

UNITED STATES MISSION
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Note Verbale

The Mission of the United States of America to the Organization for Security and Cooperation in Europe presents its compliments to all of the other Delegations and Permanent Missions to the Organization for Security and Cooperation in Europe, the Forum for Security Cooperation, and the Conflict Prevention Center, and has the honor to submit the 2018 responses of the United States of America's reply to the OSCE Questionnaire on participating States' Policy and/or National Practices and Procedures for the Export of Conventional Arms and Related Technology.

The Mission of the United States of America to the Organization for Security and 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
Vienna, July 10, 2018

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

Vienna



DIPLOMATIC NOTE

2018 Submission of the United States of America for the OSCE Questionnaire on participating States' Policy and/or National Practices and Procedures for the Export of Conventional Arms and Related Technology

1. Basic principles, policies and/or national practices on the export of conventional arms and related technology.

The policy of the United States on the export or transfer of conventional arms and related technology is laid out in the U.S. Conventional Arms Transfer Policy, which includes a description of the criteria by which export decisions are considered. This policy, fully reviewed and updated in April 2018, supports exports or transfers that meet legitimate security requirements of our allies and partners in support of our national and economic security and foreign policy interests. At the same time, the policy promotes restraint, both by the United States and other suppliers, in transfers of weapons systems that may be destabilizing or dangerous to international peace and security. The policy provides greater clarity and transparency with respect to U.S. goals for arms transfers and on the criteria used to make arms transfer decisions. More specifically, it highlights the importance the United States places on key factors such as respect for human rights, reducing the risk of military operations causing civilian harm, international stability, national and economic security, counter-terrorism, combatting transnational organized crime, and supporting nonproliferation. Given the complexities and multiple U.S. interests involved in each conventional arms transfer decision, the U.S. government continues to make these decisions for authorizing transfers on a case by case basis according to the requirements of U.S. law, regulation and policy. The text of the policy is available at: <https://www.whitehouse.gov/presidential-actions/national-security-presidential-memorandum-regarding-u-s-conventional-arms-transfer-policy/>.

In April 2018, the United States also updated its policy governing the international sale, transfer and subsequent use of U.S.-origin military and commercial Unmanned Aerial Systems (UAS). The UAS transfer policy establishes the stringent conditions and standards by which the United States will assess, on a case-by-case basis under the U.S. Conventional Arms Transfer Policy, potential exports of military UAS, including armed systems, and maintains the United States' long-standing commitments under the Missile Technology Control Regime (MTCR). Information about the policy is available at: <https://www.state.gov/r/pa/prs/ps/2018/04/280619.htm>.

2. National legislation governing the export of conventional arms and related technology.

The export of conventional arms is governed principally by the Arms Export Control Act, which authorizes the President to control the export of defense articles, including technical data, and defense services. The President has delegated that much of that authority to the Secretary of State. The Secretary has promulgated the International Traffic in Arms Regulations governing transactions involving transfers of defense articles and defense services from a U.S. private company to a foreign recipient, under which a license or other approval is required for exports of defense articles, related technical data, and defense services. The Department of State also must approve most government-to-government transfers, which are implemented by the Department of Defense. The United States has decided that certain weapons systems, such as man-portable air defense systems (MANPADS), will only be sold on a government-to-government basis. In addition, certain license requests or government-to-government transfers, based on both dollar value and type of equipment involved, or the nature of the transaction and

the destination, must be reported to Congress before a license or other approval is granted. These notifications to Congress are announced publicly.

3. International agreements or guidelines, other than OSCE commitments, covering the export of conventional arms to which they are a party.

A critical element of U.S. policy is to promote the control, restraint, and transparency of arms transfers. The United States plays an active role in many global and regional arms control initiatives and participates in several international arrangements and groups that address these issues, to include the Wassenaar Arrangement, the MTCR, and the Hague Code of Conduct against Ballistic Missile Proliferation. In addition to U.S. national legislation, U.S. policy on arms transfers is shaped by consistency with various United Nations Security Council Resolutions, and the United States observes and enforces UN Security Council arms embargoes currently in force. U.S. law permits the prosecution of those subject to U.S. jurisdiction who violate embargoes. The United States seeks universal participation in the UN Register of Conventional Arms and supports expansion of the register to include military holdings and procurement through national production, thereby providing a more complete picture of changes in a nation's military arsenal each year. The United States has signed but not ratified the Arms Trade Treaty.

