
Arms Trade Treaty
Eighth Conference of States Parties
Geneva, 22 - 26 August 2022

**WORKING PAPER PRESENTED BY THE PRESIDENT OF THE EIGHTH CONFERENCE OF STATES PARTIES
TO THE ARMS TRADE TREATY (ATT)**

**POST-SHIPMENT CONTROLS AND COORDINATION
EFFECTIVE EXPORT VERIFICATION AND GOOD-FAITH COOPERATION BETWEEN EXPORTERS AND
IMPORTERS**

- STATUS QUO AND GUIDANCE (“TOOLBOX”) -

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- I. Executive summary**

Preventing diversion is one of the key priorities of the Arms Trade Treaty (ATT). By joining the ATT, States Parties have committed to take effective measures to address this risk and prevent diversion. In addition to the further development of traditional control and coordination approaches, other monitoring options are to be discussed within the scope of the ATT in order to ensure holistic monitoring of arms. One such option is the implementation of on-site post-shipment controls.

On this basis, this working paper follows on from the previous discussions within the scope of the ATT and aims to assist States Parties in taking measures to prevent diversion while preserving the cooperative and coordinative approach of the ATT, including in the post-shipment phase. It should be emphasised that this approach complements existing control measures. Post-shipment controls do not replace the thorough ex-ante assessment of the end-use control of arms exports.

Finally, the working paper provides ideas and recommendations for further discussions among the ATT’s States Parties and stakeholders.

II. Introduction

Preventing diversion is one of the key priorities of the Arms Trade Treaty (ATT). By ratifying the Treaty, States Parties have committed to take effective measures to address this risk and prevent diversion. The ATT requires States Parties to take measures to prevent, detect and address the diversion of ATT items.

On this basis, the present working paper aims to assist States Parties in taking measures to prevent diversion while preserving the cooperative approach of the ATT in a post-shipment phase. One possible measure is the implementation of on-site post-shipment controls.

So far, there is neither an internationally agreed definition of the term “diversion” nor any definition in the ATT. However, the very mention of the term at the beginning of the preamble indicates its meaning in the context of the ATT: *“Underlining the need to prevent and eradicate the illicit trade in conventional arms and to prevent their diversion to the illicit market, or for unauthorized end use and end users, including in the commission of terrorist acts”*.

There is a common understanding that diversion is in general terms the transfer of items from an authorised owner or user to an unauthorised user¹. While diversion can occur at any time during the lifecycle of arms, the risk is certainly greatest during transfers. Article 11 (1) of the ATT² therefore requires specifically that each State Party that engages in the “transfer” of ATT items “take measures to prevent their diversion”. In addition, Article 11 (2) stipulates that States Parties shall consider the “establishment of mitigation measures” to prevent the diversion of transferred ATT items.

Furthermore, Article 15 (1), (2) and (3) calls upon States Parties to cooperate in the implementation of the Treaty, facilitate international cooperation and consult on matters of mutual interest. This cooperative approach is the basic rationale of the ATT. The responsibility to prevent diversion is not assigned solely to the exporting State. Cooperation and the exchange of information between exporting, transit, trans-shipment and importing States as one of the main principles of the ATT should be promoted in order to mitigate the risk of diversion. Post-shipment controls are an area where such international cooperation could in particular take place among States Parties.

III. Measures to identify and/or prevent “diversion” – an overview

The ATT lists a wide range of measures that States Parties may consider in order to prevent and address diversion.

1. Traditional control and monitoring approach by licensing and customs authorities

Combating diversion begins at the pre-export stage. Therefore, a national control system needs to evaluate the risk of each transfer of ATT items included in the national control list. All such transfers are subject to prior authorisation (i.e. a licence). During the licensing process, the risk of diversion of the export should be assessed, including an examination of all parties involved in the transfer.

