Resolution 64/40

National legislation on transfer of arms, military equipment and dual-use goods and technology.

Kingdom of the Netherlands

2010

1. Export controls of strategic goods

1.1 General introduction on export controls policy in The Netherlands

Export controls are applied to the export of so-called strategic goods, i.e. military goods and dual-use items. The policy on military goods is Dutch national policy, based on international agreements (EU Common Position and the Wassenaar Arrangement). The policy on dual-use items is determined at the level of the European Union and implemented in Dutch legislation. The general goal of export control policy is to prevent Dutch companies from contributing to military programmes under embargo, or to the development or spread of weapons of mass destruction and their modes of delivery.

The basic national policy regarding arms exports is defined by a government memorandum on the export policy on weapons ("Nota wapenexportbeleid"), last updated on 27 February 1992. Key elements of this policy are (1) the right for sovereign countries to defend themselves and (2) the general merit of applying restraint and prudence where arms exports are concerned. The latter especially in regard to countries in regions where tensions are high or where there are signs of an excessive build up of military arsenals.

In addition, eight criteria were stipulated by the European Council on 8 December 2008 in the Council Common Position 2008/944/CFSP defining common rules governing control of exports of military technology and equipment. The criteria focus amongst others on the human rights situation in a particular country, internal stability or regional conflicts.

Since 1998 the Dutch government has sought increased transparency on the export of conventional arms. This allows for closer scrutiny and control by Parliament and the general public of the Governments licensing policy.

The policy of the Netherlands on the export of dual-use items is determined by the European Union and multilateral agreements on the prevention of the proliferation of weapons of mass destruction and their means of delivery. In general terms, the Dutch government opposes the export of dual-use goods if there are indications that the goods may contribute to or be utilised for the development or production of weapons of mass destruction or for application in missile programmes.
1.2 Legal basis

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

1. Regulation (EC) No. 428/2009 of the Council of the European Union on 5 May 2009 setting up a community regime for the control of exports, transfer, brokering and transit of dual-use items (PB. 2009 L 134); “the Regulation”.
7. Decree on Strategic Goods (Besluit Strategische Goederen) (Bulletin of Acts And Decrees 2008, 252)
9. Decision Exemptions ‘small scale border traffic’ (Vrijstellingsregeling klein grensverkeer (niet-landbouwgoederen) 1963) (Government Gazette 133)
10. Economic Offences Act (Wet op de economische delicten, WED) (Bulletin of Acts and Decrees 1950, 258)

Sub 1:
This Regulation, ‘the dual use regulation’ introduces a common system for the control of exports of dual use items at the level of the European Union. The Regulation includes the list of dual-use goods for which an export licence is required (i.e. Annex I to Regulation (EC) No. 428/2009 of the Council). The Regulation entails international obligations that EU Member States have to take into consideration when deciding on whether or not to grant a licence. Furthermore, the Regulation provides the competent authorities with the possibility to impose under certain conditions a licence requirement for goods not covered in the annexes to the Regulation. This Regulation replaces the former dual-use regulation (EC) 1334/2000 (Pb. 2000 L 159).

Sub 2:
The General Customs Law permits the issuing of administrative regulations that tie any or all international trade of strategic goods to licences. The regulations must be in line with the international legal order and the security and economic needs of the Netherlands.

Sub 3:
The Act Revising the General Customs Law regulates the introduction of the General Customs Law and the amendment of several other acts to adhere to this act.

Sub 4:
The Chemical Weapons Convention (Implementation) Act sets out the rules for implementation of the Chemical Weapons Convention. The Act prohibits the import, export and transit of certain chemical substances, unless an exemption has been granted. The Act also provides the basis for the notification requirements of chemical substances as set by the Chemical Weapons Convention and for international inspections of facilities producing chemical substances.

Sub 5:
The Chemical Weapons Convention Implementation Decree indicates the chemical substances to which the Convention pertains, establishes further rules with regard to the obligations of notification and the associated time limits for submission.
Sub 6:
The Implementation Act of the Treaty on Biological Weapons prohibits the possession or acquisition of biological agents or equipment for their dissemination, if the exporter knows or has reason to know they will be used for biological warfare.

Sub 7:
The Decree on Strategic Goods 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 goods and technology mentioned in this Decree (i.e. military goods) without a licence from the Minister of Foreign Trade. The decree also prohibits the export and re-export of the dual-use goods mentioned in Annex I to EC Regulation No. 428/2009, without a licence from the EU Trade Commissioner. A licence for dual use items is not required in case of intra-Community trade unless the items are listed in Annex IV to that Regulation.

