

RECOMMENDATION OF THE CUSTOMS CO-OPERATION COUNCIL^{*}
CONCERNING THE PROTOCOL AGAINST THE ILLICIT MANUFACTURING OF
AND TRAFFICKING IN FIREARMS, THEIR PARTS AND COMPONENTS
AND AMMUNITION, SUPPLEMENTING THE UNITED NATIONS
CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME

(29 June 2002)

The Customs Co-operation Council,

HAVING REGARD to the United Nations Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime (hereafter referred to as the Firearms Protocol) (31 May 2001),

ACKNOWLEDGING that effective controls on the legitimate movements of firearms are essential in order to distinguish illicit movements,

DESIRING that harmonized and effective Customs control procedures be applied in the processing of the import, export and transit movement of firearms,

NOTING that the legitimate firearms trading community can assist law enforcement to enhance controls over firearms,

RECOMMENDS that Members of the Council and Members of the United Nations or its specialized agencies, and Customs or Economic Unions, should:

1. adopt the principles of the Firearms Protocol to strengthen their controls over the import, export and transit movement of firearms;
2. apply the principles of the Firearms Protocol to all classes of firearms, their parts and components and ammunition (Article 4) ^{**};
3. adopt the statistical nomenclature proposed by the Harmonized System Committee in order to facilitate the monitoring and control of products specified in the Firearms Protocol (Article 10) ^{**};
4. allow for the lodging and registering or checking of the Goods declaration and supporting documents relating to firearms prior to the import, export or transit movement of the goods as well as encourage importers, exporters or third parties to provide information to Customs prior to their shipment (Article 10) ^{**} ^{**};
5. verify that the appropriate authorizations are available or in place at the time the firearms are presented for import, export or transit movement, to ensure the legitimacy of the shipment (Article 10) ^{**};
6. implement, in co-operation with the authorizing agency, an appropriate mechanism to verify the authenticity of licensing or authorization documents for the import, export or transit movements of firearms (Article 10) ^{**};

7. implement, using risk assessment principles, appropriate security measures on the import, export and transit movement of firearms, such as conducting security checks on the temporary storage, warehouses and means of transport carrying firearms, and requiring persons involved in these operations to undergo security vetting. (Article 11) **;
8. consider designating specific offices/sites for the processing of legitimate firearms shipments in order to enhance control over their transborder movement (Article 11) **;
9. deploy automated systems, human resources, equipment and examination facilities as required to those specific designated offices/sites to facilitate the processing of firearms shipments (Article 11) **;
10. enhance controls governing shipments of firearms entering or leaving free zones in order to reduce the risk of theft or diversion of firearms (Article 11) **;
11. introduce means to broaden information exchanges and increase co-operation between law enforcement agencies and promote the use of specialized systems and techniques under their jurisdictions, such as the Customs Enforcement Network (Article 12) **;
12. promote the conclusion of Memoranda of Understanding between Customs and legitimate traders, such as manufacturers, dealers, importers, exporters, brokers and commercial carriers of firearms to strengthen controls and to increase accountability (Article 13) **;

REQUESTS Members of the Council and members of the United Nations Organization or its specialized agencies, and Customs or Economic Unions which accept this Recommendation, to notify the Secretary General of the Council of the date from which they will apply the Recommendation and of the conditions of its application. The Secretary General will transmit this information to the Customs administrations of all Members of the Council. He will also transmit it to the Customs administrations of the members of the United Nations Organization or its specialized agencies and to Customs or Economic Unions that have accepted this Recommendation.

**EXPLANATORY NOTE FOR MEMBERS OF THE
WORLD CUSTOMS ORGANISATION ON THE UNITED NATIONS PROTOCOL
AGAINST THE ILLICIT MANUFACTURE OF AND TRAFFICKING IN FIREARMS,
THEIR PARTS AND COMPONENTS**

Purpose

The purpose of this explanatory note is to provide members with background information and a brief explanation on (1) the key features of the United Nations Protocol against the Illicit Manufacture of and Trafficking in Firearms, their Parts and Components and (2) the WCO Recommendation concerning the Firearms Protocol.

1. Background to the Firearms Protocol

In December 1998 the United Nations General Assembly established an Ad Hoc Committee, for the purpose of elaborating a comprehensive international convention on transnational organised crime. The purpose of the Convention is to promote co-operation to prevent and combat transnational organised crime more effectively.

