



Arms Trade Treaty Implementation Toolkit

Module 7 Import

Available on: www.un.org/disarmament/ATT

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 to put in place in order to carry out its obligations under the ATT. These measures may vary from country to country.

Article 8 of the ATT explicitly requires States Parties to take measures to allow them to regulate, where necessary, the import of the conventional arms covered in Article 2 (1), but are encouraged to apply the provisions of the Treaty to the broadest range of conventional arms.¹

This seventh module, *Import of conventional weapons*, provides States with practical information to consider when establishing and maintaining control over imports.

II. National control system

➤ States Parties are required to establish and maintain a national control system, including a national control list.²

➤ States Parties have to designate competent national authorities to ensure the effective and transparent national control and regulation over the import of items covered under the ATT.³

III. States Parties' obligations regarding imports of conventional arms

➤ States Parties shall adopt measures to regulate, where necessary, imports of conventional arms covered in Article 2(1) into their jurisdiction.⁴ (The Treaty also provides that such measures may include import systems, but it does not provide further guidance on such systems.)

➤ States Parties can also adopt measures to regulate the import of ammunition and parts and components, although the ATT does not explicitly require them to do so under Article 8. Such measures would be consistent with Article 5 (5), by which States Parties are required to take the measures necessary to implement the provisions of the ATT and to designate national authorities in order to have an effective and transparent national control system regulating the transfer of conventional arms, ammunition and parts and components.

➤ States Parties shall prohibit the importation of conventional arms ammunition, parts and components if such importation would violate Article 6 of the Treaty.

¹ Article 5 (3).

² Article 5 (2).

³ Article 5 (5).

⁴ Article 8 (2).

IV. Regulation of import

- At a minimum, a State Party needs a system that can ensure the prohibition of import of items listed in Article 2(1), 3 and 4 if it violate the provisions contained in Article 6 of the ATT.
- Import regulation enables a State Party to authorize or deny applications for imports and to ensure that actual shipments into its territory are consistent with authorizations and the national control lists. Moreover, In line with Article 7(1) and 8(1), the importing State Party has to have in place measures to enable it to provide appropriate and relevant information to assist exporting States in the conduct of export assessments, when such information is requested and is consistent with the importing State's national law.
- By exercising import regulation, the importing State is likely to have a mechanism for obtaining prior notification that enables the competent authorities to determine whether the goods should be allowed to enter the importing State's territory and whether they should be subject to inspection upon arrival (including the possibility of seizure).
- Effective import regulation can help to prevent diversion of weapons, ammunition, parts and components.
- Proper import regulations can inform decision-making processes – including export assessments – of the national authorities in the exporting State. Importing States can thus help ensure the reliability of information contained in end-use/user documentation, and the authentication of such documentation.
- Import regulation can also contribute to build confidence with other States. Having an effective and transparent system in place for regulating imports can enhance the importing State's credibility as a destination for weapons.
- Consequently, importing States Parties may have an incentive to review their import laws, policies, practices and procedures in order to ensure the effectiveness and transparency of their systems for regulating the import of weapons.

1. Elements of imports regulation

- The basic elements needed to effectively regulate imported conventional weapons are:
 - a. National legislation, including a national control list;
 - b. National authorities;
 - c. Regulatory procedures, including record-keeping;
 - d. Enforcement mechanisms.

2. National legislation, including a national control list

- The national legislation should state:
 - a. Which items are subject to import regulation (national control list);
 - b. Which government ministries, departments and agencies are responsible for regulating conventional arms imports (national authorities);

- c. Criteria for granting or refusing import authorizations (regulatory procedures);
- d. Record-keeping by applicants and national authorities;
- e. The legal and/or administrative actions that would be applied in case of import offences (e.g., enforcement measures and mechanisms, prosecution and punishment).

States Parties are required to maintain and establish a national control list.⁵

➤ See module 6 for details on national control lists.

3. National authorities

➤ States Parties have to designate competent national authorities to ensure that they have an effective and transparent national control system for regulating transfers of items covered under the ATT.⁶

➤ The designated national authorities should consult with other relevant government ministries or departments before deciding on any authorization application.

➤ Tasks to be undertaken by the authorization agency may include:

- a. Receiving and reviewing import applications, including verifying and assessing end-use/user documentation, if applicable, feasible and practical;
- b. Issuing import authorizations;
- c. Keeping records of import licences/authorizations as well as actual imports, if applicable;
- d. Reporting to the oversight body and providing data for the national reports to be submitted to the ATT Secretariat, where applicable and in accordance with national laws;
- e. Requesting, where applicable, information from the exporting State on any pending or actual export authorizations where the importing State is the country of final destination of the export;
- f. Cooperating with the exporting State in its export assessment, as appropriate;
- g. Establishing or undertaking mitigation measures, such as confidence-building measures or jointly developed and agreed programmes with the exporting States, if required.

