

## 3.2 – UPDATES ON ATT INITIAL REPORTS AND MONITORING TREATY IMPLEMENTATION

### INTRODUCTION

Article 13.1 of the ATT requires States Parties to submit an initial report to the ATT Secretariat on measures undertaken to implement the Treaty. These initial reports can be invaluable tools for understanding, monitoring and evaluating how States Parties interpret and implement their obligations under the ATT. While States Parties are required to submit their initial reports within the first year of the ATT's entry into force for them, nearly a quarter of those due to report have yet to do so, and two-thirds are more than four years past their initial reporting deadline.

This chapter provides an update on the status of ATT initial reporting as of 7 June 2022. It offers an overview of the initial reports submitted or updated over the past year, discusses the current state of compliance with the ATT's initial reporting obligation, and examines efforts by the Working Group on Transparency and Reporting (WGTR) and the ATT Secretariat to enhance initial reporting. In addition, this chapter provides a brief overview of the inclusion in initial reports of post-shipment controls and on-site verification, which is the thematic focus of the Eighth Conference of States Parties (CSP8).

### RECENT REPORTS

Five States Parties (Afghanistan, Namibia, Niue, People's Republic of China and São Tomé and Príncipe) were required to submit their initial reports since 7 June 2021, the cut-off date for last year's ATT Monitor Annual Report. As of 7 June 2022, only the People's Republic of China had done so.

An additional four States Parties (Botswana, Grenada, Guatemala and Niger) belatedly submitted their initial reports to the ATT Secretariat over the past year. Their initial reports had been due in September 2020, December 2015, October 2017 and October 2016 respectively. In total, 44 States Parties have submitted their initial reports late, representing 51 per cent of the 86 initial reports submitted as of 7 June 2022.<sup>1</sup> While States Parties should strive to submit their initial reports on time, those that missed their deadlines should be encouraged to submit so as to provide insights into their national arms-transfer control systems and to fulfil their treaty obligations.

Of the five States Parties that submitted their initial report over the previous year, only Niger elected to make it publicly available. The People's Republic of China, Botswana, Grenada and Guatemala submitted confidential initial reports, which are available only to the ATT Secretariat and other States Parties. The large percentage of confidential reports among the most recent submissions reflects a continued and unwelcome trend. In total, 21 States Parties – nearly a quarter of the 86 States Parties that have reported on measures taken to implement the ATT – have restricted access to their initial reports. Over the years, States Parties have provided several reasons for making their reports confidential, such as concerns around the release of sensitive information and uncertainties around public reporting, or even reports being made confidential by mistake.<sup>2</sup>

States Parties are not required to follow any particular format in preparing their initial reports. While most have used a version of the recommended initial reporting template, States Parties have used several different approaches for their submissions. Of the 86 initial reports submitted to date, 73 (85 per cent) used the template.<sup>3</sup> Of the 65 initial reports that are publicly available, 56 (86 per cent) used the template, seven (11 per cent) used the ATT Baseline Assessment Survey developed by the Stimson Center's ATT-Baseline Assessment Project, and two (3 per cent) used a national format. While the ATT Secretariat launched an online reporting tool in 2019 that States Parties can use to submit their initial reports, none that have submitted public initial reports to date has used it.

States Parties now have the option of submitting their ATT reports using revised versions of the recommended initial and annual reporting templates that were endorsed by the Seventh Conference of States Parties in September 2021. As the WGTR rightly observed, the endorsement of the revised templates 'could significantly contribute to improving the quality of reporting' under the Treaty, as the revisions address many of 'the most urgent clarifications, user friendliness issues, gaps and inconsistencies identified in the current templates'.<sup>4</sup> The revised initial reporting template includes new and more explicit questions that invite States Parties to provide more detailed information on specific elements of their national control systems and assistance needs and capabilities, additional guidance to assist States Parties in preparing their reports, and

1 ATT Secretariat (2022). 'Arms Trade Treaty: Status of Reporting.' Second Meeting of the Working Group on Transparency and Reporting. 28 April 2022. <https://bit.ly/3nxiv02>

2 Of the three States Parties that indicated reports were made confidential by mistake, one was able to rectify the issues by submitting an amended report to the Secretariat. See, Arms Trade Treaty-Baseline Assessment Project (2022). 'Taking Stock of ATT Reporting Trends and Challenges.' April 2022, <http://www.armstrade.info/wp-content/uploads/2014/10/Taking-Stock-of-ATT-Reporting-Trends-and-Challenges.pdf>.

