Sub-Group on Article 11 Diversion

Import documentation
Arms Trade Treaty
WGETI
03 April 2019

Why focus on end use/r controls?

- **End use/r controls** recognized as **effective mechanism to combat diversion**, pertinent to **Article 11**, but also to **Articles 7, 8, 9 and 10 of the Arms Trade Treaty**

- **End-use documentation** is **effective in the context of a broader control system**:
  - **comprehensive risk assessment** at the licensing stage
  - use of **assurances** as part of documentation
  - the **verification of end user documentation**
  - Follow up through **post-shipment cooperation**

- **Evidence from diversion** suggests that **differences among national end use/r control systems**, as well as the **lack of shared understanding on their application** pose a challenge to the effective use of end use/r controls.

Diversion and end use/r controls

- End use/r **documentation is not authenticated** by exporting States, and **forgeries are used to acquire export licences** to divert arms

- End use/r **documentation is not verified** by exporting States, with **information missing** or **not checked adequately**

- The importing State **lack adequate system for oversight and procedures of arms imports**

- **Assurances on end use are ignored** by the importing State, where **adherence to assurances is not monitored** by the exporting State or **actions are not taken when reports of violations** are presented

- Officials in importing States are **intentionally or accidentally undertaking an unauthorized re-transfer** of arms without the exporting State's prior consent

Areas of focus for today's session

- **Terminology**
- **Preparation of documentation in the importing state**
- **Information contained in end use/r documentation**
- **Types of end use/r assurances**
- **Compliance with end use/r assurances**
- **Options for verification and authentication**

Terminology

End use/r documentation:

Documents whose purpose is to *identify, authorize, commit to certain undertakings* and *verify delivery*

Key terms: end use/r documentation

- End use/r documentation covering arms transfers to **State end users**

    - **End user certificate (EUC)**

    - End use certificate

    - End use assurance

    - End user undertaking

- End use/r documentation covering arms transfers to **non-State end users**

    - Import licence

    - International import certificate (IIC)

    - End use/r statement (EUS)

- **Delivery verification certificate (DVC)**

Key terms: End use and end user

- **End-use:** the ultimate application of internationally transferred item

- **End-user:** the ultimate recipient of an international transfer of item

- **Types of end-user:**

  - National government, national military forces, or other national authorities such as police, customs or paramilitary forces (…);

  - Companies that provide security services;

  - Industrial end-users are increasingly common when components or subsystems are exported.

Key terms: Entities

- **Exporter**: makes, or on whose behalf the export declaration is made

- **Consignor**: natural or legal person who sends a consignment

- **Importer**: makes an import declaration—or on whose behalf a customs clearing agent or other authorized person makes the import declaration

- **Consignee**: natural or legal person who is the intended recipient of a consignment

- **Intermediary**: Entities involved in the transaction such as freight forwarders, customs brokers, agents or representatives, and arms brokers

Key terms: Processes at pre-transfer phase

- **Assurance:** commitment to circumscribe, limit or specify the use of imported item, or to rule out certain uses

- **Certification** or **Validation**: EUS is stamped and signed (or otherwise certified) by a competent authority of the importing State

- **Authentication**: The competent authority of the importing and/or exporting State conducts a check to ensure that the end use/r document is not a fake or forgery and has not been tampered with

- **Verification**: The competent authority of the importing and/or exporting State assesses the veracity and accuracy of the information contained in the end use/r document

Key terms: Processes at post-delivery phase

- **Re-export:** the export of goods from the State that previously imported them, without further processing or transformation of the imported goods

- **Post-delivery cooperation**: often called 'post-delivery controls', 'post-shipment controls', or 'post-delivery monitoring' refers to the exchange of information between exporting and importing States after items have been delivered, confirming receipt and use in accordance with assurances provided by the importing State

Take-away points

➢ UNIDIR examined the potential for:

- Common definitions and terminologies in end use and end user controls, including for users, types of documentations and processes.

➢ **UNIDIR observed that:**
- **Most States indicated exchange on definitions as a good starting point in dialogue on end use/r controls**
- **Some terms are used interchangeably, reflecting the plurality of terms**
- **There is potential for common understanding on key terms for documentation, building on existing definitions**
- **Particular challenges exists for definitions for actors (end user)**

Questions for participants

1. What other types of written documents exist or are used?

2 i) Do States distinguish between documentation covering arms transfers to State end-users and transfers to non-State end-users?

2 ii) What are the different considerations that apply?

Questions for participants

3 i) Does your State have a national template (or templates) for EUC or other end use/r documentation?

3 ii) Are the competent government authorities seeking to import arms required to use the template(s)?

3 iii) Does your State have a different template for State end-users to the one required for non-State end-users?

