



Arms Trade Treaty Implementation Toolkit

Module 9 Brokering

I. Introduction

Any countries joining the Arms Trade Treaty (ATT) are required to put in place effective measures to implement the Treaty.

States will decide which measures they need to carry out their obligations under the ATT. These measures may vary from country to country.

This ninth module, *Brokering*, aims to assist States in regulating arms brokering taking place under their jurisdiction. In particular, this module will discuss measures to be considered by States Parties in adopting national brokering controls.

II. Regulating brokering under Article 10 of the ATT

➤ Brokering constitutes a “transfer” under Article 2 (2) of the ATT. In accordance with Article 10, States Parties, pursuant to their national laws, shall regulate brokering for conventional arms covered under Article 2 (1) taking place under its jurisdiction.

➤ Such measures may include requiring brokers to register or obtain written authorization before engaging in brokering.¹ Each State Party has discretion in determining how to design such regulation provided that it complies with its obligation on prohibitions of transfers under Article 6 of the ATT, and more generally with its obligation not to undermine the object and purpose of the Treaty.

➤ Although Article 10 of the ATT does not explicitly require States Parties to regulate brokering in ammunition or parts and components, each State Party has the prerogative to adopt measures to regulate brokering in those items taking place within its jurisdiction. This would be consistent with the aims of the ATT and the provisions of Article 5 (5).

III. What constitutes arms brokering?²

Brokering refers to activities performed by a broker, which might include:

-serving as a finder of business opportunities to one or more parties;

¹ Article 10.

² See the Report of the Group of Governmental Experts established pursuant to General Assembly resolution 60/81 to consider further steps to enhance international cooperation in preventing, combating and eradicating illicit brokering in small arms and light weapons (A/62/163). For more information on brokering, also refer to the International Small Control Standards (ISACS) 01.20

- putting relevant parties in contact;
- assisting parties in proposing, arranging or facilitating agreements or possible contracts between them;
- aiding parties in obtaining the necessary documentation;
- assisting parties in arranging the necessary payments.

A broker can be described as a person or entity acting as an intermediary that brings together relevant parties and arranges or facilitates a potential transaction in return for some form of benefit, whether financial or otherwise.

As part of the process of putting a deal together to gain benefit, a broker might perform other activities closely associated with brokering which might not constitute brokering activities in themselves. In this context, the broker might:

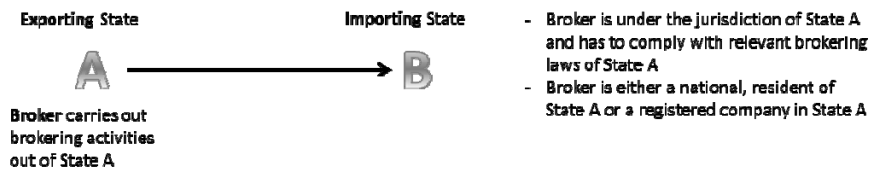
- act as a dealer or agent;
- provide technical assistance and/or training;
- supply transport and/or freight forward;
- set up storage;
- provide finance services;
- obtain insurance policies;
- give maintenance;
- provide security and other services.

IV. The trans-boundary nature of brokering activities

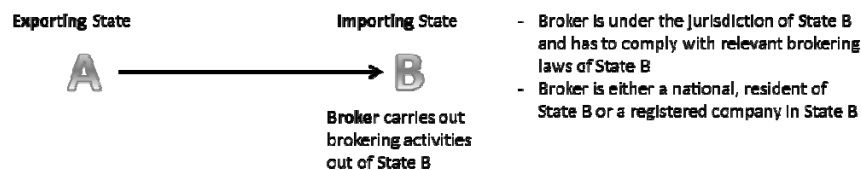
- Brokering activities can take place in the broker's country of nationality, residence or registration. They can also take place in another country.
- The items being brokered do not necessarily pass through the jurisdiction of the State where the brokering activity takes place and the broker might never take ownership of those items.
- Given the trans-boundary nature of brokering activities, national controls could be exercised by different States with jurisdiction over the same activity.
- Brokering activities can take place under the jurisdiction of the exporting State, the importing State, the transit/ trans-shipment State or any other country (third country).
- If the brokering takes place in the exporting State, the importing State or the transit/ trans-shipment State, then the items will actually pass through the territory of the States where the broker operates. Figure 1 illustrates the different regulatory criteria of brokering activities taking place under the jurisdiction of the exporting, importing or transit/ trans-shipment States.