3 ATT Secretariat (2022). Ibid.

4 ATT WGTR (2021). 'Co-Chairs' Draft Report to CSP7: 22 July 2021, para. 26. <https://bit.ly/3aaLKTj>

an annex that States Parties can use when updating their reports to summarize the changes made.

Niger used the revised reporting template to prepare its initial report and, in so doing, illustrated the more detailed responses that this template can elicit. For example, it responded to the newly added questions about international assistance by providing detailed insights on its assistance needs, indicating that it is especially interested in receiving assistance around ATT reporting given its lack of experience in that domain.

Niger also reported that it enforces a registration requirement for arms brokers, that its national risk-assessment procedure goes beyond what is required under the Treaty (including by subjecting license applicants to background investigations), and that a draft law on the general control regime for arms, if adopted, would enhance its implementation of the ATT.

## NON-COMPLIANCE

All but one of the Treaty's 111 State Parties are required to have submitted an initial report to the ATT Secretariat. (The exception is the Philippines, the newest State Party, which is not yet required to submit its initial report.) As of 7 June 2022, 86 States Parties had submitted their initial report, 78 per cent of the 110 due to report. The number of States Parties that have yet to fulfil the initial reporting obligation has remained constant in recent years: 24 had yet to submit their required initial reports as of 7 June 2022, the same number that had yet to do so by the same deadline in 2020 and 2021.

Most of the 24 States Parties that have yet to submit their initial report are several years past their deadline. Four of them (17 per cent) are six-months to one-year late,<sup>5</sup> four (17 per cent) are one- to three-years late,<sup>6</sup> and 16 (67 per cent) are more than four years late.<sup>7</sup>

Many of the 24 States Parties that are late in submitting their ATT initial reports have experience in reporting on their national arms transfer control systems in other forums, particularly the UN Programme of Action on Small Arms and Light Weapons (UN PoA). Of the 24, 12 (50 per cent) have submitted at least one UN PoA report since ATT initial reporting began in 2015. Furthermore, seven of them (29 per cent) have submitted at least one UN PoA report since their ATT initial report was due.

## UPDATED REPORTS

Article 13.1 of the ATT requires that States Parties 'report to the Secretariat on any new measures undertaken in order to implement this Treaty, when appropriate'. Submitting updated initial reports is crucial to ensuring that these reports remain an accurate and useful tool for understanding how States Parties implement the ATT, for measuring the Treaty's impact on national control systems, for developing good practice and for identifying gaps and needs.

To date, only six States Parties (Hungary, Japan, New Zealand, Romania, Slovenia, and Sweden) have submitted updated initial report to the ATT Secretariat. However, several additional States Parties have reported making changes to their national control systems since submitting their initial reports in interventions at formal and informal ATT meetings.<sup>8</sup>

Romania is the only State Party to have submitted an updated initial report since the publication of the 2021 ATT Monitor Annual Report. It reported changes made in 2021 to its primary and secondary legislation, using tracked changes and the report's annex to clearly indicate where information had been updated. The update was submitted using the revised initial reporting template and included responses to the template's newly added questions. As a result, Romania's updated initial report not only contains more recent information but also provides welcome additional insights not captured in its original report.



**STATES PARTIES ARE NOT REQUIRED TO FOLLOW ANY PARTICULAR FORMAT IN PREPARING THEIR INITIAL REPORTS. WHILE MOST HAVE USED A VERSION OF THE RECOMMENDED INITIAL REPORTING TEMPLATE, STATES PARTIES HAVE USED SEVERAL DIFFERENT APPROACHES FOR THEIR SUBMISSIONS.**

5 Afghanistan, Namibia, Niue and São Tomé and Príncipe.

6 Brazil, Guinea Bissau, Lebanon and Mozambique.

7 Bahamas, Barbados, Cabo Verde, Central African Republic, Chad, Dominica, Ghana, Guinea, Guyana, Lesotho, Mali, Mauritania, Saint Kitts and Nevis, Saint Lucia, San Marino and Seychelles.

