



United States Department of State
*Under Secretary of State for Arms Control and
International Security*
Washington, D.C. 20520

April 8, 2024

MEMORANDUM

TO: Alan F. Estevez - Under Secretary of Commerce for Industry and Security

FROM: Bonnie D. Jenkins - Under Secretary of State for Arms Control and International Security

SUBJECT: Foreign Policy Guidance on Firearms Export Policy

The Department of Commerce (Commerce) has requested that the Department of State (State) provide foreign policy guidance to inform Commerce's review of its licensing policies for the export of certain firearms, related components, and ammunition. To support Commerce's ongoing efforts to impose export controls that further U.S. national security and foreign policy, State has developed a list of destinations in which there is a substantial risk that lawfully exported firearms sold to non-governmental end users could be diverted or misused in a manner adverse to U.S. national security and foreign policy. As explained in this guidance document, State has developed a methodology for identifying such destinations and, in applying that methodology, has identified 36 destinations in consultation with the interagency.

Introduction

Under the Export Control Reform Act of 2018 ("ECRA"), Pub. L. No. 115-232, Title XVII, Subtitle B, 132 Stat. 2208, the Secretary of Commerce, in consultation with the Secretary of State and heads of other Federal

agencies, must establish and maintain a list of controlled items and require licenses or other authorizations for exports, reexports, and in-country transfers of controlled items. *See* 50 U.S.C. § 4813. Since March 2020, Commerce has controlled certain firearms, related components, and ammunition. These items were previously controlled by State but were transferred from the United States Munitions List to the Commerce Control List, Supp. No. 1 to part 774 of the Export Administration Regulations, 15 C.F.R. parts 730-774. State continues to participate in Commerce’s license review process for these items.

On October 27, 2023, Commerce “paused” the issuance of new export licenses involving certain firearms, related components, and ammunition under its jurisdiction for all non-governmental end users in certain destinations. During this “pause” period, Commerce assessed current firearm export control review policies to determine whether any changes were warranted to advance U.S. national security and foreign policy interests. Those interests include promoting country and regional stability, preventing acts of terrorism, and protecting human rights.

As part of its initial review process, Commerce analyzed whether there are specific factors that can be used to assess the risk that a firearm export will be diverted or misused in a manner adverse to U.S. national security and foreign policy interests. Commerce subsequently requested that State assess whether there are specific destinations in which there is substantial risk of diversion or misuse adverse to U.S. national security and foreign policy interests. In response to that request, and building upon Commerce’s initial analysis, State, in consultation with the interagency, developed a methodology for identifying such countries. To do so, State leveraged its substantial experience working across regions and in subject matter areas including human rights, international counternarcotics, counterterrorism, and arms control and the expertise of the U.S. interagency.

This guidance document reflects the culmination of the State-led, interagency informed, assessment. As explained below, State began by

developing a set of relevant risk factors in consultation with Commerce and gathering data relevant to those factors from various credible sources. State then engaged in consultations with in-country U.S. diplomats, including those with significant experience working with local law enforcement agencies, subject matter experts and regional experts, and other federal agencies as needed. This guidance document sets forth State's methodology, lists the destinations identified using that methodology for which there is a substantial risk of diversion, and clarifies how guidance will be updated in the future.

Methodology

As an initial matter, Commerce and State determined that the assessment should focus on the risks associated with firearm exports to commercial distributors, civilians, and other non-governmental end users. In the course of that assessment, Commerce and State reviewed evidence indicating that firearms are more likely to be diverted or misused when they are exported to commercial distributors and civilians, rather than to government end users. Many governments have systems in place to prevent firearms traffickers and other criminals from stealing government-owned firearms. Even in countries where government-owned firearms have historically been vulnerable to theft, there have been concerted efforts, in partnership with international organizations, to bolster government security infrastructure. By contrast, commercial distributors and civilians are relatively easy targets for firearm traffickers. Compared to governments, these entities often are less able to secure and to keep track of firearms in their possession. And worldwide, there are many more Commerce-controlled firearms in the possession of commercial distributors and civilians than there are in the possession of government organizations, further increasing the relative risk of diversion.

Then, based on its substantial experience studying firearms trafficking, Commerce's initial analysis, the considerations informing Commerce's

existing license review policies (as codified in the Export Administration Regulations), and interagency consultations, State identified a set of factors that correlate with an increased risk of a firearm exported to a certain destination being diverted or misused in a manner adverse to U.S. national security and foreign policy. These risk factors were selected in part based on existing Commerce regulations under which all firearms exports are controlled for one or more of the following reasons: National Security (NS), Regional Stability (RS), Crime Control and Detection (CC), and Firearms Convention (FC) for OAS states. The risk factors also take into account the U.S. Conventional Arms Transfer (CAT) Policy, including human rights considerations, which applies to export of Commerce-controlled firearms. Therefore, as a threshold matter, this methodology identifies risk factors that should inform destination-specific assessments as described below.

