The Permanent Mission of the Kingdom of The Netherlands to the United Nations presents its compliments to the Office for Disarmament Affairs and has the honour to refer to the latter’s note verbale no. ODA/24-2008/NLDU, dated 14 March 2008.

The Permanent Mission of the Kingdom of The Netherlands to the United Nations has the honour to submit to the Office for Disarmament Affairs, with reference to GA resolution 62/26, entitled “National legislation on transfer of arms, military equipment and dual-use goods and technology”, information on export policy and legislation on strategic goods in The Netherlands.

The Permanent Mission of the Kingdom of The Netherlands to the United Nations avails itself of this opportunity to renew to the Office for Disarmament Affairs the assurances of its highest consideration.
Export Policy and Legislation on Strategic Goods in the Netherlands

1. Export control of strategic goods

1.1 Policy objectives

The goods specified in the Annexes to the Strategic Goods Manual are subject to export control on various grounds:
1. national policy on arms exports;
2. multilateral agreements in the framework of the Wassenaar Arrangement (WA);
3. multilateral agreements on preventing the proliferation of weapons of mass destruction and of means of delivery such as missiles;
4. the EU Code of Conduct on Arms Exports.

The basic national policy on the export of weapons was laid down in the Policy Document on Arms Export Policy, sent to Parliament on 28 March 1991 and updated on 27 February 1992.

Key elements of this policy are acknowledging sovereign countries’ right to defend themselves as well as the general advisability of restraint and prudence where arms exports are concerned. Restraint and prudence are of course especially well advised with regard to countries in regions where tensions are high or which seem to be amassing excessive weapon arsenals.

In addition to these key elements, on 29 June 1991 and 27 June 1992 the European Council laid down eight criteria for exports of military goods, including the human rights situation in a particular country and the importance of preserving regional peace, security and stability. The EU Code of Conduct on Arms Exports adopted in 1998 was based on these criteria.

In the past decade, increased transparency on the export of conventional weapons has been sought to allow closer scrutiny of the Government’s licensing policy by Parliament and the general public.
Another major element of national policy is that the Dutch authorities oppose the export of goods if there are indications that such goods may contribute to or be used in missile programmes or the development or production of weapons of mass destruction.

1.2 Legal basis

The legal basis for the control of strategic goods consists of several Acts, Decrees, Orders and Regulations:

1. Import and Export Act (*In- en Uitvoerwet*) (Bulletin of Acts and Decrees 1962, 295);
3. Strategic Goods Import and Export Decree (*In- en uitvoerbesluit strategische goederen*) (Bulletin of Acts and Decrees 1999, 516);
4. Financial Services (Strategic Goods) Decree (*Besluit financieel verkeer strategische goederen 1996*) (Bulletin of Acts and Decrees 1996, 552);
5. Strategic Goods (Issue of Certificates) Decree (*Besluit afgifte verklaringen strategische goederen*) (Bulletin of Acts and Decrees 1986, 417);
6. Military Shipments Exemption Order (*Vrijstellingsregeling militaire zendingen (niet-landbouwgoederen) 1966*) (Government Gazette 93);
7. Decision Exemptions ‘small scale border traffic’ (*Vrijstellingsregeling klein grensverkeer (niet-landbouwgoederen) 1963*) (Government Gazette 133);
8. Economic Offences Act (*Wet op de economische delicten (WED)*)) (Bulletin of Acts and Decrees 1950, 258);
10. Chemical Weapons Convention Implementation Decree (*Uitvoeringsbesluit verdrag chemische wapens (Uitvoeringsbesluit CW)*)) (Bulletin of Acts and Decrees 1997, 15);
Re 1: The Import and Export Act is the statutory basis of all the decrees mentioned above except the Financial Services (Strategic Goods) Decree. Section 19 of this Act gives the enforcement agency (the Fiscal Information and Investigation Service and Economic Investigation Service (FIOD-ECD)) supervisory as well as investigative tasks.