Figure 1 – Brokering in export/import/transit States

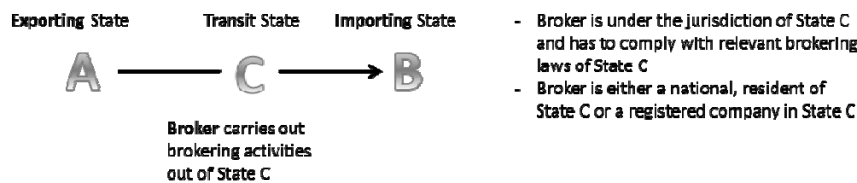
CASE 1



CASE 2



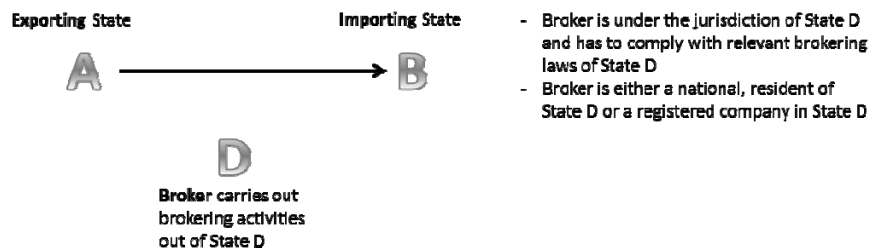
CASE 3



➤ When brokering activities take place in a third country (different from the exporting, importing, transit/trans-shipment States), the items may never enter the country from where the broker operates. This is called “third country” brokering.

➤ Under Article 10, States Parties have an obligation to regulate brokering activities taking place under their jurisdiction. Therefore, “third country” brokering will also need to be regulated if the “third country” is a party to the ATT. In sum, brokering activities taking place in a territory under the jurisdiction of any State Party to the ATT must be regulated.

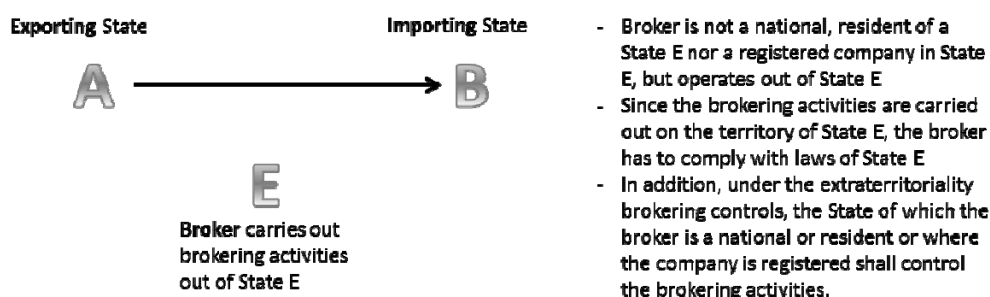
Figure 2 – Third-party / third-country brokering



➤ In some cases, the broker might travel outside of his/her home country (country of nationality or legal permanent residence) and carry out brokering activities in another country. This is known as “extraterritorial brokering”.

➤ To regulate “extraterritorial brokering,” States Parties to the ATT should consider including extraterritorial clauses in their national legislation to exercise control over brokering activities carried out outside their territories by brokers of their nationality, brokers who are residents or are established in their territories. Figure 3 illustrates “extraterritorial brokering”.

Figure 3 – Extraterritorial brokering



➤ The regulation of “extraterritorial brokering” is consistent with the rights of States Parties under the ATT. Exercising control over “extraterritorial brokering” would contribute to the establishment of the highest possible common international standards in the regulation of the international trade in conventional arms.³

➤ Moreover, exercising control over “extraterritorial brokering” would facilitate mutual legal assistance and extraditions between States concerned, consistent with Article 15(5), which obliges States to afford one another the widest measure of assistance in investigations, prosecutions and judicial proceedings in relation to violations of national measures established pursuant to this Treaty.

➤ Enforcing brokering regulations extraterritorially may require extradition of brokers indicted for violations.

V. Measures to be considered by States Parties in the regulation of brokering

Each State Party is in charge of its own efforts to comply with its obligations under the ATT. States Parties may consider adopting any of the following measures:

³ Article 1.

1. Designation of competent national authorities that exercise brokering controls

- The competent national authorities tasked with regulating brokering of conventional arms should be clearly identified in the national legislation.
- Although it is a prerogative of each State Party to decide which authorities should be entrusted with the responsibility of regulating brokering, it would be consistent with ATT implementation obligations to consider placing that responsibility with the same authorities entrusted with the regulation of exports.

