

**Export Control:**

**User Guide on**

**Strategic Goods**

**and Services**

**for The Netherlands**

issued by the Ministry of Foreign Affairs  
(last updated: March 2013)

<http://www.government.nl/issues/export-controls-of-strategic-goods>  
[www.rijksoverheid.nl/exportcontrole](http://www.rijksoverheid.nl/exportcontrole)

## **0. Content**

This user guide was written with great care. However, its content is not legally binding.

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## 1. Introduction

The User Guide on Strategic Goods and Services is designed principally as a reference guide – in particular for exporters, traders and brokers - to the system of export control on military goods and dual-use goods (i.e. strategic goods) applicable in the Netherlands.

Chapter 2 describes the objectives of the export control policy and sets out the framework whereby the government can impose a ban on strategic goods exports or subject them to conditions by means of a licensing system.

Chapter 3 provides background on strategic goods. Chapter 4 gives more information about export and transit of strategic goods, strategic services and the Chemical Weapons Convention.

Chapter 5 of this user guide describes extensively the necessary information for applying an export license. Chapter 6 contains a brief description of all important documents.

This document describes and explains the lists of goods. These lists are originally drawn up and amended in working groups of multilateral export control regimes, which are briefly described in chapter 2 of this user guide. The 'Wassenaar Arrangement on export control for conventional arms and dual use goods and technology', established and updates the 'Munitions List', the Dutch version of which serves as the Dutch list of military goods. Each multilateral export control regime also composes lists of dual-use goods that are to be controlled. All these lists are compiled in into one large European dual-use list, contained in the annexes to the European Dual-use regulation (EC) 428/2009 of 4 May 2009 (published in the EU Official Journal of 27 May 2009).

This user guide is meant to answer any questions there may be on export control in the Netherlands. However, if questions remain unanswered, don't hesitate to pose them. Please look for contact details on the website [www.government.nl/issues/export-controls-of-strategic-goods](http://www.government.nl/issues/export-controls-of-strategic-goods) or [www.rijksoverheid.nl/exportcontrole](http://www.rijksoverheid.nl/exportcontrole) (in Dutch and more detailed than the English version of the website).

## 2. International conventions, treaties and export control regimes

The Netherlands is signatory to a number of treaties and conventions and is associated with a number of (all) export control regimes set up to regulate the worldwide proliferation of certain 'sensitive' goods. Each treaty or regime has its own particular focus, for example military goods or nuclear related goods. Lists of sensitive goods are agreed in the course of the international meetings of the individual treaties or export control regimes. Each country, including the Netherlands, ensures that those goods are duly subjected to controls by means of national (or European) legislation. In addition, the regimes provide a forum where export control policy and information exchange on (new) threats and policy enforcement can be discussed.

### 2.1.1 International conventions and treaties

The Netherlands is party to the following conventions and treaties:

#### Non Proliferation Treaty (NPT)

<http://www.iaea.org/Publications/Documents/Treaties/npt.html>

The United Nations Treaty on Non-Proliferation of Nuclear Weapons (NPT) is aimed at restricting the possession and development of nuclear weapons. The Treaty was signed on 1 July 1968 and is based on three pillars: non-proliferation, disarmament and the right to use nuclear energy for peaceful purposes. The Treaty recognized five countries as official nuclear-weapon State Parties (United States, Russian Federation, United Kingdom, France and China), who undertake to dismantle their nuclear arsenals and not to transfer the technology to other countries. The other countries (non-nuclear-weapon states) renounce nuclear armament. Signatories to the Treaty do not include Israel, Pakistan and India.

#### Biological and Toxin Weapons Convention (BTWC)

<http://www.opbw.org/convention/conv.html>

The Biological and Toxin Weapons Convention, or BTWC, encompasses a worldwide prohibition of the development, production and stockpiling of bacteriological (biological) and toxin weapons. The BTWC also provides for the elimination of these weapons. The Convention was signed in 1972 and entered into force in 1975. It was ratified by the Netherlands in 1975.

#### "The Chemical Weapons Convention" (CWC)

<http://www.opcw.org/chemical-weapons-convention/>

The Chemical Weapons Convention entered into force in 1997 and prohibits the development, production, stockpiling and use of chemical weapons, and endeavours to eliminate these weapons entirely (Netherlands Treaty Series 1993, 162). Almost all countries of the world (currently 188) are State Party to the associated organisation, the Organisation for the Prohibition of Chemical Weapons (OPCW). In the Netherlands, the Chemical Weapons Convention is implemented in the Chemical Weapons Implementing Act, the Chemical Weapons Implementing Order and the Strategic Goods Order.

The purpose of the CWC is to effect a worldwide ban on chemical weapons, and to this end it prohibits the development, production, stockpiling and use of such weapons. In addition, the CWC obliges States Parties to impose a control system on the production of and trade in certain chemicals, the so-called scheduled chemicals. On the one hand, this means that those countries must possess an import/export registration and licensing system for certain categories of chemicals (the so-called 'lists') while on the other hand their chemical industry and trading companies must give information on the production, processing, use and import/export of the chemicals on a regular basis. The National Authority of each country will provide OPCW with this information on behalf of its national industry. International OPCW inspectors are empowered to perform chemical industry inspections.

This user guide deals exclusively with the import/export regulations of the Convention. Besides those regulations, the chemicals are also subject to declaration requirements, but these are not discussed in this document. The obligations for declaration can be consulted on the Dutch-language pages in the 'Handleiding voor de chemische industrie en voor handelaars in chemische producten', which you will find at [www.rijksoverheid.nl/exportcontrole](http://www.rijksoverheid.nl/exportcontrole) under "Verdrag Chemische Wapens".

### 2.1.2 International export control regimes

The Netherlands participates in all existing export control regimes, mentioned below.

#### Australia Group (AG)

[www.australiagroup.net](http://www.australiagroup.net)

The Australia Group (AG) is an important informal alliance intended to combat the proliferation of biological and chemical weapons, which met for the first time in 1985. The purpose of the alliance is co-ordinated action by means of export control, designed to prevent proliferation of these types of weapons.

#### Missile Technology Control Regime (MTCR)

[www.mtcr.info](http://www.mtcr.info)

In 1987 the Missile Technology Control Regime (MTCR) was established by Germany, Canada, France, Italy, Japan, the United Kingdom and the United States in order to stop the ongoing proliferation of ballistic missiles. The regime includes a range of agreements on exports of missile components, components for unmanned aerial vehicles, and other related technology. The Netherlands acceded to the regime in 1990.

#### Nuclear Suppliers Group (NSG)

[www.nuclearsuppliersgroup.org](http://www.nuclearsuppliersgroup.org)

Partly in response to the nuclear explosion that occurred in India in 1974, it was decided in that same decade that additional measures were needed in order to prevent the proliferation of nuclear goods and technology. In 1975, talks between the United States, the Soviet Union, the Federal Republic of Germany, the United Kingdom, Japan, Canada and France resulted in a number of minimum principles governing exports of nuclear goods. In mid-1976, the Netherlands endorsed this exchange of notes. The NSG control list consists of a 'trigger list', consisting of goods designed specifically for nuclear applications, and materials such as power plants and ultracentrifuges, and a dual-use list of goods that can be used in the production of nuclear goods and materials.

#### Wassenaar Arrangement

[www.wassenaar.org](http://www.wassenaar.org)

During the Cold War, Western countries subjected arms exports to restrictive measures as agreed in the COCOM, the Co-ordinating Committee on Multilateral Export Control. COCOM was responsible for overseeing arms exports to the Soviet Union and other Warsaw Pact countries, and was able to prohibit supplies of arms. COCOM was abolished in 1994, mainly because it was an instrument dating from the Cold War. In reaction to the Gulf War, however, the former COCOM partners immediately seized the initiative to set up a new export control arrangement with more member countries, including the Russian Federation.

In 1996, the Wassenaar Arrangement (full name: Wassenaar Arrangement on export control for conventional arms and dual-use goods and technologies) was ratified by thirty three states in Vienna. In order to assure regional and international security and stability, the Wassenaar Arrangement seeks to enhance the transparency of trade flows of strategic goods to third countries. The Wassenaar Arrangement Participating States, currently forty, determine, among other things, which military goods and conventional dual-use goods they want to control.

#### Zangger Committee

[www.zanggercommittee.org](http://www.zanggercommittee.org)

The Zangger Committee was set up when the Non-Proliferation Treaty came into force. The goal was to harmonise the interpretation of the policy governing nuclear export control of NPT states.

The Committee interprets Article III paragraph 2 of the NPT, which states that parties to the Treaty shall not export nuclear material and specially designed equipment for the production of materials to non-nuclear arms states unless that export is subject to International Atomic Energy Agency (IAEA) security controls. The Zangger Committee endeavours to prevent nuclear goods initially intended for peaceful purposes, from being used for nuclear weapons or other nuclear explosive devices. The Committee compiles a trigger list of nuclear-related goods requiring safeguards as a condition of supply. In contrast to the trigger list of the NSG, the Zangger Committee trigger list includes only goods and not technology.

### 2.2 Regulatory basis

In the Netherlands, regulatory controls on strategic goods are based on the following acts, regulations, orders and measures. The texts of the instruments are available at [www.wetten.nl](http://www.wetten.nl) (in Dutch). The European Dual-use regulation can be found on the website <http://eur-lex.europa.eu/>, in the Official Journal 2009 L134.