To enhance the Convention against Transnational Organised Crime, the Ad Hoc Committee also developed three additional instruments dealing with particular types of transnational crime that are currently billion dollar industries and commonly involve organised criminal groups. These additional Protocols cover:

- Trafficking in persons, especially women and children;
- Smuggling of migrants by land, sea and air;
- Illicit manufacturing of and trafficking in firearms, their parts and components and ammunition (adopted on 31 May 2001).

Growing problem of organised crime

Recognizing that organised crime is a growing problem has led various Governments to take initiatives over the last decade that target organised criminal groups. With changes in technology and ease of travel, it is now apparent that there is an increasing transnational dimension to the activities of such groups, which are also becoming more sophisticated in their operations.

Organised criminal groups often operate as businesses, looking for "easy" market opportunities. Many have sophisticated networks and, in some countries, are better resourced than enforcement agencies. Vulnerable countries can be easily destabilised by the operation of criminal groups which, in turn, has a flow-on effect for other countries, in some instance, presenting security issues

The negotiations of the Convention and Protocols represent the culmination of a series of international meetings and declarations in recent years which have expressed concern about the growing problem of transnational organised crime and called for action to be taken at an international level. There is now general recognition that States cannot combat this sort of crime individually, simply by taking unilateral measures. Rather a concerted and co-ordinated effort is needed by all States. At the same time it is clear that international initiatives cannot be effective unless they enjoy widespread support from a broad range of States as it is only in that way that safe havens for criminals can be eliminated.

Protocol against the illicit Manufacturing of and trafficking in Firearms, their parts and components and ammunition (Firearms Protocol)

The world is flooded with approximately 500 million small arms and light weapons, equating to one weapon for every 12 people on earth. Most of these weapons are controlled by legal authorities, but when they fall into the hands of terrorists, criminals and irregular forces, they bring devastation. They exacerbate conflict, spark refugee flows, undermine the rule of law, and spawn a culture of violence and impunity.

The Firearms Protocol, which was adopted by the General Assembly of the United Nations by resolution 55/255 of 31 May 2001, is the first binding international instrument addressing illicit firearms. The purpose of the Protocol is to *promote, facilitate and strengthen co-operation among State Parties in order to prevent, combat and eradicate illicit manufacturing of and trafficking in firearms, their parts and components and ammunition.*

The twenty one article Protocol contains provisions on numerous aspects of this issue, including confiscation, seizure and disposal of illegal firearms, record keeping, marking, deactivation, general requirements for export, import and transit licensing or authorisation systems; security and prevention measures; exchange of information; training and technical assistance; brokering and settlement of disputes.

It opened for signature on 1 July 2001 and will remain open until 12 December 2002. It will come into effect 90 days after the deposit of the 40th instrument of ratification, acceptance or approval.

Scope of the Firearms Protocol

The Protocol is designed to prevent the illicit manufacturing of and trafficking (import, export and transiting) in firearms, their parts and components and ammunition. This is achieved by placing controls on the import and export of these goods and for the investigation and prosecution of the following offences (Article 5) where those offences are transnational in nature and involve an organised criminal group :

- Illicit manufacturing of firearms, their parts and components and ammunition;
- Illicit trafficking in firearms, their parts and components and ammunition;
- Falsifying or illicitly obliterating, removing or altering the marking(s) on firearms required by article 8 of the Protocol.

The Protocol does not apply to state to state transactions or to state transfers in cases where the application of the Protocol would prejudice the right of a State Party to take action in the interests of national security consistent with the Charter of the United Nations.

Border Controls

One of the most critical components of the Protocol and the one which impacts on Customs administrations is the import, export and transit system (Articles 10, 11, 12 and 13). It is a reciprocal system requiring countries to exchange authorisations before permitting shipments of firearms, their parts and components and ammunition to arrive in, leave, or transit their territory. The rationale for this approach is the need to create a documentary chain of information to enable law enforcement authorities to track the legal movement of firearm shipments in order to prevent theft and diversion and to assist in tracing those that leak into the black market.

It is vital that import and export licensing or authorisation systems be supported by effective and credible intervention strategies by Customs administrations which are designed to identify and prevent the illicit movement and supply of firearms around the world. Intervention at the border is an efficient method of interrupting the supply chain and preventing organised criminal groups from obtaining illegal supplies of firearms and ammunition.