4. Is there a shared (or clear) understanding of terms such as 'end-user'?
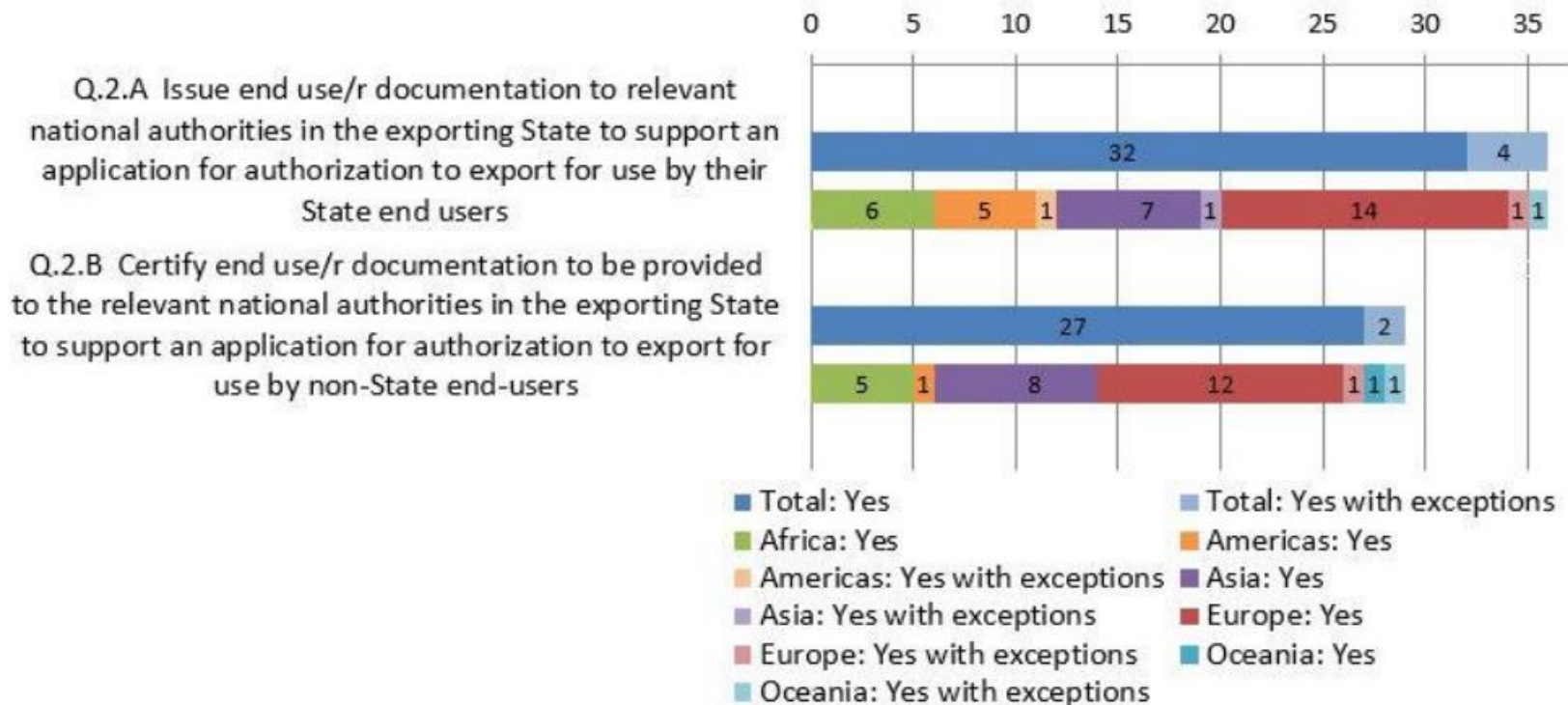
Preparation of documentation in the importing state

Preparation of documentation in the importing state

- Not all states have centralised systems for issuing end use/r documentation and/or import authorization documentation (i.e. licenses, permits).

- There can be multiple competent authorities for regulating imports, with different processes for issuing documentation and officials authorized to sign or certify end use/r documentation.

- Different approaches are often used for regulating imports to state and non-state end users?

- What are the implications of electronic licensing systems?

- How can the states that will regulate the export, brokering, and transit/trans-shipment check with the competent authorities in the importing state?

Issuing and certifying end use/r documentation

Q.2.A Issue end use/r documentation to relevant national authorities in the exporting State to support an application for authorization to export for use by their State end users

Q.2.B Certify end use/r documentation to be provided to the relevant national authorities in the exporting State to support an application for authorization to export for use by non-State end-users

Legend:
- Total: Yes
- Total: Yes with exceptions
- Africa: Yes
- Americas: Yes
- Americas: Yes with exceptions
- Asia: Yes
- Asia: Yes with exceptions
- Europe: Yes
- Europe: Yes with exceptions
- Oceania: Yes
- Oceania: Yes with exceptions

Q.2.A values: 32, 4 (Total); 6, 5, 1, 7, 1, 14, 1, 1

Q.2.B values: 27, 2 (Total); 5, 1, 8, 12, 1, 1, 1

Observations

- Best practice guidelines provide:
  - Considerable guidance for end use/r documentation provided by State end users and written import authorization (licence, permit)
  - Limited guidance on certification for end use/r documentation provided by non-State end users, in contrast to substantial guidance for State end users

- UNIDIR's survey indicates that:
  - Not all respondent States have in place particular measures to prevent forgery and misuse of documentation and assist in authentication
  - Not all respondent States are willing to certify and authenticate documentation for non-State end-users

Questions for participants

- **How are EUCs and other import documents prepared?**

- **Which ministries and agencies are involved? How do they cooperate and coordinate?**

- **Who is authorized to sign end use/r documentation for transfers to States? For transfers to non-State entities?**

- **Do importing states have a centralized system for EUC / import licence authorization and a database or list of entities/persons authorized to sign EUCs?**

- **Would importing states be willing to share such information with ATT States Parties via the restricted access section of the ATT website, and ensure it is up-to-date?**

Questions for participants

- **Could ATT National Points of Contact play a role in confirming authenticity of EUCs?**

- **With respect to documentation by commercial/non-State entities, do competent authorities in importing states have systems in place to certify / indicate that the proposed import is authorized by the government?**

- **Do all agencies use the same EUC template/document?**

- **Are the EUCs paper-based or electronic? What are the pros and cons of each system? What does this mean for the authentication process?**

- **What measures do importing states take to certify / assure competent authorities in exporting States that the documentation is legitimate? (i.e. apostille?)**

Information to be provided in end use/r documentation

End-use/r documentation

- Euro-Atlantic organizations and export control regimes have carried out a lot of work to identify essential elements for end-use/r documentation for government end-users

- Essential elements to be included in end-use/r documentation include:
  - Details of end user and declared end use
  - Details of items being transferred, and potential end uses
  - Relevant information on other entities involved in the transfer and the route, if known
  - Assurances or undertakings on end use and re-export.

