

# National Implementation of the proposed Arms Trade Treaty: A Practical Guide



# Contents

<b>1. Introduction</b>	<b>2</b>
The practical guide	3
<b>2. Elements of a national control system</b>	<b>3</b>
<b>3. Licensing</b>	<b>4</b>
Legal requirements	
– <i>Items subject to control: control lists</i>	4
Types of transfer subject to control	5
Institutions	6
Procedures	7
Proof of implementation	
– <i>Transparency and accountability</i>	12
Training and capacity-building	13
<b>4. Enforcement</b>	<b>14</b>
Legal requirements	14
Enforcement institutions	15
Penalties and sanctions	16
Procedures for enforcement	17
Information sharing and transparency	17
Training and capacity-building	18
<b>5. External outreach to industry and international partners</b>	<b>19</b>
The government-to-industry relationship	19
– <i>Legal requirements</i>	19
Institutions and procedures	20
– <i>Transparency and implementation</i>	21
The external relationship	21
– <i>Information sharing and exchange with other governments</i>	21
– <i>International transparency, reporting, and accountability</i>	21
– <i>Capacity-building and assistance</i>	22
<b>6. Conclusion</b>	<b>23</b>
<b>Endnotes</b>	<b>24</b>

# Introduction

**This practical guide is intended to support law-makers, licensing officers, customs officials, and other agencies and individuals involved in establishing and implementing national control systems for international arms transfers. This guide will also be useful to the member states of the UN in alerting them to some of the practical issues they will need to consider as they begin the process of negotiating an international ATT.**

In December 2009, the UN General Assembly voted to start negotiations to achieve an international Arms Trade Treaty (ATT) by 2012, to create international standards governing the global conventional arms trade.

*Conventional arms cover a range of weapons that are not nuclear, chemical, or biological. The category includes major weapons (such as battle tanks, aircraft designed or modified for military use, warships, missiles, and missile systems); small arms and light weapons; conventional dual-use goods, technologies, and software; imaging and counter-measure equipment specially designed for military use; and the ammunition, components, and technology used for and by these systems.*

Unlike the trade in items and technologies that could potentially be used in chemical, biological, or nuclear weapons, there are no comprehensive, global controls on the international trade in conventional arms (although some regional and multilateral frameworks have been developed). As a result, significant variations in standards and laws, massive loopholes where legislation does not exist, and a lack of clarity allow unscrupulous traders to navigate the blurred line between legal and illicit markets, creating the risks that weapons could fall into the hands of human rights abusers and terrorists, perpetuate conflicts, and undermine development.

In the era of globalisation, no country can disregard the need to put in place some form of national strategic trade control system. The development of modern conventional weapons systems is a multilateral concern where components and designs are developed and shared in an intricate network across the world. In addition, a country might not produce, import, or export a specific item, but its location on an international trade route may make the control of shipments through its harbours, airports, land borders, and cyber domains relevant and necessary.

The proposed ATT will be the first of its kind and will serve to close the dangerous loopholes that arise because existing agreements do not cover every region, type of transfer, or activity related to the trade in arms. The ATT is not a disarmament initiative, but rather a call for regulation of a strategically sensitive and important market. It will be a critical element in efforts to reduce armed violence and increase stability and security.

Many states, including a majority of those that produce arms and defence equipment, already have in place regulatory frameworks and legislation controlling national transfers. Other states, however, have only rudimentary formal controls in place. Thus, the future ATT will help provide a general denominator for national controls and will allow states the option to implement stricter (but not weaker) regulations should they so choose.

Currently there is no uniform way to implement national controls for international transfers of conventional arms. Some states have over the years developed sophisticated national control systems for international transfers of such arms, while others have only just begun. Some states can dedicate extensive bureaucracies and resources specifically to managing arms transfers. Others, which may only very rarely be involved in international arms transfers, require a system that can be implemented with minimal dedicated resources.

For an ATT to be successful, it will have to provide clear guidelines for implementation, transparency, monitoring, compliance, and verification. This will require it to be flexible enough to be incorporated into national transfer control systems, regardless of individual states' size, capacity, and legal tradition.

## The practical guide

This practical guide is designed to help policy makers and practitioners to build and implement national control systems for international arms transfers. In doing so, it acknowledges that there is no 'one size fits all' solution. The systems of individual countries will be based on the extent and nature of their arms trading, taking into consideration size, geographical location, technological infrastructure, and capacity. However, core principles and elements can be drawn out from the different systems. This guide outlines these principles and gives examples from a number of countries to demonstrate how different states have implemented them. It is intended to provide ideas for how states can adopt a functional and effective national control system.

This guide draws upon many different national control systems and was developed following an experts' round table, held in Vienna, Austria on 17–18 March 2010. In addition, it has undergone an expert review by current and former government officials, who provided suggestions and guidance on its development. All national examples have been gathered from interviews and publicly available open sources and are thus representative for the mechanism exemplified and not the complete national system.

The guide presents elements required for a basic national control system, and then includes other elements that could be included in a more comprehensive system.

The guide is based on three basic principles:

- **All countries need to have in place a national system for the licensing and control of international conventional arms transfers;**
- **A national system has to include a set of criteria to follow when deciding whether to approve or deny international conventional arms transfers;**
- **A national system must define the range of equipment and activities to which controls will be applied.**

## Elements of a national control system

# 2

An effective national system will consider the following three major components:

- 1. Licensing:** All conventional arms that enter, leave, or pass through a country's customs membrane or national jurisdiction require authorisation.
- 2. Enforcement:** The national system has to be enforced by officers operating at the border and by prosecutors who try cases when a violation has been committed.
- 3. External outreach to industry and international partners:** The national system needs to engage with the companies and trade actors involved, and to fulfil its international commitments.

For each of these components, there are four areas to consider.

- **Legal requirements:** These provide the judicial legitimacy and guidance for how to carry out the control. The precise nature of this legal structure will be for each country to decide.
- **Institutions and Procedures:** A specific entity, or co-ordinated group of entities, must implement the system.
- **Training, equipment, and capacity:** Each institution will need to be subject to training to keep abreast of changing circumstances and techniques. Tools (computer systems for risk analysis, customs inspection kits, etc.) will be required and the government will need to dedicate resources and capacity to make the system effective.
- **Proof of implementation:** Each component requires its own proof of implementation (licences, reports, etc.).

The licensing of arms transfers is at the core of any strategic trade control system. It provides a framework for authorisation of the transfer of conventional weapons.

#### Key elements of national licensing systems for international transfers of arms

- **Legal requirements**

Items subject to control: control lists  
Types of transfer subject to control  
Rules for licensing determinations (criteria or parameters)

- **Institutions**

Institutional responsibilities and rights at government, ministerial, and parliamentary levels

- **Procedures**

Licensing stage  
Transfer stage  
Post-transfer stage

- **Proof of implementation**

Transparency and accountability

- **Training/capacity-building**

## Legal requirements

### Items subject to control: control lists

A fundamental requirement of any national system is to set out precisely which items and technologies are subject to transfer controls – these are commonly referred to as the control list or lists. Without a control list, companies and legal entities within the jurisdiction are at risk of inadvertently transferring equipment that should be licensed, or applying for licences that are not needed. Such problems damage the credibility of licensing systems and increase the likelihood that entities will seek to ignore the system when they believe they can.

Control lists should ideally provide as much information as possible, either listing each individual item or at the very least using descriptive categories. Regardless of the system, the list will have to be clear and regularly updated. Detailed and comprehensive lists can provide greater certainty for industry, but

require regular review to take into account technical developments, new emerging technologies, and the risk level attached to each product.

The European Union and the multilateral export control organisation the Wassenaar Arrangement are two examples of organisations that maintain regularly updated control lists for exports.<sup>1</sup> These lists are increasingly being used by other states as models for their own control lists. To avoid duplication of work, increased costs, and the sidetracking of valuable national resources, states are encouraged to make good use of existing examples and to follow similar practices.

To maintain an efficient method of regularly updating lists, it is recommended that the control list or lists and their mandatory update function are established through secondary legislation, e.g. regulations, ordinances, decrees, etc., according to the country's individual legal traditions and structure.