#### General Customs Act (Staatsblad 2008, 111)

The General Customs Act (Algemene Douanewet) forms the legal basis of all orders and measures regarding strategic goods mentioned here, with the exception of the CW Implementing Order. The General Customs Act defines the competences pertaining to all the tasks assigned to Customs with regard to goods and movements of goods. Besides, relevant acts are the Strategic Services Act contains regulations for the services related to strategic goods, and the Chemical Weapons Convention Implementing Act.

#### Strategic Goods Order 2012 (Stcr. 2011, 19960)

The Strategic Goods Order 2012 (Besluit strategische goederen 2012) states rules for the export and transit of dual-use and military goods. It also provides for certain matters to be further arranged by order of the Minister for Foreign Trade and Development Cooperation. For dual-use goods, the rules specified by the Order consist principally of criminalisation of offences for military goods, and designates the Minister for Foreign Trade and Development Cooperation as the competent authority. The latter also applies for military goods. For military goods the Order also specifies rules for a license requirement or a notification requirement in the case of transit. Currently the Strategic Goods Order is under review by the Dutch government.

#### Strategic Services Act (Stb. 2011, 445)

The Strategic Services Act (Wet strategische diensten) came into force in January 2012. It contains regulations for three types of services related to strategic goods: intangible transfer of technology, technical assistance and brokering services. The act is relevant for both military and dual-use items.

With this new act some regulations were repealed as they are (partly) covered by the Strategic Services Act: the Financial Transactions (Strategic Goods) Order 1996 (Besluit financieel verkeer strategische goederen) and the Order governing intangible transfer of software and technology 2006 (Regeling houdende strafbaarstelling ongeoorloofde overdracht van programmatuur en technologie) and the Sanctions measure for brokering 2009 (Sanctieregeling tussenhandel).

#### Chemical Weapons Convention Implementing Act (CWC Implementing Act) (Stb. 1995, 338)

The Chemical Weapons Convention Implementing Act (Uitvoeringswet verdrag chemische wapens) implements the Chemical Weapons Convention.

The Act prohibits transfer of some chemicals to national and foreign buyers (both import and export). Furthermore the Act provides the regulatory basis for reporting and notification requirements corresponding to the chemicals appearing in the Annex on Chemicals to the Convention. The Act also provides the basis for international inspections at plants producing and/or processing scheduled chemicals.

Chemical Weapons Convention Implementing Order (CWC Implementing Order) (Stb. 1997, 15)

The CWC Implementing Order (Uitvoeringsbesluit verdrag chemische wapens) designates those chemicals governed by the CWC, and contains further rules regarding notification requirements and related deadlines.

Regulation (EC) 428/2009 of the Council of the European Union of 5 May 2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items (OJ.2009 L134)

Regulation 428/2009 introduces a community system for the export of dual-use goods. It is genuinely referred to as the Dual-use regulation. The appendices to the Regulation include a list of dual-use items requiring licenses for export from the European Union, and – in some sensitive cases – for intra-Community transfers. The Dual-use regulation designates the international agreements that EU Member States are required to observe when issuing licenses.

Dual-use goods not listed in the annexes of the Dual-use regulation in principle do not require an export, transfer or brokering license. However, in some cases the competent authorities may deem it necessary to impose on an ad-hoc basis a license requirement for the export, transfer or brokering of these goods. This ad-hoc license requirement is usually referred to as the catch-all procedure.

The text of the Regulation can be found at:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:2009R0428:20120615:EN:PDF>

Economic Offences Act (Stb. 1950, 258)

The Economic Offences Act (Wet op de economische delicten) defines the powers of the Customs Service and the Fiscal Investigation Department (FIOD) with regard to undertaking investigations, and the sentences applicable to offences against the export regulations. Such offences are not subject to the penalty regime of the General Customs Act; they are designated as economic offences.

Arms and Munitions Act (Stb. 1995, 292)

Besides the provisions arising from the General Customs Act, importers and exporters of certain fire arms, launch systems and related munitions may need to take into account the provisions of the Arms and Munitions Act (Wet wapens en munitie). In certain cases, this may mean that a consent<sup>1</sup> is required for importing, exporting or re-exporting arms and munitions regulated by the Act. The Minister of Security and Justice is responsible for this act. Its enforcement is the responsibility of the head of police in the region in which an enterprise is established.

## 2.3 Authorities involved

This section contains information on authorities which you may need to contact in the course of completing the formalities connected with the import, export and transit of strategic goods. Addresses and telephone numbers can be found at [www.government.nl/issues/export-controls-of-strategic-goods](http://www.government.nl/issues/export-controls-of-strategic-goods) or [www.rijksoverheid.nl/exportcontrole](http://www.rijksoverheid.nl/exportcontrole) (in Dutch), under 'Contact'.

Ministry of Foreign Affairs (MFA)

[www.government.nl/issues/export-controls-of-strategic-goods](http://www.government.nl/issues/export-controls-of-strategic-goods);

<http://www.rijksoverheid.nl/onderwerpen/internationale-vrede-en-veiligheid> (in Dutch)

[www.rijksoverheid.nl/exportcontrole](http://www.rijksoverheid.nl/exportcontrole) (in Dutch)

The Ministry of Foreign Affairs (MFA) is responsible for controlling the export, transit, brokering and - in the case of chemicals listed in the Annex on Chemicals of the Chemical Weapons Convention – import of strategic goods. The Ministry holds primary political and juridical responsibility for implementing the export and transit controls – in particular decisions concerning license

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<sup>1</sup> A *consent* is a license for the import, export or transit of certain arms under the Arms and Munitions Act (Wwm). Further information may be found on the Ministry of Justice's website: [www.rijksoverheid.nl/onderwerpen/wapens-en-munitie](http://www.rijksoverheid.nl/onderwerpen/wapens-en-munitie) (in Dutch).



applications. Export licenses for strategic goods are granted by the Minister for Foreign Trade and Development Cooperation (Minister voor Buitenlandse Handel en Ontwikkelingssamenwerking). It is the Ministry's objective to promote international security without obstructing Dutch trade and industry unnecessarily in the performance of its business. Within the ministry of Foreign Affairs two departments are involved in export control. On the one hand the department for Trade Policy and Economic Governance on the other hand the department for Security Policy. The department for Security Policy deals above all with the international political aspects of arms controls and international security policy. For certain destinations the department for Trade Policy and Economic Governance will consult the department for Security Policy. The Security Policy department will then assess the specific application against the eight criteria of Common Position 2008/944/CFSP of 8 December 2008, which defines common rules governing export control of military goods and technology (OJ EC L 335 of 13 December 2008). An export license will be issued if it is found that an export is consistent with the criteria. Furthermore, MFA has a duty to consult with other EU member states that have denied comparable applications. In the course of such consultations it will be considered whether any similarity exists between the applications. This procedure provides the best possible guarantee for a European level playing field, because in comparable instances it is very likely that the same decision will be taken.

### Customs / Central Licensing Office (CDIU)

[http://www.belastingdienst.nl/wps/wcm/connect/bldcontentnl/belastingdienst/douane\\_voor\\_bedrijven/veiligheid\\_gezondheid\\_economie\\_en\\_milieu\\_vgem/cdiu/cdiu\\_algemeen/](http://www.belastingdienst.nl/wps/wcm/connect/bldcontentnl/belastingdienst/douane_voor_bedrijven/veiligheid_gezondheid_economie_en_milieu_vgem/cdiu/cdiu_algemeen/)

Companies or individuals intending to export or re-export goods and technology appearing on the list of military or dual-use goods, or to provide strategic services, should apply for an export license at the Central Licensing Office (Centrale Dienst voor In- and Uitvoer, CDIU). On behalf of the MFA, the CDIU processes a large proportion of the applications. This applies in particular to applications for the export or re-export of strategic goods to less sensitive countries. The CDIU sends a small number of license applications to the MFA for further assessment. The CDIU can also help you assess the strategic nature of goods, and will provide further information on measures concerning strategic goods. The CDIU forms part of the Tax and Customs Service (Belastingdienst/Douane) Department of the Ministry of Finance, and is mandated by MFA to grant export licenses.

### Customs / Team POSS

Team POSS checks the company's compliance in the fields of precursors, strategic goods, and sanctions legislation (POSS). Team POSS provides support to the Customs risk control organisation by organising customs controls, supplying input for risk analyses, and passing relevant information to Customs. Team POSS pays inspection visits to a large number of organisations each year, among other things in order to check their compliance and to examine their books and records. Should any irregularities be found, a warning may be issued or an official report drawn up. Team POSS and MFA also escort OPCW inspections in the framework of the Chemical Weapons Convention. Formally, POSS is part of Customs at the Ministry of Finance.

### Fiscal Information and Investigation Service (FIOD)

The investigation of punishable offences in the field of strategic goods is one of the duties of the FIOD. Should Customs detect any irregularities, it will report them to Team POSS. Should Team POSS consider an investigation to be desirable or necessary, it will report that to the FIOD. The latter will then decide whether an investigation is necessary. If the FIOD decides not to initiate an investigation, Team POSS will decide how to deal with an irregularity. In addition, the FIOD may initiate investigations on an autonomous basis, for example if they possess information pointing to irregularities.

### **Other authorities**

A number of other authorities concerned with export control policy are mentioned below. However, for direct questions on export control you will have little or no official contact with them.

### General Intelligence and Security Service (AIVD)

[www.aivd.nl](http://www.aivd.nl)

The investigation into proliferation of weapons of mass destruction falls under both the intelligence task and the security task of the General Intelligence and Security Service (AIVD). The AIVD

supplies MFA with information for export control. In the case of special destinations, the AIVD is requested to supply data on the dependability of certain foreign organisations or individuals. Besides, AIVD and MIVD have a shared unit for counter proliferation.

