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TOOLKIT

FOR ADDRESSING UNAUTHORIZED RE-EXPORT
OR RE-TRANSFER OF ARMS AND AMMUNITION



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The South Eastern and Eastern Europe Clearinghouse for the Control of Small Arms and Light Weapons (SEESAC) has a mandate from the United Nations Development Programme and the Regional Cooperation Council to support all international and national stakeholders by strengthening national and regional capacity to control and reduce the proliferation and misuse of small arms and light weapons, and thus contribute to enhanced stability, security and development in South Eastern and Eastern Europe.

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TOOLKIT FOR ADDRESSING UNAUTHORIZED RE-EXPORT OR RE-TRANSFER OF ARMS AND AMMUNITION

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**NORWEGIAN MINISTRY
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TOOLKIT

ON RE-EXPORT AND RE-TRANSFER CONTROLS

This toolkit builds on existing guidelines, best practice documents and national practices to provide practical suggestions for the export licensing authorities of South Eastern Europe on the following points:

- ▶ How to impose re-export and re-transfer controls
- ▶ How to enforce and monitor re-export and re-transfer controls
- ▶ How to uncover cases of unauthorized re-exports and re-transfers
- ▶ How to investigate them further
- ▶ How to guard against future re-occurrences

The toolkit presents examples of good practices, including appropriate language from the relevant guidelines and best practice documents, useful examples from different states' national policies and practices, and practical lessons learned from cases of violations of re-export and re-transfer controls. The intention of the toolkit is to highlight practical examples that are appropriate to the needs and resources of states in South Eastern Europe, not to present something that is impossible to implement.



IMPOSING RE-EXPORT AND RE-TRANSFER CONTROLS

1.1. CATEGORIZATION OF DIFFERENT TYPES OF OBLIGATIONS THAT CAN BE APPLIED

Controls on the re-export and re-transfer of exported arms and ammunition can take different forms. Obligations recommended by existing guidelines and best practice documents—and currently in use by exporting states—fall into six different categories. In each case, restrictions can be imposed on both re-export and re-transfer or just re-export.



OPTION 1.

PROHIBITION ON RE-EXPORT TO ANOTHER DESTINATION

In this case, the importing state or end-user is obliged not to re-export the imported arms and ammunition to another destination.



OPTION 2.

PROHIBITION ON RE-EXPORT, EXCEPT FOR CERTAIN DESTINATIONS

In this case, the importing state or end-user is obliged not to re-export the imported arms and ammunition, except to a limited number of destinations. In such cases, approved re-export destinations should be limited to those that pose a low risk of illegal or irresponsible exports or inappropriate end-use.



OPTION 3.

PROHIBITION ON RE-TRANSFER TO ANOTHER END-USER, LOCATION OR END-USE

In this case, the importing state or end-user is obliged to not re-transfer the imported arms and ammunition to another end-user, location or end-use. In such cases, specific limitations on the approved end-user, location or end-use are included in the end-user certificate (EUC) or other relevant documentation. Such prohibitions represent restrictions on what the importing state can do with the arms after they have been delivered, even if they remain under the control of the importing state or inside the importing state.

▶ OPTION 4.

PRIOR AUTHORIZATION BEFORE ANY RE-EXPORT OR RE-TRANSFER

In this case, the importing state or end-user is obliged to only re-export or re-transfer the imported arms and ammunition after receiving prior authorization from the original exporting state. Such restrictions can be confined to re-export, confined to re-transfer or cover both. An obligation to obtain authorization prior to any re-export or re-transfer provides the original exporting state with an opportunity to veto particular re-exports or re-transfers.

▶ OPTION 5.

NOTIFICATION OF ANY RE-EXPORT OR RE-TRANSFER

In this case, the importing state or end-user is obliged to notify the original exporting state of any re-export or re-transfer of the imported arms and ammunition. Such restrictions can be confined to re-exports or re-transfers or cover both. Such an obligation provides the original exporting state with a means of monitoring end-use and with information that can be of use when investigating any reports that the arms and ammunition have been delivered to the targets of United Nations arms embargoes or conflict parties.

