

The Implementation of Post- Shipment Controls in Export Control Regimes – Best Practice

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SIPRI work on post-shipment OSIs



1. Introduction

Diversion of military materiel is one of the main issues in the international arms trade that exacerbates conflict and fuels crime and insecurity. Diversion refers to material passing from the legal to the black market, but also to unauthorized end users, or being sold for unauthorized end uses.¹ It can occur at any stage of an item's life and supply chain, such as manufacture, during transfer, or after export and receipt by an end user.² In particular, diversion of military materiel to unauthorized recipients can occur after an initial legal export and in violation of present international arms control commitments (ICACs).³ Furthermore, diversion can have increasingly looked at different post-shipment measures, especially on-site inspections, to ensure that exported military materiel remains in a position of the authorized end user.

Numerous agencies have developed cases of diversion after shipment. For example, Ukrainian tanks, artillery, small arms and ammunition reported authorized for export to Korea between 2006 and 2008 were subsequently transferred to South Sudan's Liberation, a Ukrainian military helicopter transferred to the United Arab Emirates (UAE) in 2015 was delivered in it

¹ The Arms Trade Treaty has no definition of diversion, but it is possible to read a definition into the provision and article 6 of the Treaty to control and monitor arms and to prevent their diversion to unauthorized end users. For more information on the Arms Trade Treaty, see the SIPRI Arms Trade Treaty Handbook for Implementation, SIPRI, 2019, available at <https://www.sipri.org/publications/2019/08/arms-trade-treaty-handbook-for-implementation>.

² "Transfer refers to the movement of materiel from the authorized end user to unauthorized recipients, which can occur at any stage of the supply chain, from production to export, or after export and receipt by an end user or end user of an end user." SIPRI, *Arms Trade Treaty Handbook for Implementation*, SIPRI, 2019, available at <https://www.sipri.org/publications/2019/08/arms-trade-treaty-handbook-for-implementation>.

³ For more information on the Arms Trade Treaty, see the SIPRI Arms Trade Treaty Handbook for Implementation, SIPRI, 2019, available at <https://www.sipri.org/publications/2019/08/arms-trade-treaty-handbook-for-implementation>.

INTRODUCTION

Post-shipment on-site inspections of military materiel enable a state to perform checks on exported items after they have been delivered.¹ They are one of a range of pre- and post-shipment controls which states can use to help prevent the diversion of exported military materiel to unauthorized end-users and for unauthorized end uses.² In recent years, a growing number of states have adopted or expanded their use of on-site inspections. Aside from the United States—which has long had the most wide-ranging policies and practices for on-site inspections and post-shipment controls—of least eight states have provisions that allow for their use and have carried out at least one inspection (Belgium, Canada, Germany,

Latvia, Slovakia, Romania, South Africa and Switzerland).³ In addition, Spain and Sweden have recently created new provisions for on-site inspections.⁴ Other states

¹ SIPRI survey of export licensing and on-site inspection regimes of Belgium, 8 Aug. 2021; Canada, 14 July 2021; Denmark, 20 July 2021; Latvia, 10 Jul 2021; Romania, 10 July 2021; Slovakia, 10 July 2021 and Ireland, 10 July 2021; see also SIPRI, *Arms Trade Treaty Handbook for Implementation*, SIPRI, 2019, available at <https://www.sipri.org/publications/2019/08/arms-trade-treaty-handbook-for-implementation>.

² SIPRI, *Arms Trade Treaty Handbook for Implementation*, SIPRI, 2019, available at <https://www.sipri.org/publications/2019/08/arms-trade-treaty-handbook-for-implementation>.

³ SIPRI, *Arms Trade Treaty Handbook for Implementation*, SIPRI, 2019, available at <https://www.sipri.org/publications/2019/08/arms-trade-treaty-handbook-for-implementation>.

⁴ SIPRI, *Arms Trade Treaty Handbook for Implementation*, SIPRI, 2019, available at <https://www.sipri.org/publications/2019/08/arms-trade-treaty-handbook-for-implementation>.

Upcoming in 2022:

- Good practice guide
 - Adopting on-site inspections
 - Requiring on-site inspections
 - Conducting on-site inspections
 - Follow-on steps after on-site inspections
- Policy Brief about on-site inspections and PSSM
- Policy Paper about the wider adoption of on-site inspections

Post-shipment On-site Inspections of Military Materiel: Challenges and Responses

Adopting on-site inspections

- Challenge - Need to adjust domestic legislation
- Response – Limited if the focus is on confidence building

Requesting on-site inspections

- Challenge – Sensitivities associated with attaching inspection clauses
- Response – Focus on the cooperative aspects of the instrument

Conducting on-site inspections

- Challenge – Having necessary resources and expertise
- Response – Draw from available explicit and implicit knowledge

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