from a state’s national report on *Programme of Action* implementation. In these reports, many EU states indicate that they apply the EU *Code of Conduct* to their export licensing decisions.

In their national reports on *Programme of Action* implementation, their annual reports on arms transfers, and on the Web sites of relevant agencies, some states indicate that they apply the EU *Code of Conduct* to their export licensing decisions; these states include **Austria**, the **Czech Republic**, **France**, **Germany**, **Portugal**, **Romania**, **Sweden**, and the **United Kingdom**.⁴² Relatively few countries, however, expressly mention their commitment to the OSCE or Wassenaar criteria governing small arms exports. While quite similar, they are not identical. One undertaking that does not appear in the EU *Code of Conduct* but is reflected in the OSCE and Wassenaar documents is that states should take into account the stockpile management and security procedures of a potential recipient country (OSCE, 2000, sec. III.1 (A)(2)(c); WA, 2002, sec. II.1).⁴³ Only a few of the major exporters reviewed—e.g. **Belgium**, **Italy**, and **Norway**—make express reference in their licensing principles to the need to consider whether the recipient has stockpile security sufficient to prevent theft, loss, diversion, or unauthorized transfers (Moreau, 2008; Fallani, 2007; Leonhardsen, 2007).

States have incorporated numerous other criteria in their licensing systems that are not reflected in Table 2.4. For example, in addition to the regional stability and legitimate defence needs principles, **China** has adopted a third principle: no interference in the internal affairs of the recipient country (China, 2002, art. 5). This reflects the principle of non-intervention in the internal affairs of another state enshrined in the UN Charter (UN, 1945, art. 2(7)). **Austria**, **Finland**, and **Norway** also consider whether the recipient is in breach of a ceasefire agreement (Klob, 2007; Kotiaho, 2008; Leonhardsen, 2007); the **Republic of Korea** takes into account whether the transfer involves a ‘high possibility of causing diplomatic friction’ (Republic of Korea, 2008, p. 16); and **Belgium** and **Switzerland** consider whether child soldiers are used in the recipient’s army (Moreau, 2008; Switzerland, 1998, art. 5(b)).

Only a few major exporters consider the status of stockpile security in the recipient country.

In addition to understanding what criteria states have incorporated in their export control systems, it is also worth exploring the challenges of practical implementation. The EU *Code of Conduct* provides some elaboration of its criteria. For example, under Criterion 8 (technical and economic capacity of the recipient country), the *Code* stipulates that ‘States will take into account, in the light of information from relevant sources such as UNDP, World Bank, IMF and OECD reports, whether the proposed export would seriously hamper the sustainable development of the recipient country.’ Further practical guidance is provided in the *User’s Guide to the EU Code of Conduct on Arms Exports* (EU, 2006). The Wassenaar Arrangement has also developed guidelines to assist states in evaluating the risks associated with a potential export (WA, 1998).

Many governments utilize national intelligence sources to inform their arms licensing decisions. This information is sometimes shared between friendly governments. States may also make use of numerous non-governmental tools and information sources, including the media, reports by non-governmental organizations and human rights agencies, as well as data sets such as the Cingranelli–Richards Human Rights Data Set, the Universal Human Rights Index, the World Bank’s Worldwide Governance Indicators, the Ibrahim Index of African Governance, and the Countries at the Crossroads Survey.⁴⁴ Box 2.5 describes one such tool. The International Committee of the Red Cross has also produced a set of guidelines to assist states in their assessment of a recipient state’s compliance with international humanitarian law (ICRC, 2007).

Box 2.5 Practical tools for assessing export criteria

In **Germany**, the Federal Ministry for Economic Development and Cooperation funds a project run by the Bonn International Center for Conversion designed to provide information on the extent to which potential recipients of German arms exports meet EU *Code of Conduct* criteria. The project Web site hosts a database that measures 170 countries against the following seven criteria, based on the EU *Code*: international or regional arms embargoes, respect for human rights, good governance, internal conflict, membership in human rights and arms control conventions, arms export controls, and the danger of disproportionate military capacities impairing development.

For each criterion, each country is classified as either 'green', 'yellow', or 'red' with each colour indicating the respective degree of correspondence, and an explanation of how the evaluation was made. See Figure 2.2 for an example for a sample recipient.