- **Firearms Trafficking/Diversion Risk.** This factor assesses the demonstrated level of firearms trafficking in a destination country, including whether there are cases of lawful exports being diverted or misused in a manner contrary to U.S. national security and foreign policy. Prior diversion or misuse events are relevant to assessing the risk that such actions might occur in the future. Such events may also provide insight into the mechanisms by which firearms are diverted or misused in a given country or region, as well as into the impact of diversion or misuse on U.S. national security and foreign policy.
- **Terrorism Risk.** This factor assesses the level of terrorist activity in a destination country. In countries where terrorist groups have a significant presence, there is a greater risk that lawful firearm exports will be diverted, both to those groups and to other dangerous actors. Many terrorist groups actively seek to obtain diverted firearms to bolster their ability to carry out attacks. Over the past decade, terrorist groups have increasingly used firearms rather than explosives. Additionally, terrorist groups frequently attack military and police personnel, making it difficult

for the government to devote resources to preventing other kinds of crime, including firearms trafficking. Accordingly, there is a substantial risk that firearms exported to countries with high levels of terrorist activity will end up in the hands of terrorist groups, who will use those firearms for activities detrimental to U.S. national security and foreign policy interests.

- **Corruption Risk.** This factor assesses the level of corruption in the destination country, including the extent to which corrupt officials in law enforcement agencies work with criminal organizations. Because corruption undermines the government's ability to police crime, including firearms trafficking, a high level of corruption increases the risk that lawful firearm exports will be diverted or misused. In countries where corrupt officials siphon off resources needed by law enforcement agencies, those agencies are less equipped to combat various kinds of organized crime, including drug trafficking. And in some countries with extremely high levels of corruption, officials in law enforcement agencies work directly with criminal organizations to form state-sponsored trafficking organizations that are difficult to combat. The diversion of lawful firearm exports to state-sponsored trafficking organizations or other criminal organizations enables those organizations to engage in destabilizing activities, thereby undermining U.S. national security and foreign policy interests, including maintaining the rule of law and regional stability.
- **Human Rights and Political Violence Risk.** This factor assesses whether the destination country has a record of human rights abuses or political violence. In countries where law enforcement authorities commit violence against citizens or devote resources to suppressing political opposition, there is an increased risk that those authorities will be unable or unwilling to combat firearms trafficking. This risk is especially acute in countries where governments rely on paramilitary groups and civilian

militias, who often engage in firearms trafficking. Additionally, in countries where criminal organizations commit human rights abuses to exert control over local communities, there is an increased risk that those organizations will seek to obtain firearms to extend their territories and commit further abuses. Thus, regardless of whether the violence is perpetrated by state actors or non-state actors, a lengthy record of human rights abuses or political violence signals a higher risk of diversion or misuse of firearms in a manner contrary to U.S. national security and foreign policy interests.

- **State Fragility Risk.** This factor assesses whether there are conditions in the destination country that could lead to internal conflict, including the strength of the country's government and its ability to respond to non-state armed groups. In general, state fragility correlates with the risk of diversion or misuse because strong states will be better positioned to manage the flow of lawful firearms commerce and to ensure that firearms do not inadvertently fall into the hands of criminal organizations. There is also greater risk that fragile states will devolve into conflict and that diverted firearms could be used as a tool to contribute to fragmentation and regional conflict, which could undermine U.S. national security and foreign policy goals.
- **Organized Crime/Gang-Related Risk.** This factor assesses the level of organized criminal activity present in the destination country. In countries where transnational criminal organizations and gangs have a significant presence, there is an increased risk that lawful firearm exports will be diverted or misused by those organizations. Transnational criminal organizations and gangs often fund their operations by establishing markets for illicit commerce, including diverted firearms. Those organizations also use firearms to commit violence against citizens, to destabilize local governments, and to provide logistical support to drug cartels and human traffickers. Accordingly, there is substantial risk that

firearms exports to countries with large criminal organizations and gangs will directly threaten U.S. national security and foreign policy interests such as regional stability and human rights.

- **Drug Trafficking Risk.** This factor assesses the level and prevalence of drug production and trafficking in a destination. There is a direct and well-documented link between firearms trafficking and drug trafficking. As a result, in destinations with major drug operations, there is a particularly acute risk that firearms will be diverted to those operations or to other criminal organizations. Drug traffickers and producers divert firearms to further core drug operations, to enforce extortion schemes against local communities, and to resist law enforcement. The flow of firearms to such operations threatens U.S. national security by increasing their ability to flood the U.S. with potentially deadly substances, spark regional conflict that has spillover effects in the United States, and establish transnational operations that extend into the United States.