A fully comprehensive control list could include the following:

- **Battle tanks and armoured vehicles;**
- **Large- and small-calibre artillery systems;**
- **Small arms and light weapons and man-portable air defence systems;**
- **Aircraft, helicopters, and unmanned aerial vehicles designed or modified for military use;**
- **Warships and naval vessels designed or modified for military use;**
- **Missiles and missile systems;**
- **Ammunition and explosives;**
- **Fire control and related alerting and warning equipment;**
- **Test, alignment, and counter-measure equipment specially designed for military use;**
- **Imaging and counter-measure equipment specially designed for military use;**
- **Armoured or protective equipment;**
- **Simulators or specialised equipment for military training;**
- **Directed energy weapons systems;**
- **Police and security equipment (including torture equipment and riot control agents);**
- **Components, expertise, and equipment essential for the production, maintenance, and use of the items above; and**
- **Conventional dual-use goods, technologies, and software that can be used for the production, maintenance, and use of items above.**

In addition, in a comprehensive system, countries may choose to apply so-called 'catch-all' controls. This type of mechanism provides for control of items that are not listed, but may require extra controls due to circumstances surrounding the transfer or the item being transferred. For example, an item might be just below the threshold for control and therefore unlisted, but the licensing authorities may have knowledge that the item is intended for military use. Under a catch-all control, the transfer can be denied or may be released under a licence. In this way extra control can be applied when needed, without overburdening the control lists. However, such a mechanism is heavily reliant on intelligence information, as well as good inter-governmental communication and an effective relationship between government and industry.

### Types of transfer subject to control

National controls for international arms transfer have historically been seen as primarily concerned with controlling exports. However, experience has shown that omitting issues such as import, transit, and re-export does not assure a high level of control and runs the risk of leaving loopholes. A comprehensive approach to national controls of international arms transfers would also include the following:

**Import:** States are naturally inclined to want full knowledge of all military equipment that enters their jurisdiction, not least for national security reasons. This calls for legal licensing requirements to be put in place for imports.

**Transit and transshipment:** In addition, governments should reserve the right to examine any case of transit and to allow or refuse such a transfer should it so choose. For the sake of consistency and thus simplicity, where specific transit authorisation is required, the same standards should be set in terms of decision-making criteria as for exports. Transshipment is sometimes defined separately, focusing on the aspect of the transiting cargo switching its means of transport. Attempts have been made to separate the two concepts, but for the purposes of this guide the following generalisation can be made: a request for a transit licence covers those items that pass through a country's customs jurisdiction regardless of the type of transport used or if the means of transport changes.

**Re-export:** Controls on re-export restrict a recipient's potential to internationally re-transfer arms. Re-export controls can involve a state issuing a licence on the basis that: i) the recipient will not re-export the arms; ii) re-export can occur with the originating exporting state's approval; or iii) the recipient will not re-export without first advising the original exporter.

The application of re-export controls is becoming increasingly commonplace in national systems.

To be effective, a licensing system should apply to both tangible and intangible transfers, and to all aspects of the transfer regime, including:

- **Government-to-government transfers of goods and technologies;**
- **Transfers by a government to a private end-user in another country;**
- **Commercial transfers;**
- **Licensed production arrangements;**
- **Leasing arrangements, barter arrangements, loans of equipment; and**
- **Gifts or aid.**

It is not unusual for national systems to distinguish between commercial sales and transactions in which the government acts as a principal. However, the process for authorising the transfer should in essence be the same. For example, while the government may not grant itself a licence per se, a government-to-government sale should require the same end-use guarantees and apply the same criteria with equal rigour when deciding whether or not the transfer is appropriate as it does for commercial transactions.

A comprehensive national system would also cover other transactions and services that are integral to making international transfers of conventional arms, such as payments, rewards, and benefits for:

- **Brokering or acting as an agent;**
- **Providing technical assistance, training, and maintenance;**
- **Transport, freight forwarding, and storage;**
- **Finance and insurance; and**
- **Security services.**

As arms brokers play a large role in many international arms transactions worldwide, national systems also need to consider how best to control arms **brokering**, i.e. the facilitation of deals between seller and buyer where the facilitator, or broker, does not take physical possession or ownership of the goods. The circumstances and the means by which such aspects are controlled may vary, but the legal requirements must provide the government with such powers. As recently as 2 December 2008, the UN General Assembly adopted Resolution 63/67 '*Preventing and combating illicit brokering activities*'<sup>2</sup> calling on all nations to put in place arms brokering controls, though this in many cases is yet to be implemented.

A basic approach for brokering controls would require a registration system for arms brokers operating within a country. A comprehensive approach would control the facilitation of transactions to and from a country; deals that involve a broker based in one country but facilitating a transfer between two or more other countries; and, finally, deals where the broker operates outside of the original country's customs jurisdiction. This last case, which is currently controlled by relatively few countries worldwide, is sometimes referred to as extra-territorial brokering.

## **Institutions**

There is no 'one size fits all' approach to the institutions involved in licensing – different systems have developed over the years to suit differing national needs, contexts, and systems of government. For states with a significant amount of trade to administer, there is an obvious logic to formally involving a range of departments or agencies in the licensing process. In jurisdictions with limited international arms trade and where licensing activity is rare, a less elaborate system may be sufficient. However, it is critical that whichever agency is tasked with managing the licensing process, it is given the authority to seek and receive advice and information from other branches of government in the exercise of its responsibilities. Thus, states should consider including the following:

**Government ministries and departments:** While many ministries may be involved in the process (including foreign affairs, international development, defence, commerce or trade, interior, customs, national security, and intelligence agencies), each should have distinct and differing roles based on its expertise and mandate. Import and export controls may be governed by the same agencies or by different ones. Typically, Customs or the Ministry of the Interior may have responsibility for imports, while the Ministry for Trade, Industry, or Foreign Affairs may be responsible for exports. Input from the intelligence services and from customs can help gauge a transfer's legitimacy and appropriateness. Furthermore, customs officials often have unique insight with regards to the end-users and trade patterns that would be natural components in a licensing decision. It is imperative to have clear and well-defined responsibilities for each institution, as well as providing that institution with the powers to fulfil its assigned tasks.

**Independent boards, committees, or groups:** In some cases, independent offices or groups may be responsible for granting arms licences.

Regardless of the system, the institution would benefit from input on a technical level – to aid in commodity classification, for instance. This input could come from independent government agencies that are able to evaluate products and their uses, or it could be performed by a mandated university or by a non-government organisation (NGO).

**Ministerial involvement:** Many strategic transfer control systems contain an authorisation process that includes the possibility of inter-ministerial consultations. In some systems, ministers play a significant role in the licensing process on a regular basis, particularly in controversial sales or where there is an impasse over a problematic or questionable licence application, when they serve in a dispute resolution capacity. In other systems, ministerial involvement in the licensing process is not allowed by law. Within any system, however, the role of ministerial engagement should occur according to clearly defined rules.

**Parliaments** can play an institutional role in the licensing process by providing transparency and accountability to the system. Parliaments may scrutinise and approve transfer control legislation and may have an oversight role in arms licences (often post-licence, occasionally pre-licence decision-making). Parliaments may request briefings and hearings on national reports concerning arms transfers and can highlight technical and political aspects of transfer control by pointing to specific details of potential or past sales.

## The roles of institutions in different national contexts

In the **Republic of Senegal**, no trade in arms may be conducted without the express authorisation of the Senegalese Minister of the Interior. The Ministry determines the quota of weapons to be imported each year, and weapons may transit through the territory of Senegal only with an authorisation from the Minister of the Interior.<sup>3</sup>

In **Romania** the Ministry of Foreign Affairs, through the General Directorate at the National Agency for Export Controls (ANCEX), grants or rejects licence applications for export, import, transit, transshipment, brokering, and technical assistance related to military equipment and dual-use goods, including transfers physically conducted outside Romanian territory. The position of head of the ANCEX General Directorate is held by the State Secretary for export controls and is appointed by decision of the Prime Minister.<sup>4</sup>

In **Sweden**, an advisory council, the Export Control Council, collates parliamentary input relating to licensing decisions. The Council includes representatives from all parties in parliament and is chaired by the Director-General of the national licensing authority, the Swedish Agency for Non-Proliferation and Export Controls (ISP). The Director-General can consult the Council in specific licensing cases for defence equipment or dual-use goods. A small number of particularly sensitive cases go before the Council, which then has access to all relevant documentation. The Director-General also keeps the Council updated on the ISP's activities.<sup>5</sup>

In **Argentina**, the National Commission for Export Controls of Sensitive Items and War Material (CONCESYMB) is composed of representatives from the Ministries of Foreign Affairs, Economy, and Defence. Technical agencies also have a role depending on the nature of the commodities; for example, for military items the Research Institute on Science and Technology (CITEDEF) is involved.<sup>6</sup>

In the **United Kingdom**, the Export Control Organisation is situated within the government Department for Business, Innovation, and Skills (BIS) and holds primary responsibility for export controls. BIS requests formal advice from the Foreign and Commonwealth Office and the Ministry of Defence (MOD) on all licensing decisions and from the Department for International Development (DFID) on many decisions. Sensitive cases are reviewed by the relevant ministers.<sup>7</sup>

The legal mandate for a licensing institution is often found in a country's primary legislation, where criteria for controls and control lists set the basic foundation. Procedural arrangements are commonly found in secondary legislation such as regulations or ordinances.