▶ OPTION 6.

IMPORTING STATE GIVEN RESPONSIBILITY FOR RE-EXPORT OR RE-TRANSFER

In this case, the importing state is given responsibility for controlling any re-export or re-transfer of the imported arms and ammunition. Whether or not responsibility is given in this way will depend on (a) the goods being exported, (b) the end-user and (c) the destination. In particular, states may impose strong controls on exports of complete weapon systems to a government where the destination country has a weak record on export controls. In contrast, states may impose less stringent controls on exports of components to a private end-user where the destination country has a strong record on export controls.

- ▶ States should always seek to maintain stricter controls for higher-risk goods, end-users and destinations. In particular, this includes applying relevant Wassenaar Arrangement and OSCE guidelines with regards to exports of MANPADS,
 - ▶ States may make public their national guidelines for which types of re-export or re-transfer controls are applied and in which circumstances,
 - ▶ Regardless of whether national guidelines are made public or kept confidential, they should be applied in a clear and consistent manner. They should also be in line with relevant guidelines and best practice documents and able to withstand public scrutiny should they need to be discussed and analysed in the context of a report of an unauthorized re-export or re-transfer.
-

1.2. INSERTION OF END-USE ASSURANCES IN END-USER CERTIFICATES, END-USER STATEMENTS AND COMMERCIAL CONTRACTS

Re-export and re-transfer controls should be imposed via the insertion of appropriate end-use assurances in the EUC (for government end-users) or end-user statements (for private end-users) that accompany an export. Re-export and re-transfer controls can also be imposed via the insertion of appropriate end-use assurances into the commercial contract that accompanies an export.

In cases where the importing state is made responsible for controlling any re-export or re-transfer of the imported arms and ammunition, international import certificates may also be used to impose re-export and re-transfer controls.

In all cases, the language used should be as unambiguous as possible. In particular, the language used should make clear that the controls imposed apply equally to all types of transfer, including sales, loans, leases and gifts. Failure to clearly include all forms of transfer may leave opportunities for misunderstanding or misinterpretation by the end-user or importing state, whether unintentional or not.

The following sample language for inclusion in end-user certificates or end-user statements applies to the options identified above.¹



OPTION 1. **PROHIBITION ON RE-EXPORT OR RE-TRANSFER**

POSSIBLE LANGUAGE:

I/we/the end-user [NAME OF END-USER] certify that the items [DESCRIPTION OF ITEMS] will not be exported, sold, leased or transferred temporarily or permanently with or without compensation to any third country or to any other legal entity or person in [NAME OF END-USER STATE] other than the stated end-user.

¹Adapted from OSCE, (note 13).

▶ **OPTION 2.**
**PROHIBITION ON RE-EXPORT OR RE-TRANSFER,
EXCEPT FOR CERTAIN DESTINATIONS AND END-USERS**

POSSIBLE LANGUAGE:

I/we/the end-user [NAME OF END-USER] certify that the items [DESCRIPTION OF ITEMS] will not be exported, sold, leased or transferred temporarily or permanently with or without compensation to any third country or to any other legal entity or person in [NAME OF END-USER STATE] other than the stated end-user, except to the following destinations [NAME(S) OF IMPORTING STATES THAT ARE SUBJECT TO EXEMPTIONS].

▶ **OPTION 3.**
**PROHIBITION ON RE-TRANSFER TO ANOTHER END-USER,
LOCATION OR END-USE**

POSSIBLE LANGUAGE:

Possible language on prohibition on re-transfer to another end-user in the importing country:

I/we/the end-user [NAME OF END-USER] certify that the items [DESCRIPTION OF ITEMS] will be used only by the end-user [NAME OF END-USER]

Possible language on prohibition on re-transfer to another location in the importing country:

I/we/the end-user [NAME OF END-USER] certify that the items [DESCRIPTION OF ITEMS] will be used only in the location [LOCATION OF ITEMS].

Possible language on prohibition on re-transfer to another end-use:

I/we/the end-user [NAME OF END-USER] certify that the items [DESCRIPTION OF ITEMS] will be used only for the stated end-use.

