

Audit of the control of the transfer of war material

State Secretariat for Economic Affairs SECO

Key facts

In 2016, arms exports accounted for CHF 412 million or 0.14% of Swiss exports. The exports are approved by the State Secretariat for Economic Affairs (SECO) or, depending on the type of transaction, also by the Federal Department of Foreign Affairs (FDFA), other departments or the Federal Council.

The Swiss Federal Audit Office (SFAO) assessed the effectiveness of federal export checks on war material. In its authorisation procedures, SECO complies with the War Material Act (WMA), the War Material Ordinance (WMO) and the Federal Council's interpretation practice. On this basis, all war material exports in 2016 which were checked by the SFAO were correctly authorised.

Ordinance amendments and the interpretation practice (by confidential Federal Council decrees of a framework nature) are of great importance and have led to a business-friendly implementation of the WMA over the past 20 years. For the purpose of transparency and legal certainty, the WMA's interpretation practice should be included in the WMO and/or published in an appropriate form.

SECO's export control and sanctions departments in general, and specifically the arms control and arms control policy section, are intended to maintain a critical distance between SECO in carrying out its function as licensing and control authority for war material and the companies and their lobbyists which are to be supervised.

More risk-based company audits required

SECO has the power to carry out on-site inspections at Swiss war material manufacturers at any time. These company audits represent a strong risk-oriented control instrument but are of lower priority for SECO.

In order to free up more resources for such inspections, SECO inspections of war material purchasers abroad, i.e. post shipment verifications (PSVs), could be reduced or outsourced, as such PSVs are very resource-intensive and, according to the SFAO, less effective.

Federal control network for war material exports is too weak and insufficiently coordinated

In addition to SECO and the FDFA, other federal offices are involved: the Federal Customs Administration (FCA) for example has enforcement responsibilities at the borders; targeted information from SECO on shipments from selected companies which need inspecting would allow the FCA to increase the prioritisation and efficiency of its control activities. On the other hand, the Central Office for Combating the Illegal Trade in War Material at the Federal Intelligence Service only employs one full-time member of staff who is not informed of any reports, potential infringements by war material companies or ongoing proceedings.

Law, ordinance and interpretation practice means industry can benefit from alternative export possibilities which have been created

Due to the international division of labour in the defence industry, war material transactions which are unable to be authorised from Switzerland, can still be carried out via various other means.

According to Art. 18 para. 2 WMA, the so-called assembly package rule, assembly packages of up to a maximum of 50% of the production cost of the finished product can be exported without a non-re-export declaration. This allows shipments via "intermediate countries" to final destinations which Switzerland would otherwise not be able to deliver to. An example of this is the planned sale [REDACTED].

If a Swiss defence company acts as a broker for war material transactions between two countries or grants a licence for production in a third country and by doing so earns commission based on turnover, such export transactions to the WMO Annex 2 countries (a total of 25 countries) do not require authorisation. The company [REDACTED] is an example of this. After SECO rejected the direct export of pistols (components) to Saudi Arabia and, upon its second application, the Federal Council rejected their indirect export via the USA¹, the company was nevertheless able to trade with Saudi Arabia via the USA using production and licence agreements in the European Union.

Furthermore, inspection interviews have shown that the industry knows how to take advantage of the demarcation leeway between the WMA and the Goods Control Act (GCA). If a company can plausibly show that its defence products are also used for civilian purposes, their export does not come under the WMA, instead it falls under the less restrictive GCA. In this context, it is worth noting the "[REDACTED]" case: in 2007, this company exported telescopic sights to Iran via Italy. In 2014, the company was found guilty of violating the WMA. However, on appeal, [REDACTED] was able to prove that the telescopic sights were also used for civilian purposes and that the export therefore did come under the WMA.²

In end effect, products can be moved within a group relatively freely. As long as the end client is not yet known, there are de facto few reasons for refusing such exports.

Original text in German

¹ Federal Council press release of 23.01.2013: "Federal Council rejects application for the export of pistol components"

² Federal Supreme Court ruling of 28 January 2016 (6B_14/2015)