

SECOND MEETING OF THE CIFTA-CICAD GROUP OF
EXPERTS TO PREPARE MODEL LEGISLATION
ON THE AREAS COVERED BY THE CIFTA
October 11-13, 2006
Washington, D.C.

OEA/Ser.L/XXII.6.2
GE/CIFTA-CICAD/doc.2/06 rev. 4
9 May 2008
Original: English

PROPOSED MODEL LEGISLATION AND COMMENTARIES
FOR STRENGTHENING CONTROLS AT EXPORT POINTS FOR FIREARMS,
AMMUNITION, EXPLOSIVES AND OTHER RELATED MATERIALS

(Approved *ad referendum* by the Consultative Committee on May 8, 2008)

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PREAMBLE

This proposed Model Legislation and accompanying commentaries reflects Member States' conviction that illicit international trade in firearms, their parts and components and ammunition constitutes a specific risk to the security and well-being of Member States and that measures to promote further cooperation among them, in particular by the promotion of strengthened controls at export points, will assist in preventing their diversion to unlawful ends.

The proposed Model endeavors to underscore Article X of the Inter-American Convention Against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives and other Related Materials (CIFTA) in which State Parties are called upon to "adopt such measures as may be necessary to detect and prevent the illicit manufacturing of and trafficking in firearms, ammunition, explosives and other related materials between its territory and that of other States Parties, by strengthening controls at export points." It further seeks to address the requirement of Article IX of the CIFTA that States Parties establish or maintain an effective system of export licenses or authorizations, as well as with Article VIII of the CIFTA, in which States Parties should undertake to adopt measures to ensure the security of firearms, ammunition, explosives and other related materials.

The strengthening of export points is essential to the implementation of national controls on exports and should complement other control mechanisms established by Member States in related areas, including controls regarding importation and in transit movements of firearms, ammunition, explosives and other related materials.

Member States that seek to strengthen the legislative and/or regulatory regimes in relation to strengthening controls at export points may wish to adopt, in accordance with the provisions of their national policies, their legal systems and in accordance with their fundamental laws, the policies and practices identified in the following commentaries and in the legal provisions of the proposed Model Legislation.

1. DEFINITIONS

Commentary

The following definitions shall be applicable throughout the text of this Model Legislation except when another meaning is expressly indicated.

Text

“Ammunition” means the complete round or its components, including cartridge cases, primers, propellant powder, bullets, or projectiles that are used in any firearm, as defined in Article I of the Inter-American Convention.

“Explosives” means any substance or article that is made, manufactured, or used to produce an explosion, detonation, or propulsive or pyrotechnic effect, except:

- a. substances and articles that are not in and of themselves explosive;
or
- b. substances and articles listed in the Annex to the Inter-American Convention;

as defined in Article I of the Inter-American Convention.

“Firearms” means:

- a. any barreled weapon which will or is designed to or may be readily converted to expel a bullet or projectile by the action of an explosive, except antique firearms manufactured before the 20th Century or their replicas; or
- b. any other weapon or destructive device such as any explosive, incendiary or gas bomb, grenade, rocket, rocket launcher, missile, missile system, or mine;

as defined in Article I of the Inter-American Convention.

“Inter-American Convention” means the Inter-American Convention Against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives, and Other Related Materials.

“License” or “licensing” means the license that authorizes a person to export firearms, ammunition, explosives and other related materials referred to in pursuant to Items 4 and 5 of this Model Legislation.

“Office of Export Controls” or “OEC” refers to a national agency described in the “Text” portion of item 3 of this Model Legislation, responsible for the review of applications for and issuance of export licenses.

“Person” includes natural and legal persons.

“Other related materials” means any component, part, or replacement part of a firearm, or an accessory which can be attached to a firearm as defined in Article I of the Inter-American Convention.

“Serious crime” means conduct constituting an offense punishable by a maximum deprivation of liberty of at least four years or a more serious penalty.

(What constitutes a “serious crime” may differ from country to country, and in other countries, may not be defined in national law. In this Model Legislation, the expression is used in Article X for the purpose of determining an applicant’s eligibility for a license with the idea of rejecting applicants convicted of a type of offense that would make it undesirable that they engage in arms exporting, such as an offense that raises a connection to organized crime. The same definition is used in the United Nations Transnational Organized Crime Convention.)

2. DESIGNATED EXPORT POINTS

Commentary

The purpose of strengthening controls at export points under Article X of the CIFTA goes to the detection and prevention of illicit trafficking of the products identified in CIFTA, firearms and related materials, ammunition and explosives¹. Illicit trafficking is broadly defined in the CIFTA, so as to include the unauthorized movement of any product from or across the territory of one State Party to another. Thus, the term “illicit trafficking” would include any unlicensed or undeclared (i.e. smuggled) or mis-declared product and shipment irregularities, such as for example, shipments containing incorrect volumes and types of the product, or products that have not been properly marked or that lack other identifying characteristics that are in conformity with the export permit/authorization granted.

