

Ordinance on War Material of 25 February 1998

The Swiss Federal Council

Given article 5, 3rd paragraph, article 15, 2nd paragraph, article 17, 3rd paragraph, article 20, 3rd paragraph, articles 26, 29, 30, 31, 43, and 47 of the Law on War Material of 13 December 1996 (LWM);

Given article 43 of the Law on the Organisation of the Government and the Administration (LOGA),

Decrees:

Section 1: General Provisions

Article 1 Scope

1. The present ordinance regulates the initial authorisations and the specific authorisations that are required for the manufacture, the brokerage, the import, the export, and the transit of war material, as well as the conclusion of contracts to transfer incorporeal property, including know-how, and the concession of related rights.
2. The ordinance applies in Swiss customs area, to Swiss customs warehouses, and Swiss customs enclaves.

Article 2 War material (art. 5 LWM).

Are deemed war material, goods enumerated in annex 1.

Section 2: Initial Authorisations

Article 3 Request (art. 9 LWM)

Must be included in a request for initial authorisations:

- a. a list of the war material for which the authorisation is requested;
- b. the Federal and Cantonal authorisations that may be required under the legislation on arms;
- c. an excerpt from the commercial registry;
- d. an excerpt from the tax registry;
- e. an excerpt from the registry of financial proceedings;
- f. for physical persons, proof of residence.

Article 4 Withdrawal and revocation (art. 11 LWM)

1. The initial authorisation to manufacture war material is withdrawn if it is not used for five years.
2. The initial authorisation to trade or broker is withdrawn if it is not used for three years.
3. If an initial authorisation is withdrawn, revoked or has lapsed for any other reason, the war material that is still located with the holder of the authorisation is sold or liquidated under the supervision of the Federal Office for Foreign Economic Affairs (FOFEA).

Section 3: Specific Authorisations

Article 5 Authorisation criteria for foreign markets (art. 22 LWM)

Authorisations regarding foreign markets and the conclusion of contracts pursuant to article 20 LWM must be based on the following considerations:

- a. the maintenance of peace, international security and regional stability;
- b. the situation in the country of destination, especially with regards to the respect of human rights;
- c. Swiss efforts in the area of cooperation to development;
- d. the attitude of the country of destination towards the international community, in particular with regard to the respect of international law;
- e. the attitude of countries who, like Switzerland, are members of international export control regimes.

Article 6 Authorisation to broker (art. 15 and 16 LWM)

1. Any person who, in Switzerland, manufactures war material on his own production premises cannot broker without a specific authorisation unless the initial authorisation to broker was delivered for analogous products to those being manufactured on his production premises.
2. The brokerage of war material towards states listed in annex 2 does not require a specific authorisation; professional brokers must however hold an initial authorisation.

Article 7 Authorisation to transfer incorporeal property or to concede related rights (art. 20 and 21 LWM)

The conclusion of contracts regarding the transfer of incorporeal property, including know-how related to war material, or the concession of related rights, do not require a specific authorisation when these goods are intended for states listed in annex 2.

Article 8 Diplomatic or consular missions and international organisations

Supplies from diplomatic or consular missions, or international organisation situated in Switzerland and the Principality of Liechtenstein are deemed to be imports; supplies that are intended to them are deemed to be exports.

Article 9 Easing of process for participants in shooting competitions

The temporary import or export of arms by Swiss or foreign marksmen participating in shooting competitions or training does not require an authorisation.

Section 4 Import Certificates

Article 10 Import certificate

1. The FOFEA establishes, upon written request from the importer of war material, an official import certificate in complement to the authorisation to import, if
 - a. the state supplying the war material expressly requests it; and
 - b. the applicant is established on Swiss customs territory and is registered in a commercial register in Switzerland or Liechtenstein.
2. It can subject the granting of import certificate to proof regarding the foreseen import (copy of orders, etc.) and the final use of the war material.
3. It supervises the import of the goods for which it has established certificates.

Article 11 Charges

1. The importer must import within the six months from the date of the establishment of the import certificate the war material for which the certificate was requested. This period can be prolonged upon duly motivated written request.

2. He must prove to the FOFEA, by means of original customs documents and pertinent invoices from the supplier, that the import has taken place. The proof must be brought as soon as the customs documents are received. The temporary imports under an ATA booklet or permit are not deemed to be a customs clearing.

Article 12 Unused or partially used import certificates

1. If the war material for which the import certificate has been delivered is not imported into Switzerland, the certificate must be returned to the FOFEA.
2. If the import certificate cannot be retrieved from the foreign authority, or if only part of the war material has been imported, the importer must, in writing, notify the FOFEA before expiry of the import delay.

Section 5: Authorisation Procedure

Article 13 Competent authority regarding authorisations

1. The FOFEA is competent to deliver authorisations, except as provided for in paragraphs 2, 2bis, and 3.
2. The authority competent, pursuant to the *Federal Law on Explosive Substances of 25 March 1977*, in delivering authorisations to manufacture and import munitions and parts of munitions for shoulder arms and hand arms is the Public Ministry of the Confederation. The procedure is governed by the *Ordinance on Explosive Substances of 26 March 1980*.
- 2bis. The authority competent for the commercial import of shoulder and fist firearms, parts thereof, their munitions and parts of munitions, is the Central Office of Arms. The procedure is governed by the *Ordinance on Weapons of 21 September 1998*.
3. The competency with respect to air transit (authorisation to fly over) is reserved (art 3a of the *Ordinance on the Safeguarding of Sovereign Air Space of 17 October 1984*).