2. National implementation of legislation and administrative procedures

- It is up to each State Party to decide how to regulate brokering activities in conventional arms taking place under its jurisdiction, provided that the State Party complies with its obligations under Article 6 of the ATT.

- As an example, the measures listed below could be an integral part of the regulatory process.

- Adoption of a national definition of broker and brokering activities;
- Registration and licensing procedures;
- Record-keeping by government;
- Penalties and fines ;
- Criminalization of brokering activities that violate Security Council arms embargoes.⁴

- Registration and screening of prospective brokers may be required by the national authorities. To this end, prospective brokers could be asked to provide the following information:

- Broker's country of nationality and residence;
- Broker's ownership of any entity or involvement in any relevant businesses used to facilitate brokering activities;
- Range of conventional weapons that the broker may wish to be involved in brokering.

- In screening potential brokers, the State Party may assess if the applicant:

- a. Is in good legal standing and, when applicable, in good financial standing;
- b. Is not included in a black list;
- c. Has not previously misrepresented/falsified documents and information submitted;

⁴ S/RES/1196 (1998).

- d. Has not been denied an application for brokering authorization;
- e. Has not been involved in transfers that constituted a violation of the prohibitions stipulated in Article 6;
- f. Has 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).

➤ The State Party may also conduct other checks on the information provided by the potential broker.

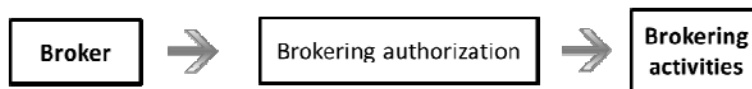
3. Approaches to regulation of brokering

➤ States Parties may regulate brokering activities by issuing licences, authorizations or permits. States Parties may adopt a one-step approach, whereby brokers are only required to obtain an operating licence or an authorization before engaging in brokering activities, or a two-step approach whereby brokers are required both to obtain a licence and to apply for an authorization for each brokering activity.

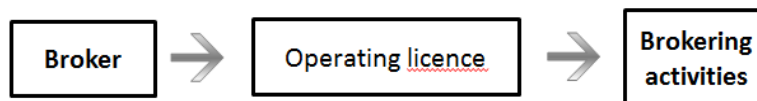
➤ Figure 4 shows different approaches States Parties may adopt to regulate brokering activities.

Figure 4 – Approaches to regulate brokering activities

One step approach (a): Brokers need to apply only for authorization for each brokering activity



One step approach (b): Brokers need to only obtain an operating licence before engaging in brokering



Two step approach: Brokers need to obtain an operating licence **and** apply for authorization for each brokering activity



➤ The same criteria for granting arms export licences may be applied to the authorization of brokering activities. The prohibitions provided under Article 6 as well as the assessment criteria listed under Article 7 should be applied in decisions regarding the authorization of brokering activities.

VI. International cooperation and assistance

1. International cooperation on sharing of information

➤ States Parties should seek and provide information, in accordance with their national law, on brokering activities and brokers as well as those involved in illicit or suspicious activities and related entities or assets used in transfers (aircrafts, vessels, etc). Information provided could be limited by national laws on protection of personal data, commercial confidentiality and States' security considerations.

➤ States Parties could conclude bilateral and multilateral arrangements for promoting cooperation with regard to the control of brokering activities.⁵

➤ For more details on international cooperation, see Module 6.

2. International assistance

For details on international assistance, see Module 6.

⁵ Examples of such multilateral instruments include:
Best Practice Guidelines for the Implementation of the Nairobi Declaration and the Nairobi Protocol on Small Arms and Light Weapons (2005).
OAS "Model Regulations for the Control of Brokers of Firearms, their Parts and Components and Ammunition", document CICAD/doc1271/03, 13 November 2003.
Council of the European Union, Council Common Position 2003/468/CFSP of 23 June 2003 on the Control of Arms Brokering, EU document 2003/468/CFSP, 23 June 2003.
Organization for Security and Co-operation in Europe, Best Practice Guide on National Control of Brokering Activities, document FSC.GAL/63/03/Rev.2, 19 September 2003.
Organization for Security and Co-operation in Europe, Principles on the Control of Brokering in Small Arms and Light Weapons, document FSC.DEC/8/04, 24 November 2004.
Wassenaar Arrangement, Elements for Effective Legislation on Arms Brokering (2003).