- Major exporter states provide different end-use/r documentation templates or checklists of elements to be included in end-use/r documentation
  - Items (conventional arms; SALW; parts and components; dual-use items)
  - End-users (State; non-State)

End use/r documentation contents

Document contents	UN MOSAIC	EU	OSCE	WA
Exporter details	X	X	X	X
End user details	X	X	X	X
Contract number	X	-	X	X
Country of final destination	X	X	X	X
Description of items	X	X	X	X
Quantity / Value	X	X	X	X
End user representative details	X	X	X	X
Date of issue	X	X	X	X
Description of end use	X	X	X	X

End use/r documentation contents

Document contents	UN MOSAIC	EU	OSCE	WA
Intermediary details	-	X	X	X
Government issuing agency details	X	-	X	X
Date of expiration / Period of validity	X	-	X	-
National register number for EUC	X	-	X	-
Seal / Apostille				

Export authorization: Details contained in end-use/r documentation

	0	5	10	15	20	25	30	35	40
Exporter details (at least name, address and business name)						36			1
End user details (at least name and address)						37			1
Contract number or order reference and date					25		2		
State of final destination						35			1
Description of arms being exported (type, characteristics)						36			1
Quantity of conventional arms						35			1
Value of conventional arms					27		2		
Signature, name and position of the end user's…						35			1

■ Global: Yes   ■ Global: Yes with exceptions

Source: UNIDIR Global Survey 2015

Export authorization: Details contained in end-use/r documentation (cont'd)

Legend: ■ Global: Yes   ■ Global: Yes with exceptions

Detail	Global: Yes	Global: Yes with exceptions
Date of issue of end use/r documentation	36	1
Description of the end use of the conventional arms	35	1
Official letterhead of competent authority in importing State or entity	23	4
Name, address and contact details of the agency issuing the certificate	29	1
Signature of competent authority in importing State or entity	30	1
Stamp of importing State authority to certify the end use/r document	29	2
Details, where appropriate, of any intermediaries involved in the transfer	26	2

EUC contents in "possible measures to prevent and address diversion"

Document contents	Essential	Optional
Parties involved in the transfer	- Details of the exporter	- Details of the intermediate and final consignee
Goods to be transferred	- Description - Contract / invoice no. - Quantity / value	
End use	- Indication of end user - Undertaking on non-proliferation	
Location		- Certification on installation - On site inspection

EUC contents in "possible measures to prevent and address diversion"

Document contents	Essential	Optional
Documentation	- Signature, name title of end-user/consignee - Original or legally-certified copy	- Signature, name title of end-user/consignee - Unique identifier - Date of issue / validity - Kept with arms
Re-export / diversion		- Undertaking on re-export
Delivery verification		- Delivery Verification Certificate or other proof

Observations

- Best practice guidelines provide:
  - Considerable guidance for the 'essential' or 'minimum' details to be provided in end use/r documentation issued by State end users
  - Examples of 'optional' details to be provided in end use/r documentation issued by State end users

- UNIDIR's Survey indicates that:
  - Opportunity for consensus on 'essential' or 'minimum' details in end use/r documentation issued by State end users, while recognising the need for flexibility depending on items, end user, etc.
  - Lack of discussion on 'essential', 'minimum' or 'optional' details for non-state end users

Questions for participants

- **What information do States include in their EUCs?**

- **What is the minimum or essential information that should be included? Is there information missing from the table in Annex B?**

- **What additional information could be useful to request and why?**

- **Is there scope for endorsing a list of essential and optional information to be included in an EUC for use by ATT States Parties, as required, for use by States Parties on a voluntary basis?**

Assurances

Assurances on end use and unauthorized re-transfer

➢ UNIDIR examined the potential for framework to strengthen:

- Assurance on **end use**;

- Assurance that the end user will be the ultimate recipient and **items will not divert or relocate to another destination or location in the importing state**;

- Assurance not to **re-transfer**:

  - re-export under any circumstances

  - re-export without prior, written authorization from the original exporting State

- Assurance on **post-shipment cooperation**

Assurances on end-use and unauthorized re-transfer

- It is expected that **a high-level official in the government of an importing state or a representative of the end-user provides assurances on use**
  - **Not to be used for purposes other than the declared use**
  - **Not to divert or relocate to another destination or location** in the importing state

- It is expected that **a high-level official in the government of an importing state or a representative of the end-user provides assurances to abide by provisions relating to re-transfer/re-export of items to be supplied**
  - **No re-export under any circumstances**
  - **No re-export of without prior, written authorization** from the original exporting State
  - **Re-export is permitted if expressly permitted** by the original exporting State

Assurances on end use/r

Type of assurance	UN CASA	EU	OSCE	WA
The item(s) being exported will not be used for purposes other than the declared use	X	X	X	X
The item(s) will be installed at the premises of the end user or will be used only by the end user	X	-	X	X
The importer/end user will not divert or relocate the item(s)	X	-	-	X