▶ **OPTION 4.
PRIOR AUTHORIZATION BEFORE ANY RE-EXPORT OR RE-TRANSFER**

POSSIBLE LANGUAGE:

I/we/the end-user [NAME OF END-USER] certify that the items [DESCRIPTION OF ITEMS] will not be exported, sold, leased or transferred temporarily or permanently with or without compensation to any third country or to any other legal entity or person in [NAME OF END-USER STATE] other than the stated end-user without the written approval of the authorized state agency of [NAME OF EXPORTING STATE].

▶ **OPTION 5.
NOTIFICATION OF ANY RE-EXPORTS AND RE-TRANSFERS**

POSSIBLE LANGUAGE:

I/we/the end-user [NAME OF END-USER] certify that the items [DESCRIPTION OF ITEMS] will not be exported, sold, leased or transferred temporarily or permanently with or without compensation to any third country or to any other legal entity or person in [NAME OF END-USER STATE] other than the stated end-user without notifying the authorized state agency of [NAME OF EXPORTING STATE].

▶ **OPTION 6.
IMPORTING STATE GIVEN RESPONSIBILITY FOR
RE-EXPORTS OR RE-TRANSFERS**

POSSIBLE LANGUAGE:

I/we/the end-user [NAME OF END-USER] certify that the items [DESCRIPTION OF ITEMS] will not be exported, sold, leased or transferred temporarily or permanently with or without compensation to any third country or to any other legal entity or person in [NAME OF END-USER STATE] other than the stated end-user without the written approval of the authorized state agency of [NAME OF END-USER STATE].

Most export licensing authorities rely on documentation issued by the importing government when making their assessments of an export licence application. This can create problems when exporting states are seeking to control the exact wording of end-user assurances or ensure that the documentation contains all recommended language and security features. An alternative approach is for exporting states to issue their own EUCs rather than relying on documentation issued by the end-user (see Box 1).

BOX 1.

AN ALTERNATIVE TO END-USER CERTIFICATES: THE CASE OF SWEDEN

Sweden produces its own EUCs rather than relying on documentation issued by the end-user. The EUCs are printed on banknote paper. The Swedish exporter must see that they are completed by their proposed customers before an export licence may be issued. A signed copy of the EUC is then sent to the Swedish licensing authority via the Swedish embassy in the importing country.^a For exports of small arms and light weapons, the Swedish authorities also require a small arms and ammunition certificate that the end-user provides to the Swedish exporter on its official letterhead. This certificate has to be provided to the Swedish licensing authority as part of the licence application.^b

a Swedish Agency for Non-Proliferation and Export Controls, 'End-user certificate', 16 July 2009, <<http://www.isp.se/sa/node.asp?node=543>>.

b Swedish Agency for Non-Proliferation and Export Controls, 'Certificates and other forms', 16 July 2009, <<http://www.isp.se/sa/node.asp?node=551>>.

Source: Mark Bromley and Hugh Griffiths, 'End-user certificates: improving standards to prevent diversion', SIPRI Insights on Peace and Security no. 2010/3, Mar. 2010, <http://books.sipri.org/product_info?c_product_id=398>.

1.3. ASSESSING SUPPLIES TO PRIVATE COMPANIES AND INDIVIDUALS AND SUPPLIES FOR INCORPORATION AND RE-EXPORT

Certain exports can prove particularly challenging. These include cases where arms are being supplied to a private person or company or where components are being supplied to a private company who will incorporate them into a weapon system that will be re-exported to another state. Such exports should only be approved if the private person or company has received the necessary authorizations from the competent authorities of the importing state, such as an import licence and certification of the end-user statement.

Where re-export of the arms or complete weapon systems will take place, the exporting company should be asked to provide information about the final end-user as part of the licence application. The assessment of the export licence, including the assessment of the potential risk of in-shipment or post-shipment diversion (see below), should take into account the identity of both the importer and the final end-user.