Some countries, especially smaller countries and/or those that do not produce firearms, may find that the exclusive designation of only one or a few export points through which the products to which the Convention applies can be exported will help to improve the application of the country’s export control measures, because the designation of specific export points for those products would mean that these would be only permitted to pass through an export point or points that have been strengthened in such a way that they would possess the facilities, equipment and personnel best able to detect and prevent illicit trafficking, in furtherance of Article X of the Convention.

In view of the broad scope of products addressed by the Convention – firearms and related materials, ammunition and explosives – it may be appropriate that the designated export points for one of the products – explosives -- be different from those for the others. Exporting explosives may necessitate the use of different export points for both security and safety considerations. To this end, a security and safety audit of individual sites could be carried out.

Having selected strengthened specialized export points would facilitate the detection of anomalies not only between the goods being exported and those identified in the corresponding licenses or permits, but in the routing patterns proposed for the exported product. Likewise officials at export points could develop a sense of which shippers were likely to be reliable and which not,

1. The CIFTA refers to “Firearms, ammunition, explosives, and other related materials”, however, the term “other related materials” is defined solely in the context of “firearms”, therefore this instrument attempts to clarify this point by referring to “firearms and related materials, ammunition and explosives”.

because as the sole or principal points for export of these products, experience would make them sensitive to traditional routing patterns used by shippers and whether these seemed to be legitimate. Also, a comprehensive list of approved or reviewed exporters, brokers and freight forwarders could prove very useful for export officers.

Acknowledging that the designation of specific points will undoubtedly lead to the attempted use of other export points that are not specifically designated for the export of such products, controls at all other export points will need to be strengthened at the same time. The strengthening of these points could be primarily accomplished through the upgrading of staff in the detection of illicitly manufactured or trafficked products.

In addition, the attempted use of unauthorized export points for the products identified in the Convention could be discouraged by rules that heighten penalties beyond the usual. Legislation could be introduced to make the attempted use of unauthorized (not specially designated) export points an illicit trafficking offense and this could contain penalties that in addition to the customary ones for illicit trafficking, such as confiscation of all illicitly manufactured or trafficked products, could include cancellation and permanent non-renewal of permits and licenses for any convicted person or entity, as well as sizeable fines and possible imprisonment of all parties who could be linked to the transaction.

In terms of detection and enforcement, as will be seen later in this Model Legislation, customs staff (or the staff of whatever Ministry is responsible for export points) should be provided with specialized training in the detection of illicit firearms and related materials, ammunition and explosives. Cadres of the most highly trained officials could also be moved to different export points on a short-term basis if intelligence reveals that smuggling through such a particular point is likely to become or has become a problem. In addition, mobile detection equipment could be acquired by countries and moved to different export points on a spot-check basis as required.

The designation of specific export points should be effected by regulations that could be amended from time to time without the need for new legislation.

Text

- 2.1 The exportation of firearms and related materials, ammunition and explosives may only be effected at the authorized customs locations listed in the regulations.
- 2.2 The attempted exportation or exportation of firearms and related materials, ammunition and explosives at a location other than an authorized customs location shall constitute an offense identified in Item 10 (1) (d).

3. COORDINATION AND COMMUNICATION AMONG GOVERNMENT AGENCIES

Commentary

Criminal activity tends to flourish when the mandates of government are unclear and when laws do not lead to prosecution and imprisonment of those who break them. These factors can also demoralize officials responsible for implementing the law and make them susceptible to corruption.

These conditions can be exacerbated when several government agencies are responsible for the oversight and control of an issue and coordination and communication between them is weak. Control over an issue can be further undermined by inter-departmental conflict and poor administration when lines of authority are not clear. The Otterloo case, in which firearms from Nicaragua, ostensibly for export to Panama, ended up in the hands of the AUC forces in Colombia, resulted in large part from poor inter-departmental communications, in particular a failure to confirm with Panamanian authorities the intent to import the firearms.

In a number of countries decisions on exports of firearms and related materials, ammunition and explosives often involve a number of government departments. Ministries with responsibilities for trade, foreign affairs, police departments and customs are typically involved. In some cases, final decisions on the exportation of certain firearms, related materials, ammunition and explosives may even involve the executive branch whether through a government's cabinet or cabinet committee, or simply the Chief Executive alone.

In some other countries, military forces are responsible for all aspects of firearms and related materials, ammunition and explosives control, including the importation and exportation of these products, and may operate independently of civilian authorities. This may avoid the problem of interdepartmental coordination referred to above, but the absence of civilian involvement may give rise to other problems, such as policy differences on exports of firearms, related materials, ammunition and explosives between military and civilian authorities.

Regardless of the number of agencies involved in the export of firearms and related materials, ammunition and explosives, a primary feature of a country's control system is its authorization of the export, usually evidenced through a license or permit issued for this purpose. Such licenses are usually limited as to time of validity, type of product, quantity, destination and other restrictions and are issued only to persons or entities that meet standards established by the responsible government authority, including those standards established because of bilateral or multilateral commitments.

Near the end of the export process, the officials (usually of customs departments) at export points become the last bastion of control to ensure, within their own mandates, that the shipments of firearms or related materials, ammunition or explosives, as the case may be, meet their verification criteria and that all appropriate authorizations have been given in accordance with the law by the officials in the respective ministries concerned. Only at this point are the exports of the firearms or related materials, ammunition and explosives allowed to proceed.