Assurances on re-export

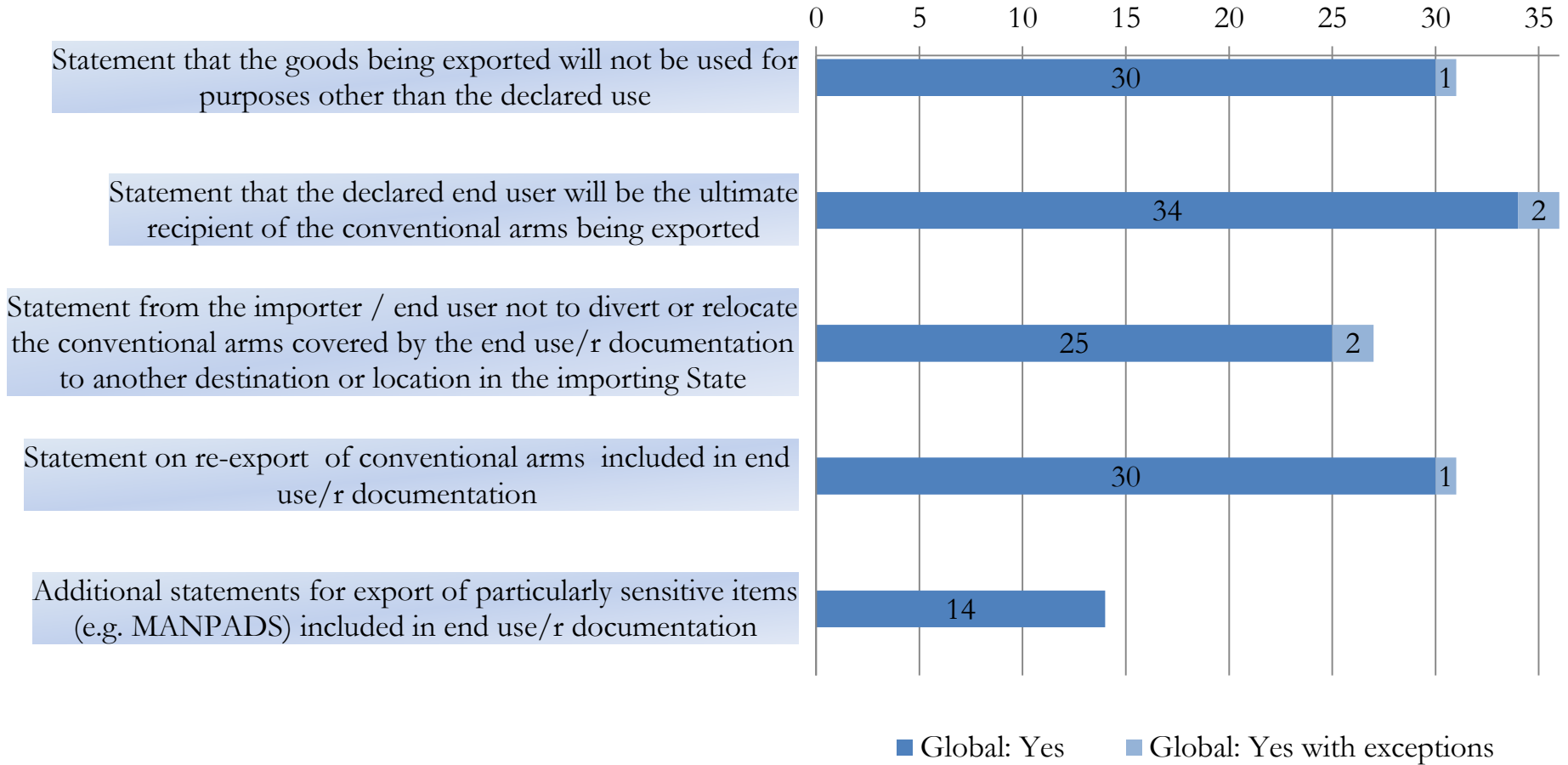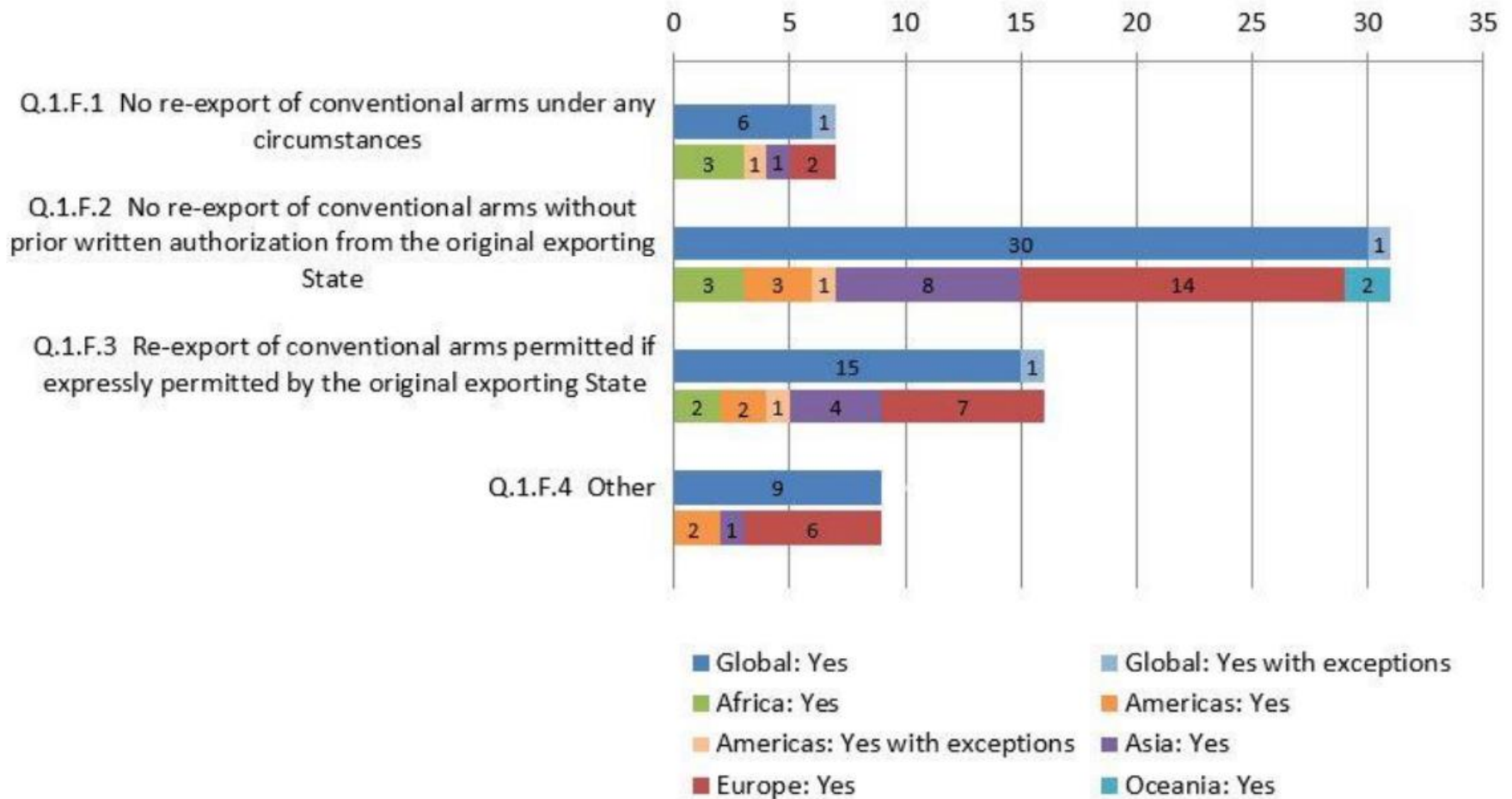| Type of assurance	UN CASA	EU	OSCE	WA
A clause prohibiting re-export of the item(s)	X	X	X	X
Re-export will only be carried out under the authority of the importer's/end user's export licensing authorities	X	X	X	X
Re-export will only take place after authorization has been received from the export licensing authorities of the original exporting State	X	X	X	X