Exporting States should conduct thorough reviews of the documentation, such as contracts or agreements, international import certificates, transit approvals, end-use/r certificates (EUCs), and various other assurances provided by importing States (Articles 8 (1) and 11 (2)). The licence may

¹ UN Office for Disarmament Affairs, ATT Implementation Toolkit, Module 10 – Preventing Diversion

² Unless otherwise stated, Articles mentioned in this working paper are Articles of the ATT.

contain mitigation measures for any risks deemed overriding or otherwise concerning. Such mitigation measures could include specific terms and conditions, such as reporting requirements, cancellation provisos or post-shipment measures.

Customs authorities form the last line of defence of the exporting States and also play an important role in the transit and import control phase. Cooperation and coordination between licensing and customs authorities is the cornerstone of the traditional approach to arms trade controls. Usually, the possibility of monitoring the transaction ends when the arms have left the territory of the exporting State.

2. In addition: Establishing controls and coordination measures in the post-delivery or post-shipment phase

In order to address the risk of diversion even more effectively and implement the requirements of Article 11 (1) and (2), the integration of measures in the post-shipment phase into the national export control system is particularly relevant. In this phase, it is possible to check whether the guarantees given by the end-user have been adhered to. The responsibility of the exporting States does not end with the granting of the export licence. Importing States should be encouraged to cooperate with exporting States to coordinate their efforts to prevent diversion. This applies in particular to the post-shipment phase. States are therefore encouraged to take or strengthen measures in the post-shipment phase in addition to their pre-export controls that are already in place.

On this basis, this working paper contains voluntary measures that States Parties may consider in order to foster the goal of combating diversion of ATT items. It contains a non-prescriptive and non-exhaustive list of measures that could be taken into account as potential components to be adopted by States in the post-shipment stage of transfers of ATT items.

IV. Post-shipment controls and post-delivery coordination

1. Post-shipment controls – definition

There is a wide range of possible measures to ensure that arms which have been supplied have not been diverted in an unauthorised way. These measures include various forms of controls or checks *post-shipment*, i.e. after the arms have been shipped:

- Formal assurances by the importing State (requesting of end-user assurances such as end-user declarations and/or delivery verification certificates), including assurances that prior permission will be requested for re-exports and or domestic transfers
- Reporting requirements concerning the actual export
- Regular screening of reports of possible diversion incidents (including via information exchanges within the scope of the ATT, e.g. the Diversion Information Exchange Forum – DIEF)
- Audits of the exporting entities by the competent authorities of the exporting State
- Measures that allow an exporting State to inspect the supplied military items itself *on-site* on the premises of the end-user

The physical on-site inspection after the export, i.e. *post-shipment*, has been variously referred to as an end-use check (USA), post-shipment verification (CHE), post-shipment control (DEU), on-site verification (CAN) or on-site visit (UNODA).

For the purposes of further discussion, the term “post-shipment control” will be primarily used in the following to describe the physical on-site inspection of items by the exporting State after they have been delivered to the final end-user.

Post-shipment controls enable a State to perform checks on military equipment after it has been exported and delivered to the end-user to ensure that exported military equipment remains in the possession of the authorised end-user.

2. Post-delivery coordination

However, post-shipment controls should not be perceived as unilateral verification measures with the sole purpose of controlling the end-use of the arms supplied.

By conducting post-shipment controls, the exporting and importing States can jointly document their individual and common efforts to combat the diversion of arms. Post-shipment controls are therefore a bilateral instrument that requires and strengthens cooperation between the exporting and importing States in monitoring the end-use of arms. Coordinated action by the exporting and importing States has the potential to establish and/or increase trust and to build confidence in the control system in question. It underlines the cooperative approach of the ATT. In this sense, the increasing use of the term “*post-delivery coordination*” demonstrates the growing interest in and understanding of this approach among ATT States.

V. Post-shipment controls – previous and current initiatives within the scope of the ATT

There are a number of past initiatives under the ATT on preventing and addressing diversion and post-shipment controls. “Post-shipment controls” as a subtopic of “post-delivery controls” were highlighted by the ATT Working Group on Effective Treaty Implementation (WGETI) and the sub-working group on Article 11. At CSP4, the WGETI Chair’s Draft Report included a paper on “Possible measures to prevent and address diversion”. This comprehensive document considered a series of measures that could be taken at all stages of the transfer of arms – including the post-delivery stage – by the ATT States Parties to address possible instances of diversion. In addition, the instrument was emphasised in the “Multi-year work plan for the WGETI sub-working group on Article 11 (Diversion)” in March 2021.