Accordingly, authorities at export points should be responsible for inspecting the shipments brought to the export point for export and ensuring that the firearms and/or related materials, ammunition and explosives match in numbers, type and other distinguishing characteristics the items listed on the licenses issued by the responsible authority. They will also be responsible for verifying that the licenses are valid and that *the necessary licenses/authorizations from the importing and/or in-transit countries have been* issued before they authorize release of the firearms and related materials, ammunition and explosives.

Several measures and tools will facilitate the ability of the officials to perform their tasks effectively and avoid the coordination problems referred to above.

First, among the departments involved in the export of firearms and related materials, ammunition and explosives, a central supervisory authority should be designated responsible for the export of these products. This authority could reside in the office responsible for export controls (OEC or Office), located in a Ministry such as the Ministry of Foreign Affairs and with overall responsibility for overseeing, coordinating and, subject to specified parameters to avoid inter-departmental conflict, effecting control over the entire export process.

The determination of products that could or could not be exported and any limitations on the countries to which these could be sent would be the subject of lists set out in regulations or directives issued by the executive, but administration would reside with the OEC. The Office would also have responsibility for the approval and issuance of export licenses and for verifying the import/in-transit licenses or authorizations from the countries to (and through) which the firearms, related materials, ammunition or explosives are proposed to be sent. Officials at export points would have to have the ability to communicate directly with the OEC, including by electronic communication, in order to confirm aspects of exports about which they might have any questions or uncertainties. They should also know which officials have issued the export license and verified the legitimacy of the corresponding import and/or in transit licenses. To this end, the officials at the export points would need to be able to communicate directly with those persons by telephone or electronically.

Second, an inter-departmental coordination mechanism or entity chaired by the Office of Export Controls or customs or police departments that would meet on a routine basis should be established. This entity could, among other functions, arrange workshops or seminars at which officials of the different departments at the working level could exchange ideas and experiences and otherwise attempt to determine improved ways of working together. One area that could result in productive cooperation would lie in information exchanges between customs officials at export points and the responsible law-enforcement authorities and the subsequent carrying out of joint operations against smugglers of illicit arms and related materials.

Third, a manual should be developed and maintained by the OEC that sets out the mandates, roles and responsibilities in relation to firearms and related materials, ammunition and explosives of each of the responsible offices in the various ministries concerned. A directory of officials and contact points in each ministry should be included, along with extracts of relevant legislation and regulations.

Fourth, countries may wish to exchange current sample copies of import, export and transit licenses so that recipient states would be more readily able to determine whether documentation was genuine.

This manual should be available to all the authorities involved in a firearms or other related materials, ammunition or explosives transaction in hard copy and on-line and be kept updated on a routine basis, so that any change in officials, procedures or responsibilities is immediately flagged for the persons dependent on that information.

Finally, all government agencies involved in the export of firearms and related materials, ammunition and explosives, should be on a common and secure electronic information system as referred to in Item 5.

Text

- 3.1 There shall be established a central office responsible for administering export controls (the “Office of Export Control” or “Office”) situated in the Ministry of _____.
- 3.2 Among other functions, the Office shall be responsible for:
- (a) reviewing applications for licenses to export firearms and related materials, ammunition and explosives;
 - (b) issuing or, as the case may be, denying issuance of export licenses and notifying applicants accordingly;
 - (c) verifying import licenses and in transit authorizations of other State Parties;
 - (d) providing immediate responses to queries from export points regarding firearms and other related materials, ammunition and explosives;
 - (e) development and maintenance of a manual that sets out the mandates, roles and responsibilities in relation to firearms and other related materials, ammunition and explosives on the part of each of the responsible offices in the various ministries concerned.
- 3.3 The Office of Export Control shall designate the officials authorized to issue licenses for the export of firearms and other related materials, ammunition and explosives.
- 3.4 The key contact points, addresses, telephone numbers and e-mail addresses of the office authorized to issue licenses for the export of firearms and other related materials, ammunition and explosives shall be publicly published by the State Party for the notice of applicants seeking to export these products.
- 3.5 The Office of Export Control shall also make available the key contact information of the Office to the national authorities of States Parties responsible for issuing in-transit and import licenses in order to facilitate the requirements of Article IX.3 of the Inter-American Convention.
- 3.6 The Office of Export Control shall establish a secure electronic communications system for use by officials authorized to issue licenses for the export of firearms and other related materials, ammunition and explosives, and other responsible authorities and in particular the officials at export control points.

4. EXPORT LICENSE APPLICATIONS

Commentary

As indicated above, the Office of Export Control would be responsible for receiving licensing applications and, as appropriate, issuing licenses for the export of firearms and related materials, ammunition and explosives. This provision sets out possible requirements that countries might impose upon applicants seeking an export license for these products.

Wherever possible, countries should require that export license applications be made in a standard format by electronic means.

