

16 February 2012

ENGLISH only

**UNITED STATES MISSION
ORGANIZATION FOR SECURITY AND COOPERATION IN EUROPE**

No. 2011/048

NOTE VERBALE

The Mission of the United States of America to the Organization for Security Cooperation in Europe presents its compliments to all Delegations and Permanent Missions to the OSCE and to the Conflict Prevention Center, and with reference to Decision 17/10 of the Forum for Security Cooperation, has the honor to submit the U.S. information on the current regulations regarding Small Arms and Light Weapons Brokering Activities.

The Mission of the United States of America to the Organization for Security Cooperation in Europe avails itself of this opportunity to renew to all Delegations and Permanent Missions to the OSCE, the Forum for Security Cooperation, and the Conflict Prevention Center, the assurances of its highest consideration.

**U.S. Mission to the OSCE
June 30, 2011 Vienna**



**To all Permanent Delegations and Missions to the OSCE
The Conflict Prevention Centre**

DIPLOMATIC NOTE

*) Change of distribution status, text remains unchanged



QUESTIONNAIRE FOR

INFORMATION EXCHANGE WITH REGARD TO OSCE PRINCIPLES ON THE CONTROL OF BROKERING IN SMALL ARMS AND LIGHT WEAPONS

By 30 June 2011

(in accordance with FSC Decision 17/10)

Country		United States		
Q	Source	Question	Yes	No
Laws, regulations and administrative procedures				
1	PoA II.14	Does your country have laws, regulations and/or administrative procedures governing brokering of SALW?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
2		List laws and/or administrative procedures regulating SALW brokering in your country. Public Law 164-104 (signed July 21, 1996) amended the Arms Export Control Act (1976) to control the activities of arms brokers.		
3	GGE Report para 63(i)	Are those laws and procedures part of the national export control system?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
		Comments		
4		Does your country have a definition of brokering activities of persons and entities?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
4a		If yes, please provide Brokering activities include financing, transportation, freight forwarding or taking any other action that facilitates the manufacture, export or import of a defence article or defence service on the United States Munitions List.		
5	FSC. DEC/8/04	Does your country require brokers to register before they can apply for brokering licenses?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
		Comments		
6		Does your country require a license to engage in brokering activities?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
		Comments		
7		Does your country make a background check on past involvement in illicit activities before registering a broker or issuing brokering licenses?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
		Comments		
8	PoA II.14	Does your country keep a register of SALW brokers/traders?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
		Comments		

9		Does your country require a licence for SALW brokering activities on the territory of your country regardless of the nationality of the brokers?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
		Comments		
10	FSC. DEC/8/04	Does your country control brokering activities outside your territory carried out by brokers of your country's nationality?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
		Comments		
11		Does your country control brokering activities outside your territory carried out by non-citizen residents who are established in your country's territory?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
		Comments		
12	BPG, Brokering, V (1)	<p>What is the policy on deciding which State's jurisdiction is appropriate for each brokering transaction?</p> <p>Brokering activities subject to U.S. regulations ITAR Part 129 include:</p> <ol style="list-style-type: none"> 1. By any U.S. person wherever located. 2. By any foreign person located in the U.S. 3. By any foreign person located outside the U.S. involving U.S.-origin defense article or defense service. 4. By any foreign person located outside the U.S. involving the import into the U.S. of any defense article or defense service. 5. By any foreign person located outside the U.S. acting on behalf of a U.S. person. 		
13	BPG, Brokering, V (5(i))	Does your country have requirements for end-use documentation before authorizing each brokering activity?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
13a		<p>If so, describe</p> <p>The U.S. requires submission of form DSP-83, Non-transfer and Use Certificate, to be submitted to the Directorate of Defense Trade Controls at the U.S. Department of State.</p>		
14	PoA II.14	Does your country require a licence, permit or other authorization for each brokering transaction?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
		Comments		

15	GGE Report para 44	Are such applications for a licence, permit or other authorization considered for approval on a case-by-case basis?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
		Comments		
16		Are there exceptions to the requirement to hold a licence or authorization for a brokering transaction?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
16a		<p>Details (e.g. if the transaction is on behalf of the police or armed forces or other government officials)</p> <p>Exemptions for licenses are rare, generally limited only to certain military equipment arranged wholly within and destined exclusively for the North Atlantic Treaty Organization and its member states, as well as Australia, Japan or New Zealand.</p> <p>Licenses are not required for exports or imports made by or for an agency of the U.S. Government, for official use by a department or agency, or for carrying out any foreign assistance or sales program authorized by law (Sec. 38 (1) (B) (2), Arms Export Control Act). These exports and imports are subject to the control of the President by other means. Decision on Foreign Military Sales requests are made on a case-by-case basis and are very similar to those made about commercial sales.</p>		
17		<p>What are the criteria for granting a licence, permit or other authorization?</p> <p>First person must be registered, and authorization request must be consistent with and in furtherance of U.S. foreign policy and national security.</p>		
18	BPG, Brokering, V (3)	Is ex post facto licensing possible?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
18a		If yes, under which conditions?		
19		Does your country have measures to validate the authenticity of documentation submitted by the broker?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
19a		Describe those measures		