In 2020/2021, Canada prepared an initial survey in order to gather information on potential interest in discussions of “post-delivery verification measures” within the scope of the ATT; the majority of the consulted States considered that post-delivery measures could help mitigate the risk of diversion.

Furthermore, events were organised by Switzerland and Germany to share their national experiences with the implementation of post-shipment controls on the margins of past ATT meetings. Most notably, at the first preparatory meeting for CSP8 in February 2022, a first workshop was organised by Germany with support from Switzerland and Mexico that focused on the perspective of States Parties. A second workshop supported by Switzerland and Canada at the preparatory meeting in April 2022 included the perspective of civil society actors (SIPRI and UNIDIR) and industry (Dynamit Nobel Defence – DND).

Those initiatives aimed to promote voluntary discussions between ATT States Parties on post-shipment controls. Building on these discussions, the following section will set out a toolbox for possible implementation of post-shipment controls. The toolbox is mainly based on German experiences; the individual components will have to be adapted to national circumstances.

VI. Operational steps for the introduction and implementation of post-shipment controls

1. Political commitment and buy-in

A basic policy paper may be useful for documenting and explaining the motivation for the introduction of post-shipment controls, be it for domestic policy reasons (e.g. in response to instances of diversion in the past) or as a way to demonstrate willingness to join international efforts to mitigate diversions of arms. It may also be helpful to involve exporters and other stakeholders (e.g. civil society, parliamentarians) at an early stage. Other major exporting States have already demonstrated that the introduction of post-shipment controls has not negatively affected the exporting industries in those States.

Effective practice recommendations:

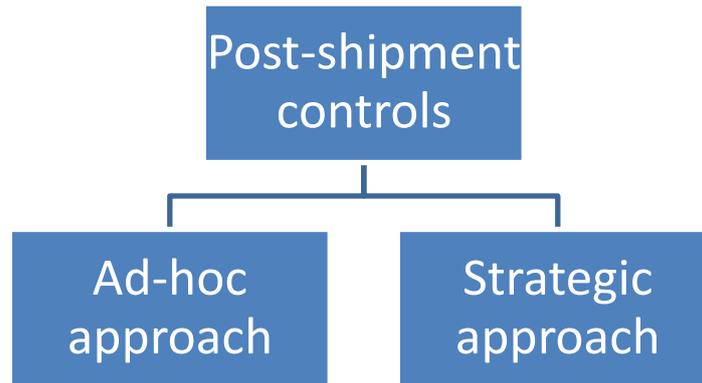
- Consider States that have already introduced post-shipment controls in order to learn from their experiences.
- Carry out an initial pilot phase of post-shipment controls in order to gain first-hand experience and to test domestic decision-making and coordination structures or identify the optimal structures, then subject the results to an internal evaluation process before more formal structures are established.
- Establish a dialogue with exporters and parliaments to explain the motivation for post-shipment controls as well as their limitations.
- Draw on the reference document “Key points for the introduction of post-shipment controls for German arms exports”³ for an initial general policy paper.
- Define the scope of controls, in geographical terms and in terms of the items subject to control. Focusing on final and complete products may be useful as it may be difficult to trace and control components or assemblies that are to be incorporated into weapons systems abroad; a risk-guided approach could focus on those items that are most likely to be diverted.

2. Structure, organisation, staff

Various configurations of post-shipment controls currently exist. A distinction is made between ad-hoc verifications and a more strategic approach. “Ad-hoc” refers to short-notice reactions to individual indications of a possible diversion.

The strategic approach, on the other hand, is to carry out a certain number of checks every year, based on formal selection criteria and ideally on a national policy. The choice of the end-user to be controlled may be primarily random or it may be based on a risk assessment. With this approach, the question arises of how many controls should be carried out and where the control officers should be stationed. Control officers could conceivably be based at regional centres abroad or travel from the exporting State to the end-user in the importing State.