### Military Intelligence and Security Service (MIVD)

[www.defensie.nl/mivd](http://www.defensie.nl/mivd)

The Military Intelligence and Security Service (MIVD) supplies intelligence and security information to the four branches of the Dutch armed forces. Key starting points to the work of the MIVD consist of intelligence needs in support of peacetime operations and those made necessary by the sharp increase in international terrorism. Monitoring supplies of military goods to other countries forms part of both the MIVD's security task and its intelligence task. The MIVD provides MFA with information appropriate for export control policy. Besides, MIVD and AIVD have a shared unit for counter proliferation.

### Agentschap NL

<http://www.agentschapnl.nl/organisatie/divisies/divisie/NL%20EVD%20Internationaal>

The Agency for International Business and Co-operation (NL EVD Internationaal) is the executive agency of the Netherlands government in matters of international business and co-operation. It plays no official role in export control policy, but it regularly acts as an informal contact for organisations engaging in international business. It therefore has the capability to play an important role as a source of advice on export control policy. It employs staff possessing knowledge of specific foreign countries.

### Chambers of Commerce (KvK)

[www.kvk.nl](http://www.kvk.nl)

Netherlands Chambers of Commerce play no official role with regard to the policy on export control, but nevertheless they often act as initial contact desks for exporters in general. Their staff includes consultants who are generally well-informed as to the relevant rules regarding export control. At discussions with businesses wishing to enter the export market, they will be able to point out any necessary licensing requirements that may have been overlooked by the prospective exporter. Further information in this regard should be sought at [www.kvk.nl](http://www.kvk.nl).

### 3. What are strategic goods?

#### 3.1 Strategic goods – an introduction

Strategic goods are products that, for security reasons or due to international agreements, are considered to be of such military importance that their export is either prohibited altogether or subject to specific conditions. Such goods are generally suitable to be used for military purposes or for the production of weapons of mass destruction (WMD).

The term strategic goods refers to both military goods and dual-use goods. Dual-use goods and the technology they embody, are intended primarily for civilian purposes but may also have a military application (so-called conventional dual-use goods) or an application in the development and production of WMD or missiles capable of bringing these weapons to their targets.

##### Military goods and conventional dual-use goods

From a legal point of view, individual countries have discretion to determine what goods they classify as “military”, but the Netherlands nevertheless bases itself on multilateral understandings with other producer countries. The Wassenaar Arrangement is a multilateral export control regime for conventional arms and dual-use goods, puts together a Munitions list. The Common Military List of the European Union is effectively a direct translation of the Wassenaar Arrangement Munitions List. In practice this list is also applied by a number of countries not party to the Wassenaar Arrangement.

The Wassenaar Arrangement also composes a list of conventional dual-use goods. These conventional dual-use goods are included in the appendices to the Dual-use regulation of the European Community<sup>2</sup>.

##### Non-conventional dual-use goods

For non-conventional dual-use goods there are special-purpose export control regimes. The Nuclear Suppliers Group, the Australia Group and the Missile Technology Control Regime deal respectively with nuclear weapons applications, biological and chemical weapons, and ballistic missiles capable of carrying WMD loads. All these regimes, of which the Netherlands is an active member, compile their own lists of dual-use goods. The Netherlands is able to influence which goods are included on the lists through negotiations within the regimes, but once the regimes have taken their collective decision the European Commission produces its own combined version of all the lists. Together with the conventional dual-use goods of the Wassenaar Arrangement, these non-conventional dual-use goods are then incorporated into the annexes to the EU Dual-use regulation. Those annexes then come into force in all Member States via the Dual-use regulation<sup>3</sup>.

##### Examples

To illustrate the types of dual-use goods and the considerations observed in assessing license applications, two practical examples are given below: one for WMD-related dual-use goods and the other for conventional dual-use goods.

1. Certain fire retardants which are generally used in the civil construction industry or plastics manufacturing industry can potentially be used for the production of poison gases by bonding or reacting with other chemicals. The Netherlands has no objection to the civil use of fire retardants. However, with the license requirement for the export of this product, the MFA seeks to control that the fire retardants will be used exclusively for civil applications. The more sensitive the receiving country is, the stricter the required guarantees will be. This varies from a simple end-user declaration to arrangements concerning inspections of the plant where the fire retardant concerned is to be processed. If MFA considers that there are insufficient guarantees for civil end-use, the license application will be denied.

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<sup>2</sup> The Dual-use regulation with annexes can be found through <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:2009R0428:20120107:EN:PDF>.

<sup>3</sup> See 2.

2. Image intensifier tubes are used both in military night-vision equipment and in security surveillance systems and certain types of television cameras. Depending on the design, the tubes are classified as military goods, dual-use goods, or as other goods that do not require a license. However, because it is not the use but the design that is decisive, it may occur that military tubes are used for civil applications while dual-use tubes (which in practice will be slightly inferior in quality) are nevertheless incorporated in night-vision equipment for military purposes. In many cases that is not a problem, but sometimes it will be undesirable that a foreign army obtains equipment with Dutch dual-use components – think of armies of countries on which there is an arms embargo. The export license requirement can be used to ensure that a foreign customer will only incorporate the tubes in equipment destined for countries for which the Netherlands would also grant an export license if the goods were to be delivered directly from the Netherlands.

### *3.1.1 Determining whether a product is strategic*

In order to determine whether a product is strategic, the technical specifications of the goods must be compared to the descriptions appearing on the lists of strategic goods. Weblinks to these lists are shown in the annex of this user guide. The CDIU amends the EU dual-use list in such a way (with specific letters) as to make it immediately clear which regime governs a given product. This overview is visible in the PDF document attached to this user guide on strategic goods and services.

Whether a product is strategic is important in order to determine whether it is subject to a license requirement. If the goods do not appear in the lists and for that reason are not controlled, it may be useful for Customs and other authorities concerned, to be notified that the goods are to be exported. A declaration may be requested to confirm that the goods concerned are not subject to licensing. 5.2 Classification of goods contains further information on the classification of goods and how you can obtain advice on this matter.

## **3.2 Military goods**

The Common EU list of military goods can be found via <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2013:090:0001:0037:EN:PDF>.

The common EU list of military goods is a translation of the internationally agreed Munitions List of the Wassenaar Arrangement. Examples of military goods are weapons, weapons systems, technology and software for such systems and other equipment designed specifically for military purposes. These goods are subdivided into items ML1 to ML22. These 22 items give detailed descriptions of military goods, generally including accessories and/or components and related equipment.

The EU list of military goods has been translated by the EU translation service into all the official languages of the European Union. However, the possibility remains that the Dutch text is unclear or that the Dutch and English texts appear not to correspond. In case of doubt, the English version will be regarded as authoritative.

A brief description of the categories is given below.

ML1	Smooth-bore weapons with a calibre of less than 20 mm, other arms and automatic weapons with a calibre of 12.7 mm (calibre 0.50 inches) or less and accessories
ML2	Smooth-bore weapons with a calibre of 20 mm or more, other weapons or armament with a calibre greater than 12.7 mm (calibre 0.50 inches), projectors and accessories, as follows, and specially designed components therefor
ML3	Ammunition and fuse setting devices and specially designed components therefor
ML4	Bombs, torpedoes, rockets, missiles, other explosive mechanisms and charges and related

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	equipment and accessories, and specially designed components therefor
ML5	Fire control, and related alerting and warning equipment, and related systems, test and alignment and countermeasure equipment specially designed for military use and specially designed components and accessories therefor
ML6	Ground vehicles and components therefor
ML7*	Chemical or biological toxic agents, "riot control agents", radioactive materials, related equipment, components and materials
ML8	"Energetic materials" and related substances
ML9	Vessels of war (surface or underwater), special naval equipment, accessories, components and other surface vessels, specially designed for military use
ML10	"Aircraft", "lighter-than-air vehicles", unmanned airborne vehicles, aero-engines and "aircraft" equipment, related equipment and components, specially designed or modified for military use
ML11	Electronic equipment, not specified elsewhere on the Munitions List, as follows, and specially designed components therefor
ML12	High velocity kinetic energy weapon systems and related equipment, as follows, and specially designed components therefor
ML13	Armoured or protective equipment, constructions and components
ML14	Specialised equipment for military training or for simulating military scenarios, simulators specially designed for training in the use of any firearm or weapon specified by ML1 or ML2, and specially designed components and accessories therefor
ML15	Imaging or countermeasure equipment, specially designed for military use, and specially designed components and accessories therefor
ML16	Forgings, castings and other unfinished products, the use of which in a specified product is identifiable by material composition, geometry or function, and which are specially designed for any products specified by ML1 to ML4, ML6, ML9, ML10, ML12 or ML19
ML17	Miscellaneous military equipment, materials and 'libraries', and specially designed components therefor
ML18	Equipment and technology for the production of goods specified in the Common EU Munitions List
ML19	Directed energy weapon systems, related or countermeasure equipment and test models, and specially designed components therefor
ML20	Cryogenic and "superconductive" equipment, as follows, and specially designed components and accessories therefor
ML21	"Software"
ML22	"Technology"

\* Note that the goods listed in ML7b are also covered by the Chemical Weapons Convention (known as Schedule 1 chemicals), and that these chemicals are controlled separately. See 3.4 Scheduled chemicals of the Chemicals Weapons Convention and 5.7.1 Schedule 1 chemicals.

### 3.3 Dual-use goods and technology

The list of dual-use goods is available via

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:2009R0428:20120615:EN:PDF>.

Annex I provides an overview of goods that require a license when exported outside of the European Union. The items mentioned in Annex IV of the dual use regulation (page 323-331) require a license as well for intracommunity transfers, see

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:2009R0428:20120615:EN:PDF>.