Core elements for licensing institutions are:

- **Clearly delineated responsibilities and relevant powers to fulfil the tasks;**
- **Clear procedures on how to carry out licensing or update the control list;**
- **Clear and effective communication between institutions. Inter-agency communication is essential for ensuring that effective licensing, enforcement, transparency, and accountability are achieved. Thus states should:**
  - Develop clear procedures that facilitate file, intelligence, and data sharing;
  - Hold regular meetings of relevant staff;
  - Develop a clear policy/manual that reflects roles and responsibilities;
  - Develop standard operating procedures, checklists, guidelines, etc. to implement the policy; and
  - Use technology that facilitates face-to-face and web/network-based communication.

## Procedures

### Decision-making

When building a national control system for international transfers of conventional arms, some countries start from the position that entities have a right to transfer items unless explicitly forbidden (permissive framework) while others proceed from the basis that the transfer of controlled items is forbidden unless explicitly authorised by the government (restrictive framework). Differences in legal traditions will affect the structure of legislation as well as the institutions involved.

### Legal requirements for a licensing system:

#### France

'French arms export control is defined by a strict legislative and regulatory framework, which takes into account the national imperatives of sovereignty and security as well as international commitments in terms of arms control, disarmament and non-proliferation. This framework is based on a **principle of prohibition**. It provides for an authorization system in stages and ongoing inter-ministerial consultation.

'Decree no. 2004-1374 of 20 December 2004 codified in the Defence Code, establishes the fundamental principle that the **export of war materials is prohibited except as authorized**. Moreover, the production, trade and stockpiling of war materials can be done only with authorization from the State and under its control. This authorization is given by the Ministry of Defence after an investigation by security services.'<sup>18</sup>

Licensing systems include a range of criteria or parameters against which a potential transfer should be judged. These are often included in primary legislation. Different national, regional, and multilateral systems have defined their own lists of criteria, but there is a high degree of commonality among them. For example, recurring criteria include how the transfer fits with the transferring country's international obligations (e.g. a UN Security Council arms embargo) or if there is a risk that the transfer could have a serious negative impact on national or regional stability, human rights, etc. The level of stringency varies, from criteria that have only to be 'taken into account' to a clear obligation to deny transfers under particular circumstances.

When considering how to make such a decision, licensing officials conduct an assessment of each licence application against the criteria. Public, corporate, and state confidence will be increased the more transparent and open the methodology is.

Countries have a wide variety of reasons for allowing or refusing a transfer, including, for example, international obligations or national security concerns. Whatever the rules and standards in place, these have to be interpreted and implemented at the national level.

In conducting an assessment, licensing officials will typically be required to draw upon information that:

- **Is provided by the applicant on, with, or subsequent to the international transfer licence application, including:**
  - Details of the items to be transferred;
  - An end-user certificate;
  - Details of any brokers or intermediaries involved in the transfer, their role, the value of fees and commissions paid, and the possible undertaking that the transaction does not involve corruption;
  - Information concerning the transport of the items, such as route, freight forwarding agents, etc.;
- **Is gathered by means of desk-based research of open sources;**
- **Emerges from other government departments and ministries;**
- **Is provided through intelligence reports;**
- **Is passed from consular staff on the ground in the recipient country or region; or**
- **Is accessed via the various bilateral and multilateral networks of export control expertise to which the country has access.**

Factors and processes associated with systematic risk assessments used by governments include assessing or ascertaining:

- **The validity and authenticity of documentation submitted such as the application itself, end-user certificates, and customs declarations;**
- **The credibility of the stated end-user and end-use;**
- **Risks of diversion or misuse, including the risk that the authorised end-user may put the weapons to unauthorised use;**
- **The reliability of controls on import, transportation, and holdings within the importing country; and**
- **Risks that the transfer would increase the risks of misuse, diversion, or irresponsible export of the end-user's existing military equipment.**

A final licensing decision should be based on an overall assessment that is objectively informed through the systematic application of clear criteria using reliable and credible evidence.

## Different types of licences

Licences are generally assessed on a case-by-case basis. However, some countries also use so-called 'black lists' where certain items, destinations, or end-users are prohibited from export or transit. In some cases countries also use 'white lists' of items, destinations, or end-users that are considered safe and where no licence is required or streamlined licensing procedures are followed.

Examples of different types of licences include:

- **Individual licence: given for one transfer to a single destination. Most countries use individual licences for arms transfers;**
- **Global/open licence: applied for by, and issued to, an individual trader but valid for several transfers or destinations over a period of time;**
- **General licence: similar to a global/open licence, in that it can apply to more than one destination and/or transfer. However, general licences do not have to be applied for but are instead pre-available for use by a multiplicity of actors provided they meet certain conditions – for example, they have in place an internal compliance programme and abide by the terms of the licence.**

## Licensing procedures: **Canada**

The Export and Import Controls Bureau is responsible for administering the Export and Import Permits Act (EIPA). The EIPA delegates wide discretionary powers to the Minister of Foreign Affairs to control the flow of goods included in specified lists provided for under the Act. Most controlled goods require an Individual Permit for import or export, although some goods may enjoy less complicated treatment under a General Permit. Under the EIPA, the Governor-in-Council may establish lists known as the Import Control List (ICL), the Export Control List (ECL), and the Area Control List (ACL). The Act also sets out the reasons for including goods or countries on these lists.

The Ministry of Foreign Affairs states: 'The ICL generally comprises a list of goods, some of which are only controlled for certain countries of origin; all goods contained in this list require an import permit. The ECL is a list of goods only; all goods contained on this list also require an export permit. The ACL is a list of countries for which export permits are required to export any and all goods. The Import Permit Regulations and Export Permit Regulations establish procedures for obtaining permits. Other Acts or Regulations may apply simultaneously, in some cases. For instance, countries listed on the ACL are often also named in the United Nations Act and specific Regulations because they are under some form of trade sanction authorized by UN Security Council Resolution.'<sup>9</sup>

A transfer licence must include at a minimum:

- **The place and date of issuance;**
- **The date of expiration;**
- **The country of export, the country of import, and the final consignee;**
- **The final end-user and end-use;**
- **The authorised exporter, broker, and other intermediaries (if known at the time of licensing) or an obligation to advise the licensing authority of any intermediaries and transport routes once known;**
- **The description and the quantity of conventional arms;**
- **The unique marking of each item where applicable; and**
- **Information on the export and import companies involved and their official registration as an enterprise in their country.<sup>10</sup>**

The validity of a licence should be limited to a reasonable period of time, e.g. not more than one year. Upon expiry of the licence, a new application will be required. Sometimes, a less rigid procedure can be established if the elements of the operation have not changed and if only a simple extension of its validity is required.

Some licence applications are non-controversial and can move quickly through a licensing system and the relevant institutions. Others, however, are more complicated, and thus procedures could be developed to address these cases, such as intra- or inter-governmental consultations, or the use of technical or parliamentary advisory boards.

In addition, an **appeals process** for denials should be developed. This would involve representatives from those agencies involved in the licensing system, with input from relevant intelligence, police, or other agencies. In the implementation and use of all of these systems, co-operation with relevant authorities in other states is essential to ensure that the most up-to-date and comprehensive information is acquired.

