

ATT-BAP REPORTING GUIDANCE NOTES

MODULE 7 – RISK ASSESSMENT

The Arms Trade Treaty-Baseline Assessment project has developed a series of nine ATT-BAP Guidance Notes to assist States in the completion of their national ATT-BAP Survey and in the preparation of their initial report on measures to implement the Arms Trade Treaty, as required under Article 13 (1). Each of the ATT-BAP Guidance Notes focuses upon a particular topic and ATT commitment. Each Note:

- Identifies the relevant Treaty articles for each topic
- Introduces the ATT-BAP Survey questions and a sample of responses provided by States
- Provides information on potential sources of information for addressing the ATT-BAP Survey questions, highlighting similar questions or relevant responses contained in national reports on transfer control systems for other international instruments

RISK ASSESSMENT: RELEVANT ATT ARTICLES

Article 7

1. If the export is not prohibited under Article 6, each exporting State Party, prior to authorization of the export of conventional arms covered under Article 2 (1) or of items covered under Article 3 or Article 4, under its jurisdiction and pursuant to its national control system, shall, in an objective and non-discriminatory manner, taking into account relevant factors, including information provided by the importing State in accordance with Article 8 (1), assess the potential that the conventional arms or items: (a) would contribute to or undermine peace and security; (b) could be used to: (i) commit or facilitate a serious violation of international humanitarian law; (ii) commit or facilitate a serious violation of international human rights law; (iii) commit or facilitate an act constituting an offence under international conventions or protocols relating to terrorism to which the exporting State is a Party; or (iv) commit or facilitate an act constituting an offence under international conventions or protocols relating to transnational organized crime to which the exporting State is a Party.

2. The exporting State Party shall also consider whether there are measures that could be undertaken to mitigate risks identified in (a) or (b) in paragraph 1, such as confidence-building measures or jointly developed and agreed programmes by the exporting and importing States.

3. If, after conducting this assessment and considering available mitigating measures, the exporting State Party determines that there is an overriding risk of any of the negative consequences in paragraph 1, the exporting State Party shall not authorize the export.

4. The exporting State Party, in making this assessment, shall take into account the risk of the conventional arms covered under Article 2 (1) or of the items covered under Article 3 or Article 4 being used to commit or facilitate serious acts of gender-based violence or serious acts of violence against women and children.

5. Each exporting State Party shall take measures to ensure that all authorizations for the export of conventional arms covered under Article 2 (1) or of items covered under Article 3 or Article 4 are detailed and issued prior to the export.

6. Each exporting State Party shall make available appropriate information about the authorization in question, upon request, to the importing State Party and to the transit or trans-shipment States Parties, subject to its national laws, practices or policies.

7. If, after an authorization has been granted, an exporting State Party becomes aware of new relevant information, it is encouraged to reassess the authorization after consultations, if appropriate, with the importing State.

Article 11.2

The exporting State Party shall seek to prevent the diversion of the transfer of conventional arms covered under Article 2 (1) through its national control system, established in accordance with Article 5 (2), by assessing the risk of diversion of the export and considering the establishment of mitigation measures such as confidence-building measures or jointly developed and agreed programmes by the exporting and importing States. Other prevention measures may include, where appropriate: examining parties involved in the export, requiring additional documentation, certificates, assurances, not authorizing the export or other appropriate measures.

ATT-BAP SURVEY QUESTIONS

The ATT-BAP Survey contains several questions for States to explain how they fulfill their ATT commitments with regards to the risk assessment for export decisions. The questions seek information on the risk assessment processes, criteria and mitigation measures, and relates to Articles 7 and 11.

Examples of answers provided by States that completed ATT-BAP Surveys during 2013-2015 are included below to show the types of information that States have included in their Surveys and are indicative of the type of information governments are willing to share publicly on measures taken to implement the ATT. Completed Surveys are available for review via the 'Country Profiles' and 'Database' pages on the Arms Trade Treaty – Baseline Assessment Project Portal at: <http://www.armstrade.info/>

7. RISK ASSESSMENT

	Yes	No	Details / Reference / Web link /Additional comments
Response taken from ATT-BAP Survey completed by the Netherlands			
A) Does your State always conduct a risk assessment prior to authorization of an arms export? [Article 7.1]		✓	
i) If no, please specify under which conditions a risk assessment is not required. [Article 7.1]			When the receiving party is an ally (EU members, NATO members, Switzerland, Australia, Japan and New-Zealand). This risk assessment is done annually and not on a case-by-case basis.