Types of assurances

- Good practice guidelines recommend assurances on:
  - End-use
  - End-user
  - Re-export

- UNIDIR's Survey reveals (2015-2017) that:
  - Most respondent States seek assurances on end-use, end-user and re-export
  - Respondent States use different re-export assurances options

Types of Assurances

| | 0 | 5 | 10 | 15 | 20 | 25 | 30 | 35 |

Statement that the goods being exported will not be used for purposes other than the declared use — 30, 1

Statement that the declared end user will be the ultimate recipient of the conventional arms being exported — 34, 2

Statement from the importer / end user not to divert or relocate the conventional arms covered by the end use/r documentation to another destination or location in the importing State — 25, 2

Statement on re-export of conventional arms included in end use/r documentation — 30, 1

Additional statements for export of particularly sensitive items (e.g. MANPADS) included in end use/r documentation — 14

■ Global: Yes   ■ Global: Yes with exceptions

Assurances on Re-export

Source: UNIDIR Survey (2015 - 2017).

Types of assurances

➢ **UNIDIR research indicates that:**

- **States are familiar with assurances on end use, end user and re-export**; however the **familiarity decreases when responsibilities are diversified at national level**

- Assurance **options differ depending on the end user and items**; indicating that further mapping on types and conditions useful

- **Recordkeeping of documentation is essential** to better monitor and oversee adherence to assurances

- Potential for **linking assurance and post-deliver cooperation:**

  - **Import marking, recordkeeping; Stockpile management; Disposal of surplus and/or obsolete weapons; Reporting on assurances**

- **Assurances may be linked in the future closely to ATT provisions** in particular Articles 6, to strengthen process

Questions for participants

1. What other types of assurances do States request?

2. Do States request different assurances for different types of transfer? E.g. if arms or ammunition are delivered as part of military aid or donation versus if they are purchased by the importing State.

3. Do States request different assurances for different types of arms/items? E.g. One of the findings of the UNIDIR study is that, with respect to MANPADS, some exporting States already seek assurances before authorizing exports of MANPADS on safe and secure storage and transportation to prevent their diversion to unauthorized non-State end users.

Questions for participants

4. Do States require small arms and light weapons to be marked on import as a condition of an export (to facilitate tracing and serve as a diversion-prevention measure)? Could this be a recommended condition imposed?

5. Is it possible/feasible for States Parties to the ATT that export weapons to agree to explicitly request assurances that recipients use the imported items in accordance with provisions contained in articles 6, 7 and 11 of the ATT even if the recipient is not a State Party to the Treaty?

Compliance with assurances (Post-delivery cooperation)

Post-delivery cooperation

Post-delivery process require **active participation and cooperation of importing and exporting States and non-State actors** where involved

- **Delivery confirmation or verification** provided by the importer / consignee / end user to the exporter, **confirming delivery and/or receipt** of the conventional arms by the authorized end user or representative (e.g. DVC)

- **Routine or ad hoc post-delivery checks** to prevent misuse after delivery or post-delivery diversion. **On-site inspections** can be used for particularly sensitive items or in cases where there is a heightened risk of diversion.