8 For further details on States Parties' public statements with regards to updates to their national control systems, see the ATT Secretariat's records of informal preparatory meetings. ATT Secretariat (2022). 'Working Group Meetings and 2nd CSP8 Informal Preparatory Meeting'. <https://thearmstradetreaty.org/CSP8-2nd-working-group-and-preparatory-meeting>.

### TEXTBOX 3.1 – POST-SHIPMENT CONTROLS AND ON-SITE VERIFICATIONS

The German Presidency chose post-shipment controls and on-site verifications as the theme for the Eighth Conference of States Parties. Eighteen States Parties, in their initial reports, have described the implementation of these types of control measures.<sup>9</sup>

A review of the publicly available initial reports submitted as of 7 June 2022 suggests that States Parties place greater emphasis on pre-transfer than post-transfer controls. While many describe conducting pre-transfer checks, the number of States Parties that describe utilizing post-transfer controls or on-site verifications is much smaller, and explicit mentions of 'post-transfer controls' and 'on-site verifications' are relatively infrequent.

States Parties that mentioned post-shipment controls described their practices and measures in a variety of ways. They frequently referred to the use of delivery verification certificates (DVCs) or similar forms of documentation to confirm that transferred arms have been delivered to an authorized end-user. Nine States Parties made explicit references to DVCs in their initial reports.<sup>10</sup> An additional four referenced similar documents, such as 'a certificate that the delivery is completed' (Bulgaria), 'a written report with proof that the equipment has been installed on the end user's location, installation of equipment by the exporter, etc.' (Netherlands), 'proof of delivery of the goods' (New Zealand) and 'Goods Received Notes' (Zambia). Some States Parties explained that they may issue DVCs or other documents when importing arms. Albania, for instance, reported that it issues DVCs 'if required by the exporter state'. Likewise, exporting States Parties stated they may require that these documents be issued upon delivery. For example, Romania stated that it may require 'the Romanian exporter to provide delivery verification certificate or an equivalent document after each delivery is made, where multi-shipments are involved'. Some States Parties also reported taking steps to verify DVCs. Romania reported doing so 'through diplomatic channels'.

In some instances, States Parties' post-shipment controls may include requirements that records be kept or provided upon request to facilitate post-transfer checks. Canada reported that its risk-mitigation measures may include 'post-shipment controls, including [...] record-keeping requirements or checks'. Ireland explained that the documentation it requires for import authorizations 'can be checked to ensure the shipment compares in all regards to documentation, and it should be established that the person moving the firearms, ammunition, humane killers, explosives or explosive substances is the person named on the documentation'.

Finally, some States Parties provided examples of post-shipment controls that may be applied long after a delivery takes place. Liechtenstein and Switzerland, for example, explained that 'if there is evidence that the non-re-export declaration has been violated, the licensing authority may take precautionary measures (e.g. temporary stop of delivery, request for information, on-site inspections)'. They added that their 'licensing authorities may at any time demand from the licensee information on the nature, quantity, customs clearance data and end use of goods that are or have been imported or transported in transit in terms of a GIL [General Import License]'.

Five States Parties described using post-shipment verifications (PSVs) or similar measures as part of their export-control system.<sup>11</sup> Liechtenstein and Switzerland explicitly referenced PSVs, while Belgium mentioned 'post-export verification', Bulgaria 'physical inspection [...] of delivery', and Romania 'on-site post-delivery verification'. Belgium, Bulgaria, Liechtenstein and Switzerland indicated that they may require these inspections or verifications as part of an export authorization. These States Parties also provided some insights on the purpose of PSVs as well as who may conduct them, with Switzerland and Liechtenstein reporting that PSVs may be conducted to 'verify compliance with the non-re-export declaration', and Bulgaria explaining that 'a physical inspection [...] of the delivery in the end-user state' may be carried out by 'persons authorised' by Bulgaria's 'Interministerial Commission'. In general, however, these States Parties did not provide detailed explanations of the purposes or processes for PSVs.