These risk factors also align with the U.S. Conventional Arms Transfer Policy (CAT), which is a Presidentially-established framework under which U.S. Government agencies review and evaluate proposed arms transfers. Under the CAT Policy, all decisions on potential arms transfers are to take into account a range of considerations, including: the degree to which the transfer bolsters capabilities of partners and allies to counter international and transnational threats; the risk of violations of human rights or international humanitarian law; the overall stability of the recipient country's political system; the risk of adverse political, social, or economic effects within the recipient country, including by adversely impacting the protection of human rights, fundamental freedoms, or activities of civil society, contributing to corruption, instability, authoritarianism, or transnational repression; impunity; or undermining democratic governance; and the risk of diversion. The CAT policy and the Commerce regulations are

similar because they take into account similar risk factors when evaluating proposed arms exports.

To determine how each of these risk factors applies to specific destination countries, State, in consultation with other U.S. agencies, gathered relevant information from reliable sources, including U.S. Government reports and international NGO and intergovernmental reports that assess these risk factors qualitatively and quantitatively. Such data sources include, but are not limited to:

- State Department Human Rights Country Reports
- Global Terrorism Index
- Corruption Perceptions Index
- Government Defence Integrity Index
- Amnesty International Reports
- Human Rights Watch Report
- Fragile State Index
- Global Organized Crime Index
- Small Arms Light Weapons Tracker
- U.N. Global Study on Firearms Trafficking
- Presidential Determination on Major Drug Transit or Major Illicit Drug Producing Countries (Majors List)

These sources were selected because they are reliable, collected and maintained by reputable institutions, and, in most cases, regularly updated. The datasets provide information for a variety of countries, are cited widely in secondary literature, and help inform assessment of national security and foreign policy risks. Consulting multiple datasets also helped ensure that an appropriate balance of a diverse set of different sources in these analyses. No single index is sufficient on its own to assess the risk that lawful firearms exports to a certain destination could be diverted or misused in ways contrary to U.S. national security and foreign policy interests. By consulting a wide range of reputable data sources, this approach provided a thorough and nuanced consideration of risk in specific destinations. Where feasible,

the methodology also used U.S. government law enforcement data to inform the analysis, including ATF tracing data and other law enforcement data on firearm diversion and misuse.

In addition to evaluating the risk associated with exports to nongovernmental entities in individual countries based on the identified datasets, State Department officials brought their own country-specific expertise to bear. This review involved consideration of U.S. foreign policy and national security goals, as well as U.S. economic competitiveness. In particular, U.S. Embassy officials with country-specific expertise were able to provide important on-the-ground context that could not be gleaned from other data sources. Such insights included, but were not limited to, knowledge of local criminal networks and activity; past instances of diversion or misuse; the volume and nature of bilateral trade; a destination's regulations for gun imports and exports and its record of enforcing those regulations; and diplomatic sensitivities, including implications for collaboration with law enforcement and other foreign policy priorities. For example, in one country, U.S. Embassy officials noted that the government had created safeguards around firearms imports and exports to help mitigate certain other identified risks. In another country, U.S. Embassy officials indicated that firearms are often trafficked in from a neighboring country, rather than diverted from lawful exports.

Additionally, State relied on the guidance from its "functional" bureaus, *i.e.*, those with expertise in a particular topic area such as arms control and nonproliferation; democracy and human rights; international narcotics and law enforcement; and conflict stabilization. Leveraging experts across each of those topic areas enabled State to identify where certain risk factors reflected a pattern or trend, as well as whether destination-specific assessments were consistent with other U.S. government foreign policy and national security priorities. Finally, State sought policy guidance from stakeholders across the U.S. government to ensure that the assessment incorporated relevant aspects of U.S. national security and foreign policy.

Based on the process described above, 36 countries were identified where there is a substantial risk that lawful firearms exports to non-governmental end users will be diverted or misused in a manner adverse to U.S. national security and foreign policy. A country's presence on the list is not necessarily a reflection of its government's efforts to limit firearms diversion or misuse or its level of cooperation with the United States. Rather, the list reflects a holistic analysis of where lawful exports of firearms and related items to non-governmental end users pose substantial risk to U.S. interests.

Next Steps

As part of Commerce's rulemaking process, State has agreed to chair a formal interagency working group to evaluate firearm diversion and misuse risks on a country-by-country basis. State will use that working group to continually assess the conclusions set out in this guidance document, with the goal of updating this list of destinations on an annual basis. In addition, State plans to lead U.S. interagency efforts to supplement the analysis with new qualitative and quantitative sources, including future data collection efforts to increase government understanding of diversion of both lawful and unlawful firearms. State also understands that it may be necessary to update this guidance outside of the annual window to advance U.S. national security and foreign policy interests.

LIST OF COUNTRIES

Bahamas, Bangladesh, Belize, Bolivia, Burkina Faso, Burundi, Chad, Colombia, Dominican Republic, Ecuador, El Salvador, Guatemala, Guyana, Honduras, Indonesia, Jamaica, Kazakhstan, Kyrgyzstan, Laos, Malaysia, Mali, Mozambique, Nepal, Niger, Nigeria, Pakistan, Panama, Papua New Guinea, Paraguay, Peru, Suriname, Tajikistan, Trinidad and Tobago, Uganda, Vietnam, and Yemen.