4. Regulatory procedures for the import of conventional arms

➤ Procedures to regulate imports of conventional arms establish the conditions under which import licences or import authorizations may be granted.

➤ There are different approaches for regulating imports of conventional arms:

⁶ Article 5 (5).

- a. *Licensing system*: Importing entities (companies, associations etc) are required to obtain import licences, permits or authorizations prior to the transfer of the weapons, as well as the transfer of ammunition and parts and components, where such items are also subject to a licensing system. Specific requirements vary from State to State, such as:
 - Provisions requiring that any import of weapons (and ammunition and parts and components, when applicable) need prior authorization;
 - Limited provisions requiring that the imports of certain weapons (and ammunition and parts and components, when applicable) are subject to an import authorization;
 - Limited provisions requiring that certain entities can import only after receiving an import authorization;
 - Provisions stating that certain types of weapons are prohibited.
- b. *Import regulation by customs authorities*: States use their customs as a primary means to inspect, regulate, and control imports of items.

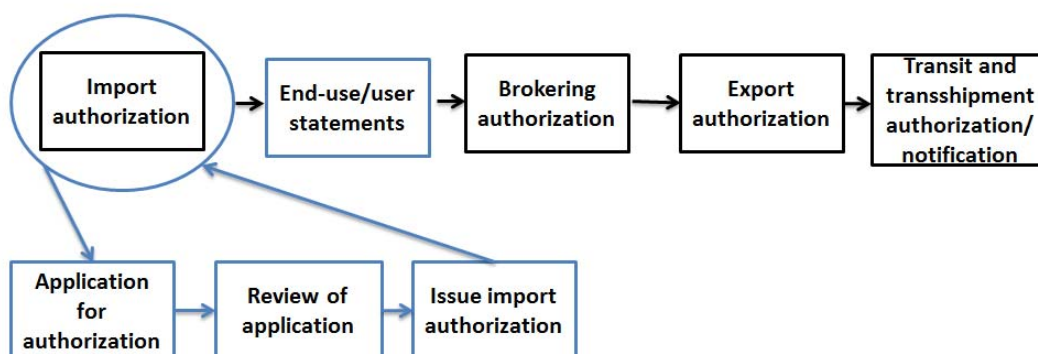
➤ In both cases, custom authorities should control imports of items, including verifying all necessary documentation. Specific measures aimed to regulate or control imports of weapons do not supersede the broader prerogatives and responsibilities of customs authorities.

Import procedures

➤ When the items to be imported fall under the national control list, the importer should apply for import authorization to the national authority in the importing State.

➤ The typical sequencing of the import procedures is:

- a. Application for import authorization
- b. Review of application by national authorities
- c. Issuance/denial of import authorization



Prerequisite operating licence (only if required by national laws)

- States Parties, according to their national laws, may (but are not required to) establish an import licensing system whereby only the holders of a valid operating licence can apply for import authorization for each transaction.
- In such cases, the operating licence is a pre-requisite for applying for an import authorization.

Application for operating licence

- Applicants for operating licences should be required to meet the criteria set forth by national regulations.
- An application for an operating licence should be refused if:
 - a. The applicant has failed to meet the licensing criteria established by national regulations;
 - b. There is evidence of past involvement by the applicant in illicit trade of weapons;
 - c. Information submitted in support of the application is false, inaccurate or incomplete;
 - d. The applicant has been refused an operating licence in another State on grounds that would also apply in the State considering the application.

Expiration of the operating licence

- Where import licences are issued, the validity of licences should be limited in time. These documents should have an expiration date. The expiration date should be indicated clearly on operating licences.

Step 1 – Application for import authorization

- Applications for import authorization should be detailed, and preferably contain the following information:
 - a. Name and contact details of the applicant (the importer);
 - b. Name and contact details of the end-user;
 - c. Country of export;
 - d. Name and contact details of the exporter;
 - e. Country of transit and trans-shipment, if practical and known at the time of application;
 - f. Name and contact details of brokers and other intermediaries, if applicable and practical;
 - g. Value / quantity of the import;
 - h. Intended use of the items to be imported;
 - i. Detailed descriptions of the items to be imported.

Step 2 – Review of application by national authorities

- The competent national authorities should assess each application for import authorization in accordance with clearly defined criteria.
- Article 6 provisions on prohibitions of transfers must be applied to the import assessment.⁷ In other words, imports shall not be authorized if they would violate Article 6 of the ATT.
- The competent authorities could also consider whether the quantity and the nature of the imported items are commensurate with the needs of the importer.
- Applicants and end-users should be checked and scrutinized during the assessment. Specifically, the assessment should verify that the applicant and the end-user:
 - a. Are legally registered companies or individuals;
 - b. Are in good legal standing and, when applicable, in good financial standing;
 - c. Are not included on a black list;
 - d. Have not previously misrepresented/falsified documents and information submitted;
 - e. Have not been denied an application for import authorization;
 - f. Have not been involved in transfers that constituted a violation of the prohibitions stipulated in Article 6;
 - g. Have not been involved in transfers that undermined peace and security or were used to commit or facilitate any of the violations or acts listed under Article 7 (b).