Text

- 4.1. Every person who proposes to export firearms and related materials, ammunition or explosives from the territorial jurisdiction of _____ (country) shall first obtain a license issued by the Office of Export Control prior to each proposed exportation of that product.
 - 4.2. To obtain a license, the applicant shall provide to the Office of Export Control the information set out in Item 5. (1) below. Before it issues the license, the Office may require verification of the information submitted by the provision of original or certified copies of the documentation required in support of the application.
 - 4.3. A license authorizing the export of firearms and related materials, ammunition or explosives shall be valid for a period of _____.
 - 4.4. No license shall be issued to a person who has been convicted of a serious crime in any jurisdiction.
 - 4.5. No license shall be issued that would authorize a person to export the following classes of firearms and related materials, ammunition and explosives:

(Here, individual countries would set out the classes of prohibited weapons for which an export license will not issue.)
 - 4.6. No license shall be issued that would authorize a person to export firearms to any country or countries that are the subject of an arms embargo of the United Nations Security Council or other multilateral sanctions to which the country adheres, or that it unilaterally applies.
 - 4.7. An export license issued to a person under this Item shall not be transferable to another person.
5. REQUIREMENTS FOR EXPORT LICENSES FOR THE CONTROL OF FIREARMS AND RELATED MATERIALS, AMMUNITION, AND EXPLOSIVES AND IN THE EXPORT CONTROL PROCESS

Commentary

As noted in Item 3 above, improvements in communications and coordination among all the actors involved in the control of firearms and related materials, ammunition and explosives in a country will help to strengthen export points. A system of common information technology among the agencies having responsibilities in relation to these products is one tool to this end. This will mean, however, that every government authorized export point, no matter how small, should have electronic access to each of the other actors on the system.

While such technology could and, as applicable, should be applied to a wide variety of export products, in view of the sensitivity associated with firearms and related materials, ammunition and explosives, countries should give consideration to establishing a permanent and secure electronic communication system specific to these products that could only be accessed by authorized personnel, possibly with different levels of access depending upon the function(s) performed by each.

The system as it relates to exports of firearms and related materials, ammunition and explosives should include, among other features, a check list that sets out all the steps of the approval procedures for the export of firearms and related materials, ammunition and explosives that indicates in relation to a particular shipment of these products which steps in the export process have been complied with. Information about these exports and records of the completion of the clearances, for which each agency is responsible, should be stored in a data base controlled by the Office of Export Control. After all preliminary steps have been completed, the check list would be made available to the customs officials "on the ground" at the export point each time a shipment is being forwarded to it for export.

Through the system, officials at the export points should also have the means to confirm electronically (as well as against hard copy documentation), all necessary features of the products when they conduct their inspection/examination. The system should include descriptive specification records of the products that clearly identifies them, the numbers of the product proposed to be exported under the license, as well as the serial numbers and other identifying markings or, as applicable, the corresponding lot numbers.

In addition to the above-mentioned descriptive information, the documentation related to the export license would indicate the firearms or related product manufacturer, any brokers involved in the export transaction, the would-be exporter, the importer and the shipper and the final recipient or end-user. In each case the copies of the business license of each of these entities showing its date of issuance and expiry (if applicable) and the address, telephone, facsimile and electronic mail of these persons, as well as the bill of sale should also be provided.

In the event that the export license application is denied, this fact should be recorded in the OEC's database along with a statement of the reasons for the denial. Any license irregularities and past denials or revocations of previous export licenses should also form part of the database.

Both electronic and hard copies of the export license and related documentation would be available for the reference of the customs officials at the point of export. The hard copy would accompany the shipment. If the export point officials had questions about any aspect of an intended export, these could be checked through the system to verify the export license, the import licenses or in-transit authorization documentation, and allow for checks to be made on the shipment and the persons engaged in the export.

After the customs officials at the point of export complete their verification of the shipment and related information, the senior officer responsible for the verification would, in the event of an approved shipment, affix the customs office's stamp to the hard copy of the documentation and sign the copy. This copy would be retained for the records of the customs department. If shipment of the proposed export is denied the senior officer shall immediately notify Customs Head Office and the Office of Export Controls.

Whether export of the shipment is approved or denied, the senior officer would also send an electronic message notifying Customs Head Office and the Office of Export Controls accordingly. This message should be entered in the OEC's database to become part of the country's record of exports of firearms and related materials, ammunition or explosives.

As with other records of a sensitive nature, countries should consider preserving records of export licenses and actual exports of firearms and related materials, ammunition and explosives for lengthy periods of time, preferably over twenty years.

The system would also include a manual of instructions for customs officials to follow in carrying out their responsibilities at export points. The scope of discretion and authority of the officials at the export points in terms of those instructions will be considered further in Item 8 below.

Finally, depending upon national constitutional requirements, either the government authority (OEC) with primary responsibility for firearms and related materials, ammunition and explosives or the manufacturers of these products would be required to keep records of all the products manufactured by each domestic producer, as well as a separate list of the manufactured products placed in commerce by an individual manufacturer and whether these were for domestic use or for export. In the circumstances in which manufacturers were required to keep the records themselves, these records would be required to be made available on request to government inspectors and be updated periodically, at least every three months. The recorded lists on which exported firearms and related materials, ammunition and explosives appeared would also include the country of final destination and, if required by the exporting country, notification to it by the country of import of the receipt of the firearms and related materials, ammunition, and explosives (CIFTA Art. IX.4). Exporting countries might also ask to receive from the importing country information on the end-users of the products.

