



Arms Trade Treaty Implementation Toolkit

Module 10 Preventing Diversion

I. Introduction

Any country joining the Arms Trade Treaty (ATT) commits to putting in place effective measures to implement the Treaty.

Each State will decide which measures it needs in order to carry out its obligations under the ATT. These measures may vary from country to country.

This tenth module, *Preventing weapons diversion*, aims to assist States in taking appropriate measures to that end.

II. The obligation to prevent diversion

1. What is diversion?

➤ The ATT does not provide a definition of diversion.

➤ In general terms, diversion is the transfer of items from an authorized owner/user to an unauthorized user.

○ Diversion can take place when items are intended for export to one end-user, but instead they are delivered to another, unauthorized, end-user.

○ Diversion of weapons is a key method by which States under arms embargo, warlords, human right abusers, terrorists and organized criminal groups obtain weapons.

➤ Diversion could take place at any time during the life-cycle of weapons, from production to distribution, from transfer to storage to destruction. Weapons are particularly vulnerable to diversion during transfers.

2. Causes of diversion

➤ Diversion of arms can occur as a result of:

- a. Inadequate legislation, policies and procedures;
- b. Absence of appropriate controls over transfers;
- c. Limited capabilities for enforcement (e.g. border patrols and controls, especially when borders are extensive or located on hard-to-access areas);
- d. Falsification of documents;
- e. Unauthorised re-transfers;
- f. Theft and leakages from poorly managed stockpiles;
- g. Hand-outs or sale to armed groups;
- h. Capture of government forces stockpiles;
- i. Corruption.

3. Diversion under the ATT

- The prevention of diversion is one of the cornerstones of the ATT. The goal of preventing weapons from reaching illicit hands or those who systematically misuse them could not be achieved with trade regulation alone, without a serious effort to prevent and combat diversion.
- Each State Party involved in a transfer of conventional arms (exporting, transit/trans-shipment and importing States) shall adopt measures to prevent diversion.¹
- While the ATT does not require States Parties to take measures to prevent diversion of ammunition or parts and components, each State Party is free to adopt such measures.
- The exporting State shall assess the risk of diversion of the proposed export of conventional arms through its national export control system by conducting an export assessment.²
- Exporting, transit/trans-shipment and importing States Parties shall cooperate and share information, pursuant to their national laws, to mitigate the risk of diversion of arms transfers.³
- When a State Party detects diversion of transferred weapons, the State Party is required to take appropriate measures to address such diversion in accordance with both national and international law.⁴
- When a State Party detects diversion of transferred weapons it should also alert potentially affected States Parties.
- States Parties should share information on their experiences in addressing diversion.⁵
- States Parties should also report to other States Parties, through the ATT Secretariat, on effective measures taken to address diversion.⁶

4. Preventative measures

- All parties involved in a particular transfer of conventional weapons shall take measures to prevent their diversion.

4.1. Measures by the exporting State

4.1.1. Include the risk of diversion in the export assessment⁷

The exporting State should:

- a. Examine all relevant information and parties;

¹ Article 11 (1).

² Article 11 (2). For a discussion on how to conduct an export assessment, refer to module 6 of this toolkit.

³ Article 11 (3).

⁴ Article 11 (4).

⁵ Article 11 (5).

⁶ Article 11 (6).

⁷ See module 6.

b. Pay particular attention to documents that:

- are missing essential information (e.g. importer is not identified, lack of address or contact number);
- can be easily forged or re-used (e.g. document lacks ministerial or government seal, the space used to provide the document with an individual certification number has been left blank);
- contain inconsistent information.

c. Request additional documentation and information if needed;

d. Contact the importing and/or transit and trans-shipment States, as appropriate, regarding the proposed export;

e. Consult any databases (if available) or other sources of information on previous cases of diversion, illicit transfers and illicit brokers;

f. Consult embassies and other diplomatic officials.

➤ If the exporting State Party determines that there is a risk of diversion it should not authorize the export.

Suggested indicators to assess the risk of diversion

- Whether or not the recipient State has the capacity to ensure that the exported arms are not diverted or transferred to other entities or destinations. This may include a determination of whether or not the recipient State or end-user has adequate systems for the management of stockpiles;
- Whether or not the recipient State has a national control system, including a national control list;
- Whether or not the recipient State has adopted national legislation and regulations to prevent and combat diversion of conventional arms;
- Whether or not the recipient State has legislation and effective procedures for investigating offences related to diversion of conventional arms;
- Whether or not the recipient State has a competent, independent, impartial and functioning judiciary with the capacity and the will to prosecute offences related to diversion of conventional arms;
- Whether the recipient State exercises effective control over conventional arms imported into its territory;
- Whether or not the end-user or any other actor involved (e.g., broker) has a record of diverting conventional arms;
- Whether end-use assurances provided by the end-user are credible;
- Whether the types, quality and quantity of items requested are compatible with the legitimate security needs of the end-user;
- Whether the carriers to be used in the transport of the arms to be transferred are well-established and reputable;

-Whether the means of transport/ transport route have been used in previous cases of diversion.