Figure 2.2 **Evaluation of sample country's compliance with EU Code of Conduct criteria**

1. International or Regional Arms Embargoes



[show details](#)

2. Adherence to Human Rights



[show details](#)

Source: BICC (n.d.)

Despite an abundance of practical tools, which could, in theory, facilitate a more harmonized approach to arms transfer licensing, different states do make varying decisions regarding the risks inherent in a particular transaction, even when applying the same criteria. This is well illustrated by the incident involving the export of rifles by Austria to Iran in 2004. Austria approved the sale of 800 Steyr .50 HS rifles after it concluded in 2004 that they would be used by Iran to fight narcotics smugglers. Approval was granted despite concerns raised by the United States and the United Kingdom that the weapons might end up in the hands of insurgents. Indeed, in 2007, US troops recovered more than 100 of the rifles in the hands of insurgents in Iraq (IHT, 2007).

This case highlights the fact that different states may approach the same decision differently, depending on their assessment of the circumstances. The incident also illustrates another difficulty associated with licensing decisions: circumstances may change. It is reported that in defending the approval of sale, the Austrian Foreign Ministry spokeswoman Astrid Harz noted that the proposal was assessed very carefully and that the situation in Iraq and the region in 2003–04—when the decision was made—was very different from the situation in 2007, when the weapons were discovered in Iraq (IHT, 2007; *Daily Telegraph*, 2007).

A similar response was put forward by China following media reports of the shipment of arms from China to Zimbabwe in April 2008, at a time of heightened political tensions due to upcoming national elections. Foreign Ministry spokeswoman Jiang Yu stated that the shipment 'was perfectly normal trade in military goods between China and Zimbabwe', adding that 'the contract for the shipment was signed last year and was unrelated to the recent changes in Zimbabwe's domestic situation' (*China Daily*, 2008). While circumstances can change unpredictably, overtaking initial licensing decisions, it may be convincingly argued, in these cases, that the deterioration was foreseeable and—along with existing red flags—should have been factored into the licensing decision.

CONCLUSION

This chapter has reviewed national export controls in the world's major exporting states with a view to comparing and, to some extent, evaluating these systems. The chapter's first observation is one of sheer diversity. States employ a dizzying array of policies and procedures in an effort to ensure their arms exports serve national policy goals and, no less important, that once authorized for shipment abroad, the weapons reach their intended end users and are used according to the terms of the corresponding licensing agreement.

The chapter's second observation is that existing control measures are of varying quality. The basic components of export control systems appear to be in place in virtually all of the world's major small arms exporters (such as pre-licensing requirements, interagency decision-making, end-user certification, and sanctions). But the effectiveness of those components varies. Some states easily meet accepted standards of best practice, while others appear to fall short; yet more detailed information is required for a definitive assessment of national export controls. More often than not, given resource and space limitations, the chapter stops at an assessment of national practices. The extent to which states implement their legislation remains, in most cases, undisclosed.

Awareness of the need to maintain robust, effective export controls is increasing among states, which has resulted in a growing list of regional and international commitments on small arms transfers, together with a growing recognition of the relevance of existing legal norms in this area. The chapter makes an initial assessment of the degree to which states have translated international and regional commitments into legislative form. While this is a crucial step towards full compliance with such norms, it is only an initial step and not one that all states have taken.

In diversity lies danger. As the chapter indicates, there are many control gaps among the world's major exporting states. These extend to all aspects of national export controls but appear particularly acute once weapons leave the national territory. Gaps also exist between the licensing criteria states have incorporated in their legislation or policy guidance and the practical application of such criteria to specific cases. As illustrated, different states can reach very different conclusions in the same case. Clearly, there is much work to do, at the international level, to ensure that national control systems complement, rather than contradict, one another. ■

LIST OF ABBREVIATIONS

ANCEX	National Agency for Export Controls (Romania)	GPL	Global project licence
		IIC	International import certificate
CIFTA	Convention against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives, and Other Related Materials	IHL	International humanitarian law
		MEC	Military equipment for combat purposes (Sweden)
DVC	Delivery Verification Certificate	NCACC	National Conventional Arms Control Committee (South Africa)
EU	European Union	OAS	Organization of American States
EUC	End-user certificate	OECD	Organisation for Economic Co-operation and Development
FA	Framework Agreement (France, Germany, Italy, Spain, Sweden, and the UK)	OGEL	Open general export licence (UK)