Text

- 5.1. An application for an export license for firearms and related materials, ammunition or explosives (as applicable) shall include, at a minimum, the following information:
 - (a) Name of exporter, address, telephone and fax, representative's name if commercial body and signature;
 - (b) Source of firearms or related materials, ammunition or explosives including name, address, telephone and fax, country code of residence, citizenship if individual, name of representative if commercial or government and signature;
 - (c) Manufacturer's name and country of manufacture;
 - (d) Quantity of firearms or related materials, ammunition or (as applicable) explosives for export listed by classification-description;
 - (e) Additional descriptive information, as applicable, such as barrel length, overall length, action, number of shots, manufacturer's name and country of manufacture;
 - (f) Name of importer, address, country code of residence, citizenship if individual, name of representative if commercial or government;

- (g) Name of final recipient (if different than importer), address, country code of residence, citizenship if individual, name of representative if commercial or government;
- (h) As applicable, the name of any broker involved in the transaction, address, telephone and, country code of residence, citizenship if individual, name of legal representative if a business, broker registration number, and certified copy of broker license authorizing the transaction;
- (i) End-user certificates, or some other form of documentation on end-use;
- (j) Copies of import and in-transit authorizations.

5.2. A valid export license shall contain, in addition to the information required to be submitted by an applicant under Item 5. (1) above, the following:

- (a) The name of country from which export is being made and date of issuance of export license;
- (b) The name of the authorizing agency, address, telephone and fax, signing officer and signature;
- (c) The date of expiry of the Certificate;
- (d) The type and quantity of firearms or related materials, ammunition, or explosives;
- (e) The import certificate agency identifier, the country of issuance of the import certificate, and the date of issuance of the certificate;
- (f) The import certificate expiry date;
- (g) The identification of the importer and the final recipient;
- (h) As required, the in transit countries;
- (i) As required, the in transit authorization agency identifier, the country of issuance of the authorization, and the date of issuance of the authorization; and
- (j) As required, the in transit authorization expiry date.

5.3. Countries may wish to require exporters to provide, in addition to the export license application, shipment information that can be provided to customs officials when the firearms and related materials, ammunition or explosives, as the case may, are presented for export to customs officials at export points. Shipment information should include:

- (a) The name of the shipper, address, telephone and fax, representative's name if commercial or government and his or her signature;
- (b) A copy of the bill of lading;
- (c) The proposed date of the shipment;
- (d) Exit point and routes planned;
- (e) Anticipated delivery date of the shipment to the importer country;
- (f) In transit countries, as applicable;
- (g) Any other shipping modes and shippers involved in the transportation of the goods.

- 5.4. The authority responsible for the oversight of exports of firearms and related materials, ammunition or explosives shall maintain a permanent data base, preferably, in electronic form containing the following information:
- (a) The completed export license applications referred to in Item 5. (1);
 - (b) The export licenses referred to in Item 5. (2);
 - (c) As applicable, the shipping information referred to in Item 5. (3);
 - (d) Certificate cancellation information (when the certificate was denied or subsequently revoked) including date, agency identification, address, telephone and fax, name of officer and signature, and reason for cancellation.
- 5.5. Customs officials at the point of export may inspect the firearms and related materials, ammunition and explosives before them prior to authorizing their export and shall verify all related documentation in relation to those products to ensure that:
- (a) The export license and all other required documentation is valid;
 - (b) The products and the quantity are in accordance with the license; and
 - (c) The export documentation is consistent with the license.
- 5.6. Customs officials at the point of export shall not authorize the export of the firearms and related materials, ammunition or explosives until it is determined that the three conditions set out in paragraphs (a), (b) and (c) of sub-item 5. (5) have been met.
6. TECHNICAL REQUIREMENTS FOR FACILITIES AT EXPORT POINTS THROUGH WHICH FIREARMS AND RELATED MATERIALS, AMMUNITION AND EXPLOSIVES ARE AUTHORIZED TO PASS

Commentary

Export point facilities through which firearms and related materials, ammunition and explosives are authorized to pass should be designed in a manner that permits the efficient delivery of the products inside the export point, adequate examination space, and secure onward movement and storage areas. Such security would be focused on preventing theft and diversions of the products, as well as possible attacks on the customs premises. The export point facility should be set up in such a manner that the actual movement of the goods from the national territory could be observed and confirmed and that the shipper/transporter identified in the bill of lading could be identified as the one actually being used. Finally, clear lines of sight for observation are necessary to ensure that the exported firearms and related materials, ammunition and explosives were not diverted back into the country of export. Additionally, the facility could be placed under continuous video surveillance to record the export of shipments. Security recordings would be kept by the Customs Department for a period of at least six months.