9 Albania, Belgium, Bulgaria, Canada, Czech Republic, Estonia, Germany, Ireland, Liechtenstein, Lithuania, Netherlands, New Zealand, Poland, Portugal, Romania, Slovenia, Switzerland and Zambia.

10 Albania, Belgium, Canada, Czech Republic, Estonia, Poland, Portugal, Romania and Slovenia.

11 Belgium, Bulgaria, Liechtenstein, Romania and Switzerland.

## EFFORTS TO ENHANCE ATT INITIAL REPORTING

The Working Group on Transparency and Reporting continues to support the timely and accurate submission of ATT initial reports. During the preparatory process for the Eighth Conference of States Parties, the WGTR provided opportunities for States Parties, the ATT Secretariat, and civil society organizations to review the status of reporting, to share reporting challenges and identify means of assisting States Parties in addressing them, and to propose and discuss solutions to substantive reporting issues as well as issues around information exchanges and the ATT Secretariat's IT platform.<sup>12</sup> The WGTR co-chairs explained that its draft mandate for the coming year, which will be considered at CSP8, 'contains considerably fewer recurring and specific tasks' than its current mandate in the hope of allowing the WGTR's work 'to be more flexible and responsive to upcoming challenges and developments and to input from the members of the Working Group'.<sup>13</sup> In its draft mandate for the CSPg cycle, the WGTR proposes to continue to conduct exchanges around the status of reporting and reporting challenges; substantive reporting issues, such as the public availability of reports, gender considerations, and synergies with other reporting obligations; and transparency issues and information exchanges.<sup>14</sup> This may include an update on the WGTR's efforts to monitor the impact and usefulness of the revised initial reporting template, discussion of which was postponed during the CSP8 cycle.<sup>15</sup>

Support for enhanced initial reporting has also been provided by the ATT Secretariat, including through EU-funded projects aimed at matching implementation assistance needs and capabilities, training local and regional experts on delivering implementation assistance, and building the capacity of national points of contact, including with respect to initial reporting.<sup>16</sup> The ATT Secretariat has also monitored responses to individualized letters it sent on behalf of the CSP7 President to States Parties with overdue initial reports, several of which have since submitted theirs.<sup>17</sup> Additionally, the ATT Secretariat is considering ways to resume a peer-to-peer exchange of reporting assistance between States Parties – a project it began during the CSP6 cycle but was forced to suspend due to the COVID-19 pandemic.<sup>18</sup>

## CONCLUSION

Over the past year, there have been some positive developments with regards to ATT initial reporting, such as the submission of new, updated and long-overdue reports as well as the adoption of useful revisions to the initial reporting template. However, there have also seen some negative transparency and reporting trends. The low rate of initial reporting compliance from the newest Treaty members, the submission of confidential reports by most new reporters and the limited number of States Parties who submit updated initial reports upon modifications to their national control systems continue to undermine initial reporting. The CSPg cycle will need to be deliberate and concerted in its efforts to reverse these negative trends and fulfil the Treaty's transparency aims.

12 ATT WGTR (2021). Ibid, Annex A.

13 Visser, Sabine (2022). 'Presentation at the Second Meeting of the Working Group on Transparency and Reporting' 28 April 2022. <https://youtu.be/3yfyLwYiKw?t=11353>.

14 ATT WGTR (2022). 'Draft Annotated Agenda for Meeting of 28 April 2022' 13 April 2022, Annex B. <https://bit.ly/3OLuEKH>

15 ATT WGTR (2022). 'Introductory Paper for Meeting of 17 February 2022' 21 January 2022, para. 26. <https://bit.ly/3AEmwrrp>

16 ATT WGTR (2022). 'Co-Chairs' Report of 17 February 2022 Meeting' para. 12; Council of the European

Union (2021). 'Arms Trade Treaty: EU steps up support in fight against illicit arms trade' 16 April 2021.

<https://www.consilium.europa.eu/en/press/press-releases/2021/04/16/arms-trade-treaty-eu-steps-up-support-in-fight-against-illicit-arms-trade/>.

17 ATT WGTR (2022). 'Introductory Paper for Meeting of 17 February 2022' para. 19.

18 Ibid, para. 14.