The official name for the Dual-use regulation is Council Regulation (EC) No 428/2009 of 5 May 2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items. The dual-use goods controlled by the Dual-use regulation are mentioned in the annexes to the regulation.

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In this regulation, dual-use items are understood to be items including software and technology that are suitable for both civil and military use. This user guide refers to dual-use “goods” instead of “items”, but what is important is that this refers to dual-use goods as well as software and technology.

Dual-use goods are subdivided into ten categories:

- 0 – Nuclear materials
- 1 – Materials, chemicals, micro-organisms, toxins
- 2 – Materials processing
- 3 – Electronics
- 4 – Computers
- 5 – Telecommunication and “information security”
- 6 – Sensors and lasers
- 7 – Navigation and avionics
- 8 – Marine
- 9 – Aerospace and propulsion

Export control on dual-use goods aims to prevent certain goods normally used for civil purposes, from being employed in the development and manufacture of weapons, in particular weapons of mass destruction (nuclear, chemical weapons, biological) and missiles capable of delivering these weapons to their targets.

Initially, multilateral export control regimes such as NSG, AG and MTCR, and the Wassenaar Arrangement, decide which goods are dual-use goods. In addition, certain chemicals are subject to controls in accordance with the Chemical Weapons Convention (CWC).

The European Union then combines the lists of goods of the export control regimes and the CWC into Annex I and IV of the Dual-use regulation.

In the list given in Annex I of the Dual-use regulation) you will see that the goods have a code such as “N2B231”, called an SGP code. The coding system is explained below.

### EXAMPLE SGP CODE FOR DUAL USE GOODS:

<b>[N]</b>	<b>2</b>	<b>B</b>	<b>231</b>
If goods are also listed on the basis of a non-proliferation regime or treaty, the regime is identified *.	Dit nummer geeft de categorie goederen weer.	Deze letter zegt iets over de soort goederen.	Als goederen uitsluitend op basis van een van de non-proliferatieregimes op de lijst zijn geplaatst, worden de bovengenoemde nummers gebruikt.
<u>First letter</u>	<u>Category number</u>	<u>Second letter</u>	<u>Item number</u>
[W]- Wassenaar Arrangement	0 – Nuclear items	A = Systems, equipment and components	001 t/m 099 – Wassenaar Arrangement
[M]- MTCR	1 – Materials, chemicals, “micro-organisms”, “toxins”	B = Test-, inspection and production equipment	100 t/m 199 - MTCR
[N] - NSG dual-use lijst	2 – Materials processing	C = Materials	200 t/m 299 - NSG
[T] - NSG trigger list (cat. 0)	3 – Electronics	D = Software	300 t/m 399 - AG
	4 – Computers	E = Technology	
	5 – Telecommunication & “information security”		

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[A] - AG	6 – Sensors and lasers		350, 351 en 450 – Chemical Weapons Convention
[C1]- CWC Schedule 1 chemicals (military)	7 – Navigation and avionics		
[C2]- CWC Schedule 2 chemicals (dual-use)	8 – Marine		
[C3]- CWC Schedule 3 (dual-use)	9 – Aerospace and propulsion		

\* The CDIU adds the “first letter” to the dual-use list of goods as compiled by the EU – Annex I to the Dual-use regulation. The purpose is to help organisations identify the regime which governs their goods. It also clarifies why goods are placed on the list. This amended version of the dual-use goods list is the list reproduced in the PDF document attached to this user guide.

### 3.4 Scheduled chemicals of the Chemicals Weapons Convention

Certain chemicals appear both on the list of military goods and on the list of dual-use goods. This is the case for chemicals included in the Annex on Chemicals of the CWC. Although certain activities relating to those chemicals are not banned under the Convention, the greater the risk posed by a given chemical category the stricter the controls become.

The Chemical Weapons Convention differentiates between ‘Schedule 1’, ‘Schedule 2’ and ‘Schedule 3’ chemicals, as well as what are known as ‘discrete organic chemicals’ (DOCs). In addition to the provisions governing their import and export, these chemicals are also subject to declaration requirements. The relevant details are not discussed any further in this document but they can be consulted on the Dutch-language web pages in the ‘Handleiding voor de chemische industrie and voor handelaars in chemische producten’ (Guide for the chemical industry and traders in chemical products), which can be found at [www.rijksoverheid.nl/exportcontrole](http://www.rijksoverheid.nl/exportcontrole) under “Verdrag Chemische Wapens”.

#### Schedule 1 chemicals: Chemical weapons

Because of their high toxicity, Schedule 1 chemicals pose a major risk for the purpose of the Convention. These chemicals hardly have any civil applications (for example only in pharmaceuticals and medical research) and are never manufactured industrially. The manufacture of Schedule 1 chemicals is subject to strict conditions and their production, processing, use and trade is limited to very small quantities. Generally, this is forbidden.

Most Schedule 1 chemicals in the Chemical Weapons Convention are included in the EU list of military goods. They are classed in ML7 (b) and designated as “agents for chemical warfare”. Only Schedule 1 chemicals ricin and saxitoxin are not classified as military goods but included in Annex I and IV of the Dual-use regulation, item 1C351 d.4 and 5. In the extended goods list to this user guide, Schedule 1 chemicals are denoted by [C1].

Schedule 1 chemicals are exempt from the provisions of the Strategic Goods Order, because trade in Schedule 1 chemicals is in principle prohibited. Exemption for transfer of a Schedule 1 chemical can be granted only for specific cases (5.7.1 Schedule 1 chemicals).

#### Schedule 2 chemicals: Very suitable for manufacture of chemical weapons

Schedule 2 chemicals represent a smaller but nevertheless considerable risk for the purpose of the Chemical Weapons Convention. Some chemicals appearing on this list are produced for commercial purposes. A number of Schedule 2 chemicals are key precursors of toxic chemicals appearing in Schedule 1.

Schedule 2 chemicals are dual-use goods, that is to say that the chemicals are included in Annex I to the Dual-use regulation, items 1C350 and 1C450. The sole exception is BZ, or 3-quinuclidinyl benzilate (CAS 6581-06-2), which is included in the EU list of military goods under item ML7.b 3a (agents for chemical warfare, incapacitating agents). In the extended goods list to this user guide, Schedule 2 chemicals are denoted by [C2].

### Schedule 3 chemicals: Suitable for manufacture of chemical weapons

Schedule 3 chemicals entail a certain risk for the purpose of the CWC. Nevertheless, some of the chemicals appearing on this list are used extensively in the chemical industry and have a broad commercial application.

Schedule 3 chemicals are dual-use goods. They are included in Annex I to the Dual-use regulation, items 1C350 and C450, and in the extended goods list to this user guide they are denoted by [C3].

### Miscellaneous

For regulations concerning 'discrete organic chemicals', you are referred to the 'Handleiding voor de chemische industrie and voor handelaars in chemische producten' (Guide for the chemical industry and traders in chemical products), which can be found at [www.rijksoverheid.nl/exportcontrole](http://www.rijksoverheid.nl/exportcontrole) under "Verdrag Chemische Wapens". No supplementary measures apply to imports and exports of these chemicals.

The rules relating to import and export of chemicals in the Annex on Chemicals of the Chemical Weapons Convention are laid down in two regulations:

- Council Regulation (EC) No 428/2009 of 5 May 2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items (OJ EG L 134/2009) and all subsequent amendments thereto.
- Strategic Goods Order (Stb 2008, 252) and all subsequent amendments thereto. This Order also serves to implement Council Regulation (EC) No 428/2009.

Please note that the transfer of Schedule 2 or Schedule 3 chemicals from one EU member state to another Member State is subject to declaration requirements, even if this transfer would not be considered to be import or export according to the EU Customs Code.

## **3.5 Supplementary measures**

### *3.5.1. Catch-all provision covering goods not specified in the annexes to the Dual-use regulation*

#### Catch-all order – Article 4 of the Dual-use regulation

Besides the controls of export of goods appearing on the control lists, should there be cause to do so, it is possible for the MFA to subject exports of other goods to a license requirement by means of a catch-all provision. This may be imposed in circumstances as determined in article 4 of the Dual-use regulation, and specified below.

The authorities can impose a catch-all provision on goods that are not, in principle, subject to mandatory licensing when:

- the items in question are or may be intended for the development of weapons of mass destruction or missiles capable of delivering such weapons;
- if the purchasing country or country of destination is subject to an arms embargo decided by the European Community, the UN or the OSCE and the items in question are or may be intended, in their entirety or in part, for a military end-use (see article 4, paragraph 2, of the Dual-use regulation);
- the items in question are or may be intended for goods appearing on the EU list of military goods that have been exported to the country of end-use without the proper license required (see article 4, paragraph 3, of the Dual-use regulation).



- If an exporter is aware that dual-use items which he proposes to export, not listed in the dual-use list, are intended for any of the uses referred to above, he must notify the MFA.

In such a case the exporter will be duly notified by MFA that a license is required on the export concerned.<sup>4</sup>

Since the imposition of a catch-all provision may lead to diminished legal certainty, the government uses its power to impose a mandatory license requirement with great prudence and caution.

Possible threat to public security or for human rights considerations – Article 8 of the Dual-use regulation

For reasons of public security or for human rights considerations, the MFA may issue an order imposing a ban license requirement on the export of dual-use goods not appearing in Annex I of the Dual-use regulation.