Sub 8:
The Financial Services (Strategic Goods) Decree provides that a resident in the Netherlands requires a licence from the Dutch Minister of Finance for financial participation in a third party’s transaction 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.

Sub 9:
The Decision Exemptions ‘small scale border traffic’ grants exemptions – under certain conditions – from the export licence requirement, for example for hunting and shooting clubs or for Dutch ships and aircrafts that are temporarily abroad.

Sub 10:
The Economic Offences Act authorises the Enforcement Agency (i.e. the Fiscal and Economic Investigation Services (FIOD-ECD)) to conduct investigations and serves as the punitive framework for infringements of the export control legislation.

Apart from the stipulations stemming from the General Customs Law and the Act Revising the General Customs Law, the importer/exporter of strategic goods may have to satisfy the requirements of the Weapons and Ammunition Act (Wet Wapens en Munitie (WWM)). This Act regulates the possession of arms on Dutch territory, but in certain cases, also requires a consent (similar to a licence) for the entry, exit or re-export of weapons and ammunition which fall within the scope of this Act. The WWM is the responsibility of the Minister of Justice.

Currently the Ministry of Economic Affairs is preparing the Strategic Services Act, a proposed bill to establish a national framework for the regulation of the provision of brokering services, technical assistance and the transmission of software and technology by electronic media. These three types of services related to both military and dual-use goods are currently not or only partly regulated. This act will replace the Financial Services (Strategic Goods) Decree and will amend several of the acts mentioned above.

1.3 International treaties and export control regimes

The Netherlands has ratified various treaties and participates in several export control regimes aiming to prevent worldwide proliferation of sensitive goods.
- Non-Proliferation Treaty (NPT)
- The Chemical Weapons Convention (CW)
- Treaty on Biological Weapons (BW)
- Wassenaar Arrangement (WA)
- Nuclear Suppliers Group (NSG)
- Missile Technology Control Regime (MTCR)
- Australia Group (AG)
2. The Export Control Policy

2.1 Introduction

Two types of goods make up the lists of strategic goods: military goods and dual-use items. The classification of goods as strategic is essential for the determination whether an export licence is required. To determine whether goods are strategic, it is necessary to compare the technical specifications of the goods to be exported with those of the goods listed as strategic goods.

The Dutch Licensing Office (Centrale Dienst voor In- en Uitvoer (CDIU))) can be of assistance in this process. This licensing office processes the licence applications for exports of military and dual use goods. In all cases licences for the export of strategic goods are granted or refused by the CDIU on behalf of the Ministry of Economic Affairs, which is responsible for this subject.

2.2 Licence requirements

2.2.1 Export

Military goods
Military goods comprise weapons, weapon systems, technology and software listed in the Common Military List of the European Union referred to in the Decree on Strategic Goods under the headings ML1 to ML22. Export of military goods without a licence granted on behalf of the Minister of Foreign Trade is prohibited. Such a licence, issued by the Licensing Office, is required for all countries with the exception of Belgium and Luxembourg (Benelux).

Trade involving military goods and dual-use items in the Benelux requires no export licence. However, if it is known that certain goods do not have their final destination in Belgium or Luxembourg, a licence for exportation to the final destination should be requested.

N.B. The exceptional position for the Benelux does not apply to Schedule 1 chemicals (military items of the Chemical Weapons Convention).

Dual-use items
On 27 August 2009, Regulation (EC) No. 428/2009 on the export, transfer, brokering and transit of dual-use items came into force. The definition of "dual-use items" in the Regulation is "items including software and technology which can be used for both civil and military purposes... ". Such items are specified in Annex I to the Regulation. These goods have been assigned categories 0 to 9, subdivided (by types of goods) into sections A to E. Annex I in fact combines the control lists of the export control regimes mentioned in paragraph 1.3.

The Regulation requires a licence for export from the Community of dual-use items mentioned in Annex I. With the exception of dual use items listed in Annex IV of the Regulation Trade within the Community generally does not require a licence.

2.2.2 Transit

Military goods
For transit or transhipment of goods listed in the Common Military List of the European Union through the Netherlands' territory, a licence or notification is required before they leave Dutch territory. For military goods, goods in transit originating from or destined for Australia, Japan, New Zealand, Switzerland, Member States of the European Union or NATO allies are exempted. However, a notification requirement is necessary.