At the same time the Protocol recognises that there is a substantial legitimate international trade in firearms and ammunition. Customs administrations should ensure that their border enforcement systems do not impede the clearance of these legitimate shipments.

1. Explanation to the WCO Recommendation

In support of the Firearms Protocol, the Council of the World Customs Organization, in June 2002, had adopted a Recommendation concerning the Firearms Protocol. WCO Members are encouraged to formally advise the Secretary General of their acceptance and implementation of the provisions of the Recommendation.

The following paragraphs explain the recommendations of the Council concerning the Firearms Protocol. Explanations are not provided for recommendations that are deemed self explanatory. The term 'transit' is also explained in view of the difficulties faced by Members during the development of the Recommendation.

The term 'transit' is used instead of 'Customs transit' throughout the Recommendation so as not to unduly narrow the scope of the term. This had been agreed by the Permanent Technical Committee in order to align the terminology with that of the Firearms Protocol. The overall objective of the Protocol had been to prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms. Thus it makes it necessary to control all legitimate movements of firearms regardless of whether or not they move under the Customs transit procedure. Limiting Customs control activities only to firearms that are carried under the Customs transit procedure involves the risk of firearms carried by air or by sea, where the Customs transit procedure does not generally apply, avoiding control, in violation of the provisions of Article 11 of the Protocol.

Paragraphs 3 to 6 of the Recommendation relates to the principles contained in Article 10 of the UN Firearms Protocol. Article 10 sets out general requirements for export, import and transit licensing or authorization systems. The intention has been to establish a watertight system whereby potential transit countries and the country of import give their consent for the carriage of firearms through their respective territories and to its territory before the firearms are permitted to leave the country of export. This is achieved by providing that, before issuing export licences or authorizations for shipments of firearms etc., each State Party shall verify (1) that the importing States have issued import licences or authorizations and (2) that the transit States have, at a minimum, given notice in writing, prior to shipment, that they have no objection to the transit (paragraph 2 of Article 10). In addition, the information contained in the import licence must be provided in advance to the transit States (paragraph 3 of Article 10). By this system, the countries of transit and that of import are made aware in advance that firearms will be transported through their territories and to its territory and are able to take any control action in accordance with Article 11 of the UN Firearms Protocol.

Members should allow for the lodging, registering or checking of the Goods declaration and supporting documents pertaining to firearms prior to their import, export or transit movements. Such measures would facilitate Customs enforcement on firearms movements. In addition, Members are also encouraged to develop simplified procedures for the temporary import, export or transit of firearms. These procedures also form the key principles advocated in Chapter 3 of the General Annex in the revised Kyoto Convention on the simplification and harmonization of Customs procedures.

Paragraph 3 of the Recommendation specifically requires the adoption of the statistical nomenclature proposed by the Harmonized System Committee. In this regard the Council had, in June 2002, adopted a WCO Recommendation on the insertion in national statistical nomenclatures of the subheadings to facilitate the monitoring and control of products specified in the Firearms Protocol. Member administrations and Contracting Parties to the Harmonized System Convention have been advised to take all appropriate actions to insert the additional subdivisions in their statistical nomenclatures, either separately or grouped together where necessary to meet national requirements.

Paragraphs 7 to 10 of the Recommendation concerns the principles contained in Article 11 of the Protocol. Article 11 of the Protocol requires each State Party to take appropriate measures, in an effort to detect, prevent and eliminate the theft, loss or diversion of firearms etc., to require the security of firearms etc. at the time of import, export and transit through its territory and to increase the effectiveness of import, export and transit controls, including, where appropriate, border controls, and of police and Customs transborder co-operation. In this regard, Members should exercise similar control measures on firearms moving into or leaving free zones.

Paragraph 11 of the Recommendation relates to information exchanges and increased co-operation between law enforcement agencies. Examples of the types of information to be exchanged are contained in Article 12 of the Protocol. Paragraph 11 also requires Members to promote the use of specialized systems and techniques under their jurisdiction such as the WCO's Customs Enforcement Network (CEN). CEN is an information, analysis and communication system for the fight against Customs offences and it supports and enhances Customs fight against Transnational Organized Crime.

Paragraph 12 of the Recommendation relates to paragraph 3 of Article 13 of the Protocol. It covers the Memorandum of Understanding between Customs and legitimate traders. However, the coverage under Article 13 is broader in its scope in that it also calls for co-operation between States at the bilateral, regional and international levels.