*3.5.2 Ad-hoc order - mandatory licensing of transit consignments of military goods*

In those cases where military goods do not require a license when in transit through the Netherlands, there may be a notification requirement<sup>5</sup>. The main purpose of this mandatory notification is to chart the nature and scale of military goods transit volumes crossing Netherlands territory, but it may also generate information leading to an ad-hoc license requirement. The option to impose an ad-hoc license requirement can be employed if there are indications that a transaction is not under the effective control of the country of origin<sup>6</sup>, or if in the course of its transit across Netherlands territory a transaction appears to acquire a different destination than intended upon issuance of an export license.

*3.5.3 Benelux*

Trade in military goods between the Benelux countries is not subject to licensing. Transit movements, however, do require a license or have to be notified<sup>7</sup>. In that respect it should be noted that where the definitive country of final destination of the goods is known to be other than Belgium or Luxembourg, a license for the export from the Netherlands to that third country via the Benelux must be requested in the Netherlands.

*3.5.4 Sanctions and embargoes<sup>8</sup>*

Sanction measures are political instruments of the foreign and security policy of the United Nations and the European Union. They are compelling, non-military instruments which are employed in response to violations of international law or to regimes disrespecting constitutional and democratic principles, in an attempt to bring about change. The most common sanctions are arms embargoes, trade restrictions, financial sanctions (freezing of deposits), and travel and visa restrictions.

It sometimes happens that a license is required in accordance with the Dual-use regulation whereas sanctions call for a prohibition. In such cases the prohibition takes priority.

Sanction measures are usually based on a resolution of the UN Security Council, which is subsequently converted into secondary Community law. A number of sanction measures have been imposed by the Community without there being a UN Sanctions Resolution. EU sanctions are laid down in Decisions and/or Regulations. Where the measures exclusively constitute an instruction to

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<sup>4</sup> The regulatory basis of the catch-all provision is article 4 of the Dual-use regulation.

<sup>5</sup> See 4.4 Scheduled chemicals of the Chemical Weapons Convention.

<sup>6</sup> For example when there is no export license, or if the documentation is incomplete.

<sup>7</sup> The regulatory basis of this exemption is the Strategic goods order.

<sup>8</sup> The regulatory basis for enforcement of international sanctions is the Sanctions Act 1977.

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Member States (e.g. visa restrictions) a Decision may suffice. If the measure targets private individuals (for example, freezing of deposits) a regulation is also established. In the light of the competence of the European regulator, arms embargoes are embedded exclusively in Decisions. The Netherlands takes up an EU arms embargo into national law.

With regard to sanctions and arms embargoes, therefore, the Netherlands follows the policy of the European Union but takes up the resultant EU decisions into (national) law under the 1977 Sanctions Act in order to ensure that breaches are penalised under Dutch law.

Websites:

<http://www.rijksoverheid.nl/onderwerpen/internationale-vrede-en-veiligheid/sancties>

[http://ec.europa.eu/external\\_relations/cfsp/sanctions/docs/asures.htm](http://ec.europa.eu/external_relations/cfsp/sanctions/docs/asures.htm)

## 4. Policy and instruments

This chapter covers the rules governing the export, transit and brokering of strategic goods and services.

### 4.1 Export of strategic goods

#### 4.1.1 Export of military goods

##### a) Definitions

- Export: In the Strategic Goods Order, export is understood as goods leaving the Netherlands territory for a destination in a third country<sup>9</sup>.
- Transfer: In the Strategic Goods Order, transfer is understood as goods leaving the Netherlands territory for a destination in a EU Member State, Norway, Iceland or Liechtenstein.
- Netherlands territory: The territory of the Kingdom of the Netherlands in Europe.
- Third country: Countries other than EU Member States, Norway, Iceland and Liechtenstein.

##### b) The rules

###### General license requirement

Export and transfer of military goods from the Netherlands without a license issued by the Minister for Foreign Trade and Development Cooperation is prohibited. This mandatory license requirement also applies to military goods disposed of by the Netherlands armed forces.

###### Exemptions to the license requirement

Exempted from the export license requirement is the export or transfer of<sup>10</sup>:

- military goods with final destination Belgium or Luxembourg;
- military goods intended for use by the Netherlands armed forces;
- military goods both owned by and intended for use by NATO armed forces, Allied Joint Force Command Brunssum (formerly AFCENT) or ERA;
- military vehicles, used by an armed force for events such as state or courtesy visits, fleet reviews or air shows.
- Chemicals appearing both on the military list and on CWC Annex on Chemicals Schedule 1 are also exempted as they are subject to a ban with dispensations - see 5.7.1 Schedule 1 chemicals<sup>11</sup>.

For these exemptions there is no license nor notification requirement.

MFA may nevertheless require a license for the export of military goods which in principle are not subject to a license requirement if:

- this is necessary in the interest of international law and order or a related international agreement, or;
- the Minister for Agriculture and Trade deems it necessary for the protection of the essential interests of national security<sup>12</sup>.

If it is established that there are no objections to the proposed export, MFA will issue an export license.

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<sup>9</sup> This differs from transit, which is understood as referring exclusively to the transport of goods that are brought into Netherlands territory in order to be conveyed by way of that area to a destination outside of Netherlands territory. The relevant regulatory basis lies in article 5 of the Strategic Goods Order.

<sup>10</sup> The regulatory basis is in the Strategic Goods Order.

<sup>11</sup> See art. 18-2.a of the Strategic Goods Order.

<sup>12</sup> See art. 13-3 of the Strategic Goods Order.

#### 4.1.2 Export of dual-use goods

##### a) Definitions

- Export: In the Dual-use regulation export is understood as export of Community goods as well as the re-export of non-Community goods. Export means:
  - an export procedure within the meaning of article 161 of Regulation (EEC) No 2913/92 (the Community Customs Code);
  - a re-export within the meaning of article 182 of that Code but not including items in transit; and
  - transmission of software or technology by electronic media, including by fax, telephone, electronic mail or any other electronic means to a destination outside the European Community; it includes making available in an electronic form such software and technology to legal and natural persons and partnerships outside the Community. Export also applies to oral transmission of technology when the technology is described over the telephone<sup>13</sup>.

##### b) The rules

###### Within the EU: No license requirement but requirements regarding commercial documents

Intra-Community trade in dual-use goods listed in Annex I to the Dual-use regulation (and not also mentioned in Annex IV to the Dual-use regulation) is not subject to a license requirement.

Although no license is required for the export of these dual-use goods to other EU Member States it remains necessary to observe the following rule:

- relevant commercial documents (such as offers and invoices) relating to intra-Community transfer of dual-use goods on Annex I to the Dual-use regulation, should state clearly that those goods will be subjected to control upon export from the Community.

###### Exemptions free movement of goods

Certain goods listed in Annex I of the Dual-use regulation are also included in Annex IV of the Dual-use regulation. These goods do not qualify for free circulation among EU states. Annex IV lists the most sensitive goods. Transfer within the European Community of dual-use goods included in Annex IV of the Dual-use regulation is thus subject to a license requirement.

###### Outside the EU: General mandatory licensing

Export of dual-use goods appearing in Annex I of the Dual-use regulation is subject to a license requirement.

## 4.2 Transit

### 4.2.1 Transit of military goods

#### a) Definitions

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<sup>13</sup> In the case of export of dual-use goods the definition is restricted to the tangible export of software and technology. The export of intangible software and technology is described in 4.3.1 Intangible transfer of software and technology, where the definition of export is expanded to include the oral transmission of technology by electronic media (including fax and telephone). The dual-use regulation covers both tangible and intangible transfer of technology (see art. 2, definition of export (iii)).

- Transit: The Strategic Goods Order defines 'transit through the Netherlands' as the transport of goods which are introduced into Netherlands territory for the sole purpose of being transported through this territory to a destination outside Netherlands territory.
- Netherlands territory: The territory of the Kingdom of the Netherlands in Europe.

b) The rules

License required

Transit of military goods through the Netherlands requires a license issued on behalf of the MFA. If it appears that there are no objections to the proposed transit, MFA will issue an export license.

Exemptions to this license requirement<sup>14</sup>

Exempted from the transit license requirement is the export of military goods which:

- originate from or have as their destination: Australia, Japan, New Zealand, Switzerland, or any Member State of the European Union or NATO and are not trans-shipped in the Netherlands;
- originate from an EU- member state and are destined for an EU- member state.

For this exemption from the license requirement, there is a notification requirement.

- are transported through Netherlands territorial waters or airspace without docking or landing;
- military goods transported by or on behalf of the Netherlands armed forces of the Netherlands;
- military goods by or on behalf of NATO armed forces, Allied Joint Force Command Brunssum (formerly AFCENT) or ERA (the European Space Agency);
- military vehicles owned or in use by an armed force and intended for refuelling of those vehicles, or on the occasion of events such as state or courtesy visits, fleet reviews or air shows.

For these exemptions there is no license nor notification requirement.

The main purpose of the notification requirement is to register the nature and volume of the transit movements of military goods through Netherlands territory. But notification can also generate information that may prompt the Minister for Foreign Trade and Development Cooperation to impose an ad-hoc license requirement on the export of goods that are otherwise free to transit through the Netherlands Territory. This option is employed:

- when there are indications that a consignment may not be under the effective control of the country of origin (when the export license is not correct or missing for example), or;
- when in the course of transit through Netherlands territory the destination of a consignment appears to change from its stated destination at the time of issue of the export license, or;
- when international law or related agreements so requires<sup>15</sup>, or;
- when the Minister for Foreign Trade and Development Cooperation deems it to be necessary in order to protect the essential interests of national security<sup>16</sup>, or;
- when information is present, originating for example from security and intelligence services, giving the Minister for Agriculture and Trade cause to institute an ad-hoc license requirement.