- It is recommended that the above indicators also be used to assess the risk of diversion of ammunition and parts and components.

4.1.2. Mitigation measures

If the exporting States Parties determines that there is a risk of the exported weapons being diverted to unauthorized end-users and/or end-use, it may consider whether there are measures to mitigate the risk identified. Such mitigation measures could include:

- Confidence-building measures;
- Jointly developed and agreed programmes by the exporting and importing States;
- Examining parties involved in the export;
- Requiring additional documentation, certificates and assurances;
- Post-delivering monitoring programme;
- Requesting delivery verification certification;
- Conduct on-site visits;
- Other appropriate measures.

4.2. Measures by the transit/trans-shipment State

- Establish and maintain a system for regulating transit/trans-shipment;
- Issue a transit/trans-shipment authorization;
- Collaborate with the exporting State, upon request, in the export assessment.

4.3. Measures by the importing State

- Commit to no re-exporting or to effectively control re-exports;
- Improve and strengthen weapons stockpile management and security;
- Put in place effective procedures for import authorization.
- Ensure that all documents issued to importers by the competent authorities are authentic, reliable and trustworthy. The more credible the documents issued by the importing State the

easier it is for the authorities of the exporting and transit/trans-shipment States to process their respective authorizations and detect diversion risks.

4.4. Other preventative measures as required in each specific situation.

4.4.1. Transportation control

Weapons can be diverted during transportation (e.g. en route to transit/trans-shipment State or importing State, by re-routing the vessel, aircraft or other means of transportation to a destination that is different from the one in export/import/transit/transshipment authorization).

- Specific measures a State could adopt to control transportation of arms are:⁸
 - a. Requiring detailed information on transport and transport service providers in applications for import and export licences or authorizations;
 - b. Requiring transport service providers to maintain comprehensive and verifiable documentation, including manifests, bills of lading and invoices for possible inspection by State authorities.
 - c. Make it mandatory for the transporter and/or the parties involved in the transfer to notify the exporting and the importing State whenever there is a change in the transportation plan (route, carrier, date, etc.).

4.4.2. Weapons marking

- Importing States are encouraged to mark imported weapons, particularly small arms and light weapons (SALW), at the time of import, and to keep adequate records.
- The International Tracing Instrument adopted by the UN General Assembly in 2005 recommends and provides standards for marking SALW at the time of manufacture. That instrument also encourages States to require the marking of SALW at the time of import.
- The Firearms Protocol requires its States Parties to ensure that SALW are marked at the time of manufacture and of import.

4.4.3. Tracing

- States are encouraged to develop national capacities to trace illicit or diverted weapons, particularly SALW.
- Weapons tracing can help law enforcement officials to uncover trafficking routes, to identify parties engaged in the illicit trade and the methods used by them.⁹ This type of information is critical to efforts to prevent diversion.

⁸ For more information on this matter, refer to “Elements for Controlling Transportation of Conventional Arms Between Third Countries”, agreed at the 2011 Plenary Meeting of the Wassenaar Arrangement.

⁹ For more information on tracing, refer to International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons.

4.4.4. Stockpile management

Taking regular and comprehensive inventory of weapons, ammunition, and parts and components is essential to ensure that weapons are not diverted. States should endeavour to strengthen the physical security of stocks and improve their management system.

5. Information exchange

In preventing diversion, States Parties should cooperate with one another and exchange information on:

- a. Export licence/authorization;
- b. Import licence/authorization;
- c. Transit/trans-shipment licence/authorization;
- d. Broker licence/authorization and brokering activities authorization;
- e. End-user certificates data to help verify the truthfulness of end-use claims;
- f. Information on weapons transportation providers;
- g. Cases of previous diversion;
- h. Denials of export and import licences;
- i. Known international trafficking routes, methods, illicit brokers, intermediaries and transport agency/carriers involved in diversion;
- j. Any other relevant information, pursuant to national laws.

6. Actions to be taken in case of diversion

Under Article 11(4), when States Parties detect a diversion of conventional arms, they shall take appropriate measures promptly. These may include:

- a. Alerting potentially affected States (Exporting, importing, transit and trans-shipment States, neighbouring States and States with current conflicts or tension in the region.);
- b. Examining diverted shipments. Re-examine all relevant documents to identify the weapons being diverted and the possible point and method of diversion;
- c. Tracing weapons that have been diverted. Cooperate and exchange information with all States concerned. Use available tools such as the INTERPOL iARMS database, where appropriate;
- d. Initiating/cooperating in criminal investigations of cases of diversion.