OME	Other military equipment (vs. MEC, Sweden)	SADC	Southern African Development Community
OSCE	Organization for Security and Co-operation in Europe	SEESAC	South Eastern and Eastern Europe Clearinghouse for the Control of Small Arms and Light Weapons
PISE	Product Identification Search Engine	UN	United Nations

ENDNOTES

- 1 The 26 states reviewed in this chapter have been classified by the Small Arms Survey as major exporters of small arms and light weapons for at least four of the past five years (since 2004). That is, their annual exports have exceeded USD 10 million. Note: Mexico also qualifies in this category, but more research is necessary to assess its status with respect to transfer controls.
- 2 For a detailed list of regional and multilateral instruments affecting small arms transfers, see Parker (2008).
- 3 Although the EU *Code of Conduct* was transformed into a legally binding Common Position in December 2008, references throughout this chapter are to the EU *Code of Conduct* rather than the *Common Position*. Since research for the chapter was completed before the adoption of the *Common Position*, it reflects the situation as it existed under the EU *Code*. See EU (1998).
- 4 The EU *Code of Conduct* became a legally binding Common Position in December 2008. See endnote 3.
- 5 See US (1997, part 748.13).
- 6 For online details of current UN Security Council arms embargoes, see UNSC Sanctions Committees (n.d.).
- 7 The *Report of the Governmental Technical Experts on the Register of Conventional Arms* states, 'Since the supply of equipment by a State to units of its armed forces stationed abroad does not involve transfer of national title and control, such supply is not considered an international transfer.' See UNGA (1992, paras. 10–12).
- 8 Also referred to as 'war materiel'.
- 9 See WA (2008, notes to sec. ML1) and EU (1998, Op. Provision 1; 2008b, notes to sec. ML1).
- 10 In the Wassenaar Munitions List, items are categorized numerically as 'Munitions List 1' (ML1), 'Munitions List 2' (ML2), and so forth. They are similarly identified in the EU Common Military List.
- 11 France is in the process of repealing the order of 20 November 1991 establishing its list of war materiel and related materials, and integrating the EU Common Military List (Elluin, 2008).
- 12 Under the *Defense Export Control Law, 5766-2007*, 'defense equipment' is defined to include 'combat equipment', which in turn is defined to cover 'equipment included in the Munitions List of the Wassenaar Arrangement, as periodically updated' (Israel, 2007, ch. B).
- 13 With regard to the export of hunting and sporting rifles, however, Sweden's National Inspectorate of Strategic Products (ISP) handles exports to states that are not members of the Organisation for Economic Co-operation and Development (OECD) while the Swedish Police Service handles exports to other OECD states.
- 14 In the *Programme of Action*, states have undertaken to assess export applications 'according to strict national regulations and procedures that cover all small arms and light weapons' (UNGA, 2001, para. II.11, emphasis added).
- 15 In some jurisdictions arms that are transiting the state may be considered 'exports' when they leave the territory of the state. However, some states expressly exclude goods in transit from the definition of 'export' (e.g. Singapore).
- 16 In addition, the commercial export of military small arms is prohibited (Teixeira, 2007).
- 17 See UNGA (2001, para. II.18), OSCE (2000, sect. IV.C.1), and EU (2002, art. 4(c)).
- 18 The Wassenaar *Best Practices for Disposal of Surplus/Demilitarised Military Equipment* (agreed at the plenary in December 2000), provides a list of best practices for disposal of surplus military equipment (items that may or may not have been demilitarized) drawn from the responses provided by participating states on this subject. These practices are those actually followed or aspired to by Wassenaar Arrangement participating states and are illustrative of effective export control over surplus/demilitarized military equipment.
- 19 Belgium is composed of three regions: Brussels Capital, Flanders, and Wallonia. Flanders and Wallonia are each subdivided into five provinces.
- 20 Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia, and Slovenia were admitted in 2004; Bulgaria and Romania joined in 2007.
- 21 See also Small Arms Survey (2008, p. 166).
- 22 Bulgaria (2007a, art. 3); Czech Republic (1994a, art. 3); Finland (2008b, p. 12); Italy (2007); Spain (2004a, ch. 1, sec. 1, art. 2(2)(d)(5)); Switzerland (1997, art. 13(f)); US (2007, sec. 126.4).