Arms and Munitions Act (WWM)

In cases where both a notification and a consent is required under the Arms and Munitions Act<sup>17</sup> (abbreviated as WWM), it will suffice to submit an application to receive an entry consent as referred to in article 14 of the WWM. Accordingly a consent is valid as a notification for the purpose of transit through the Netherlands of this class of military goods. You can apply for a consent at the CDIU.

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<sup>14</sup> The regulatory basis for the transit policy is the Strategic Goods Order.

<sup>15</sup> See art. 5.3 of the Strategic Goods Order.

<sup>16</sup> See 15.

<sup>17</sup> See 2.2 Regulatory basis.

In cases where both a transit license and a consent are required under the Arms and Munitions Act, an entry consent as referred to in article 14 of the WWM will suffice, unless the transit shipment has a commercial purpose. Therefore an entry consent does not suffice for transit shipments of weapons and munitions that are part of a sales contract or intended for an exhibition or a demonstration. Contrary to the situation in which a notification is required, the application to receive an entry consent does not suffice; the entry consent actually must have been issued.

### 4.2.2 Transit of dual-use goods

#### a) Definitions

- Transit: With regard to dual-use goods, it has been agreed within the European Community that the term 'transit' shall be understood as: transport of non-Community dual-use goods which are introduced into the Customs territory of the Community for transport through that area to a destination outside the Community.
- EU Customs territory: the territory referred to in Article 3 of the Community Customs Code.

#### b) The rules

##### No license requirement

Dual-use goods which transit through the European Community only, and as such through the Netherlands, are not subject to a license requirement.

Where dual-use goods appearing in Annex I of the Dual-use regulation enter the Customs territory of the Netherlands in transit through the EC, MFA may declare the transit subject to a license requirement and if necessary prohibit it. This may be the case where the products are or may be intended, in their entirety or in part, for use in connection with WMD or missiles capable of delivering such weapons<sup>18</sup>.

## 4.3 Services related to strategic goods<sup>19</sup>

Strategic services are services that are related to strategic goods. The regulations are laid down in the Strategic Services Act and in the Strategic Services Implementing Order. Three types of strategic services are covered: intangible transmission of software or technology, technical assistance and brokering services. These three types of services are covered in rules and regulations, both for military and for dual-use items.

The Strategic Services Act also covers the islands Bonaire, Statia and Saba there are similar rules and regulations. They are described in chapter 2 of the Strategic Services Act (article 19-31). Some articles of this have extraterritorial effects. As a result, those regulations are also valid for Dutch passport holders who have their permanent residence abroad. This might be the case for a broker in military items who has his residency outside of the European Union; he also has to apply for a license before offering his brokering services.

To report your brokering activities and to apply for a license, you can use the (application) forms on

[http://www.belastingdienst.nl/wps/wcm/connect/bldcontentnl/belastingdienst/douane\\_voor\\_bedrijfven/veiligheid\\_gezondheid\\_economie\\_en\\_milieu\\_vgem/cdiu/cdiu\\_strategische\\_diensten/](http://www.belastingdienst.nl/wps/wcm/connect/bldcontentnl/belastingdienst/douane_voor_bedrijfven/veiligheid_gezondheid_economie_en_milieu_vgem/cdiu/cdiu_strategische_diensten/). For license applications regarding strategic goods the forms can be found through [http://www.belastingdienst.nl/wps/wcm/connect/bldcontentnl/belastingdienst/douane\\_voor\\_bedrijfven/veiligheid\\_gezondheid\\_economie\\_en\\_milieu\\_vgem/cdiu/cdiu\\_strategische\\_goederen/](http://www.belastingdienst.nl/wps/wcm/connect/bldcontentnl/belastingdienst/douane_voor_bedrijfven/veiligheid_gezondheid_economie_en_milieu_vgem/cdiu/cdiu_strategische_goederen/).

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<sup>18</sup> See art. 6 of the Dual-use regulation.

<sup>19</sup> The regulatory basis is the Dual-use regulation, in the Strategic Services Act and in the Strategic Services Implementing Order.

#### 4.3.1 Intangible transfer of software and technology

##### Dual-use goods<sup>20</sup>

###### a) Definitions

- Intangible transfer of software or technology: the transmission of software and technology by electronic means, including by fax, telephone, electronic mail or any other electronic means outside of the European Community. It includes making available in an electronic form such software and technology to legal and natural persons and partnerships outside the Community. Export also applies to oral transmission of technology when the technology is described over the telephone.

Extensive definitions of terms such as “software”, “technology” and “development” can be found at the end of the list of goods in annex I to the Dual-use regulation.

An exporter in this case is a natural or legal person or partnership which decides to transmit or make available software or technology by electronic media including by fax, telephone, electronic mail or by any other electronic means to a destination outside the Community.

###### b) The rules

The intangible transfer of software and technology for or directly associated with or required for the development, production or use of dual-use goods to destinations outside the Community, is equated to the tangible export of dual-use goods. Such transfers therefore come within the scope of the export controls governing strategic goods<sup>21</sup>.

Note that the export rules for the supply of services or the transmission of technology do not apply, if that supply or transmission involves cross-border movement of persons<sup>22</sup>.

The same rules governing export of dual-use goods are applicable, but since those rules are not always easy to transpose and apply to intangible transfer of software and technology, they are explained below with reference to software and technology.

##### Technology relating to category 0 dual-use goods

Export and transfer of technology relating directly to goods classed in category 0, is subject to the same rules as to the export and transfer of category 0 goods and therefore subject to a license requirement. Similarly, technology for the development, production or use of category 0 goods is subject to a license requirement even if the technology is not actually applied to category 0 goods but for example to goods that do not require a license at all<sup>23</sup>.

For category 0 dual-use goods, the license requirement for “technology” transfer is not applicable to:

- Information generally available to the public;
- information “in the public domain”;
- basic scientific research.

Refer also to the General Notes to the list of dual-use goods in Annex I to the Dual-use regulation.

##### Technology relating to category 1-9 dual-use goods

Export of technology that is required for the development, production or use of dual-use goods referred to in categories 1 to 9, is subject to the same rules that apply to the export of goods in

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<sup>20</sup> The regulatory basis is the Dual-use regulation.

<sup>21</sup> See art. 2 (under 2 definition of ‘export’, part iii) of the Dual-use regulation.

<sup>22</sup> See art. 7 of Dual-use regulation.

<sup>23</sup> The approval of goods for export also authorizes the export to the same end-user of the minimum “technology” required for the installation, operation, maintenance and repair of the goods.

categories 1 to 9, and thus requires a license. Similarly, this technology is subject to a license requirement even if the technology is not applied to other goods, such as goods that do not require an export license.

The license requirement does not apply for technology transfer relating to goods in categories 1-9 in cases where that technology is related to:

- the minimum "technology" required for the installation, operation, maintenance and repair of license-exempt goods<sup>24</sup>;
- information generally available to the public;
- basic scientific research;
- information "in the public domain", and;
- minimum necessary information for patent applications.

Refer also to the General Notes to the beginnings of the list of dual-use goods in Annex I of the Dual-use regulation.

#### *Military goods*

Because "technology" in ML22 is included in the EU list of military goods, the rules for technical assistance relating to military goods are the same rules as those for the export of other military goods on the EU military list.

#### *4.3.2 Technical assistance*

##### a) Definitions

- Technical assistance: Item ML22 of the Common EU list of military goods is "technology". Export of ML22, technology, can occur in the form of technical assistance, a service relating to military goods. Technical assistance may take the shape of instructions, skills, training, practical know-how, consultancy etc. and may be accompanied by the tangible transfer of technical data.

##### b) The rules

Because "technology" in ML22 is included in the EU list of military goods, the rules for technical assistance relating to military goods are the same rules as those for the export of other military goods on the EU military list.

#### Dual-use goods

It is prohibited to provide technical assistance when the assistance is related to use in connection with the development, production, handling, operation, maintenance, storage, detection, identification or dissemination of chemical, biological or nuclear weapons or other nuclear explosive devices, or for the development, production, maintenance or storage of missiles capable of delivering such weapons.

#### Exemptions:

- When it is already prohibited on the regulatory basis of the Dual-use regulation to provide technical assistance mentioned above without a prior authorisation.
- When the technical assistance is 1) generally available to the public or 2) basic scientific research.

For special situations a dispensation can be applied for at the CDIU.

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<sup>24</sup> This provision does not affect the embargo status of the "technology" referred to in 1E002.e, 1E002.f, 8E002.a and 8E002.b.



### Military goods

It is prohibited to provide technical assistance when the assistance is intended for an end-user established in a country of destination that is subject to an arms embargo and if the assistance is intended for military end-use.

Exemptions:

- When it is already prohibited on the regulatory basis of the Dual-use regulation to provide technical assistance mentioned above without a prior authorisation.
- When the technical assistance is 1) generally available to the public or 2) basic scientific research.

### 4.3.3 Brokering of strategic goods

#### Dual-use goods – Reporting mandatory and license required under certain conditions

a) Definitions

There are different definitions for brokering services related to dual-use items and for a broker. Some find their legal basis in the Dual-use regulation, others are national definitions that have a legal basis in the Strategic Services Act. Both the Dual-use regulation and the Strategic Services Act apply in The Netherlands.

EU definition (based on the Dual-use regulation):

- Brokering services:
  - the negotiation or arrangement of transactions for the purchase, sale or supply of dual-use items from a third country to any other third country, or
  - the selling or buying of dual-use items that are located in third countries for their transfer to another third country.
  - For the purposes of the Dual-use regulation, the sole provision of ancillary services is excluded from this definition. Ancillary services are transportation services, financial services, insurance or re-insurance, or general advertising or promotion.
- Broker: any natural or legal person or partnership resident or established in a Member State of the Community that carries out brokering services as defined above, from the Community into the territory of a third country.