		<p>Through the Department of State's "Blue Lantern" Program, U.S. Embassy staff worldwide conduct periodic end-use checks on commercial SA/LW exports (as well as other U.S.-controlled munitions) to ensure that the exported items are being used according to the terms authorized by the license and by a bona fide end-user. Inquiries may include interviews with end-users, site visits, and physical inspections. Nearly 10,000 end-use checks have been performed since the inception of this program in 1990, including 771 in 2009 in nearly 100 countries. Unfavourable Blue Lantern checks can result in denial or revocation of export licenses, debarment, and criminal or civil penalties under the Arms Export Control Act and International Traffic in Arms Regulations (ITAR). Annual Blue Lantern End-Use Monitoring reports to the U.S. Congress can be found at ww.pmdtc.state.gov/reference.htm#reports. The "Golden Sentry" program, administered by the Defence Security Cooperation Agency (DSCA), performs similar checks on military-to-military arms transfers (http://www.dsca.osd.mil/). For Man-portable Air Defence Systems, the U.S. conducts full annual on-site inventories of U.S.-origin items exported to foreign end-users.</p>		
20	FSC. DEC/8/04	Does your country keep records of all issued licences or written authorizations?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
20a		<p>If yes, how long are the records kept for?</p> <p>a) 10 years <input type="checkbox"/></p> <p>b Indefinitely <input type="checkbox"/></p> <p>c) Other <input checked="" type="checkbox"/></p> <p>Five years from the expiration of a license or other approval.</p>		
21	BPG, Brokering, V (4(ii))	Does your country require brokers to report regularly on their activities?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
21a		<p>If so, describe</p> <p>Brokers are required to report all activities related to defence trade in an annual report to the office of Defence Trade Controls at the U.S. Department of State.</p>		
22	PoA II.3	Is it a criminal offence to engage in a SALW brokering transaction without a licence or authorization in your country?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
		Comments		
23		Does your country share with other States such information as the disbarment of brokers and revocation of registration?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
		Comments		
24		Does your country regulate activities that are closely associated with the brokering of SALW?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
24a		<p>If so which of the following activities are regulated (check relevant boxes)?</p> <p>a) acting as dealers or agents in SALW <input checked="" type="checkbox"/></p>		

25		b) Providing for technical assistance	<input checked="" type="checkbox"/>	
		c) Training	<input checked="" type="checkbox"/>	
		d) Transport	<input checked="" type="checkbox"/>	
		e) Freight forwarding	<input checked="" type="checkbox"/>	
		f) Storage	<input checked="" type="checkbox"/>	
		g) Finance	<input checked="" type="checkbox"/>	
		h) Insurance	<input checked="" type="checkbox"/>	
		i) Maintenance	<input checked="" type="checkbox"/>	
		j) Security	<input checked="" type="checkbox"/>	
		k) Other services	<input checked="" type="checkbox"/>	
		Comments		
	All of the actions mentioned in this question under certain circumstances are regulated under the brokering regulations.			
	Are these activities regulated by legislation on brokering or any other legislation?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
26	PoA II.14	What penalties or sanctions does your country impose for illegal brokering activities? Violators of the Arms Export Control Act requirements to register and obtain a license for defense-related exports are subject to criminal penalties including fines of up to \$1,000,000 and imprisonment of up to ten years for each transaction.		
International Assistance				
27	PoA II.14	If the answer to Question 1 is 'no', does your country wish to request assistance in developing laws, regulations and/or administrative procedures to regulate SALW brokering?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
28		What kind of assistance do you require?		
29		Has your country developed a project proposal for assistance?	<input type="checkbox"/>	<input type="checkbox"/>
29a		Does your country require training on controlling brokering activities in SALW?	<input type="checkbox"/>	<input type="checkbox"/>
Actions taken during the reporting template				
30	PoA II.6	During the reporting period, was action taken against groups or individuals engaged in illegal brokering (e.g. prosecution)?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
30a		Details Various civil and criminal actions		
31		Is your country content for these replies to be published on the OSCE website ?	<input checked="" type="checkbox"/>	<input type="checkbox"/>