- **Investigations into reports or allegations of diversion or unauthorized re-transfer** are most effective when undertaken in a cooperative manner. **Sharing information on the investigation and its results** with other exporters via regional organizations or export control regimes is an important outcome.
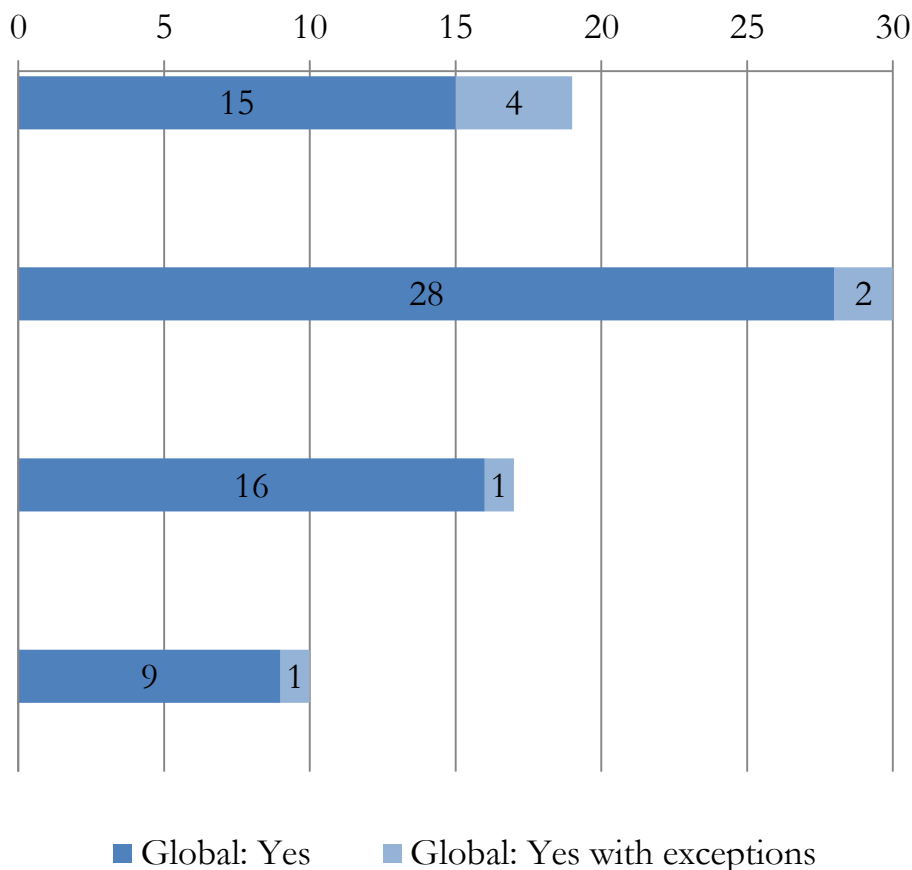
Post-delivery cooperation

	0	5	10	15	20	25	30

States that, when authorizing the export of conventional and SALW, require the importer / end user to provide evidence that the arms arrived at the intended destination (e.g. provide DVC) — 15 | 4
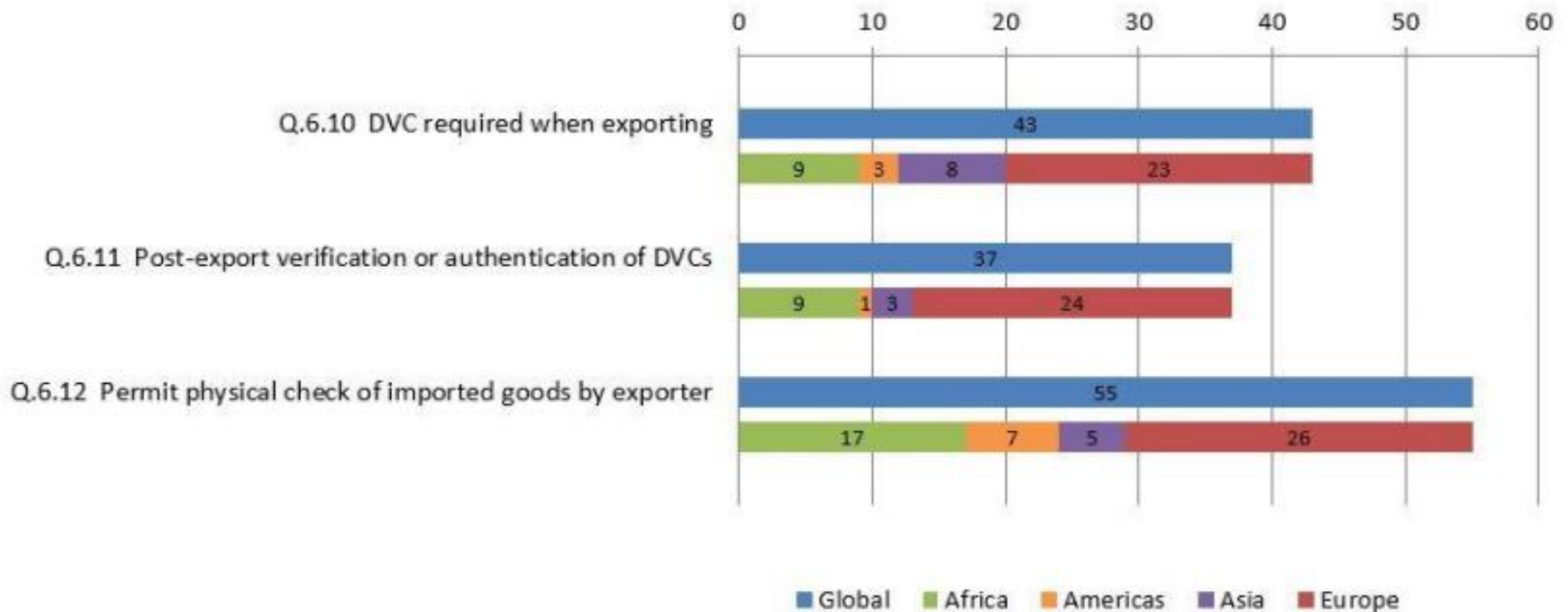
States that, when importing conventional and SALW, provide evidence to relevant authorities in the exporting State, when requested, that the conventional and SALW arrived at the intended destination (e.g. provide DVC) — 28 | 2

States that require in their end use/r documentation a commitment by the importer / end user to provide the exporting State with a delivery verification (e.g. DVC) upon request — 16 | 1

States that include in end use/r documentation an agreement by the importer/end user to allow on-site verification — 9 | 1

■ Global: Yes   ■ Global: Yes with exceptions

Source: UNIDIR Survey (2015 - 2017).