Simplified procedures may be adopted in certain circumstances for the temporary international transfer of conventional arms for purposes such as exhibitions, repairs, evaluation, training, and research. States must, however, reserve the right to apply the full licensing system for such transfers when appropriate or necessary.

#### **End-use(r) processes**

An end-use(r) certificate (EUC) is the most commonly used method of providing an assurance of the intended use of the arms by the end-user. EUCs typically include the following information:

- **A description of the items, their broad classification, quantities, and values;**
- **The end use(s) of the items and the location(s) where they will be used;**
- **The name(s) and address(es) of the intermediate consignees or purchasers and of the end-user(s) and the country of final destination;**
- **An undertaking that the items will not be used for purposes or by end-users other than those declared; and**
- **A reference to appropriate procedures to be followed in the event of any intention to re-export (e.g. the importer to inform or seek permission from the original exporter).**

EUCs should be issued by a competent national authority, and should be printed on banknote-quality paper bearing a unique serial number.

The provision of an EUC is often a standard part of the transfer licensing process; however, verifying the authenticity of the certificate provided is often a challenge. End-use procedures may involve multiple agencies, within a state and in co-operation with embassies, foreign officials, and international agencies. Readily accessible lists should be kept of authorised and legal brokers, or of authorised government agencies that can sign EUCs, as these assist in information and intelligence sharing in order to avoid problematic exports.

EUCs, on their own, represent only minimal assurance against misuse or diversion of arms transfers. Unless steps are taken to check the authenticity of the documentation provided, transfer licensing authorities will run the risk of being duped by false or misleading end-use(r) undertakings. Such checks can include:

- **Telephone calls;**
- **Website checks;**
- **Consular officer visits to the location pre- and post-shipment; and**
- **The use of international licensing, customs, and intelligence information networks.**

A comprehensive system requires that the recipient commits to providing proof of delivery, such as an authenticated Delivery Verification Certificate (DVC), to show that the shipment has reached its authorised destination and end-user. It can also involve a physical post-delivery check to ensure that the arms have been transferred to the authorised end-user and are being used for the authorised end-use.

### **End-use monitoring: the USA's Blue Lantern programme**

One of the most comprehensive end-use monitoring programmes is the USA's Blue Lantern programme, which is legally required by the country's Arms Export Control Act (1996) and which includes pre-licence and post-shipment checks; verification of order/receipt of defence articles and services; assessment of bona fides and reliability of foreign parties; verification of foreign import/export documentation; physical inspection of defence articles in situ; and confirmation of authorised end-use/end-user. In the fiscal year 2008, over 700 Blue Lantern checks were made in over 90 countries worldwide.<sup>11</sup>

The Blue Lantern programme is not a law enforcement action or investigation; rather, it provides guidance on how to conduct pre-licence and post-shipment checks and, in some cases, post-licence but pre-shipment checks. It has established the following specific warning flags for licence assessments:

#### **End-use(r) indicators**

- **Unfamiliar end-user;**
- **Reluctance or evasiveness by US applicant or purchasing agent to provide information;**
- **Payment in cash or at above-market rates;**
- **Scanty, unavailable, or derogatory background information on end-user's business;**
- **Incomplete/suspect supporting documentation;**
- **Unfamiliarity of end-users with the product or its use;**
- **End-user declines usual follow-on service, installation, warranty, spares, repair, or overhaul contracts.**

#### **Commodity indicators**

- **Commodities/services appear excessive or inconsistent with end-user's or consignee's inventory or needs;**
- **Commodities in demand by embargoed countries;**
- **Especially sensitive commodities (e.g. night-vision equipment, unmanned aerial vehicles, or cruise missile technologies).**

#### **Country/shipment indicators**

- **Unusual routing, transshipment through multiple countries or companies;**
- **Location of end-user or consignee in a Free Trade Zone (FTZ);**
- **New/unfamiliar intermediary;**
- **Vague or suspicious delivery dates, locations (such as PO boxes), shipping instructions, packaging requirements, etc.;**
- **Designation of freight forwarders as foreign consignees or foreign end-users;**
- **Foreign intermediate consignees (trading companies, freight forwarders, export companies) with no apparent connection to the end-user.<sup>12</sup>**

## Import certificates

Import certificates are also end-use assurance documents, but are issued by the importing state as confirmation that it is aware of and does not object to the proposed import of a specific good. This certificate can in some cases be used as part of the end-use verification process. In other cases, import certificates are mandatory in the country of import.

### Import certificates: Latvia

Applications for export, import, and transit licences and international import certificates for strategic goods are submitted to the Latvian Export and Import Control Department of the Latvian Development Agency. For every export, import, or transit transaction of strategic goods, an individual licence is required to all destinations. The licences and licensing procedure are the same for military and dual-use goods and there are no value or quantity thresholds. Licences are valid for six months. Licences and import certificates are issued to companies registered in the Register of Enterprises of the Republic of Latvia. To obtain a licence the company must submit to the Department:

- **Application declaration on standard form;**
- **Registration certificate of the company;**
- **Special permit (licence) for several specified entrepreneurial activities (arms, dangerous chemicals, etc.);**
- **Description of the goods (giving the international registration number for chemical substances;**
- **Agreement or invoice (or a copy);**
- **International Import Certificate and/or end user statement of the importing country (or an equivalent document – statement, permit, etc.), if required by the Department (for export and transit).**

‘The importing company with its signature on the Import Certificate and EUC verifies that the goods shall not be used for production of weapons of mass destruction and the means of their delivery, is aware that these goods are controlled in accordance with the laws of Latvia and the exporting country, and that violations of those laws are a criminal offence. The importer also undertakes not to divert, re-export, or tranship the goods without written permission from the Department and export control authorities of the exporting country, and to inform export control authorities if he knows that the goods might be used for production of weapons of mass destruction or means of their delivery.’<sup>13</sup>

## Brokering controls

Authorities will require slightly different processes to regulate arms brokers. Such a system should include registration of arms brokers operating within their territory and licensing or authorisation of each proposed arms brokering activity, exemplified as:

- **Facilitation of a transfer to and from country X to a foreign country by a person/broker under the jurisdiction of country X;**
- **Facilitation of a transfer between two foreign countries (Y and Z) by a person/broker under the jurisdiction of country X;**
- **Facilitation of a transfer between country Y and Z by a person with the citizenship of country X but operating outside of country X.**

The controls will apply whether or not the compensation is received for the services provided. In addition to the information required on export licence applications, brokering licence applications will require information about the source country and the manufacturer/supplier. They must also contain proof that the transaction has been authorised by the exporting and importing countries. As highlighted above, disclosure on import and export licences or authorisations, or on accompanying documents, should include the names and locations of brokers involved in the transaction.

## Proof of implementation

### Transparency and accountability

National systems for arms transfer control can and should include provisions for information sharing and transparency. Information accessible to the public should include:

- **All laws, regulations, policies, practices, procedures, control lists, etc. pertaining to arms transfers;**
- **Periodic reporting (at least annually; some countries report quarterly or even monthly). Reports should include information on licences granted and refused, and deliveries made.**

### **Use of government information: India**

The Department of Commerce of India's Ministry of Commerce and Industry publishes handbooks on India's foreign trade policies and procedures on a regular basis. These handbooks are made public by various means, including the Gazette of India and the Directorate General of Foreign Trade website. The 2009–2014 Foreign Trade Policy Handbook specifies general provisions regarding imports and exports and their principles of restriction; for example, the import of arms and ammunition is allowed only under certain circumstances.<sup>14</sup> The current Handbook in Procedures further specifies processes such as the licensing of restricted goods or the detailed requirements for the import of ammunition by a licensed arms dealer.<sup>15</sup>

At the national level, transparency allows for accountability of decision-making, thereby increasing public confidence and exposing or reducing the incidence of corruption and poor procurement. It also provides information on policies and obligations for companies and other actors involved in trading, and thus provides predictability and increases commercial confidence. At the international level, increased transparency and accountability will promote trust and good governance.

### **Reporting: Netherlands**

The Netherlands issues annual reports on its exports of strategic goods. It does so based partly on the assumption that, with more transparency, companies are further encouraged to abide by the law. Moreover, by putting all relevant information in the public domain, the risk of misinformation and unfounded rumours is much reduced. In addition to the annual reports, monthly statistical reports are issued.