Re 2: The Regulation also includes the list of dual-use goods as Annex I.

Re 3: Strategic Goods Import and Export Decree prohibits the export -- and in certain cases the re-export -- from the Netherlands to all countries except Belgium and Luxembourg (due to the special customs arrangements under the Benelux Treaty) of the goods and technology mentioned in the Annex to this Decree (i.e. military goods) without a licence from the Minister for Foreign Trade. The Decree also prohibits the export and re-export of the dual-use goods mentioned in Annex I to the Regulation, including software and technology, without a licence from the Minister for Foreign Trade. A licence for dual-use items is not required for intra-Community trade unless the items are listed in Annex IV to the Regulation.

Re 4: The Financial Services (Strategic Goods) Decree provides that a Dutch resident requires a licence from the Minister of Finance for financial participation in third-party transactions involving strategic goods if the strategic goods either are located outside the EU or are located inside the EU but have not been formally imported into the EU.

Re 5: The Strategic Goods (Issuance of Certificates) Decree is the legal basis for issuing International Import Certificates (IICs) and acknowledgements of receipt and for the obligations entailed by these documents.
Re 6: The Military Shipments Exemption Order grants the Dutch armed forces, the armed forces of other NATO countries and the Allied Joint Force Command Brunssum an exemption, under certain conditions, from the requirement to obtain a licence for arms shipments as long as the arms remain in their custody.

Re 7: Decision Exemptions 'small scale border traffic' grants an exemption from the export licence requirement, under certain conditions, for equipment for hunting, shooting clubs, certain means of conveyance used in international traffic, and Dutch ships and aircraft that are temporarily abroad.

Re 8: The Economic Offences Act authorises the FIOD-ECD to conduct investigations and sets out the penalties for infringements of export control legislation.

Re 9: The Chemical Weapons Convention (Implementation) Act sets out the rules for implementing the Chemical Weapons Convention. The Act prohibits the entry and exit as well as the import and export of certain chemical substances, unless a discretionary permit has been granted. The Act also provides the basis for international inspections of facilities producing chemical substances and for notification requirements concerning the chemical substances governed by the Chemical Weapons Convention.

Re 10: The Chemical Weapons Convention Implementation Decree indicates which chemical substances are governed by the Chemical Weapons Convention and establishes further rules on notification requirements and the associated time limits for submission.

Re 11: The Biological Weapons Convention (Implementation) Act prohibits anyone from possessing or acquiring biological agents or equipment for the dissemination of biological agents who knows or has reason to know that they will be used for biological warfare.
In addition to the provisions of the Import and Export Act, importers and exporters of strategic goods may have to satisfy the requirements of the Firearms and Ammunition Act (*Wet Wapens en Munitie (WWM)*). This Act regulates the possession of arms on Dutch territory and in some cases requires permission (similar to a licence) for the entry, exit or re-export of firearms and ammunition that fall within the scope of the Act. The Minister of Justice is responsible for the Act's enforcement.

### 1.3 International regimes

The Netherlands participates in the following international regimes:

- the Wassenaar Arrangement (WA);
- the Nuclear Suppliers Group (NSG);
- the Missile Technology Control Regime (MTCR);
- the Australia Group (AG);

### 2. Export Control Policy

#### 2.1 Introduction

This chapter covers several aspects of existing legislation on strategic goods, including both military goods and dual-use items. Classifying goods as strategic or non-strategic is essential to determining whether a licence is required.

The Central Import and Export Office (CDIU) is the licensing agency of the Tax and Customs Administration of the Ministry of Finance, but takes its instructions on export control policy from the Ministry of Economic Affairs. The CDIU as licensing agency processes licence applications for both military and dual-use goods exports. In all cases, the CDIU grants or denies licences for the export of strategic goods on behalf of the Ministry of Economic Affairs (specifically the Minister for Foreign Trade).

#### 2.2 Import and Export Act
2.2.1 Military goods

Export of military goods to any country except Belgium or Luxembourg is prohibited without a licence granted by the CDIU on behalf of the Minister for Foreign Trade.