	Yes	No	Details / Reference / Web link /Additional comments
Response taken from ATT-BAP Survey completed by Argentina			
B) Does your State require that the following criteria are included in your national assessment prior to granting an export authorization: [Article 7.1]	✓		
i) Whether the arms would contribute to or undermine peace and security?	✓		
ii) Whether the arms could be used to commit or facilitate a serious violation of international humanitarian law?	✓		
iii) Whether the arms could be used to commit or facilitate a serious violation of international human rights law?	✓		
iv) Whether the arms could be used to commit or facilitate an act constituting an offence under international conventions or protocols relating to terrorism to which your State is a party?	✓		
v) Whether the arms could be used to commit or facilitate an act constituting an offence under international conventions or protocols relating to transnational organized crime to which your State is a party?	✓		

	Yes	No	Details / Reference / Web link / Additional comments
Response taken from ATT-BAP Survey completed by Sweden			
C) Are additional criteria considered in addition to the above prior to authorizing a transfer:			
i) Risk of diversion [Article 11.2]	✓		
ii) Acts of gender based violence? [Article 7.4]	✓		
iii) Other (please specify)			<p>In addition to the criteria under 7.B, the following elements are considered in the Swedish guidelines:</p> <ul style="list-style-type: none"> • Necessity from a Swedish security policy perspective (exports are conceived as supporting the maintenance of a defence industry geared to Swedish needs). • Compatibility with the goals and principles of Swedish foreign policy (blanket formulation to cover relevant factors whether or not they are explicitly mentioned in the guidelines). • Is the end user a government, a government authority or a government authorized recipient? • Has an acceptable end user assurance (or own production declaration) been received? • Has the recipient State respected previous end user assurances, or rectified problems in this area? (otherwise no further exports) • Does the export consist of spare parts, components or consumables for previously exported systems? (a positive presumption for such cases, but not in situations covered by 6.A.i-iii) • Is the recipient a Nordic Country or EU Member State? (a positive presumption for such cases, but not in situations covered by 6.A.i-iii) • Is the equipment in question lethal or non-lethal? (a more positive presumption for non-lethal equipment, but not in situations covered by 6.A.i-iii) <p>In addition to the criteria under 7.B, the following elements are considered in the EU Common Position:</p> <ul style="list-style-type: none"> • The national security of EU Member States as well as that of friendly and allied countries. • The behaviour of the buyer country as regards in particular its attitude to terrorism, the nature of its alliances and respect for international law. • The risk of diversion. • Compatibility of the export with the technical and economic capacity of the recipient country, taking into account the desirability that States should meet their legitimate security and defence needs with the least diversion of human and economic resources for armaments

	Yes	No	Details / Reference / Web link / Additional comments
Response taken from ATT-BAP Survey completed by Lithuania			
D) Does your State consider risk mitigation measures as part of its authorization process? [Article 7.2]	✓		
i) If yes, what risk mitigation measures does your State consider / practice? [Article 7.2] (i.e confidence building measures or jointly developed and agreed programs.)			Prior assurances and confirmation of end-user's obligations from the competent authorities of importing State, consultations with national embassies in the countries of destination.

	Yes	No	Details / Reference / Web link / Additional comments
Response taken from ATT-BAP Survey completed by Germany			
E) Please provide any other information on risk assessment and / or mitigation practices you would like to share.			The ex-ante examination ensures right from the start that defense goods are not delivered to recipients if there is a danger that the goods will be diverted. If there are doubts about the recipient's assurance of the end-use, export license applications are rejected. Nonetheless, against the backdrop of discussions in relevant international forums, Germany is assessing the current system of end-use controls to ascertain whether further improvements could be made. In particular, it is checking to what extent post-shipment-controls in respective recipient countries could be integrated into the German export control system. Even an export control system which attempts to verify the end-use of munitions/military goods by means of post-shipment controls is not fully immune to illegal diversion of. In certain circumstances however, such a system would allow activities of this kind to be detected comparatively early and corresponding counter-measures to be implemented.

SOURCES FOR INFORMATION

The information required to answer the questions and sub-questions contained in Section 7 Risk Assessment will be contained in primary and/or secondary legislation or a Presidential decree, as well as policy guidelines. States may be able to find and use relevant information contained within their reports on implementation of the UN Programme of Action (PoA) or their UNSCR 1540 implementation reports, specifically with regard to questions on legislation, policy guidelines and procedures.

RELEVANT QUESTION(S) FROM UN POA REPORTING TEMPLATE AND UNSCR 1540 IMPLEMENTATION REPORT MATRIX:

ATT-BAP SURVEY QUESTION	UN POA REPORTING TEMPLATE QUESTION	UNSCR 1540 IMPLEMENTATION REPORT MATRIX QUESTIONS
Question 7.B. - Does your State require that the following criteria are included in your national assessment prior to granting an export authorization:	Question 6.4 – Name the relevant international commitments that your government applies or considers when assessing an application for export authorization.	
Question 7.E. - Please provide any other information on risk assessment and / or mitigation practices you would like to share.	<p>Question 6.10 – When exporting, does your country require a Delivery Verification Certificate (DVC) to confirm that SALW have reached their intended end-user or intended importer in the importing State?</p> <p>Question 6.11 – After exporting, does your country verify or seek to authenticate DVCs provided?</p>	<p>OP 3 (c) and (d) and OP6 and OP10. Controls of NW, CW and BW, including related materials. - Which of the following legislation, procedures, measures, agencies exist to control border crossings, export/import and other transfers of NW, CW, BW and Related Materials? Can violators be penalized?: (17)</p> <p>End-user controls</p>