In cases where it is likely that the arms or complete weapon systems will be re-exported - but where the final end-user is not known - the importer should provide assurances that future re-exports will be controlled by the licensing authority of the importing state. In addition, close attention should be paid to the export licensing controls of the importing state when making the export licence risk assessment. Issues that should be considered include:

- ▶ Whether the importing state has an effective system of arms export controls,
- ▶ Whether the importing state is a member of relevant export control agreements and regimes, such as the EU Common Position and the Wassenaar Arrangement, and
- ▶ Whether the importing state has a history of irresponsible arms exports.



ENFORCING AND MONITORING RE-EXPORT AND RE-TRANSFER CONTROLS

2.1. EFFECTIVE MECHANISMS OF EXPORT LICENSING RISK ASSESSMENT

Any government-issued EUC received in connection with a particular transfer should contain the common list of ‘essential elements’ and ‘additional optional elements’ that are highlighted in relevant EU, OSCE and Wassenaar Arrangement guidelines and best practice documents (see Box 2).

BOX 2. ELEMENTS THAT EXPORT LICENSING AUTHORITIES SHOULD DEMAND IN GOVERNMENT-ISSUED END-USER CERTIFICATES

Essential elements

- The details of the exporter and end-user (at least name, address and business name)
- Contract number or order reference and date
- Country of final destination
- A description of the goods being exported (type, characteristics) or reference to the contract concluded with the authorities of the country of final destination
- Quantity and/or value of the exported goods
- Signature, name and position of the end-user’s representative
- The date of issue of the end-user certificate
- Indication of the end-use of the goods
- An undertaking, where appropriate, that the goods being exported will not be used for purposes other than the declared use

Additional, optional elements

- Full details, where appropriate, of any intermediaries involved in the transfer
- A commitment by the importer to provide the exporting state with a delivery verification on request
- Certification that the goods will be installed at the premises of the end-user or will be used only by the end-user
- Agreement by the importer or end-user to allow on site verification
- A clause prohibiting re-export of the goods covered in the certificate
- Assurance from the importer or end-user that any re-export will only be carried out under the authority of the importer’s or end-user’s export licensing authorities
- An undertaking from the importer or end-user not to divert or relocate the goods covered by the end-use certificate or statement to another destination or location in the importing country

Sources: OSCE, [Best Practice Guide on Export Control of Small Arms and Light Weapons](#), Handbook on Best Practices on Small Arms and Light Weapons (OSCE: Vienna, 2003), pp. 53–54; OSCE, Forum for Security Co-operation, ‘Standard elements of end-user certificates and verification procedures for SALW exports’, Decision No. 5/04, Document FSC/DEC/5/04, 17 Nov. 2004; Wassenaar Arrangement, ‘End-user assurances commonly used consolidated indicative list’, adopted in 1999, revised in 2005, <<http://www.wassenaar.org/publicdocuments/>>; and Council of the European Union, ‘User’s Guide to Council Common Position 2008/944/CSDP defining common rules governing the control of exports of military technology and equipment’, document 9241/09, 29 Apr. 2009.

States should share examples of importing states EUCs, particularly those that are suspected of being associated with cases of diversion or unauthorized re-export or re-transfer. In doing so, states in South Eastern Europe should make use of the SEESAC database of brokers, which allows states to share EUCs they have received.² States should also make use of the information gathered during the exchange of information on EUCs that the OSCE carried out in 2008.³

EUCs should be signed by a high-level government representative and—depending on the sensitivity of the export in question—the assurances provided should be reiterated in a diplomatic note.

According to the UN's 2014 CASA Guidelines on SALW Transfers, the provision of documentation such as end-user certificates and end-user statements 'shall not be the sole basis for deciding whether an export authorization will be granted. It shall form only one part of a comprehensive assessment of the application for export authorization.'⁴ According to the EU's User's Guide, 'using end-user certificates cannot substitute for a complete risk assessment of the situation in the particular case.'⁵

The EU Common Position on Arms Exports presents a list of factors that must be taken into account to guard against the risk of in-shipment or post-shipment diversion. These are:

- ▶ the legitimate defence and domestic security interests of the recipient country, including any participation in UN or other peacekeeping activity,
- ▶ the technical capability of the recipient country to use the technology or equipment,
- ▶ the capability of the recipient country to apply effective export controls,
- ▶ the risk of such technology or equipment being re-exported to undesirable destinations, and the record of the recipient country in respecting any re-export provision or consent prior to re-export which the exporting member state considers appropriate to impose,
- ▶ the risk of such technology or equipment being diverted to terrorist organizations or to individual terrorists,
- ▶ the risk of reverse engineering or unintended technology transfer.⁶

Information about any reported cases of unauthorized re-export or re-transfer—including those concerning exports by the exporting states and exports by other states—should be factored into the risk assessment that takes place in connection with any export licence application.

For this purposes, export control authorities should maintain a list of end-users that have been involved in cases of unauthorized re-export or re-transfer.

²SEESAC, 'Brokering database', <<http://www.seesac.org/project.php?i1=126&i2=154&i3=180>>.

³In Nov. 2008 the OSCE participating states agreed to 'provide a sample format of their national end-user certificate and/or other pertinent documents to all other participating States'. OSCE, Forum for Security Co-operation, 'Information exchange with regard to sample formats of end-user certificates and relevant verification procedures', Decision no. 12/08, document, FSC.DEC/12/08, 12 Nov. 2008.

⁴United Nations, ISACS/03.20 (note 16), p. 23.

⁵Council of the European Union, 'User's Guide to Council Common Position 2008/944/CFSP defining common rules governing the control of exports of military technology and equipment', document 9241/09, 29 Apr. 2009, <http://register.consilium.europa.eu/doc/srv?l=EN&f=ST_9241_2009_INIT>, p. 87.

⁶Common Position 2008/944/CFSP of 8 December 2008 defining common rules governing control of exports of military technology and equipment, *Official Journal of the European Union*, L335, 8 Dec. 2008.

2.2. MECHANISMS FOR ENSURING THAT ITEMS REACH THE INTENDED END-USER

Following an export of arms and ammunition, the exporting state should take steps to verify that the items have been received by the authorized end-user. To this end, the exporting state or exporting company should require a delivery verification certificate.⁷ This requirement should be included in the end-user certificate or end-user statement.⁸

DVCs can be of assistance in helping to ensure that goods have reached their intended destination and recipient. However, they are of limited value in preventing unauthorized re-exports and re-transfers since these can happen long after the original delivery.

The following is sample language for inclusion in end-user certificates and/or end-user statements:

I/we/ shall, upon request by the competent authorities of the exporter state, confirm receipt of the items [DESCRIPTION OF ITEMS].⁹

A DVC should contain a core set of common elements. These include:

- ▶ a unique identifying number,
- ▶ the name, address and contact details (phone, fax and email) of the exporter and end-user,
- ▶ details of the arms and ammunition and means of delivery,
- ▶ the stamp/seal of the customs administration or other competent authority of the importing State,
- ▶ indication that the end-user has taken possession of the arms and ammunition,
- ▶ the signature, printed name and position of the authorized representative of the customs administration or other competent national authority making the certification.¹⁰

7 A delivery verification certificate is issued by the authorities of the country where the end-user is located. It is a confirmation that the authorized shipment actually arrived at the end-user.

8 United Nations, ISACS/03.21 (note 9), pp. 11–13.

9 OSCE (note 13).

10 For complete list of recommended elements, see United Nations, ISACS/03.21 (note 9), pp. 11–13.

The DVC should be delivered within a reasonable time (e.g. not more than 30 days) of the consignment being cleared through customs. Following receipt of a DVC, checks should be conducted on the consistency of the information it contains with the information contained in the end-user certificate or end-user statement, particularly with regards to details of the end-user, exporter and quantity and type of arms and ammunition.¹¹ In particular, the exporting state should verify the authenticity of ‘the seal of the customs administration or other competent authority of the importing State that has certified the document; and the signature, name and position of the representative of the customs administration or other competent authority of the importing State that has certified the document.’¹²

Diplomatic channels and foreign embassies may be used to assist with these processes of checking and verification.