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 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, some transactions are exempted from both the licensing and reporting requirements. These are transit transactions of defence material owned by and destined for Dutch or NATO troops, AFCENT headquarters or the European Space Agency, or transactions of military vehicles owned or used by an army with the purpose of storing the vehicles or for using them in events such as state visits, naval reviews or aviation demonstrations.

**Dual-use items**

The stipulations of the EC Regulation are not applicable to dual-use goods that are only passing through the Community. On the level of the European Union it has been agreed that the term “passing through the Community” means: transit without transhipment (i.e. without a change of transport modality), transit in the event of re-export after temporary storage and external transit. Transit of dual-use items mentioned in Annex I of the EC Regulation can be subjected by the Dutch authorities to a licensing requirement or a prohibition if the items may be intended, in their entirety or in part, for use in connection with projects of weapons of mass destruction or missiles capable of delivering such weapons.

2.2.3 Services

The provision of brokering services, technical assistance and the transmission of software and technology with regard to military and dual-use goods through electronic media requires a licence under specific circumstances. Currently the Ministry of Economic Affairs is preparing a new act, the Strategic Services Act, which comprehensively regulates this. The act is expected to come into force in 2011 and will replace the current rules with respect to services.

2.2.4 Catch-all provision

The competent authorities of an EU Member State can, under certain conditions, impose a licence requirement for the export of items not listed in Annex I of the EC Regulation. The so-called "catch-all" provision (see Article 4 of the EC Regulation) can be used if there is a ground to suspect goods will contribute to or be used for the development or production of weapons of mass destruction, or when unlisted items are exported for military end use in countries subject to a UN, EU or OCSE arms embargo.

3. Licences

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

3.1 Types of licences

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

The types of licences are used according to the nature of the product and the destination for which the licence is requested. A licence for military goods (individual or global) is valid for one year. A licence for dual-use items (individual or global) is normally valid up to three years.

3.2 Individual licence

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

3.3 Global licences

A request for a global licence may concern military goods or dual-use items, and it may be submitted:
- by a particular exporter;
- for a type or category (categories) of goods;
- for the export to a single or several destinations;
- for several transactions.

Global licences for military goods
In principle, a global licence may be issued for transactions with Member States of the EU and/or for exports to Australia, Canada, Iceland, Japan, New Zealand, Norway, Switzerland, Turkey and the United States of America.

Global licences for dual-use items
In principle, a global licence may be issued for intra-community trade and for trade outside the Community. More details on the specific countries can be provided by the Licensing Office.

3.4 General export licences

A general export licence, i.e. the Community General Licence and the National General Licence, allows exporters to export specific dual-use items to a number of countries under a simplified procedure. In order to use a general licence previous registration at the licensing office is required. General licences do not apply to military goods.

4 Entry and import into the European Union

When strategic goods are imported into the European Union, the foreign supplier may make a request for an International Import Certificate (IIC), for the purpose of submitting user information to the authorities in his own country.

5. Indicative procedure

To apply for an export licence, an exporter is required to present the contract relevant to that particular export transaction. In the event that - prior to signing a contract or even prior to entering into commercial negotiations - an exporter wants to have an indication as to whether a licence might be granted or not, he can request such an indication. In order to do so, the exporter should make available (in writing) all relevant information (destination, end-user, and an accurate description of the goods to be exported). The request is then processed in the same way as a licence application. If the request is assessed positively, a letter is provided, stating that the Netherlands export control authorities would grant a licence if the prevailing circumstances are unchanged at that the of the formal application. The letter also always states that the authorities have the right to come to a different assessment if the situation in the country of destination changes significantly.

6. Embargoed countries

For a list of embargoed countries, the export control page of the website of the Dutch Ministry of Economic Affairs (www.exportcontrole.ez.nl) can be consulted. The website also has a hyperlink to
a sanctions and embargoes web page maintained by the European Commission. All sanctions and embargoes mentioned on the EC website are taken incorporated in the Dutch export policy.

7. Address of Licensing Office

Belastingdienst/Douanekantoor Noord - Centrale Dienst voor In- en Uitvoer (CDIU)
Office address: Engelse Kamp 2, Groningen
Postal address: Postbus 30003, NL-9700 RD Groningen
Tel.: (+31) 50-5232600
Fax: (+31) 50-5232341
Email: drn-cdiu.groningen@belastingdienst.nl

8. Relevant internet sites

Ministry of Economic Affairs: www.exportcontrole.ez.nl
EU security related export controls:
   http://ue.eu.int/cms3_fo/showPage.asp?id=408&lang=en&mode=g
EU sanctions overview on the site of the EU delegation of the USA:
   www.eurunion.org/legislat/sanctions.htm#