Customs officials at the export point facility would be responsible for keeping records (under the system referred to in item 5) in hard copy and electronic form of the dates on which shipments of firearms and related materials, ammunition and explosives arrived at the export point, the date of the inspection and verification of the shipments, the date on which the customs authorities authorized the products' release for export, and the actual date on which the release was made. This information

would be communicated to specified senior customs officials at customs headquarters, as well as to the authority with responsibility for oversight of exports (the OEC referred to above) and possibly some other agency to ensure the transparency of the completion of the export transactions.

Countries could also consider making available some or all of this information to exporters and other parties involved in the export transaction. The date that the goods were actually exported should be communicated to the Office of Export Controls, Customs Head Office, the exporter and the authorities responsible for receiving the goods in the importing country.

All shipments of firearms and related materials, ammunition and explosives passing through an export point may be subject to visual inspection, which would require the opening of containers, packages or other means of shipping the products. Depending upon the volumes of product being moved, this could mean that increased manpower and properly trained personnel would be needed to ensure that the inspections are carried out thoroughly and efficiently.

In the case of inspections directed towards preventing illicit shipments of firearms and related materials, x-ray scanning facilities have been installed in the customs facilities of some European countries to facilitate detection of containers. While these devices are undoubtedly useful, their cost may make them prohibitive for certain countries. There are also mobile x-ray inspection devices that may be more practical because they can be moved around for carrying out spot checks of illicit trafficking at different border locations.

The electronic system referred to in item 5 itself and each of the terminals on the system located in export points would need to be secure from unauthorized access and use.

Finally, periodic reviews of the suitability of the facilities to preserve the security of the premises through which firearms and related materials, ammunition and explosives move should be carried out and improvements made on the basis of comparative information from other facilities.

Text

This Item does not lend itself to legislative text.

7. COOPERATION, TRAINING AND TECHNICAL ASSISTANCE TO IMPROVE THE CAPABILITY OF EXPORT POINTS TO CARRY OUT INSPECTIONS OF FIREARMS AND RELATED MATERIALS, AMMUNITION AND EXPLOSIVES

Commentary

Countries can strengthen the control of export points in relation to firearms and related materials, ammunition and explosives through increasing exchanges of information and experiences. A number of initiatives towards improving cooperation in this manner were sponsored by the United Kingdom throughout the region on a sub-regional basis in 2004 and 2005. More recently, in June 2006, MERCOSUR and Chile sponsored a workshop on Imports, Exports and Transit of Firearms in MERCOSUR and Associated Countries in Porto Alegre, Brazil at which four working groups were established to consider and make recommendations on the political, legal, customs and training aspects of the import, export and transit of firearms. In October 2005, under the auspices of the

Consultative Committee of CIFTA, the first meeting of national authorities directly responsible for the issuance of export, import and international transit licenses and authorizations for firearms and related materials was held in Washington D.C. and was attended by representatives of 25 OAS countries. While the scope of the meeting was broader than that addressed by the present subject matter, a number of the countries' observations on their control systems were timely and relevant to the issue of export control points.

In addition to the above-referenced types of meetings on laws, procedures and processes, countries should be encouraged to hold meetings of the relevant enforcement authorities (police/customs) to exchange information with one another on investigations and intelligence in relation to movements of illicit firearms and related materials, ammunition and explosives. Information on preferred trafficking routes and the use of different export points for this purpose would be of considerable value in assisting countries to identify vulnerabilities, whether these stem from faulty procedures and processes, inadequate resources and possible corruption at individual locales.

Finally, countries wishing to strengthen individual export points, whether this involves the development of laws, regulations, policies, practices, improved infrastructure, upgrades of equipment, or the development of training programs for personnel, should not fail to consider approaching international and regional organizations and/or individual countries having robust export control systems to request technical assistance and training from them.

Text

This item does not lend itself to legislative text.

8. EXPORT CONTROL POINT PERSONNEL: REQUIREMENTS, LINES OF AUTHORITY, DISCRETION, TRAINING, AND DISCIPLINE

Commentary

While countries will have developed legislation, personnel guidelines, and practices governing the terms and conditions of employment of their public servants, not all of them will have found it necessary to develop specialized legislation for particular types of positions, in particular, unique policies and practices for the recruitment of persons performing sensitive functions that require special personal qualifications, characteristics, education, abilities and other qualities in the persons performing those functions.

Customs officials, in view of the nature of their responsibilities, generally, and those responsible for controlling exports of products such as firearms and related materials, in particular, should be required to possess exemplary personal qualifications specific to the functions they perform. An examination should be required of all individuals seeking employment in customs offices, and an in-depth background check carried out on their personal information, education and occupational experience. This particular function will also entail a certain degree of proficiency with computers, although specialized training may be required.

Officials at export points responsible for verifying and overseeing the export of firearms or related materials, ammunition or explosives should be subject to performance appraisals on a routine basis, and records of these appraisals should be kept throughout the official's career.

Officials at export points should receive briefings from headquarters on any relevant changes in the patterns of legal exports of firearms and related materials, ammunition and explosives and of any intelligence information in relation to illicit movements of these products.