Article 14 Procedure (art. 29 LWM)

1. The FOFEA decides on requests for granting initial authorisations, after having consulted the Public Ministry of the Confederation.
2. The FOFEA decides, in agreement with the relevant services from the Federal Department of Foreign Affairs (FDFA), on requests regarding foreign markets (art. 22 LFMG) and the conclusion of contracts pursuant to article 20 LFMG. Moreover, the FOFEA's decision is taken in agreement with:
 - a. the relevant service from the Federal Department of Defense, Civil Protection, and Sports (FDDPS), if armament or security policy interests are at play;
 - b. the Federal Office of Energy (OFEN), if the nuclear sector is involved.
3. The services involved determine requests that are, pursuant to the terms of paragraph 2, of major importance to foreign policy or security policy, and must therefore be submitted to the Federal Council.
4. If the services involved cannot agree on the treatment of a request, under the terms of paragraphs 2 or 3, the request is submitted for decision to the Federal Council.
5. In cases of minor importance or if there are precedents, the concerned services may renounce to deal with requests and authorize the FOFEA to take a decision alone.

Article 15 Prohibition to transfer authorisations and validity period

1. Initial and specific authorisations are untransferable.
2. Authorisations to import, export, and transit are valid for twelve months; they can be prolonged by six months at the most.

Article 16 Clearing of customs

The clearing of customs during import, export, or transit is governed by the provisions of customs legislation.

Section 6: Control and Administrative Measures**Article 17 Obligation to hold registers**

1. The manufacture, purchase, sale, brokerage or any other form of trade of war material, as well as the conclusion of contracts under the terms of article 20 LFMG, must be recorded in registers. At any moment, the registers must supply the following information:

- a. entries, exits, the state of war material stocks;
- b. the names and addresses of suppliers, buyers, and parties to contracts;
- c. the dates and the objects of the commercial transactions.

2. The following documents must be available for presentation for a period of ten years as accountable items:

- a. invoices from the suppliers;
- b. duplicates of the invoices addressed to buyers and to parties to the contracts; receipts signed by the buyers of the merchandise in cases of cash payments;
- c. the contracts bearing on transactions of incorporeal property, including know-how, relating to war material.

Article 18 Duty of diligence

The person who is tasked with holding the registers must, before handing over material or transferring incorporeal property, including know-how, ensure by way of an official identity card that he has the names, qualities, and address of the acquirer or the other party to the contract, if he is unknown to him.

Article 19 Control

1. The FOFEA undertakes controls.
2. Border control is undertaken by customs agencies. The authorisations to import, export, and transit must be presented to them.

Article 20 Examination by the Public Ministry of the Confederation

The central Office of the Public Ministry of the Confederation is charged with fighting illegal transactions of war material and must, in particular:

- a. supervise the arrival of supplies to the foreseen and approved places of destination;
- b. head police inquiries to determine if there have been violations.

Article 21 Administrative measures

Whoever does not respect the conditions and the charges accompanying the import authorisations and certificates, or the prescriptions or provisions decreed pursuant to the legislation on war material, can have his authorisations withdrawn by the licensing authority, or can be refused their extension or renewal, or refused for a certain time the granting of other import authorisations or certificates.

Section 7: Fees**Article 22 Fees (art. 31 LWM)**

1. The authorisations are subject to the following fees:
 - a. for an initial authorisation: 500 francs;
 - b. for the revision or adaptation of an initial authorisation or the establishment of a new initial authorisation: 250 francs;
 - c. for authorisations to import or export: 0.8% of the value of the goods, but a minimum of 50 francs and a maximum of 5'000 francs;
 - d. for authorisation required for manufacture, brokerage, and transit of war material, as well as the conclusion of contracts under the terms of article 20 LWM: 200 francs;
 - e. for expert assessments of types under the terms of article 25, 2nd paragraph, letter c: 200 francs on top of the effective cost of the expert assessment according to the bill of the agency responsible for the assessment.
2. The fees stipulated to in paragraph 1, letters a., b., d., and e., can be increased to a maximum of half the original when the granting of an authorisation involves extraordinary costs.
3. When import or export authorisations have not been used, or only partially, or when material has been sent back, the excess fee can be refunded upon request, after deduction of administrative costs. The request for refund must be presented at the latest three years after the granting of the authorisation.
4. No fees are charged for import or export authorisations of war material intended for the Swiss Army, to the Federal customs administration, or the police corps of Switzerland and Liechtenstein.

Section 8: Final Provisions

Article 23 Execution

1. The FOFEA is charged with the execution of the present ordinance.
2. Information relating to the legislation on war material is given by the FOFEA.

Article 24 Abrogation of the law in force

The Ordinance on War Material of 10 January 1973 is abrogated.

Article 25 Transitory dispositions

1. Until the entry into force of the federal legislation on arms, the following provisions are applicable:
 - a. no initial authorisation is granted for the trade and commerce of weapons capable of firing in bursts;
 - b. the Cantons can authorize the acquisition of individual firearms capable of firing in bursts in the framework of Federal and Cantonal legislation on weapons. They supervise collections of these weapons;
 - c. no authorisation is required for the reloading of munitions for a personal use intended for sport target practice. The provisions on the orderly munitions are reserved.
2. Until the entry into force of the Federal legislation on arms, the FOFEA is responsible for:
 - a. the delivery of specific authorisations for the import by individuals, in a non professional capacity, of shoulder arms and hand arms considered as war material;
 - b. the delivery of initial authorisations for the professional brokerage of shoulder arms and hand arms, their parts, and munitions, for recipients established in Switzerland;
 - c. the ordering of expert assessments in order to distinguish between semi-automatic shoulder weapons and weapons firing in bursts; if the applicant is involved in the trade, he may be

requested to submit a weapon as a model for comparison to the relevant authority in charge of the authorisation process.

Article 26 Entry into force

The present ordinance enters into force April 1 1998.