4. Procedures for processing an application to export conventional arms and related technology.

Section 38 of the Arms Export Control Act authorizes the President to control the export and import of defense articles, including related technical data, and defense services controlled on the United States Munitions List. The Directorate of Defense Trade Controls is the licensing authority in the State Department for commercial arms export. Given the complexities and multiple U.S. interests involved in each arms export decision, the U.S. government requires a license or other approval for all exports of arms and related services. All defense export license applications are screened against a "Watchlist," which alerts licensing officers to companies and individuals legally prohibited from receiving a license, as well as entities requiring additional scrutiny.

Internal procedures ensure that the views of other relevant State Department offices, as well as the Department of Defense and other agencies, are sought in commercial cases requiring further consideration for consistency with U.S. foreign policy and national security interest (as described in the Conventional Arms Transfers Policy). In these respects, approvals of government-to-government exports are subject to similar considerations.

5. List of conventional weaponry under national export controls and the basis for their control.

The United States Munitions List contained in part 121 of the International Traffic in Arms Regulations enumerates 21 categories of items that are designated as defense articles, including related technical data, and defense services controlled by the Department of State. The United States Munitions List is not identical to the Wassenaar Arrangement International Munitions List and in many instances is more comprehensive. The United States Munitions List

is available at <http://www.ecfr.gov/cgi-bin/text-idx?SID=86008bdfdf1fb2e79cc5df41a180750a&node=22:1.0.1.13.58&rgn=div5>

6. Principles and national regulations on the destination or end-user of the equipment.

U.S. Conventional Arms Transfer Policy promotes restraint in transfers of weapon systems that may be destabilizing or dangerous to international peace or security. U.S. policy and our record of transfer approvals reflect these considerations. The United States abides by UN Security Council-mandated arms embargoes, but in addition and in accordance with our national policy and foreign policy interests, the United States scrutinizes all potential exports or transfers of conventional arms, considering such factors as whether the parties and destinations could: be a direct threat to U.S. security; contribute to regional instability; be used in the systematic denial of human rights; or be used in acts of international terrorism, among other factors. It is the policy of the United States to deny licenses or other approvals for exports or transfers of defense articles and defense services destined for a number of countries in accordance with the criteria cited above and otherwise designated as proscribed in the International Traffic in Arms Regulations Section 126.1. Exports to countries that the Secretary of State has determined have repeatedly provided support for acts of international terrorism are contrary to the foreign policy of the United States, and are thus proscribed, as described above, according to the requirements of Section 40 of the Arms Export Control Act prohibiting transfers to countries supporting this type of activity. Section 40A of the Arms Export Control Act also prohibits exports to countries that are not fully cooperating with U.S. antiterrorism efforts. In addition, U.S. policies may preclude exports of defense articles, including technical data, and defense services to certain destinations. A comprehensive list of countries subject to regulatory export restrictions can be found at http://www.pmdtc.state.gov/embargoed_countries/index.html

7. Requirements of the provision of an end-user certificate in an export license application, or of non-re-exportation clauses, or of any other type of certification before and after delivery for conventional arms export contracts.

The written approval of the Department of State must be obtained before reselling, transferring, transshipping, or disposing of a U.S.-origin defense article (even if it is a component incorporated into a foreign origin article) or technical data to any end-user, end-use, or destination other than originally authorized on the export authorization. In cases where a license exemption is claimed under International Traffic in Arms Regulations (ITAR), written approval is required before reselling or transferring to anyone other than the authorized end-user, as stated in the shipper's export declaration. For items that were exported pursuant to the ITAR (instead of under the government-to-government system), a Non-transfer and Use Certificate (Form DSP-83) is required as a condition to the approval of any license or agreement that relates to Significant Military Equipment, classified articles, or classified technical data. This certificate must be signed by the applicant, foreign consignee, and foreign end-user who are party to any license, manufacturing license agreement or technical assistance agreement. The Directorate of Defense Trade Controls (DDTC) may also require a Form DSP-83 for the export of any other defense articles or services. The DDTC may also require as a condition of approval that an appropriate authority of the government of the country of ultimate destination also execute the certificate or provide undertakings comparable to those contained in the Form DSP-83 (e.g. in a diplomatic note), when the foreign government is not the end-user. Agreements involving classified articles or classified technical data should be accompanied by a Form DSP-83 signed

by an authorized representative of the foreign government concerned, unless the DDTC has granted an exception to this requirement. A similar approval process and conditions are required for the retransfer of items originally exported under the government-to-government program, which can be found at <http://www.state.gov/t/pm/rsat/c14030.htm>.

8. National definition of transit and transshipment (including free zones) of conventional arms, together with associated national legislation and compliance procedures.