11 United Nations, ISACS/03.21 (note 9), pp. 11–13.

12 For complete list of recommended elements, see United Nations, ISACS/03.21 (note 9), pp. 11–13.

2.3. MEASURES TO CONFIRM THAT RE-EXPORT AND RE-TRANSFER CONTROLS ARE APPLIED

Following any export of arms and ammunition, the exporting state should take steps to verify that re-export and re-transfer controls that have been imposed are being applied. A single government agency or government authority—preferably the export licensing authority—should be made responsible for ensuring that re-export and re-transfer controls are applied. In certain cases, this may involve delegating responsibility to other government agencies or government authorities.

2.3.1. INFORMATION COLLECTED BY NATIONAL EMBASSIES OR OTHER GOVERNMENT AGENCIES

Following the export of arms and ammunition, the national embassy of the country of destination should be informed of the delivery and any associated controls on re-export or re-transfer. The embassy should also be tasked with monitoring relevant sources of information and passing on reports or concerns about unauthorized re-export or re-transfer to the export licensing authority.

When there is no embassy in the country of destination, exporting states may seek to develop mechanisms that will allow them to pool their resources and assist each other with monitoring relevant sources of information and passing on reports or concerns about unauthorized re-export or re-transfer. As a first step, states could collect information on the countries in which they have embassies and develop mechanisms for sharing relevant information.

Other sources of information that can be used include national customs authorities, the recipient state and national intelligence services.

2.3.2. REQUIRING COMPANIES TO REPORT ON SUSPECTED VIOLATIONS

States can help to confirm that re-export or re-transfer restrictions are being applied by collecting information from the exporting company. Such reporting can be voluntary or can be based on legal requirement that obliges exporting companies to report to the export licensing authority about any information it obtains relating to any unauthorized re-exports or re-transfers.

2.3.3. MONITORING OF OTHER SOURCES OF INFORMATION

Following the export of arms and ammunition, the export licensing authority should monitor relevant open sources of information in order to ensure that it is aware of any reports of unauthorized re-export or re-transfer. Examples of relevant sources of information include:

- ▶ reports of the UN-appointed groups or panels of experts that monitor UN Security Council sanctions, <<http://www.un.org/sc/committees/>>
- ▶ relevant reports by Amnesty International, <<http://www.amnesty.org/en/>>
- ▶ relevant reports by Human Rights Watch, <<http://www.hrw.org/home>>
- ▶ relevant reports by International Crisis Group, <<http://www.crisisgroup.org>>
- ▶ relevant reports by Stockholm International Peace Research Institute (SIPRI) <<http://www.sipri.org>>
- ▶ relevant reports by the Small Arms Survey, <<http://www.smallarmssurvey.org/>>
- ▶ relevant reports by Conflict Armament Research, <<http://www.conflictarm.com>>

2.3.4.

SHARING INFORMATION WITH OTHER GOVERNMENTS

States should also make use of information provided by other states via relevant exchanges. This may include information provided during meetings of the SEESAC Regional Information Exchange Process (RIEP) on Arms Exports, information made available via the mechanisms of information exchange with COARM and regional COARM meetings, and information provided via other informal channels.¹³

2.3.5.

ON-SITE INSPECTIONS IN THE DESTINATION COUNTRY

In certain cases, exporting states may request the right to carry out post-shipment verifications. PSVs may be carried out by embassy officials, export licensing officials, customs officials, or trusted third parties. Such requests may be particularly relevant when there is an increased risk of unauthorized re-export or re-transfer. Such requests can also act as a form of confidence-building measure when deliveries are being restarted to a destination where there have previously been reports of unauthorized re-export or re-transfer.

An undertaking to allow PSV may be included in an end-user certificate or end-user statement. The following is sample language for end-user certificates or end-user statements:

I/We certify that the competent authorities of [NAME OF EXPORTING STATE] have the right to verify the end-use and end-use location of any supplied item at any time on their demand.¹⁴

PSVs shall only take place with prior, written authorization by the importing state.

¹³ SEESAC, 'Regional Information Exchange Process (RIEP)', <<http://www.seesac.org/project.php?f1=126&f2=154&f3=176>>.