'The Annual Reports summarise the principles and procedures of the Netherlands arms export policy for the relevant year, describe developments relating to transparency, outline the Dutch defence-related industry, describe developments within the EU relevant to the arms export policy and efforts in the field of arms control with specific reference to the issue of small arms and light weapons. The Reports include appendices with tables and statistics on several aspects of the Netherlands Arms Export Policy.'<sup>16</sup>

Accountability with regards to international arms transfers could include:

- **Parliamentary scrutiny of transfer licensing policy and practice;**
- **A culture of openness and regular dialogue with industry and civil society on transfer control issues;**
- **The involvement of all key stakeholders – including government departments and agencies, parliament, NGOs, and industry – in the development and oversight of arms transfer control policy and practice; and**
- **A statutory requirement for publication of an annual report and parliamentary scrutiny of licensing policy and practice.**

### **Training and capacity-building**

Sufficient dedicated institutional and human resources will be required in order to ensure that laws, regulations, policies, and administrative procedures are implemented. Such requirements should include:

- **Training of staff in the government ministries, departments, and agencies involved in transfer licensing;**
- **Sufficient numbers of licensing officers to rigorously process applications in a timely manner; and**
- **An intra-government co-ordination mechanism to enhance the efficiency of the system.**

### **Training centres: Jordan**

The Cooperative Monitoring Center of Amman, an NGO with strong ties to the government, is a primary forum in the Middle East for regional experts and officials to explore and adapt technology-based methodologies and solutions for enhancing regional cooperation on security and security-related issues. Its mission is to be a source of technical guidance and information for policy-makers on regional security topics and to assist official and technical experts in the Middle East to acquire technology-based skills and tools necessary to assess, design, analyse, and implement projects related to non-proliferation, border controls, strategic trade controls, public health, and environmental security.<sup>17</sup>

Personnel must be adequately trained as appropriate and relevant to their role in the licensing institution. Potential training strategies include:

- **Introductory, on-the-job, and refresher training programmes;**
- **Developing structured training schemes (possibly involving external expertise) based upon best practice operating in other, comparable states. These could include exchange visits to licensing authorities in other countries;**
- **Developing clear guidance for trade control practitioners and a body of case experience on which to draw;**
- **The provision of an export control 'manual' that could include but need not be limited to commodity identification and classification, end-use verification, identification of risks of diversion, and critical evaluation of documentation and relevant information;**
- **'Buddying' or accompaniment whereby new recruits are partnered with experienced officials as they learn all aspects of licensing;**
- **Providing dialogue structures for consultation on licensing issues amongst a range of relevant government departments and external experts; and**
- **Ensuring that ongoing review of policies and procedures involves the input of licensing officers.**

In addition, institutions must develop ways to take advantage of the experience and knowledge of current and former staff by bolstering institutional memory. Potential strategies for effective institutional intra-government memory include:

- **Committees tasked to contribute to inter-agency learning (on technical as well as political issues) on the arms transfer authorisation process;**
- **Developing personal contacts among licensing experts involved in the strategic trade process, including other actors such as representatives from other engaged government agencies, think tanks, embassies, industry representatives, NGOs, etc.;**
- **Developing good record-keeping programmes for institutional memory and to help incoming personnel to become familiar with background information and standards, etc.;** and
- **Having systems in place to ensure that new staff receive adequate training and guidance in fulfilling their duties, e.g. through a programme whereby experienced staff have a mentoring role with new staff, with cross-agency co-operation and communication as a key component of that training.**

## Enforcement

# 4

A system of enforcement is necessary in order to ensure that national controls of international arms transfers work as intended and that, when violations occur, appropriate penalties and sanctions are implemented. Enforcement systems utilise the skills and resources of a variety of government agencies.

### Key elements of enforcement include:

- **Legal requirements**
- **Enforcement institutions**
- **Penalties and sanctions**
- **Procedures for enforcement**
- **Information sharing and transparency**
- **Training and capacity-building**

### Legal Requirements

Legal requirements for enforcement can be found not only in arms transfer controls legislation itself, but also in a wide variety of other laws and regulations, such as laws on customs or customs codes; border security laws; laws on police and/or criminal procedures; penal or criminal codes; administrative procedures acts and/or administrative violations codes; and laws on prosecutors.

In order to ensure that national transfer control systems work as intended, states must ensure that there is a legal framework in place that assigns strategic trade control enforcement responsibilities to special government entities. Laws will need to establish specific international arms transfer offences, such as submitting false or misleading information and transferring items without proper authorisation. Systems must include provision for investigation of possible breaches of the law and for prosecution where appropriate.

Exactly where routine checks end and 'enforcement' begins is not always easy to determine, but this continuum applies across all aspects of arms transfer controls, from the checking of licence applications and end-use documentation through to checks at border crossings, company audits, and post-transfer verification of end-use.

A key point of enforcement control is the screening of shipments at borders. This will include land, water, and airspace border crossings, but can also include the surveillance of web-based electronic communications to capture intangible transfers of technology, i.e. transfers that do not involve the physical movement of items. These would include, for example, blueprints sent by email. The legal requirements should further specify the legal mandate to search and to seize goods in case of suspicion. This can also include seizure of financial assets.

The most commonly used legal instrument is a state's customs law, but enforcement can also involve sections of the criminal code or the laws/acts governing its police or military forces. States, most likely through their customs authorities, will need to screen, search, and seize goods at the border. In addition, states will have to determine the types of sanction (administrative and criminal) and other penalties to be used for violations.

## **Enforcement institutions**

A variety of state institutions may be involved in, and maintain, responsibilities for enforcement of strategic controls on trade. These entities are responsible for screening shipments and individuals at borders (including checking paperwork); searching shipments; detaining questionable goods; seizing goods and financial assets; and investigating, prosecuting, and sentencing violators (using administrative and criminal sanctions).

### **Customs duties: Viet Nam**

Weapons and related materials are categorised in Viet Nam as special goods and their production, acquisition, transport, and trade are prohibited. Individuals are not permitted to possess or use weapons, except for sports and hunting guns.<sup>18</sup> Transit of arms, ammunition, explosives, and military equipment for national defence can be carried out under licence. Viet Nam is in the process of building a strategic trade control system for non-proliferation purposes, but at present its export control functions are carried out by Customs.<sup>19</sup>

Article 11 of the Viet Nam Customs Law, as amended in 2005, lists the legal requirements for customs officers as follows: 'Viet Nam Customs shall have the duties to inspect and supervise goods and means of transportation; to prevent and combat smuggling and illegal transportation of goods across the borders; to organize implementation of the tax laws applicable to imported or exported goods; to collate statistics on imported and exported goods; to make proposals for policies and measures for State administration of customs with respect to activities of import, export, entry, exit and transit and for policies on tax with respect to imported or exported goods.'<sup>20</sup>

States must also consider special procedures for enforcement and must develop procedures for risk management, such as targeting procedures, risk evaluation, and management. Such procedures can involve the use of electronic systems and databases, standard operating procedures, checklists, guidelines, and commodity identification handbooks. Moreover, states must co-operate with bordering countries and allow access to the records and premises of exporters. Enforcement personnel must be adequately trained and must maintain transparent and accountable reporting of customs and border control procedures and activities.

Enforcement should not be limited, however, to actions at borders. Breaches of the law may involve extensive planning and preparatory work on the part of those involved; where suspicions exist, the investigatory organs of police and/or customs agencies should be involved immediately, and ideally well in advance of any transfer actually taking place. Intelligence agencies should similarly be involved as appropriate. States should also seek to co-operate across borders where feasible.

Customs agencies, border guards, police, and the prosecutorial courts are the most common institutions used to enforce control systems for international transfers of arms. Clear and defined roles and mandates will aid collaboration and co-operation. Systems should be in place to sanction and punish international arms transfer control violations – through both civil and criminal channels, involving legal and judicial institutions and international co-operation through agencies such as Interpol.