National definition (based on the Strategic Services Act):

- Brokering services for dual-use items third country-third country:
  - a. the negotiation or arrangement of transactions for the purchase, sale or supply of dual-use items that are not in the European Community, and that are not intended for the import into the European Union or Bonaire, Statia or Saba;
  - b. the selling or buying for one or more parties of dual-use items that are not located in the European Union and are not intended for the import into the European Union or Bonaire, Statia or Saba.
- Brokering services for dual-use items EU-third country:
  - a. the negotiation or arrangement of transactions for the purchase, sale or supply of dual-use items that are in the European Community, and that are intended for the export out of the European Union;
  - b. the selling or buying for one or more parties of dual-use items that are located in the European Union and are intended for the export out of the European Union.
- Broker: any natural or legal person or partnership resident or established in a Member State of the Community that carries out brokering services as defined above, from the Community into the territory of a third country.

Nota bene: Also for the purposes of the Strategic Services Act, the sole provision of ancillary services is excluded from this definition. Ancillary services are transportation services, financial services, insurance or re-insurance, or general advertising or promotion.

b) The rules

*Reporting mandatory*

In principle, it is allowed to provide brokering services related to dual-use items. However, the minister for Foreign Trade and Development Cooperation may decide to require a license from an individual broker. He may do so when he has indications that the brokering services in question are or may be intended, in their entirety or in part, for the development of weapons of mass destruction or for military end-use in a country of destination that is subject to an arms embargo.

To make sure that the Dutch government has sufficient information to decide whether a brokering license is required, brokers are subject to a reporting requirement. There are two variants of the reporting requirement:

- Single reporting  
Most brokers will need to do a single reporting. They are obliged to report their brokering activities before 30 June 2012 at the CDIU. With the form the brokers report in what types of dual-use items they provide brokering, and for which countries these activities are intended most of the time.
- Reporting per transaction  
Sometimes a broker is required to report for every single transaction. This is the case when the brokering activities are intended for a sensitive country of destination or if they are related to sensitive items. The broker is obliged to report at the CDIU at least two weeks before providing the brokering services.  
Sensitive countries are: Afghanistan, Angola, Belarus, Birma/Myanmar, Congo, DPRK, Egypt, Eritrea, Guinea (Conakry), India, Iraq, Iran, Israel, Ivory Coast, Lebanon, Liberia, Pakistan, Somalia, Sudan, South Sudan, Syria, Zimbabwe).  
Sensitive dual-use items are: goods mentioned in part 2 of Annex II of the Dual-use regulation.

A broker is obliged to do his reporting at least two weeks before providing the brokering services. He will not receive a formal response to that (however, he will get a receipt), unless the minister decides to impose an ad hoc license requirement. In that case, the broker will be contacted directly by the ministry of Foreign Affairs.

*License application*

When a certain legal person or natural person has received a personal message that a license is required, it can decide to apply for a brokering license concerning dual-use items. The CDIU will send the official decision to that application within the same period of time as is normal for the application of goods.

*Military goods – License requirement*

a) Definitions

- Brokering services for military items:
  - a. the negotiation or arrangement of transactions for the purchase, sale or supply of military items that are not in the Netherlands and Bonaire, Statia and Saba, and that are not intended for the import into the Netherlands or Bonaire, Statia or Saba;
  - b. the selling or buying for one or more parties of military items that are not located in the Netherlands and Bonaire, Statia and Saba, and that are not intended for import in the Netherlands or Bonaire, Statia or Saba.

Nota bene: Also for military items, the sole provision of ancillary services is excluded from this definition. Ancillary services are transportation services, financial services, insurance or re-insurance, or general advertising or promotion.

b) The rules

The provision of brokering services for military items requires a license. Therefore they are only allowed when the broker applied (and received) a license before offering the services. Dispensation is possible for brokering services intended for allies. The CDIU will send the official decision to the application within the same period of time as is normal for the application of goods.

Some articles of the Strategic Services Act have extraterritorial effects. As a result, those regulations are also valid for Dutch passport holders who have their permanent residence abroad. This might be the case for a broker in military items who has his residency outside of the European Union; he also has to apply for a license before offering his brokering services.

Until 31 January 2011 a broker for military items had to apply for a license for financial involvement based on the so-called Besluit financieel verkeer strategische goederen. This measure is revoked since the introduction of the Strategic Services Act. In some cases a brokering license will be required instead (please check carefully art. 10 and 24 of the Strategic Services Act).

The Arms and Munitions Act bans organisations and persons registered in the Netherlands from trading in weapons or munitions without an accreditation<sup>25</sup>. Authority to grant and withdraw accreditations and to extend the period of validity thereof lies with the regional police chief ('korpsschef') where the applicant is established. A license has a validity of at most five years and can be renewed by at most five years at a time.

#### 4.4 Scheduled chemicals of the Chemical Weapons Convention

##### 4.4.1 Schedule 1 chemicals – Export and import

The rules on import and export of Schedule 1 chemicals are very specific. In effect they concern commercially non-obtainable and non-tradable chemicals of which the transfer is prohibited. For that reason, the import and export restrictions on these chemicals are not discussed any further here. Should your organisation at any time come across any such product, you would be well advised contact the CDIU.

##### 4.4.2 Schedule 2 and Schedule 3 chemicals – Export and import

a) Definitions

- The definitions of import and export according to the Chemical Weapons Convention differ from the definitions of import and export as stated in the Community Customs Code. In practice, this means that the terms import and export for notifications refer to tangible transfer of listed chemicals to another country, even if that transfer may occur within the European Community. This is reflected in the CWC Implementing Act.

>> *To give an example: suppose that a Dutch firm buys triethanolamine (a Schedule 3 chemical) from a French firm and sells it to a British customer, for which purpose the goods will have to be briefly placed in storage in the Netherlands. This transfer will have to be declared by each firm in its annual notifications to its own National Authority. The French firm will declare the export to the Netherlands. The Dutch firm will declare an import from France and an export to the UK. The UK*

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<sup>25</sup> An accreditation is a license for the professional use of weapons. The Arms and Munitions Act (Wwm) prohibits the unlicensed manufacture or transformation of weapons or munitions or their exchange, lease or otherwise supply, repair, test or trade by way of business. See [www.rijksoverheid.nl/onderwerpen/wapens-en-munitie](http://www.rijksoverheid.nl/onderwerpen/wapens-en-munitie) (in Dutch).

*firm will declare an import from the Netherlands. The purpose of this procedure is to prevent chemicals from disappearing off the radar during their 'global tour'.*

b) The rules<sup>26</sup>

Global and/or individual licenses can in principle be obtained for the export of Schedule 2 and Schedule 3 chemicals. Exports to and imports from non-CWC states, however, are subject to more restrictions than exports to or imports from CWC states or EU Member States. In addition, for the export of Schedule 2 and Schedule 3 chemicals to a limited group of CWC states (Australia, Canada, Japan, New Zealand, Norway and Switzerland), EU exporters can also apply for a Union General Export Authorisation<sup>27</sup>. Export of Schedule 2 chemicals to non-Members of CWC is prohibited.

#### Export transactions for Schedule 2 chemicals

A license is required for exports of Schedule 2 chemicals to CWC states outside the European Community. No license is needed in the case of exports to CWC states of chemical mixtures containing a small proportion of a Schedule 2 chemical (< 30%).

It should be noted that the chemical BZ: 3-Quinuclidinyl benzilate (Schedule 2A\*) also requires a license for export to countries within the European Union. Though, under the Strategic Goods Implementing Order, for exports of BZ from the Netherlands to Belgium and Luxembourg a notification to the CDIU is sufficient.

It is prohibited to transfer Schedule 2 chemicals to non-CWC states. The following exceptions apply:

- chemical mixtures containing < 1% of a Schedule 2A/2A\* chemical;
- chemical mixtures containing < 10% of a Schedule 2B chemical;
- retail goods packaged for personal use or packaged for individual use.

#### Export transactions of Schedule 3 chemicals

A license is required for exports of Schedule 3 chemicals both to CWC states outside the European Community and to non-CWC states. No license is needed in the case of exports of chemical mixtures containing a small proportion of a Schedule 3 chemical (< 30%).

#### Import of Schedule 2 and Schedule 3 chemicals

Import of Schedule 2 and Schedule 3 chemicals from CWC states do not require a license.

Schedule 2 chemicals may not be received from non-CWC states. Exceptions are:

- chemical mixtures containing < 1% of a Schedule 2A/2A\* chemical;
- chemical mixtures containing < 10% of a Schedule 2B chemical;
- retail goods packaged for personal use or packaged for individual use.

Import of Schedule 3 chemicals from non-CWC states does not require a license.

#### 4.4.3 Other obligations

Besides the obligations mentioned above, other obligations are attached to the production, processing and trading etc. of chemicals appearing in the Annex on Chemicals of the Chemical Weapons Convention. On the basis of the CWC, companies working with this class of chemicals are obliged to observe notification requirements. Further details may be consulted on the Dutch-language pages in the 'Handleiding voor de chemische industrie en voor handelaars in chemische producten'. This is available at [www.rijksoverheid.nl/exportcontrole](http://www.rijksoverheid.nl/exportcontrole) under "Verdrag Chemische Wapens".

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<sup>26</sup> The regulatory basis is the Chemical Weapons Convention Implementing Act (CWC Implementing Act) and the Chemical Weapons Convention Implementing Order (CWC Implementing Order).