Post-delivery cooperation (Analysis of PoA Reports)

Source: UNIDIR Survey (2015 - 2017).

Post-delivery cooperation

- Regional organizations and the Wassenaar Arrangement have included provisions on post-delivery cooperation as options to be explored:
    - Delivery verification certificate (DVC)
    - On-site inspection

- UNIDIR's Survey underscores some possibilities for pursuing this option internationally
    - A **willingness to provide confirmation of delivery** contrasted with a low number of respondent States that seek delivery confirmation
    - A **low number of respondent States seeking the possibility for on-site inspections**
    - Questions regarding **record-keeping for end-use/r documentation**, which could have implications for assurances on re-export

Post-delivery cooperation

➢ **UNIDIR's research indicates:**

- **Willingness of importing States to provide confirmation of delivery**

- **Low number of States consider the option to seek the possibility for on-site inspections;**

- Measures for **Gifts/Grants observed to be different from those purchased directly from manufactures/suppliers**

- Shared understanding on **risk-based post-delivery control for particular items and/or end users considered useful** (e.g. import marking, recordkeeping, verification commitments)

Questions for participants

1. What challenges or obstacles do importing States face in complying with end use/r assurances?

2. What are the options for ensuring importing States stay aware of the assurances they have made?

3. How do exporting States record or keep track of assurances?

4. Do exporting States monitor and actively follow up on the adherence to end-use/r assurances? If so, how? If not, why not?

Questions for participants

5. Is it possible/feasible to have a centralized database of EUCs that have been issued (at the regional and/or international level)?

6. What sanctions do exporting States impose for non-compliance with end-use/r assurances and undertakings? E.g. are States that do not comply with end use/r assurances 'blacklisted' for future transfers?

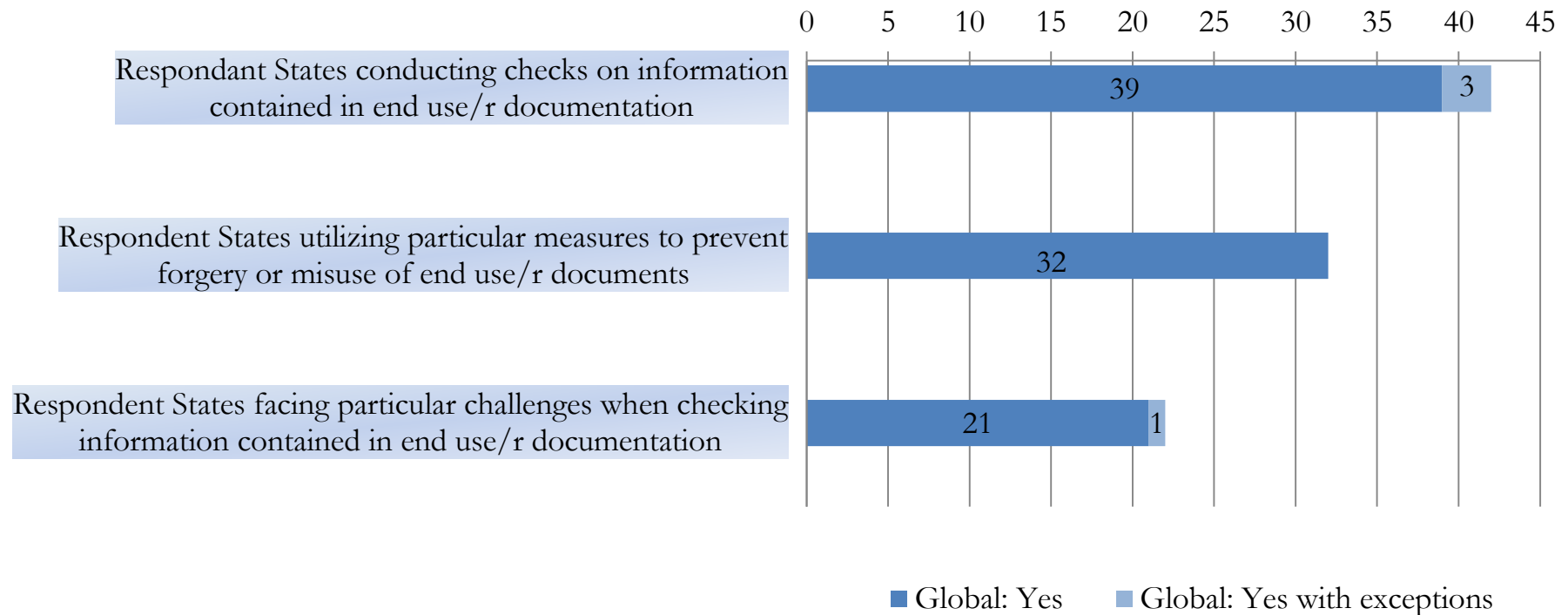# Options for verification and authentication

Options for verification and authentication by competent authorities in the exporting state