The following are typical examples of violations, which will vary in severity according to intent and impact:

- **Conducting an international transfer of controlled goods or technology without a licence;**
- **Financing a prohibited international transfer;**
- **Failing to keep required records relating to international transfer activity;**
- **Making a false statement of a material fact on a licence application;**
- **Altering a licence;**
- **Making a false statement on a document;**
- **Possession with intent to trade illegally; and**
- **Attempting to violate strategic trade laws and regulations – careful consideration will have to be given to the level of intent or neglect in the violation.**

Readily accessible lists of authorised and legal brokers and other intermediaries should be kept so as to allow for information and intelligence sharing in order to avoid problematic exports. In addition, states must be able to revoke licences on specific grounds when procedures are violated; securely transfer controlled goods; and implement criminal and civil penalties, such as sanctions imposed upon those found guilty of breaching transfer control legislation. Penalties must be clearly defined and transparent.

#### **Lists of authorised brokers and intermediaries: Estonia**

The Estonian Ministry of Foreign Affairs holds a publicly available list of authorised and legal brokers of military goods. The list specifies the broker by company name and registration number and by individual. In addition, it states the conditions under which the licence can be used and in which countries the registered broker can operate.<sup>21</sup>

## **Penalties and sanctions**

States may have a variety of penalties and sanctions at their disposal to encourage participants in the transfer system to obey the law. These could fall under both administrative and criminal jurisdictions, and include:

- **Warning letters;**
- **Monetary fines;**
- **Revocation of licences;**
- **Downgrading of preferential treatment;**
- **Denial of access to government contracts or offset programmes/projects;**
- **Denial of privilege to trade;**
- **Seizure or forfeiture of goods; and**
- **Imprisonment.**

#### **Penalties and sanctions: South Africa and Japan**

In **South Africa**, the National Conventional Arms Control Act (Act No. 41) specifies a range of fines and penalties for violating the law relating to munitions. Anyone who trades in conventional arms without a permit, or fails to comply with an issued permit or with a condition under an end-user certificate, faces a fine and/or imprisonment for a period of up to 25 years. Submitting false information to the authorities or refusing to provide required information can result in a fine and/or imprisonment not exceeding 20 years.<sup>22</sup> The court may also order the seizure of any goods, articles, materials, or substances associated with the offence.<sup>23</sup>

In **Japan**, the Foreign Exchange and Foreign Trade Law (1949, amended) states:

**'Article 53(1):** The Ministry of Economy, Trade and Industry may prohibit a person who has exported [controlled] goods ... without obtaining permission ... from exporting goods or conducting transactions designed to provide the specified technology to a non-resident for a period of not more than three years. **Article 53(2):** The Ministry of Economy, Trade and Industry may prohibit a person who has violated this Act, any order based on this Act, or any disposition based thereon ... in regard to the import and export of goods from conducting import or export for a period of not more than one year.'<sup>24</sup>

### **Penalising diversions and unauthorised use**

Once arms have been transferred, the scope for the original transferring state to exert control over their possession and use is limited. However, in the event of diversion or misuse of transferred arms, the exporting state can:

- **Make diplomatic representation at various levels, including the public disclosure of the situation at hand as a warning example;**
- **Revoke the transfer licence and suspend any further deliveries of the arms in question and, in very serious cases, of other arms;**
- **Refuse spare parts, training, and technical assistance associated with the arms transfer in question and, in very serious cases, other arms contracts; and**
- **Refuse to licence any further transfers of arms until such time as it is confident that the problem has been successfully addressed.**

### **Procedures for enforcement**

A customs officer and/or border guard will perform the necessary checks on shipments crossing a border. Such procedures can include:

- **Surveillance of vehicles and individuals passing the border;**
- **Checking of documents relating to the shipment; and**
- **Inspection of cargo.**

In order to undertake these actions, officers need to be able to correctly identify the cargo. However, these officers may not always have the technical expertise needed to determine the strategic potential of a shipment. Thus, at a minimum, officers need a manual to guide them and should be given specific training in order to carry out assignments. In more comprehensive systems, the officer would be able to access and make use of electronic risk assessment systems and be able to ask technical questions through an established network of experts. To aid in such investigations, many states now make their electronic licensing systems accessible to customs and border guards.

In order to conduct inspections, officers need a legal mandate to stop, search, seize, and detain a shipment, without fear of repercussions. At a minimum, officers need tools to access the cargo (which is most likely to be in a container or truck storage area), flashlights, and mirrors to look under vehicles. More comprehensive systems utilise more sophisticated tools, such as scanners, and X-ray equipment.

If a shipment is detained, the prosecutorial phase will need to include an investigation of all details related to the transfer, such as documents, company records, and information pertaining to the individuals involved. In recent years, investigating agencies in countries worldwide have been relying on computer forensic analysis to a greater degree. Police and other law enforcement institutions are often mandated with these functions, working in partnership with legal and judicial institutions. Because traditional criminal prosecutors might not have the technical expertise to determine the basis and potential results of violations, the courts will need to establish, at a minimum, a network of technical experts to call upon.

### **Information sharing and transparency**

Effective enforcement is greatly assisted by the circulation of information, domestically as well as internationally. In some cases, this is done most usefully in the public domain, in other cases more privately. Typically, once an enforcement action is complete (potentially with a successful prosecution), as much information as possible should be made public. Often, awareness of violations by colleagues and competitors and of subsequent prosecutions is the most efficient way of encouraging industry compliance.

Information can be made available in a variety of ways. States can provide annual reports published by their customs agencies listing successful cases and seizures. In addition, collaborative initiatives on a bilateral or regional level (such as combined 'training of trainers' programmes) can further improve access to information and also strengthen international co-operation. Similarly, court records can serve as a tool for further information sharing on cases successfully prosecuted. States may also publicly produce end-use monitoring reports, publish lists of debarred exporters, and publicise fines and other sanctions against non-compliant actors.

Most states have, quite legitimately, strict rules on publishing information in the absence of proof of wrongdoing. Such rules function both to protect the innocent and to prevent investigations from being compromised. Such circumstances should not prevent extensive information sharing among relevant government departments and, where feasible and where not forbidden by privacy or data protection laws, etc., with relevant agencies of other states.

Sharing information across borders can be undertaken in a variety of ways. In some cases there may be formal bilateral, regional, or multilateral arrangements, while in others information may flow through informal networks established via personal contacts between professionals, such as customs officer networks. While both approaches will have their advantages, states are advised not to rely solely on informal contacts, as these can be subject to disruption purely on the basis that an individual changes job or is absent for extended periods.

Whatever information-sharing and transparency systems are in place, these will have to be established and protected through laws or regulations, and will need to be consistent with other relevant national laws and practice.

### **Training and capacity-building**

Sufficient dedicated institutional and human resources are required to ensure that laws, regulations, policies, and administrative procedures are implemented. This will include adequate numbers of enforcement officers (such as customs and border police, investigation agencies, public prosecutors, and judges), relative to the quantity of transfers. For example, one mobile unit patrolling a long land border cannot possibly perform its duties in an efficient way if it is to cover several trade routes.

States with a large arms manufacturing/transfer sector should be in a position to establish dedicated units to implement training and capacity programmes, in co-operation and co-ordination with other enforcement actors. States with less involvement in arms transfers are unlikely to be able to afford the luxury of having dedicated staff. For the relevant officials in such countries, transfer controls will be only one aspect of a broader portfolio of work. Nevertheless, there will still be a need to ensure that transfer controls are given an appropriate level of prioritisation and that staff receive the necessary training. Co-operation with enforcement agencies from states with more resources should be helpful in this context, from training through to investigation and prosecution of specific cases. States with greater capacity are encouraged to regard enforcement outreach as a key component of their work.

#### **Customs training: South Korea**

The Korean Strategic Trade Institute (KOSTI) trains customs officials to classify exports on-site. Officials from Customs and the Coast Guard are invited to training sessions on the export control system, product classification, on-site inspection, and how to check transit and transshipment cargoes and items in Free Trade Zones.

KOSTI also trains the police on export controls and measures to detect illegal exports. This has resulted in police investigations and businesses being informed that their exports might be illegal.

Customs has started to detain suspicious exports in the clearance process. KOSTI and Customs have inserted the World Customs Organisation's Harmonised Commodity Description and Coding System code-relation table into their screening system so that suspicious cargoes can be held by Customs officers.