The written approval of the Directorate of Defense Trade Controls is required for the temporary import of defense articles to a U.S. Customs-bonded warehouse and foreign trade zone while transiting the United States.

9. The procedures governing companies wishing to export arms.

Any person who engages in the United States in the business of manufacturing, exporting, or importing defense articles or furnishing defense services is required to register with the Directorate of Defense Trade Controls (DDTC). Manufacturers of defense articles who do not engage in exporting must nevertheless register. Registration is a primary means to provide the U.S. government with necessary information on who is involved in certain manufacturing and exporting activities. Registration does not confer any export rights or privileges. It is generally a precondition to the issuance of any license or other approval. Companies must obtain a marketing license before disclosing any technical data controlled by the United States Munitions List to foreign end-users. In certain cases, particularly those involving non-Significant Military Equipment, a company may negotiate and sign export contracts with foreign governments without U.S. government authority, provided discussions are limited to information in the public domain and no technical data covered by the United States Munitions List is revealed. However, the company is required to obtain a license or other approval in order to fulfill a contract. U.S. persons or foreign persons subject to U.S. jurisdiction who engage in arms brokering activities, as defined in Part 129 of the International Traffic in Arms Regulations, must register with the DDTC. Their brokering activities may be subject to prior approval (license requirements) by the DDTC, per Section 129.4 of the International Traffic in Arms Regulations.

10. Policy on the revocation of export licenses once they have been approved.

The U.S. Congress has provided the President and the Secretary of State with broad authority to deny or revoke licenses in furtherance of the foreign policy and national security of the United States. Section 42(e)(2)(A) of the Arms Export Control Act provides that any export license issued may be revoked, suspended, or amended without prior notice, whenever the Secretary of State deems such action to be advisable. Further, Section 126.7 of the International Traffic in Arms Regulations authorizes suspension or revocation of an export license, *inter alia*, if: the Department of State deems such action to be in furtherance of world peace, the national security or foreign policy of the United States, or is otherwise advisable; the licensee has been indicted or convicted for a violation of the criminal statutes set forth in the Arms Export Control Act or of violating the International Traffic in Arms Regulations; the licensee is ineligible to contract with, or to receive a license or other authorization to import defense articles or defense services from any agency of the U.S. government; or violations of terms and conditions of licenses or other approvals occur. Similarly, pursuant to the underlying agreement for the

government-to government sale of defense articles or defense services, the United States can suspend or cancel any pending transfers.

11. Penal and administrative implications for any exporter failing to comply with national controls.

Persons who willfully violate any provision of Section 38 of the Arms Export Control Act or the International Traffic in Arms Regulations, or who make untrue statements or omissions of required material fact in a registration, license application or report, may be convicted of violating the Arms Export Control Act and International Traffic in Arms Regulations. Persons convicted of violating the Arms Export Control Act and/or the International Traffic in Arms Regulations may face criminal penalties up to one million U.S. dollars for each Arms Export Control Act-related violation, or imprisonment for up to twenty years, or both. Potential violations of terms or conditions of approved licenses or other approvals may also result in suspension, revocation, or amendment of existing licenses or other approvals, and prohibition (debarment) from participating, directly or indirectly, in the export or import of defense articles, technical data, or defense services. In addition to any other liability or penalty that may be imposed, the Department of State may impose civil penalties for each Arms Export Control Act related violation.

12. Any circumstances in which the export of arms does not require an export license.

Exemptions exist to relieve the regulatory/licensing burden for certain exports involving unclassified defense articles. These exemptions generally do not apply to proscribed destinations, exports for which Congressional notification is required, Missile Technology Control Regime articles, or Significant Military Equipment, and may not be used by persons who are generally ineligible per Section 120.1 of the International Traffic in Arms Regulations. When shipping exempted items, the shipper must file a shipper's export declaration with the district director of customs at the port of exit, certifying that the export is exempt from licensing requirements and identifying the section of the International Traffic in Arms Regulations under which an exemption is claimed. Exports under government-to-government arrangements do not require licenses, but must be approved by the Department of State.

13. Licenses for temporary export (e.g., demonstrations or testing), the period allowed and any special conditions attached to the license, including verification of return procedures.

Licenses for the temporary export of defense articles are issued by Directorate of Defense Trade Controls (DDTC) if: 1) the article will be exported for a period of less than four years, 2) the article will be returned to the United States, and 3) transfer of title will not occur during the period of temporary export. Articles exported pursuant to a temporary license may not be sold or otherwise permanently transferred to a foreign person while they are overseas under a temporary export license unless the DDTC gives prior approval for the transfer.