¹⁴ OSCE (note 13).

2.3.6. RECORD KEEPING AND REPORTING

Export licensing authorities should maintain comprehensive, accurate and readily retrievable records of end-user certificates, end-user statements and DVCs received.

Exporting companies shall be required to mark all arms and ammunition prior to export and maintain relevant records in line with agreed international standards and best practices.¹⁵

According to the CASA Guidelines on national controls over the end-user and end-use of internationally transferred SALW, 'Records shall be maintained for at least 20 years, and should be maintained indefinitely'.¹⁶

Exporting companies may also be required to provide information to the export licensing authority if they obtain information about any unauthorized re-export or re-transfer. Such reporting obligations are particularly relevant when the exporting company is involved in the maintenance of exported arms and ammunition.

¹⁵ See United Nations, Coordinating Action on Small Arms, 'Marking and recordkeeping', Draft International Small Arms Control Standard, ISACS/05.30, Version 1.0, Aug. 2012, <<http://www.smallarmsstandards.org>>.

¹⁶ United Nations, ISACS/03.21 (note 9), p. 15.



RESPONDING TO VIOLATIONS OF RE-EXPORT OR RE-TRANSFER RESTRICTIONS

3.1. STEPS TO TAKE WHEN VIOLATIONS OF RE-EXPORT AND RE-TRANSFER CONTROLS ARE UNCOVERED

If information is uncovered—or is reported in the media—indicating that unauthorized re-export or re-transfer has taken place, the following steps can be taken in response.

3.1.1. ESTABLISHING CLEAR LINES OF RESPONSIBILITY

A single government agency or government authority—preferably the export licensing authority—should be made responsible for coordinating and managing all aspects of the government’s response to the alleged unauthorized re-export or re-transfer. The responsibilities of this government agency or government authority should include responding to all media enquiries or questions from other governments as well as liaising with the importer state.

3.1.2. COMMUNICATING INFORMATION ABOUT STEPS TAKEN TO PARLIAMENT, MEDIA AND PARTNER STATES

When news of the unauthorized re-export or re-transfer has arisen because of a publicly available media report, then efforts should be made to quickly make information public about the steps that are being taken in response. Information should be provided within days of the report and should be provided in the form of a press release and include:

- ▶ details of the original report of the unauthorized re-export or re-transfer,
- ▶ why the reported incident has prompted an investigation,
- ▶ details of any transfers of the material in question to the country or region where the arms and ammunition have reportedly been identified,
- ▶ the government agency or authority that will be managing all aspects of the government’s response to the report,
- ▶ the nature of any temporary measures being taken while the investigation is being conducted, and
- ▶ the steps that will be taken to investigate and respond to the report.

Once an investigation has been concluded, additional information should be made available on its outcome. Information should be provided in the form of a press release and include:

- ▶ why the investigation was initially prompted,
- ▶ when and how the investigation was carried out,

- ▶ the results of the investigation, including the cause of the unauthorized re-export or re-transfer of material should the original report have been substantiated during investigation,
- ▶ what measures have been taken as a result of the investigation, and
- ▶ how the incident and investigation will inform future efforts to limit unauthorized re-exports/re-transfers of exports.

When news of the unauthorized re-export or re-transfer has arisen because of confidential information provided by the intelligence services or another state, then greater care can be exercised in terms of releasing information to the general public. Wherever possible, information should be made public as soon as possible.

3.1.3. REQUEST INFORMATION FROM THE END-USER

Based on the information that prompted the response, information should be requested from the end-user or importing state that is known to have originally imported the arms or ammunition that have reportedly been re-exported or re-transferred. In the absence of a clear indication of the identity of the original end-user or importing state, information should be requested from all end-users and importing states that have imported the type of arms or ammunition in question.

End-users should be approached via appropriate points of contact and channels of communication, which may include:

- ▶ foreign ministries via ambassadors in the country of the end-user,
- ▶ foreign ministries via local ambassadors of the end-user, and
- ▶ defence ministries via local defence attachés.