The online system 'Yestrade' has become an export control hub system among different agencies and businesses and is now linked with Customs, sending licence information to and receiving clearance data from the customs authorities.<sup>25</sup>

## External outreach to industry and international partners

# 5

### Key elements of government-to-industry relations include:

- Legal requirements
- Institutions and procedures
- Transparency and implementation

### Key elements of outreach to international partners include:

- Information sharing and exchange with other governments
- International transparency reporting and accountability
- Capacity-building and assistance

## The government-to-industry relationship

Working with the defence industry is a key component of a national control system for international arms transfers. Although many defence companies may be less globalised than their counterparts in other industries, there is a strong and increasing trend towards globalisation – from both a commercial perspective (e.g. joint ventures, subsidiary companies, part-owned companies) and a production perspective (e.g. licensed production, components being sourced from companies all over the world). This puts an increased burden on companies that operate in a variety of markets to engage with and follow a number of different strategic trade control systems with varying rules and procedures.

## Legal requirements

Industry is legally required to abide by national laws and regulations on international transfers of conventional arms. However, there is a duty on government, and often a legal requirement, to provide information to companies about their obligations. In some countries, governments require companies to put in place 'internal compliance programmes' (ICPs) to access certain types of licence (for instance, general licences). Lack of knowledge of national strategic trade control laws and policies may lead to inadvertent violations.

Legal requirements for governments to provide information to industry pertaining to arms transfers (e.g. regulatory updates or procedures) are often found in states' primary legislation, as are the obligations for companies to register or to apply for licences; keep records and provide information to government; and make premises and records available for government audits of their activities. Procedures for performing these functions can be further specified in regulations. In other cases, national law can require the solicitation of advice from companies or research institutions on technical matters concerning new control list additions or omissions.

### Legal requirements for providing information to authorities: Spain

Article 7:1 of the Regulations of Foreign Trade Control of Military Equipment, Materials, and Other Products and Dual-Use Technologies (Royal Decree 1782/2004) reads as follows:

'License holders will be subject to inspection by the General Secretariat of Foreign Trade, Ministry of Industry, Tourism and Trade and the Department of Customs and Excise of the State Agency for Tax Administration, and shall keep at the disposal of these bodies all documents relating to the respective operations that are not already held by the government, until a period of four years from the date of expiry of the period of validity of the authorization. They must return the copy of the license to the competent authority of dispatch at the latest within 10 working days of its expiration date.'<sup>26</sup>

The licensing authority is often the primary institution to reach out to industry and the academic community to provide information concerning strategic trade control requirements. In some cases governments can involve independent institutions to perform this task.

### **The role of an external organisation: Ukraine**

The Scientific and Technical Centre of Export and Import of Special Technologies, Hardware, and Materials (STC) is a non-government, non-profit organisation within the export control system in Ukraine. It was established in 1997 at the initiative of the Ministry of Industrial Policy, with the consent of the State Service of Export Control. Its mission is to assist actors engaged in foreign economic activities in the practical implementation of export control-related legislative and regulatory documents. STC assists industrial enterprises in developing export control internal compliance systems and commodity identification programmes, as well as providing assistance to enterprises concerning export control procedures and rules and conducting expert assessments of goods. STC also arranges seminars for industry on changes in relevant Ukrainian legislative and regulatory documents. Every year, training and consultative seminars are held for enterprises in different business sectors.<sup>27</sup>

### **Mandatory internal compliance programmes: Russia**

Under Article 16 of the Russian Federation's Export Control Law, as amended in November 2007, ICPs are mandatory for organisations working on defence contracts and in security areas, and also in order to obtain a licence for specific exports.<sup>28</sup> The government resolution 'On State Accreditation of Facilities Establishing Internal Compliance System' (2000) specifies that accreditation is carried out by the Federal Service for Technical and Export Control (FSTEC).

More and more states are developing web-based programmes for industry to apply for licences, check the status of applications, and obtain information about changing laws, policies, procedures, and lists.

### **Online licensing system: United Kingdom**

SPIRE is the one-stop online licensing database of the UK's Export Control Organisation (ECO) in the Department for Business, Innovation and Skills. Exporters use the SPIRE system to apply or register for export or trade licences issued by the ECO for military goods and controlled dual-use goods (i.e. civilian goods with a military purpose) such as lasers, chemicals, nuclear equipment and materials, telecoms equipment, and computers. Companies are also able to monitor the progress of their licence through the licensing system.<sup>29</sup>

### **Institutions and procedures**

States communicate in a variety of ways (publications, websites, face to face, through trade associations) with industry, relevant researchers, and academia to:

- **Ensure clarity in process, procedure, and law. Industry cannot be expected to comply with the licensing process if information is not available or if the process is unclear;**
- **Provide information and guidance to establish an internal compliance programme (ICP). The government can explain what would ideally be included in an ICP and can certify such programmes;**
- **Facilitate voluntary disclosure in cases where a company discovers that it has inadvertently violated the law and wants to alert the government;**
- **Promote transparency through other institutions such as trade associations; and**
- **Provide opportunities for industry to provide input into new proposals for updated transfer control legislation and control lists.**

## Transparency and implementation

States should avoid using a 'one size fits all' approach in working with industry – information and the means of communication need to be tailored to fit the audience and the environment. Customised assistance can respond to traders' specific questions or concerns and helps government and industry to develop a more co-operative working relationship, thereby improving efficiency.

Effective industry outreach could include the following actions by government:

- **Developing an official website for the key state licensing agencies;**
- **Ensuring that all legislation and regulations, etc. are readily available publicly;**
- **Producing guides/handbooks/manuals that explain the licensing process and company responsibilities;**
- **Requiring registration of all parties who wish to be involved in the transfer of controlled goods;**
- **Establishing audited internal compliance programmes for industry;**
- **Making regular compliance visits to companies;**
- **Providing a regular email service to companies (advising of changes to regulations, embargo updates, prosecutions, etc.);**
- **Holding themed seminars and workshops for defence equipment manufacturers, exporters, brokers/traders, etc.;**
- **Holding national arms transfer control conferences;**
- **Participating in national defence exhibitions, e.g. to explain the arms transfer control system;**
- **Developing protocols of co-operation with the local chambers of commerce;**
- **Providing assistance in classifying specific commodities;**
- **Providing information on licensing processes;**
- **Providing information concerning possible catch-all-controlled transactions; and**
- **Answering questions concerning companies' legal/regulatory compliance.**

Tools that governments can use include:

- **Contact information on websites or in publications;**
- **Helplines;**
- **Emails and letters;**
- **Personal meetings;**
- **Question-and-answer sessions at seminars and training activities;**
- **Information gathered from non-government or affiliated organisations; and**
- **On-site inspections of company compliance measures with advice on how to improve.**

## The external relationship

### Information sharing and exchange with other governments

Many states have formal information-sharing or information exchange obligations and/or commitments as a consequence of bilateral, regional, multilateral, or international agreements. Moreover, contacts with other states, generated through membership of these agreements or by other means, may also allow access to important information that could be helpful in the case of a complicated licensing situation, or an end-user check or commodity classification. This may be promoted by establishing a national point of contact for national arms transfer control policy and practice.

### International transparency, reporting, and accountability

States should be as open as possible in terms of the systems and communication frameworks established with regard to arms transfer controls. All aspects of a national control system should be covered, including legislation, policy, administration, enforcement, and reporting.

Responsibilities for information-sharing will need to be assigned to appropriate ministries, departments, or agencies, depending on the nature of the external partners and the information in question, consistent with national regulatory frameworks.

In some cases the state may have information-sharing obligations and/or commitments as a consequence of bilateral, regional, multilateral, or international agreements. Such obligations may need to be reconciled with other legislation or regulation with respect to issues of national security, privacy, data protection, and commercial confidentiality.

As a fundamental principle, governments should operate their national transfer control systems on the

basis that information will be provided unless there is good reason why it should not be. The establishment of a national point of contact for national arms transfer control policy and practice, made publicly available through international institutions such as the UN, would further improve transparency.

### **Capacity-building and assistance**

The costs involved in establishing and maintaining a comprehensive transfer control system may create financial and resource capacity issues for some states. A country with limited resources will be reluctant to invest in a system for trade control when many other priorities are at stake. It is in such a context that an ATT may prove particularly useful. The treaty has the possibility to raise the level of awareness on capacity issues worldwide.