Assuming that all the paper work, electronic records and the verification of firearms and related materials, ammunition, and explosives shipments carried out by the officials at export points is in order, officials should have no discretion in relation to issuing or not the authorization corresponding to the immediate export of a particular shipment. On the other hand, any irregularities in the information provided in the shipments or by way of conflicting instructions from any authority to the officials at export points should result in an immediate cessation of the export procedures until confirmation of new information and/or instructions is provided and confirmed by two or more of the other authorities designated as involved in the export process. As an example, a change in the shipment destination of firearms and related materials, ammunition or explosives would need to be confirmed by a designated senior customs authority as well as by a second official designated by the agency with overall competence for controlling firearms exports, such as the Office of Export Control (Item 2, above). These designations would form part of the information contained in the export point manual referred to below.

Any request to alter some aspect of an export authorization by any person or authority not expressly designated as being in the "loop" of authorization made to an official at an export point, should not be acted on and be reported by the official to his superior departmental officers designated to supervise the export of firearms or related materials, ammunition and explosives and to the responsible official of the Office of Export Controls. The making of an unauthorized request, as well as an official's acceding to it, should be considered a criminal cause of action resulting in dismissal, a fine and possible imprisonment, depending on the circumstances of the case.

A manual on the scope of the responsibilities of officials responsible for firearms and related materials exports would be made available to each export point electronically.

With respect to training, as noted by the Working Group on Training of the June 2005 MERCOSUR/Chile workshop held in Porto Alegre, Brazil, training needs to be a systematic, ongoing, and progressive activity taking into account the rotational nature of personnel in verification and control agencies. This would be true for officials at export points, with particular responsibilities for verification of firearms and related materials, ammunition, and explosives.

In addition to national training, countries should approach international and regional agencies about providing training to several countries at the same time, especially if these are adjacent to one another and/or conduct a significant business in firearms and related materials, ammunition and explosives among one other. The training could be provided by professionals and experts from countries with strong export control regimes and provide a means for moving towards more common and harmonized procedures for dealing with the control of exports of firearms and related materials, ammunition and explosives. It would afford an opportunity for the sharing of experiences and the possible building of an esprit de corps and the establishment of relationships among the participants that could further cooperation between them.

Discipline would be an important feature to consider in the performance of duties and responsibilities of officials at export points. All disciplinary measures would need to be reported from the export point supervisor to the personnel office and, depending upon the nature of the action, to other authorities so that other appropriate remedies including criminal action could be considered.

Text

- 8.1 Every official to be assigned to an export point and whose responsibilities include the inspection, examination, verification and authorization to export firearms or related materials, ammunition, or explosives, should meet, where possible, the following criteria as stipulated by the relevant national authorities:
 - (a) Have received adequate training in relation to export controls generally and in particular with reference to firearms and related materials, ammunition, and explosives;
 - (b) Have received adequate training in the recognition, safe handling, and security of firearms and related materials, ammunition, and explosives;
 - (c) Have received training on the content of relevant manuals;
 - (d) Be proficient in and have received training in the use of information technology and in particular the systems in place to allow communications with other government agencies involved in the administration and supervision of firearms and related materials, ammunition, and explosives;
 - (e) Have passed assessments that evaluate the official's knowledge of the subject matters referred to in paragraphs (a), (b), (c), and (d) above and, where possible, submit to periodic re-evaluation in each of these areas;
 - (f) Be willing to undertake any further recommended training to improve his or her skills to perform his job functions more efficiently and effectively.
- 8.2 Officials assigned to an export point to perform the functions identified in subsection (1) shall be subject to an evaluation of their performance on an on-going basis.
- 8.3 Any official who, in the performance of their duties encounters any irregularity in the documentation in, or in respect to an export license, or in their examination of a shipment of firearms or related materials, ammunition, or explosives before them for inspection, shall immediately contact the appropriate senior authority in their department and the competent official of the Office of Export Controls.
- 8.4 In the event of the occurrence of the circumstances in subsection (3) above, the export process in relation to the shipment shall immediately cease and the products concerned shall be quarantined and securely stored until the irregularity is resolved.
- 8.5 Authorization or direction to the officials at export points to permit the export of the shipment of firearms or related materials, ammunition, or explosives can only be made by both of the designated officials of the Department of Customs and the Office of Export Controls.

- 8.6 Direction to export given by any other authority shall constitute an offense and shall be punishable under Item 10.
- 8.7 Any export point official who authorizes the export of a shipment of firearms or related materials, ammunition, or explosives on the basis of a representation made under subsection (6), above, shall be guilty of an offense punishable under Item 10.
- 8.8 If the irregularity consists of a sanctionable activity identified in item 10, the firearms or related materials, ammunition, or explosives as the case may be shall be embargoed and subject to forfeiture in accordance with law.

9. PROHIBITIONS ON EXPORTS OF FIREARMS AND RELATED MATERIALS, AMMUNITION AND EXPLOSIVES

Commentary

Each country will have developed laws and policies that would prohibit the export of firearms and related materials, ammunition and explosives in particular circumstances usually identified in the commitments assumed when the country has ratified a particular international treaty. The authority responsible for reviewing and issuing export control licenses (the Office of Export Controls) would refuse to issue a license whenever it determined that the application did not meet published criteria.

In view of the nature of these cases, refusals should be confirmed by the official responsible for the Office of Export Controls.