14. License documents and any standard conditions attached to it.

Applications for export or temporary export must be made as follows: Applications for licenses for permanent export of unclassified defense items or the export of unclassified technical data not related to a defense service must be made on Form DSP-5; Applications for licenses for temporary export must be made on Form DSP-73; Applications for licenses for temporary imports must be made on Form DSP-61; Applications for the export of classified articles for classified technical data must be made on Form DSP-85; Applications for administrative amendments to license applications must be made on Form DSP-6 (permanent export), DSP-62 (temporary import), DSP-74 (temporary export), or DSP-119 (classified exports or temporary imports); End-use and non-transfer assurances for classified and Significant Military Equipment (as defined in the International Traffic in Arms Regulations) export transactions must be made on Form DSP-83. The Department of State also uses the “Blue Lantern” end-use monitoring program to perform both pre-license checks and post-shipment verifications on certain at-risk transactions. Most license applications, including technical assistance agreements, manufacturing license agreements, and warehouse and distribution agreements are submitted and processed electronically. Other requests, including General Correspondence for the re-export or retransfer of articles previously exported from the United States, advisory opinions and brokering request are processed via paper submissions. Sample forms and further information are available at <http://www.pmdtc.state.gov/licensing/forms.html>

15. Different types (e.g., individual, general, restricted, full permanent, etc.) of licenses and what they are used for.

Export Licenses: A document bearing the word “license” issued by the Directorate of Defense Trade Controls, which permits the export or temporary import of specific defense articles, defense services and technical data covered by the United States Munitions List.

Technical Assistance Agreements: A technical assistance agreement is a contract for the performance of a defense service or the disclosure of technical data related to the performance of a defense service. Assembly of defense articles is included under this type of agreement, provided production rights or manufacturing know-how are not conveyed.

Manufacturing License Agreements: A manufacturing license agreement is a contract whereby a U.S. person grants a foreign person an authorization to manufacture defense articles abroad and that involves or contemplates: A) The export of technical data or defense articles or the performance of a defense service; or B) The use by the foreign person of technical data or defense articles previously exported by the U.S. person.

Distribution Agreements: A distribution agreement is a contract to establish a warehouse or distribution point abroad for defense articles exported from the United States for subsequent distribution to entities in an approved sales territory.

16. Advice given to exporters as to licensability, such as the likelihood of approval for a possible transaction.

International Traffic in Arms Regulations Section 126.1 provides guidance to potential exports of restrictions on exports due to international or domestic law, or U.S. policy, such as restrictions

on specific countries due to United Nations Security Council Resolutions. These restrictions are also published at http://www.pmddtc.state.gov/embargoed_countries/index.html

Exporters can also obtain advisory opinions from the Directorate of Defense Trade Controls, which also has a Response Team to answer inquiries from the public. The Response Team does its best to provide information, but its answers are not authoritative and are not a substitute for formal advisory opinions. Additional information about the Response Team, including contact information, is available at http://www.pmddtc.state.gov/response_team/index.html

17. The average number of export licenses issued annually and the staff engaged in the export licensing procedure.

Last year the Directorate of Defense Trade Controls (DDTC) processed roughly 42,000 requests. There are approximately 150 people in the DDTC (including full-time civil servants, contractor personnel, and uniformed military personnel) involved in the regulation of commercial arms sales and transfers. This does not include the cases and staff of the Department of Defense-implemented government-to-government mechanisms, whose functions are not directly analogous. Nor does it include the staff of government organizations that advise the DDTC in their licensing decisions.

18. Any other relevant information pertaining to the export of conventional arms and related technology, e.g., additional laws, reports to Parliament, special procedures for certain goods.

In making its arms export and transfer decisions, the United States complies with its commitments under all relevant international arrangements, to include the Wassenaar Arrangement, and the Missile Technology Control Regime.

Proposed export licenses subject to Congressional notification thresholds pursuant to sections 36(c) and 36(d) of the Arms Export Control Act are published in Federal Register on a semi-annual basis. See http://www.pmddtc.state.gov/FR/2016/9397_PublishedFR.pdf for the most recent filing.

Congressional notifications of sales under government-to-government arrangements are published on the internet at <http://dsca.mil/major-arms-sales>

Data and statistics on exports under these arrangements are published at <http://dsca.mil/resources/dsca-historical-facts-book-fiscal-year-series>

19. Are all guidelines governing conventional arms transfers nationally published?

All changes to the International Traffic in Arms Regulations are published in the U.S. government's Federal Register. Regulatory and policy information, including lists of criminal and civil debarments, is also regularly posted at the Directorate of Defense Trade Controls website on the internet at www.pmddtc.state.gov