- **Authenticate** end use/r documentation

- **Verify contents** of end use/r documentation

- Conduct rigorous and thorough **risk assessment**

- Cooperate and **exchange information with importing State** competent authorities

- Cooperate and **exchange information with transit/transshipment** competent authorities

- Cooperate and **exchange information with other exporting State** competent authorities

- Cooperation with **producers, brokers, transportation**

Verification and authentication

Chart data:

Category	Global: Yes	Global: Yes with exceptions
Respondant States conducting checks on information contained in end use/r documentation	39	3
Respondent States utilizing particular measures to prevent forgery or misuse of end use/r documents	32	
Respondent States facing particular challenges when checking information contained in end use/r documentation	21	1

■ Global: Yes   ■ Global: Yes with exceptions

Challenges when authenticating and verifying information in end use/r documentation

- The lack of reliable or verifiable information in the end use/r documentation;

- Changing circumstances in the country of import or changes regarding the declared end user;

- Complexity of supply chains;

- Cooperation between with the relevant authorities in the country of import;

- Cooperation with entities involved in the transfer;

- Difficulties in identifying the competent authorities and authorized signatories (e.g. in both recipient countries and third party/transit states);

- Lack of resources (e.g. diplomatic representations in recipient countries);

- Lack of familiarity with end use/r control procedures and requirements, misperceptions with regards to checks and compliance inquiries.

Exchange of information

| | 0 | 5 | 10 | 15 | 20 | 25 | 30 | 35 | 40 | 45 |

Respondent States willing to provide information to other States on entities authorized to certify and authenticate* end use/r documentation: 37 | 1

Respondent States willing to exchange information on or share template(s) of national end use/r documentation with other States: 44 | 2

■ Global: Yes   ■ Global: Yes with exceptions

Source: UNIDIR Survey (2015 - 2017).
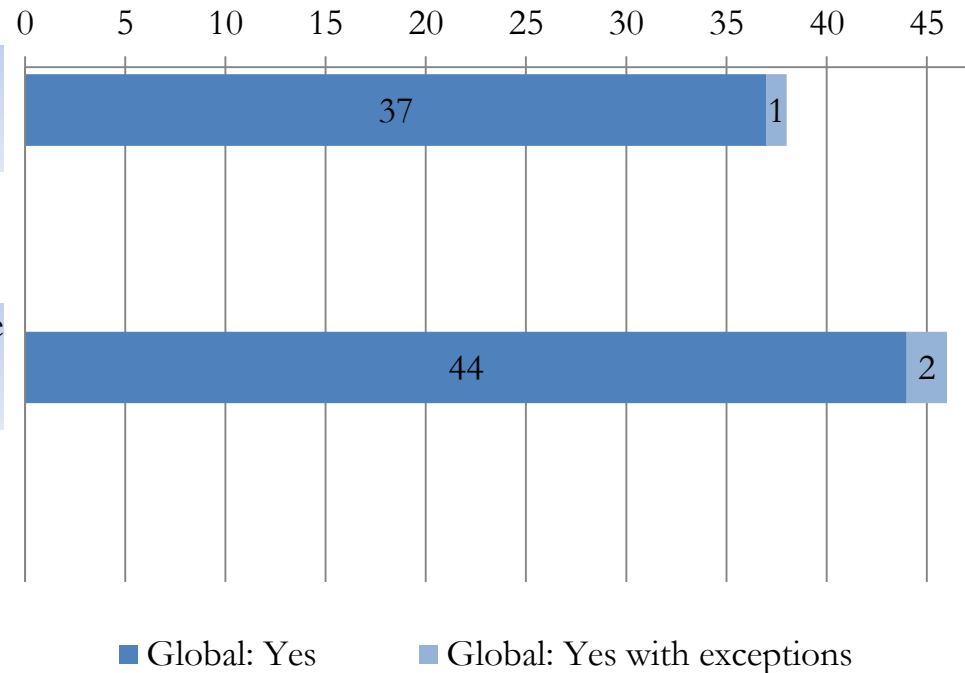
Exchange of information and risk indicators

For many States, it can be useful to receive information from other States and external sources to help in conducting a thorough risk assessment. In some cases, it could be useful for risk assessment indicators and guidance on sources of information to be shared between States

- Is there a significant risk that the items could be misused?
- Is the end user trustworthy? And what of the other entities involved in the transaction?
- Is there a significant risk that the items could be diverted?

Observations

- Best practice guidelines provide:
  - Examples of measures that can be taken to **detect forgeries and fraudulent documentation**
  - Questions and considerations that can help to **verify information contained in end use/r documentation**

- UNIDIR's Survey shows that:
  - A high level of willingness by respondent States to **exchange template EUCs with other States**, which could aid authentication
  - Challenges expressed by respondent States to **sharing information on entities authorized to certify** end-use/r documentation
  - Challenges faced by respondent States in seeking to **authenticate and verify end-use/r documentation**

Questions for participants

- **How do exporting States verify and authenticate import documents as a part of a broader risk assessment framework ?**

- **What mechanisms are used?**

- **Which agencies are involved?**

- **Do competent authorities in the exporting and importing States cooperate? How?**

- **How long does it take?**

Questions for participants

- **What steps are taken if the documentation is found to be fraudulent? Could this information be shared to ATT States Parties via the restricted part of the website, on a voluntary basis? What other measures could be undertaken for ATT States Parties to ensure the authenticity of end use/r documentation received?**

- **Does the process of verifying and authenticating import documents differ if the end user is a State or a non-State entity? Should the process be different for each?**

- **Is there scope for establishing voluntary standards and a verification process for end use/r documentation, IICs and import licences for non-State end users?**

Contact us

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