2.2.2 Dual-use items

Council Regulation (EC) No. 1334/2000 entered into force on 28 September 2000. The Regulation defines 'dual-use items' as: 'items, including software and technology, which can be used for both civilian and military purposes'. These items are specified in Annex I to the Regulation.

The Regulation requires a licence for export from the Community of dual-use items listed in Annex I.

Trade in dual-use items within the Community usually does not require a licence. However, if a dual-use item is listed in Annex IV to the Regulation, a licence is required for its transfer to another Member State.

Commercial documents pertaining to intra-Community transfer of dual-use items listed in Annex I should state clearly that these items will be subjected to control in the event of export from the Community.

Transit

The provisions of the Regulation are not applicable to dual-use goods that are only passing through the Community. It has been agreed at EC level that the term 'passing through the Community' means: transit without transshipment (i.e. without a change of transport modality), transit in the event of re-export after temporary storage, and external transit.

However, a licence is required for re-export/transit of dual-use items after:
- inward processing;
- processing under customs control;
- temporary importation;
- storage in type E customs warehouses;
- storage in type B or C customs warehouses, for a period of more than 45 days (seaside storage) or 20 days (other than seaside storage). The latter two periods (45 or 20 days) remain unchanged in case of removal to another customs warehouse.

The same exceptions to the rule that transit does not require a licence apply to military goods. However, the Dutch export control authorities have legal powers to require licences in special cases for individual transit transactions. This ad hoc licence requirement will be invoked, for example, when there is reason to suspect that such a transaction is not under the control of the exporting country or when a party involved in the transaction is trying to evade such control (diversion).

Furthermore, as a means of monitoring arms transit over Dutch territory, an obligation to report transit transactions in small arms and light weapons to the authorities entered into force on 1 January 2002. In 2004, this obligation was extended to the transit of all items mentioned in the Annex to the Strategic Goods (Import and Export) Decree (the Wassenaar Arrangement Munitions List).

NB. In the case of re-export/transit of arms or non-Community dual-use items, a licence is also required if the CDIU has issued an International Import Certificate (IIC) concerning these goods (Strategic Goods (Import and Export) Decree, article 7a).

2.2.3 Catch-all provision

The competent authorities of a Member State can under certain conditions impose a licence requirement under the so-called ‘catch-all’ provision (see article 4 of the Regulation) for the export of items not listed in Annex I to the Regulation, if they have cause to suspect that such goods will contribute to or be used in the development or production of weapons of mass destruction. This catch-all provision was extended in 2000 to make intervention possible when unlisted items are exported for military end use in countries subject to a UN, EU or OSCE arms embargo.
2.4 Benelux

No export licence is required for trade involving military goods and dual-use items within the Benelux. However, if certain goods are known to have a final destination outside the Benelux, an application should be made in the Netherlands for a licence for exportation to this final destination (third country).

N.B. The exemption for the Benelux does not apply to military goods falling under the Chemical Weapons Convention.

2.5 Lists of goods

All goods listed the Strategic Goods Manual require an export licence. Two types of goods are listed:
- military goods;
- dual-use items.

a. military goods

Military goods comprise weapons, weapon systems, technology and software listed in the Annex to the Strategic Goods (Import and Export) Decree under the headings ML1 to ML22.

b. dual-use items

Dual-use items – goods that have or may have both a civil and military application – are listed in Annex I to the Regulation. These goods have been assigned categories 0 to 9, subdivided (by type of good) into sections A to E.

Annex I in fact combines the control lists of the international export control regimes mentioned in section 1.3. The relevant regime can be identified by the letter in square brackets and the item number.
2.6 Embargoed countries

For a list of embargoed countries, see the sanctions and embargoes webpage maintained by the European Commission:
http://ec.europa.eu/external_relations/cfsp/sanctions/measures.htm. All sanctions mentioned on this webpage apply to exports from the Netherlands.