³ https://www.bmwk.de/Redaktion/EN/Downloads/eckpunkte-einfuehrung-post-shipment-kontrollen-deutsche-ruestungsexporte.pdf?__blob=publicationFile&v=2.



The advantage of the ad-hoc approach is the very low use of both human and financial resources. Such ad-hoc controls can be carried out, for example, by embassy staff in the importing State or by national officials at short notice. The situation is different for the strategic approach. With this approach, organisational structures should be established, e.g. to initiate selection decisions and to prepare, conduct and/or monitor the on-site verification visits.

Effective practice recommendations:

- A standardised procedure is helpful to guide the inter-agency process for the checks to be performed in any given year.
- A specialised unit could be established, for example within the licensing authority.
- Staff should be identified in part based on the following skills that may be useful: flexibility, multilingualism, diplomatic competence, intercultural understanding, legal knowledge, technical understanding and possibly an enforcement background.
- Special guidance documentation could be drawn up for embassy personnel.
- Possible indicators for risk-based selection criteria could be based on the destination country, the items in question (some items are more likely to be diverted than others) or the scope of the delivery. The selection may also be guided by the time that has elapsed since the initial delivery or the number of on-site visits to a particular end-use destination in the past. Guidance can be provided by embassy personnel, intelligence or media reports or as a result of information-sharing among State Parties.

The number of officers to be selected for the post-shipment controls will depend on the number of controls scheduled. Experience shows that States that schedule about 10 controls per year have assigned one or two officials to organise and carry out the post-shipment controls. Furthermore, it is vital to consider the safety aspects of the verification visits beforehand.

Effective practice recommendations:

- The visit needs to be coordinated between the exporting and the importing State beforehand.
- The verification team should ideally be accompanied by embassy officials in the importing State.
- Control officers could be provided with diplomatic passports. This may be more flexible than asking for formal assurances from the importing State.

3. Legal considerations

Depending on national circumstances, the introduction of post-shipment controls may require amendments to national export control legislation, in order to have a basis in domestic law for making use of these on-site verification measures. Most importantly, it is necessary to find a way to obtain the prior approval of the importing States for on-site inspections on their national territory.

Effective practice recommendations:

- National legislation could clarify that the approval of a licence (possibly for a defined range of end-use destinations) would be dependent on the submission of written assurances by the end-user that consent is given for subsequent on-site verifications.
- National legislative steps may also be necessary to allow the control unit to trace the transaction in question (e.g. reporting requirements for the actual export, including the submission of serial numbers to the control authority).
- As permanent exports are usually dependent on the presentation of an end-use certificate, end-use documents are a simple and helpful tool to obtain the necessary assurances/approval from the end-user of the items in question. The template could simply be amended. For example, the German and Swiss templates for end-user certificates require the end-user to sign the following assurance: *“Additionally, the end-user certifies that the German/Swiss authorities have the right to verify the end-use of the above-mentioned weapon on-site upon their request at any time”*.
- The exchange of diplomatic notes may also be a way to obtain the consent of the importing State.

4. Communication with importing States

Since the control instrument has an impact on the relationship with the importing State, addressing the implementation of post-shipment controls is of particular importance. In order to promote the coordination of post-shipment controls in a spirit of mutual trust, it is useful to provide detailed information to (importing) States.

Effective practice recommendations:

- Embassies may play a crucial role in explaining the motivation for post-shipment controls. They could conduct more general outreach when post-shipment controls are initially introduced; more detailed information could be provided during preparations for an actual on-site verification. Embassy staff should be provided with guidance material.
- It may be helpful to provide information material for the exporters that can be forwarded to their customers.
- Conducting international outreach or participating in international outreach efforts may help to raise awareness and acceptance of post-shipment controls.

5. Pre-control phase – preparation of individual controls

It is useful to consider conducting post-shipment controls at least two or three years after the delivery of the items to the end-user. It should also be noted that the preparation of an inspection and in particular coordination with the importing State and the end-user in a spirit of mutual trust may take at least six months.

