



25 May 2018
Submitted by: Japan

Arms Trade Treaty
Working Group on Effective Treaty Implementation
Geneva, 29-30 May 2017

Addressing Diversion of Conventional Arms

Submitted by Japan
25 May 2018

1. Background

Preventing diversion of conventional arms is one of the cornerstones of the Arms Trade Treaty (ATT). Generally defined as the “transfer of items from an authorized owner/user to an unauthorized user¹”, diversion could occur at any stage of the arms trade – export, transit, trans-shipment, brokering, and import – and each State Party involved in these activities are required to take measures to prevent diversion.² In particular, the Treaty requires exporting States Parties to assess the risk of diversion of the export³, while stipulating that importing, transit, trans-shipment, and exporting States Parties shall cooperate and exchange information to mitigate the risk of diversion⁴. Thus, ATT States Parties are expected to work together to fulfill the shared responsibility of preventing diversion.

2. Proposal

In this regard, Japan proposes taking a renewed look at *ATT Implementation Toolkit, Module 10 – Preventing Diversion*⁵ published by the UN Office of Disarmament Affairs and building on its suggestions to help States Parties better address diversion. The following are some of the noteworthy points from the Toolkit and respective proposals, as derived from those points, on preventing and combating diversion within the framework of the ATT. Japan invites the members of the Working Group on Effective Treaty Implementation to discuss these proposals and other possible elements and to contribute national experiences, best practices, previous cases of diversion, and other resources that help materialize the proposals.

Japan has also proposed uploading the elements of these proposals on the ATT website, as noted in Japan’s

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

² Article 11 (1)

³ Article 11 (2)

⁴ Article 11 (3)

⁵ <https://www.un.org/disarmament/att/>

working paper “Facilitating Information Exchange and Treaty Implementation via the ATT website” submitted to the late May 2018 meeting of the Working Group on Transparency and Reporting. This particular portion of the website would include a top page with the link to each element (or “section” as referred to in the proposals below) and its brief description.

Excerpt from ATT Implementation Toolkit, Module 10	Japan’s proposals
<p><u>3. Diversion under the ATT</u></p> <ul style="list-style-type: none"> ● States Parties should share information on their experiences in addressing diversion.⁶ ● States Parties should also report to other States Parties, through the ATT Secretariat, on effective measures taken to address diversion.⁷ <p><u>4. Preventative measures</u></p> <p><u>4.1. Measures by the exporting State</u></p> <p><u>4.1.2. Mitigation measures</u></p> <ul style="list-style-type: none"> ● Confidence-building measures ● Jointly developed and agreed programs by the exporting and importing States ● Examining parties involved in the export ● Requiring additional documentation, certificates and assurances ● Post-delivering monitoring program ● Requesting delivery verification certification ● Conduct on-site visits 	<p>1) Share Best Practices</p> <p>Establish a section on the ATT website to upload States Parties’ <u>best practices in addressing diversion, including mitigation measures</u></p> <p>(e.g. <u>Wassenaar Arrangement’s best practice documents</u>⁸)</p>
<p><u>4. Preventative measures</u></p> <p><u>4.1. Measures by the exporting State</u></p> <p><u>4.1.1. Include the risk of diversion in the export assessment</u></p> <p>e. Consult any databases (if available) or other sources of information on previous cases of diversion, illicit transfers and illicit brokers</p> <p><u>Suggested indicators to assess the risk of diversion</u></p> <ul style="list-style-type: none"> ● Whether the means of transport/ transport route have been used in previous cases of diversion 	<p>2) Share Entity Lists and Previous Cases</p> <p>Establish a section on the ATT website to upload links to relevant <u>entity lists and previous cases of diversion, illicit transfers, international trafficking routes, methods, and entities involved</u></p> <p>(e.g. Japan’s Foreign End User List)</p>

⁶ Article 11 (5)

⁷ Article 11 (6)

⁸ <https://www.wassenaar.org/best-practices/>

<ul style="list-style-type: none"> ● Whether or not the end-user or any other actor involved (e.g., broker) has a record of diverting conventional arms <p><u>5. Information exchange</u></p> <ul style="list-style-type: none"> g. Cases of previous diversion i. Known international trafficking routes, methods, illicit brokers, intermediaries and transport agency/carriers involved in diversion 	
<p><u>Suggested indicators to assess the risk of diversion</u></p> <ul style="list-style-type: none"> ● 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 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 	<p>3) Develop a Risk Assessment Checklist Develop a <u>checklist with suggested indicators to assess the risk of diversion</u> (as shown on the left) for voluntary use by exporting States and make it available on the ATT website</p> <hr/> <p>4) Utilize Databases Identify or develop, and upload on the ATT website as appropriate, databases on: -<u>National export control systems</u> -<u>National legislation</u> to prevent, investigate, and prosecute diversion -<u>Weapons transportation providers</u> -Other relevant information (e.g. INTERPOL Illicit Arms Records and Tracing Management System (iARMS)⁹ (available to law enforcement agencies only))</p>
<p><u>4. Preventative measures</u></p> <p><u>4.4. Other preventative measures as required in each specific situation</u></p> <p><u>4.4.2. Weapons marking</u></p> <ul style="list-style-type: none"> ● Importing States are encouraged to mark imported 	<p>5) Include Useful Links on the ATT website to information such as: -International Tracing Instrument¹⁰, - Firearms Protocol¹¹ -International Small Arms Control</p>

⁹ According to the INTERPOL, iARMS is a tool that “facilitates information exchange and investigative cooperation between law enforcement agencies in relation to the international movement of illicit firearms, as well as licit firearms that have been involved in the commission of a crime.” INTERPOL National Central Bureaus (NCBs) are required to grant formal approval of any direct access to iARMS by a non-NCB user via the signature of an iARMS User Agreement. <https://www.interpol.int/Crime-areas/Firearms-trafficking/INTERPOL-Illicit-Arms-Records-and-tracing-Management-System-iARMS>

¹⁰ <http://www.un-arm.org/PoAISS/InternationalTracingInstrument.aspx>

¹¹ https://treaties.un.org/doc/source/RecentTexts/18-12_c_E.pdf

<p>weapons, particularly small arms and light weapons (SALW), at the time of import, and to keep adequate records.</p> <ul style="list-style-type: none"> ● 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. 	<p>Standards (ISACS)¹²</p> <p>-Other relevant resources</p>
<p><u>5. Information exchange</u></p> <p>In preventing diversion, States Parties should cooperate with one another and exchange information on:</p> <ol style="list-style-type: none"> a. Export license/authorization b. Import license/authorization c. Transit/trans-shipment license/authorization d. Broker license/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 h. Denials of export and import licenses 	<p>6) Establish a Notification System on <u>national authorizations and denials</u> of export, import, transit and trans-shipment licenses and share <u>end-user certificates data</u> on the <u>restricted ATT website</u></p>
<p><u>4.3. Measures by the importing State</u></p> <ul style="list-style-type: none"> ● 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. 	<p>7) Organize Capacity-Building Workshops for States Parties on export, import, transit and trans-shipment licensing, weapons stockpile management, document authentication, etc.</p>

¹² <http://www.smallarmsstandards.org/>. As noted in the UNODA's Fact Sheet (http://unoda-web.s3.amazonaws.com/wp-content/uploads/2013/06/SALW_Fact_Sheet.pdf), ISACS "provide comprehensive guidance to practitioners and policymakers on a broad range of small arms control issues, such as strengthening national legislation, safely collecting and destroying illicit weapons, enhancing border controls, improving stockpile management, enhancing community security and preventing armed violence."