- 23 The 25 countries are: Argentina, Australia, Austria, Belgium, Canada, the Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Japan, Luxembourg, New Zealand, the Netherlands, Norway, Poland, Portugal, Sweden, Spain, the United Kingdom, and the United States.
- 24 For example, the Swedish Inspectorate of Strategic Products hosts a site listing all UN, OSCE, and EU arms embargoes in force (Sweden, n.d.a); in the United Kingdom, the Department for Business Enterprise and Regulatory Reform maintains a site detailing arms embargoes in place and other restrictions (UKBERR, n.d.a.).
- 25 Czech Republic (2007b, p. 4); Finland (2008); Germany (2008); Norway (Leonhardsen, 2007); Turkey (2008, p. 9).
- 26 See UKBERR (n.d.b).
- 27 For further details, including a full list of destination countries to which the open licence applies, see UKBERR (2008).
- 28 For a full list of the conditions attached, see UKBERR (2004).
- 29 Such reporting software includes the Annual Arms Report CD produced by the South Eastern and Eastern Europe Clearinghouse for the Control of Small Arms and Light Weapons (SEESAC). Designed for use in the western Balkans, it provides templates for reporting arms sales.
- 30 The United Kingdom uses PISE for its 'Goods Checker', a Web-based tool that helps exporters determine whether their goods, software, or technology is controlled by UK or EU strategic export control legislation. See UKBERR (n.d.c).
- 31 See Small Arms Survey (2008, ch. 5).
- 32 Dreyfus and Perez (2007); Elluin (2008); Germany (2008); Fallani (2007); Romania (Wood, 2007, p. 24); Russian Federation (2007, p. 13); South Africa (2002, sec. 17(c)); Spain (2004a, ch. 2, sec. 1, art. 23(1)(c)).
- 33 This is also in line with the OSCE *Standard Elements* (OSCE, 2004, para. 1).
- 34 See Small Arms Survey (2008, chs. 4–5).
- 35 See EU (2008a). These findings are based on the approximate number of times each criterion was invoked as the basis for a refusal. Sometimes more than one criterion is invoked for a refusal. Accordingly, the number of times criteria were invoked exceeds the total number of refusals made. The calculation includes licence refusals for categories ML1 and ML2 of the EU Common Military List. If export refusals for ML3 (ammunition) are also included, Criterion 7 was invoked in 89 out of 206 cases (43 per cent).
- 36 Japan (1997, art. 69-6(1)); Singapore (2003, sec. 5(6)(a)); Spain (2004b, p. 8), UK (1979, sec. 68(3)).
- 37 Sweden (2000, sec. 5); Switzerland (1996b, art. 33(3)); UK (1979, sec. 68(3)); South Africa (2002, s. 24(2)).
- 38 Norway (1987, para. 5); Sweden (2000, sec. 7); Switzerland (1996b, art. 33(3)); Moreau (2008); Bulgaria (2002); Singapore (2003, sec. 5(6)(b)); Czech Republic (1994a, art. 25(2)).
- 39 Although Bosnia and Herzegovina falls outside the sample of exporting states under review (it has only been classified as a major exporter twice in the last five years), it is referred to here because the veto power granted to each agency involved in the inter-agency consultancy process is an unusual feature (SEESAC, 2006, p. 22).
- 40 China (2002, art. 5); Republic of Korea (2008, p. 16); South Africa (2002, sec.15); Switzerland (1998, art. 5).
- 41 Moreau (2008); Bulgaria (2001, art. 5); Fallani (2007); Spain (2004a, art. 8).
- 42 Austria (2007b); Czech Republic (2007b, p. 11); France (2007, p. 5); Germany (2008, p. 24); Romania (2005b, p. 10); Sweden (2008, p. 14); and UK (2008a).
- 43 Consideration of the recipient country's stockpile management is not mentioned within the EU *Code of Conduct* criteria; however, according to the *User's Guide*, one of the elements to consider when formulating a judgement regarding the recipient's ability to exert effective export controls under Criterion 7 is: 'Is stockpile management and security of sufficient standard?' (EU, 2006, sec. 3.4.3, p. 48).
- 44 For details on these data sets, see CIRI (n.d.); UN (n.d.); World Bank (n.d.); Mo Ibrahim Foundation (n.d.); and Freedom House (n.d.).

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Principal author

Sarah Parker

Contributors

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