Effective practice recommendations:

- Embassies can facilitate the communication with the authorities of the importing State.
- Clear and direct communication lines between the verification team and the local embassy are necessary in the run-up to an on-site visit.
- The preparation of a dossier for the embassy (e.g. export licence, information about the consignee/end-user, EUC, description of the arms, serial numbers) may be useful for the initial talks with the authorities of the importing State.
- The verification measure should be planned beforehand and a strategy should be in place, i.e. what kind of items will be subject to inspection? Under which circumstances? What sort of preparation will be necessary?
- Typical issues to be coordinated between the verification team and the local authorities include the location and time of the verification visit. In importing States with a large territory where items may have been distributed across the country, verification officers may need to travel to different locations or the items could be gathered in a central location.
- Officers charged with the verification visit could be trained by military staff in safety measures for handling the weapons in question; they could also be trained in identifying the items that are subject to inspection. The exporter may also be a useful source of information in the run-up to a verification visit, e.g. by providing in-depth presentations of the items in question or merely by providing photographs that may help in identifying the weapons.
- The involvement of the importing State's authorities should be discussed beforehand. It may be helpful to plan for extra meetings for example at the MFA, MoD or other local authorities that may wish to gain a better understanding of the motivation for the verification visit.
- Coordination with the importing State at an early stage may also facilitate the issuing of visas or other required travel documents.

6. Control phase – conducting of controls

Cooperation between the verification team and the local authorities in a spirit of mutual trust is key to conducting successful verification visits on the premises of the end-user, especially if these premises belong to the armed forces or other security units. The essential security interests of the end-user should be taken into account by the verification team. It has already been mentioned that the exporting State needs to consider the safety and security of its verification team.

Effective practice recommendations:

- Logistics to consider include issues such as access to the verification site, the use of translators, transport services, permission to take pictures of the arms and serial numbers.
- It is useful to consider alternative means of verification, e.g. if items cannot be presented or have been used or destroyed. This could include the presentation of documents or pictures of arms.
- There should be clear communication on the handling of the inspected items; arms should be safe and unloaded.
- A visual check of all transferred arms – based on their serial number – is recommended; in the case of larger volumes of arms, a smaller sample check may also be acceptable.

7. Post-control phase

The results of the post-shipment controls should be documented. Possible sensitivities of the importing State should be respected, e.g. by keeping the reports confidential.

Effective practice recommendations:

- A template for reporting should be in place.
- It is also useful to consider who the addressees of the reports will be (e.g. other agencies, parliament) and how often these reports will be made (e.g. after each visit or annually?).
- Other issues to consider include the following: Will the information be shared with international partners? What kind of feedback should be provided to the importing State?
- Will reports also be shared with other partners? It is important to consider how the outcome of the verification visit can inform subsequent export licensing processes for the end-user in question and what to do in the case of non-compliance with the end-user's assurances. Such cases could also be presented to ATT partners.
- Appropriate sanctions in the case of non-compliance could include the suspension of export control licensing decisions until the incidents of non-compliance have been clarified. It is recommended to first discuss the instance of non-compliance with the importing State and to identify the source of the problem encountered. It may also be helpful to offer support in helping to prevent future incidents, e.g. training or capacity-building measures in the field of export controls, safe storage, anti-bribery measures etc.

VII. Recommendations and suggestions for the next steps within the scope of the ATT

- a) States Parties are encouraged to share their experiences with the implementation of post-shipment controls / post-delivery coordination measures within the scope of the ATT, through means such as the Initial Report; the Annual Report; the Working Group on Effective Treaty Implementation and sub-working group on Article 11; the Diversion Information Exchange Forum; the information exchange website; and the Conference of States Parties.
- b) Furthermore, States Parties are encouraged to define a common approach and understanding of the term "post-shipment controls" or "post-delivery coordination" within the scope of the ATT.
- c) States Parties should consider sharing their experiences with the implementation of post-shipment controls on the margins of the ATT, through side-events, updates to this working paper and other means.
- d) Discussions with all ATT stakeholders may be considered in order to promote further understanding and awareness of post-shipment measures and develop common standards for post-shipment controls.