3. Licences

3.1 Introduction

This section describes the existing types of licences, the strategic goods for which they are intended and the situations in which they can be used.

3.2 Types of licences

There are four types of export licences:
- individual licences;
- global licences;
- Community general licences;
- national general licences.

The type of licence used depends on the nature of the product and the destination for which the licence is requested.

In particular cases, as when Dutch residents or companies based in the Netherlands are financially involved in sale of strategic goods from one third country to another, a Strategic Goods Transaction Licence (Vergunning Financieel Verkeer Strategische Goederen (FVS)) is required. The licence may be individual or global.

An export or transaction licence for military goods (individual or global) is valid for one year. An export or transaction licence for dual-use items (individual or global) is normally valid for three years.
3.3 Individual licences

An application for an individual licence may concern military goods or dual-use items. The application may be submitted:
- by a specific exporter;
- for a specific good;
- for the export of Community goods and the re-export of non-Community goods to a specific destination;
- for a specific transaction (however, partial deliveries may be made under a specific licence).

3.4 Global licences

An application for a global licence may concern military goods or dual-use items, and may be submitted:
- by a specific exporter;
- for a specific type or category (categories) of goods;
- for export to a single or multiple destinations;
- for multiple transactions.

Global licences for military goods

In principle, a global licence may be issued for:
- transactions with EU Member States;
- exports to Australia, Canada, Iceland, Japan, New Zealand, Norway, Switzerland, Turkey and the United States of America.

NB: Although the possibility of a global licence is not formally excluded for military goods, in general licences for military goods will be issued for only one destination.
Global licences for dual-use items

In principle, a global licence may be issued for:

A. intra-Community trade
   - for all items mentioned in Annex IV to the Regulation;

B. trade outside the Community:
   - export of certain items mentioned in Annex I (001 to 100 and W) to the Regulation, with destinations other than Iraq, Iran, Jordan, Libya, Lebanon, North Korea, Pakistan and Syria;
   - export of certain items related to weapons of mass destruction and mentioned in Annex I to the Regulation, to destinations other than Albania, member countries of the Commonwealth of Independent States, Cuba, the Far East, the Middle East and the African continent.

3.5 General export licences

The general export licences (the Community general licence and the national general licence) allow exporters to export dual-use items to a number of countries under a simplified procedure. General licences are not available for military goods.

4. Entry and import

When strategic goods are bought into the Community, the foreign supplier may apply for an International Import Certificate (IIC), for the purpose of submitting user information for an application for a licence to be issued by the authorities in its own country.

5. Preliminary opinions

To apply for an export licence, an exporter is required to submit the contract relevant to that particular export transaction. However, prior to signing a contract or even prior to entering into commercial negotiations, an exporter may want to have an indication as to whether a licence will be granted. In that case the exporter can apply for a
preliminary opinion. Even if no contract has yet been signed, the exporter should submit in writing all information relevant to the destination and the end user and an accurate description of the goods to be exported. The application is then processed in the same way as a licence application. Independent of a positive outcome, the Dutch export control authorities issue a letter stating they would grant a licence under the prevailing circumstances if a formal application was made at that time. Such a letter will always state that the authorities reserve the right to come to a different conclusion if the situation in the country of destination changes significantly.

6. Address of Licensing Office:

Central Import and Export Service (CDIU)
Tax and Customs Administration (kantoor Noord)
Office address: Engelse Kamp 2
Postal address: Postbus 30003
               NL-9700 RD Groningen
Tel.: +31 (0)50 523 9111
Fax: +31 (0)50 526 0698
Email: cdiu.sgs@tiscali-business.nl

7. Some relevant internet sites:

Ministry of Economic Affairs: http://www.minez.nl and http://exportcontrole.ez.nl
Overview of EU sanctions: http://ec.europa.eu/external_relations/cfsp/sanctions/measures.htm
Wassenaar Arrangement: www.wassenaar.org
MTCR: http://www.mtcr.info/english/index.html
AG: www.australiagroup.net
OPCW: www.opcw.org