Most states have some level of transfer control capacity. As a result, the implementation of a future ATT would mean that there will be very few states starting completely from scratch in their development of arms transfer control capabilities. Instead, for the great majority of states, the ATT will involve developing and improving existing national frameworks and control systems. This may require the introduction of legislative measures (particularly where existing legislation is outdated), the establishment of regulatory mechanisms and transfer control policies, and the development of administrative and enforcement procedures and capacity. Capacity-building and assistance will be critical to the ATT's success, but the treaty can also potentially serve as a clearing house for offers of and requests for assistance.

Resource and capacity challenges will vary from state to state and may include a lack of:

- **(Trained) staff;**
- **Technical expertise in applying transfer control criteria;**
- **Information technology and data management systems for logging licence applications, storing information gathered during processing, recording outcomes, linking licensing and enforcement functions, and risk assessment, etc.; and**
- **Technical infrastructure, e.g. scanning machines, for the enforcement of controls.**

It will be difficult for some states to establish the necessary resources quickly, particularly when they are experiencing wider resource constraints and developmental challenges. While the initial costs of establishing an arms transfer control system may be significant, costs should nevertheless be in proportion

to the scale of the volume of arms transfer licence applications that are received each year. Typically, states that seldom export conventional arms may require a different system from those exporting on a more regular basis. Whereas transit and brokerage licences may not be proportional to the volume of arms exported, states may offset the costs involved in dealing with this trade by levying fees for processing transfer licence applications and the movement of arms through their territory.

National controls on international arms transfers will be most effective when reinforced by international co-operation and information sharing and the provision of assistance to states with a lack of relevant capacity or expertise. Existing capacity-building arrangements are inadequate for the task of supporting a new global agreement, and those states with significant expertise in transfer controls will need to redouble their efforts to provide concrete assistance to states that are lacking in this area. One of the primary challenges for the ATT will, therefore, be to develop a coherent global framework for the articulation of needs and provision of assistance, with enough states committed to providing the necessary support so as to enable all states to meet their transfer control commitments under a treaty.

To best determine what levels of capacity and assistance are required to implement a national system for international arms transfers, the first step is to determine what states want and need. States must then build awareness and be willing to ask for and/or provide assistance. Capacity-building must, however, be tailored to the requirements and capabilities of the respective partner states, with time and care taken to allow information, culture, mechanisms, and systems to be embedded across the relevant institutions. In many areas of transfer controls, e.g. Customs, this is an ongoing process.

Ultimately, national governments must themselves identify assistance needs and initiate requests for that assistance. The best type of assistance is tailored to the need, but assistance providers should not be passive in this process. Assistance programmes have to be better co-ordinated and spread. Advertising a willingness to provide support, co-ordinating with other providers, and being clear about the types of support on offer will encourage others to make their assistance needs known. And, while assistance can be offered directly to countries that have not specifically asked for it, it remains up to each state to determine for itself whether or not it wants assistance.

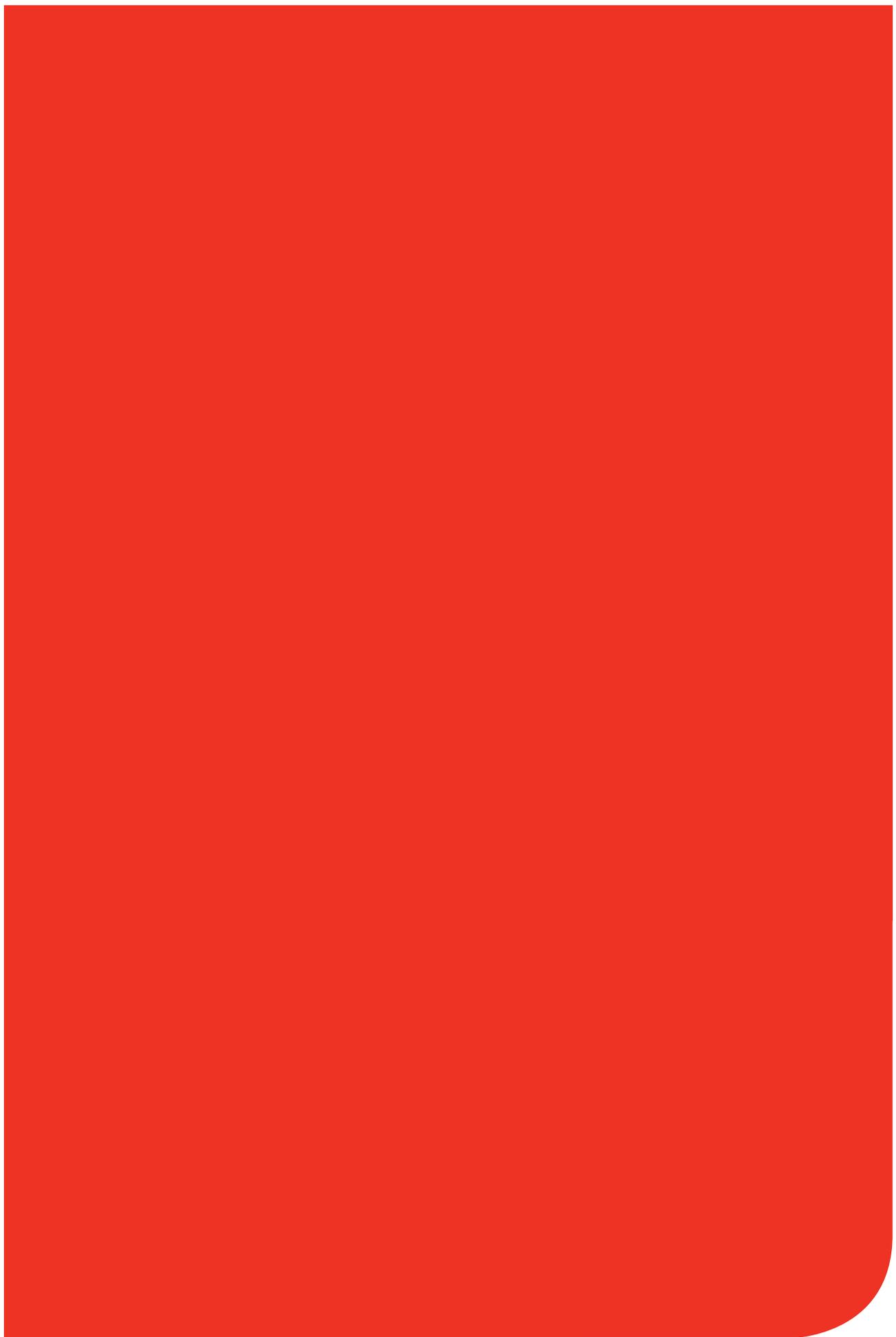
In recent years states have increasingly begun to recognise that the regulation of the international trade in conventional arms is a necessary and essential component of national and international security. National systems have been established and enhanced, and a number of regional agreements have been adopted, with a marked level of commonality across these agreements. Still, the network of systems is incomplete and the patchwork that currently exists raises the risk of loopholes being used to permit potentially dangerous international arms transfers. Developing solid national systems for the control of international transfers of arms is a concern for all countries worldwide.

As states move forward with an ATT, some of these loopholes may be eliminated. However, even with an ATT, states will still be required to make national decisions concerning arms transfers – whether to allow a transfer and how to implement their various national procedures. An ATT will set specific minimum standards that all states will be expected to incorporate into their national laws and processes.

This practical guide is intended to assist states in meeting their future obligations under a treaty. However, irrespective of the ATT, the guide is available for states' use to enhance and develop their national systems. States are continually updating and putting in place the building blocks for an effective national system. These building blocks are essential for effective transfer controls, at both the national and global levels, and should be taken into account regardless of the ATT process. Once an ATT is negotiated, states that have developed comprehensive national transfer control systems will be better placed to effectively and efficiently implement the ATT.

## Endnotes

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Ministry of Foreign Affairs

Oxfam acknowledges with thanks, the support of the Ministry of Foreign Affairs of the Netherlands in the production of this report.

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The **Center for International Trade and Security** at the University of Georgia, USA endeavors to promote peace and prosperity through the use of research, training, and outreach focused on the mitigation of threats posed by the trade of weapons of mass destruction materials and technologies and other military-related transfers as well as the illicit trade in conventional arms. The Center (CITS) carries out its mission by engaging and informing policymakers, industry representatives, educators, students, and the general public, both in the United States and abroad, about the dangers of trade in and theft of weapons and weapons components.

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