Step 3 – Denial of import authorization

Suggested grounds for denial

- Import authorizations should not be granted if:
 - a. The application is incomplete, contains wrong information, or is wilfully misrepresented;
 - b. The proposed import is prohibited under Article 6;
 - c. There is a risk that some or all of the items could be diverted before or after reaching the authorized end-user;
 - d. The intended recipient is not legally entitled to be in possession of the items in the country of import;
 - e. The importer does not have the storage facilities to securely store the imported items or cannot guarantee that the items will be safely and securely stored.
- Denial of authorization should be communicated in written form to the applicant.
- Information on denial of authorization is of particular use in preventing diversion and illicit trade of weapons. Thus States are encouraged to share the details with other States, in accordance with national laws.

⁷ For a detailed discussion of States Parties' obligations under Article 6, see module 5.

Step 4 – Authorization of import

- Import authorizations should be detailed and specific. Without prejudice to relevant national law and regulation, the import authorization could include:
- a. Import authorization number/ record identifier;
 - b. Date of issuance;
 - c. Name of national authority issuing the authorization;
 - d. Signature, printed name and position of the designated official of the authority issuing the authorization;
 - e. Name and contact details of the recipient of the authorization;
 - f. Detailed description (e.g., type, model name, model number, calibre and quantity) of items authorized for import;
 - g. Date of expiration of authorization;
 - h. Countries/ports of transit and/or transshipment, if applicable, practical and known at the time of authorization);
 - i. Names and contact details of brokers, intermediaries or any other parties involved in the transfer, if applicable and practical;
 - j. Details of the transport route, including the means of transport to be used for each segment, if practical and known at the time of authorization;
 - k. Country of export;
 - l. Intended use of the items being imported;
 - m. Name and contact details of the authorized end user;
 - n. Detailed descriptions of the items to be imported, including their value;
 - o. Seal of national authority issuing the authorization. It should be noted that the shift towards electronic applications may bring about new forms of authentication other than watermarks and embossed stamps or seals. However, such traditional methods continue to serve their purpose where electronic systems are not in place or where hard copies are required in addition to electronic applications.
 - p. Any other conditions attached to the import.

5. Enforcement mechanisms

5.1. Fines, penalties

- Laws and regulations related to weapons imports should have sufficiently severe penalties for their violations. Penalties for import offences could include:

- a. Fines;
- b. Administrative sanctions
 - suspension or revocation of licences and/or authorizations;
 - barring violators from applying for licences or authorizations for certain lengths of time;
 - placing additional burdens or imposing restrictive conditions for subsequent application of licences or authorizations;
- c. Imprisonment.

5.2. *Control by customs officials*

➤At the point of entry, customs officials should determine that:

- a. The shipment of the imported items is accompanied by all required authorizations and documentation;
- b. Actual content of the shipment is consistent with the descriptions contained in the authorizations.

5.3. *Delivery verification*

➤It is desirable that the importing State informs the exporting State that the shipment of the imported items has entered its territory. When possible, the importing State should also verify that the imported items reached the authorized end user.

➤This can be done through different means, such as:

- a. Provision of a delivery certificate;
- b. Provision of other delivery documentation or notification;
- c. Post-delivery control and on-site verifications.

5.3.1. *Delivery verification certificate*

➤A delivery verification certificate is a document certified by the customs or other competent authority of the importing State, confirming that imported items have been received by the authorized end-user.

➤A commitment by the importer to provide the exporting State with a delivery verification certificate could be included from the outset in the end-use/user certificate or statement or sale contract.

➤National authorities of the exporting State should verify the authenticity of documents submitted by the importer.

5.4. *Non-re-export clause*

An exporting State may require the inclusion of a non-re-export clause in a sales contract. In general, such clauses could stipulate that the end-user cannot re-export the arms at all or that the end-user must ask for prior written approval from the original exporting State.

6. *Record keeping*

➤ Each State Party should maintain records of conventional arms that are transferred to its territory as the final destination.⁸ The ATT does not explicitly require importing States to keep such records. However, under Article 13 (3), each State Party is required to submit an annual report concerning authorized or actual exports *and imports* of conventional arms.

➤ For details on record keeping, see module 6.

V. International cooperation and assistance

See module 6 for details.

⁸ Article 12 (2).