Text

- 9.1 The official responsible for the Office of Export Controls shall, pursuant to a governmental directive, refuse to grant licenses for and prohibit the export of firearms or related materials, ammunition or explosives if he has reason to believe that the export of those products will, or seriously threaten to:
 - (a) result in acts of genocide or crimes against humanity;
 - (b) violate human rights contrary to international law;
 - (c) lead to the perpetration of war crimes contrary to international law;
 - (d) violate a United Nations Security Council embargo or other multilateral sanctions to which the country adheres, or that it unilaterally applies;
 - (e) support or encourage terrorist acts;
 - (f) result in a diversion of firearms to illegal activities, in particular organized crime;
 - (g) result in a breach of a bilateral or multilateral arms control or non-proliferation agreement;
 - (h) prolong or aggravate an existing armed conflict;
 - (i) endanger peace, create an excessive and destabilizing accumulation of weapons or otherwise contribute to regional instability; or
 - (j) be used for the purpose of repression.

10. SANCTIONS

Commentary

Illicit exportation of firearms and related materials, ammunition and explosives can include a variety of actions that each country would need to stipulate in its national laws. Some offenses related to this topic might consist of misdemeanors or lesser offenses, known in Spanish as “*contravenciones*”, for which administrative penalties or civil fines might be prescribed, while others would consist of crimes or “*delitos*” punishable by more severe fines or imprisonment.

Bearing in mind, however, that the focus of this Model Legislation is on export points, it is more likely that the type of offense under consideration would be a crime, such as attempting to smuggle firearms, related materials, ammunition or explosives through an export point, attempting to bribe an official responsible for authorizing an export, providing misleading information about the types or quantities of a product sought to be exported, attempting to export an unauthorized or prohibited product or attempting to export a product to a destination prohibited under national law or under an international instrument to which a country has subscribed.

Sanctions need to take account of the fact that offenses may be committed not only by persons outside of the government who are seeking to export the firearms, related materials, ammunition or explosives illegally, but also by persons within the government who collaborate with those persons.

Breaches of procedures by government officials at any level who seek to subvert or violate a country's export control system especially when it concerns firearms, related products, ammunition or explosives should be punished to the fullest extent of the law. Penalties established for such offenses should be substantially increased when public officials are involved.

Text

- 10.1 In accordance with its internal norms, each country should adopt legislation that penalizes the following acts and prescribe the appropriate penalties:
- (a) Exportation or attempted exportation of firearms or related products, ammunition, or explosives without a valid export license.
 - (b) Submission of false information or failure to provide full and accurate information for the purpose of acquiring an export license.
 - (c) Violations or attempted violations of conditions in an export license.
 - (d) The exportation or attempted exportation of firearms or related products, ammunition, or explosives through an export point that is not authorized for such a purpose.
 - (e) The exportation or attempted exportation of firearms and related products, ammunition, or explosives in contravention of the prohibitions enumerated in Item 9.
 - (f) Any unauthorized direction to an official at an export point to allow the export of firearms or related products, ammunition, or explosives.
 - (g) Any other violation or attempted violation of the export control legislation.

11. END-USE MONITORING: KNOW THE FOREIGN PARTIES INVOLVED

Commentary

Careful end-use monitoring is critical to establishing and maintaining the security and integrity of exports of firearms and ammunition. Ensuring that arms are exported to appropriate end-users and are used for appropriate end-uses requires due diligence on the part of national export authorities and cooperation from the importing nation as well.

Each country should conduct pre-license checks – and ideally also post-shipment checks – on export applications where there is a risk of diversion, concerns about end-use/end-users, or particularly sensitivity the commodities involved, such as firearms. The extra steps required to conduct end-use checks – a phone call, an interview with an importer/end-user, a brief visit to inspect a facility – can mean the difference between unwittingly approving and thwarting an illicit arms export.

Text

- 11.1 Whenever the OEC of a country has reason to believe that there is a higher than normal risk that the firearms or related products, ammunition, or explosives that it proposes to export may be diverted, it may issue to the proposed exporter additional conditions to be met for the issuance of an export license. One such condition may include the requirement that the goods are directed to be received by a known, reputable and trusted end-user in the country of import.
- 11.2 The OEC of a country may impose a requirement to the importing country that it issue and provide to the exporting country an end-user certificate that, among other things provides the following information:
 - (a) whether the end-user is a government or a private end-user;
 - (b) provides a realistic determination of whether the end-user is an appropriate one for the type and number of goods listed in the certificate;
 - (c) provides assurances that the goods will only be used by the end-user indicated on the certificate and for the stated end-use; and
 - (d) warrants that either:
 - (i) the goods shall not be diverted, exported or re-exported; or
 - (ii) the goods shall not be diverted, exported or re-exported except with the previous approval of the exporting country; or
 - (iii) the goods shall not be diverted, exported or re-exported except with the authorization of the export licensing authorities of the exporting country.
- 11.3 The OEC of a country may impose a requirement to the importing country that it require that the final consignee of the goods provide to the exporting country a delivery verification certificate immediately once the export has reached its final destination and has been verified by an on-site inspection.