Information requested from the end-user should include:

- ▶ whether any of the material has been re-exported or re-transferred and, if so,
 - the serial numbers of the material concerned,
- ▶ when and where the material was last deployed or stored, and
- ▶ whether any of the material has been reported lost or misplaced in recent audits and, if so,
 - the serial numbers of the material concerned,
 - the last known date and location of the material,
 - the circumstances in which it was lost or misplaced, and
 - the measures taken to increase stockpile security as a result of the incident.

3.1.4. SUSPENSION OR ANNULMENT OF EXPORT LICENCES

During investigations of potential violations of re-export or re-transfer controls, no new licences should be issued for exports to the end-user or importing state under investigation. Granted export licences which are valid at the time of the incident should also be suspended or annulled.

In order to be able to implement such a licence freeze, the export licensing authority should have:

- ▶ resources and ability to immediately contact exporters in possession of licences,
- ▶ legal possibility to suspend or annul licences and licence applications,
- ▶ authoritative knowledge of the rights of exporters, manufacturers and related private enterprises should the annulment incur financial loss, and
- ▶ points of contact within government in case the annulment of licences infringes on political relations between the exporting state and the state of the end-user

3.1.5. RESTRICTIONS PLACED ON FUTURE-EXPORTS TO THE END-USER OR DESTINATION

Verification of intentional violation of end-user agreements or the inability to guarantee that such agreements are upheld by importing states should inform future decisions to grant export licences. Types of restriction that should be considered where unauthorized re-export or re-transfer has occurred include:

- ▶ an indefinite freeze on exports to the country or end-user until relevant authorities in each state agree that adequate means have been established to ensure the integrity of end-user agreements,
- ▶ the inclusion of more restrictive measures in future end-user agreements to minimize risks of future unauthorized re-export or re-transfer,
- ▶ enhanced prelicencing risk assessment and post-export monitoring of future-exports,
- ▶ the inclusion of a requirement to facilitate on-site inspection in future end-user agreements.

3.1.6. INFORMATION SHARED WITH OTHER GOVERNMENTS

Exporting states may share information on the outcome of any investigation into reports of unauthorized re-export or re-transfer of arms or ammunition with other states. Information can be shared during meetings of the Regional Information Exchange Process (RIEP) on Arms Exports, via the mechanisms of information exchange with COARM, and via other informal channels.

Information shared with other governments can include additional information that is deemed too sensitive for inclusion in the press release (see 3.1.2 above).

Information shared on the case should include:

- ▶ details of the original export, including any re-export or re-transfer restrictions that were imposed,
- ▶ details of if and how the re-export or re-transfer restrictions were violated, and
- ▶ details of the investigation, including steps taken, temporary measures imposed, and implications for future risk analysis that other states may benefit from.

3.2. DEVELOPING GUIDELINES OUTLINING RESPONSE IN SUCH CASES

To guide responses to reported diversions or non-compliance with end-user agreements, states should develop national guidelines. Such guidelines should have a basis in a number of key elements and should be accessible to all officials tasked with monitoring and responding to post-export control.

3.2.1. KEY ELEMENTS

Guidelines outlining national responses to reported re-exports or re-transfers in violation of end-user agreements should include:

- ▶ the types, forms and sources of report and evidence sufficient to prompt an investigation into a potential violation of an end-user agreement,
- ▶ the measures relating to pending and partially used licences, such as freezes or revocations, that are to be put in place while investigations are being conducted,
- ▶ whether, when and how the decision to investigate a reported re-export or re-transfer is to be published publically,
- ▶ what information resulting from investigations of unauthorized reports of re-transfer to share with other states, and
- ▶ the procedure by which findings of investigation will be fed back into future risk assessments and the development of the guidelines themselves.

3.2.2. AVAILABILITY OF GUIDELINES

Guidelines outlining national responses to reports of unauthorized re-export or re-transfers should be available to all officials tasked with monitoring end-use and implementing responses. While such guidelines need not be made available to the general public, doing so may increase awareness of commitment to enforcing end-user agreements and increase transparency in the event of a reported incident.

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