<sup>27</sup> See 5.1.1 Types of licenses and period of validity.

## 5. What's the procedure? – Notifications, soundings and license applications

An export license is granted by the competent authority of the Member State in which the exporter is established. For the Netherlands this is the Central Import and Export Service (CDIU) of the Ministry of Finance. However, the licenses the CDIU grants are issued on behalf of MFA.

This chapter describes the various forms of licenses, how licenses are assessed, the strategic goods they are intended for, and the circumstances in which they can be used.

### 5.1 General

An export authorisation is issued by the competent authority of the EU member state where the exporter is established. For the Netherlands this is the Central Licensing Office CDIU, part of the ministry of Finance, on behalf of the ministry of Foreign Affairs.

This chapter describes the different types of licenses, how applications are considered, for which strategic goods they are intended and under which circumstances they can be used.

#### 5.1.1 Types of licenses and period of validity

To apply for an export license, to apply for a 'sondage', to report, to apply for a 'consent', you can use the forms on

[http://www.belastingdienst.nl/wps/wcm/connect/bldcontentnl/belastingdienst/douane\\_voor\\_bedrijven/veiligheid\\_gezondheid\\_economie\\_en\\_milieu\\_vgem/cdiu/cdiu\\_strategische\\_goederen/cdiu\\_strategische\\_goederen\\_content/](http://www.belastingdienst.nl/wps/wcm/connect/bldcontentnl/belastingdienst/douane_voor_bedrijven/veiligheid_gezondheid_economie_en_milieu_vgem/cdiu/cdiu_strategische_goederen/cdiu_strategische_goederen_content/). Read the explanation carefully.

You can also request other documents at the CDIU. The office can also be of help when you have questions regarding forms. You will find information on <http://www.government.nl/issues/export-controls-of-strategic-goods> (in English, summary) and [www.rijksoverheid.nl/exportcontrole](http://www.rijksoverheid.nl/exportcontrole) (in Dutch, extended version).

There are three types of licenses. Which type is required depends on the nature of the product and the purpose for which the license is requested.

#### Individual license

An individual license can be requested for military and dual-use goods, and is intended for:

- a specific exporter;
- a specific good;
- export of Community goods and re-export of non-Community goods to specific destinations;
- a specific transaction (though part-consignments per license are permitted).

In principle, an individual license is valid for one year, but for dual-use goods a three-year license may also be issued.

#### Global license

A global license can be requested for military and dual-use goods, and is intended for:

- one specific exporter;
- one type or a category/categories of goods;
- export to one or more destinations. Military goods, however, are normally licensed for one single destination.
- multiple transactions.

A global license is in principle valid for one year, but for dual-use goods a global license can also be issued for three years.

For certain sensitive goods and/or destinations, global licenses will not be issued. In those cases individual licenses must be applied for.

### General licenses

#### Dual-use items

There are two types of general licenses: the Union General Export Authorisation (UGEA, or UAV in Dutch) and the National General Export Authorisation (NGEA, or NAV in Dutch). Both offer exporters the option of using a highly simplified procedure to export exclusively dual-use goods to certain non-EC countries.

There are six variants of the Union General Export Authorisation. The first one is valid for almost all dual-use items, for export to the most important trade partners and allies of the European Union. This UGEA is usable for export to Norway, Switzerland, the United States, Canada, Japan, New Zealand and Australia. The second one is valid for similar goods like the goods mentioned in the NGEA, but for a smaller number of destinations (Argentina, Croatia, Iceland, South Africa, South Korea, Turkey). This UGEA is especially useful for exporters who are not able to use the National General Export Authorisation. The third UGEA is intended for the export of items for repair, maintenance and replacement of goods that were exported earlier. The fourth one is valid for a temporary export for exhibitions and fairs. The fifth UGEA can be used for telecommunications, and the sixth one for certain chemicals to countries participating in the Australia Group.

Use of UGEA's and NGEA is conditional on the exporter making a once-only registration at the licensing office CDIU. To use these licenses the exporter is required to comply with registration and notification requirements. Both the UGEA and the NGEA are valid for an indefinite period (subject to interim changes).

For further details we refer to 5.6 Licenses for dual-use goods.

### Military items

Since 1 June 2012 general licenses are also available for military items. There are general licenses for transfer and for transit. All have been published by MFA and are national general licenses. The idea of general licenses is that any exporter can use them as long as the conditions are respected.

The general transfer licenses can be used to transfer military items to EU Member States, Norway, Iceland and Liechtenstein. There are four general transfer licenses:

- The first general transfer license, NL003, can be used to transfer military items to recipients that are part of the armed forces of the aforementioned countries.
- The second general transfer license, NL004, can be used to transfer military items to certified recipient undertakings.
- The third general transfer license, NL005, can be used to transfer military items for the purpose of demonstration or exhibition.
- The fourth general transfer license, NL006, can be used to transfer of military items for the purpose of maintenance and repair.

The general transit licenses can be used for the transit of military items. There are two general transit licenses:

- The first general transit license, NL007, can be used for transit shipments of military items to EU and NATO Member States, Australia, Japan, New Zealand and Switzerland. This general license can be used for almost all military items.
- The second general transit license, NL008, can be used for transit shipments of military items originating from EU and NATO Member States, Australia, Japan, New Zealand or Switzerland and destined for other than the aforementioned countries. This general license can be used for a smaller number of military items. Items such as weapons and munitions, complete military vehicles, vessels and aircrafts are excluded.

### Certification

One of the requirements for the usage of general transfer license NL004 is that the recipient is a certified undertaking. This certification process is undertaken at a national level. In order to see if your recipient is certified you can check the register of the European Commission via <http://ec.europa.eu/enterprise/sectors/defence/certider/>

All other EU Member States have a general license similar to the NL004 that the Netherlands has published. Therefore undertakings located in the Netherlands can apply for a certification as well. Once your company is certified European suppliers can use the general transfer license available in their respective countries for the transfer of military items. Applications for certification can be applied for at the Douane/ Landelijk Centrum AEO.

### 5.1.2 Who is authorized to request a license or make a notification?

#### a) Definitions<sup>28</sup>

- The one competent to decide: This term is used with reference to the rules on military goods. The one competent to decide is a natural person or a legal person or a partnership:
  - i. in whose name a customs declaration is made at export, that is to say the person who, at the time when the declaration is accepted, holds the contract with the consignee in the third country and who is authorized to decide that the product is to be sent to a destination outside the Netherlands. Where no export contract has been concluded or where the contract holder is not acting for himself, the one competent to decide is understood as meaning the person authorized to decide to send the product to a destination outside the Netherlands;
  - ii. who decides to send software or technology by electronic means including fax machine, telephone and electronic mail or by any other electronic means or to make it otherwise available to a destination outside the Netherlands.
- Exporter: This term is applicable to the rules on dual-use goods. The exporter is any natural or legal person or partnership:
  - i. on whose behalf an export declaration is made, that is to say the person who, at the time when the declaration is accepted, holds the contract with the consignee in the third country and has the power for determining the sending of the item out of the customs territory of the Community. If no export contract has been concluded or if the holder of the contract does not act on its own behalf, the exporter shall mean the person who has the power for determining the sending of the item out of the customs territory of the Community;
  - ii. who decides to transmit or make available software or technology by electronic media including by fax, telephone, electronic mail or by any other electronic means to a destination outside the Community.

#### b) The rules

##### Military goods

In the case of military goods, notifications and licenses are drawn up in writing by:

- the one competent to decide, or
- on the latter's behalf by the person performing the customs formalities relating to the export or transit, or
- where no customs formalities are performed, by the person transporting the goods.

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<sup>28</sup> The Strategic Goods Order distinguishes between dual-use items and military goods. The arms export policy is a national competence, whilst the dual-use policy is the competence of the European Union. As a result of that the definition of 'exporter' in article 2 of the dual-use regulation differs from that of the so-called 'beschikkingsbevoegde' als defined in article 1 of Strategic Goods Implementing Order. An exporter of dual-use items is someone who exports from the European Union to a third country. A 'beschikkingsbevoegde' is an exporter who exports military items from The Netherlands to a third country.

When one of these persons performs the notification, the other parties are no longer required to do so.

#### Dual-use goods

Exporters established in the Netherlands submit license applications in writing, even if the goods are located in the territory of another Member State.

#### *5.1.3 How is a license application assessed?*

##### Military goods

License applications for the export of military equipment are assessed on an individual basis against the Netherlands arms export policy, bearing in mind the nature of the good, the final destination and the end-user. For this purpose, primarily the Common Position (2008/944/CFSP) of 8 December 2008 (formerly known as the EC Code of Conduct on Arms Exports) is applied. This Common Position requires that in the case of applications for the export of military equipment to destinations where human rights are at issue, it is to be carefully examined whether the military goods concerned might potentially play a role in any violations of those rights that might be observed. This does not mean that export of military goods to such destinations will always be prohibited, but that the nature and usability of the goods will play an important role in the assessment of applications. Should it be possible to establish any correlation between a proposed export and the human rights violations, such an export will indeed be termed "undesirable" and the requisite export license will not be granted. The assessment criteria of Common Position (EU) 2008/944 defining common rules governing control of exports of military goods and technology are the following:

1. Respect for the international obligations and commitments of Member States, in particular the sanctions adopted by the UN Security Council or the European Union, agreements on non-proliferation and other subjects, as well as other international obligations.
2. Respect for human rights in the country of final destination as well as respect by that country of international humanitarian law.
3. Internal situation in the country of final destination, as a function of the existence of tensions or armed conflicts.
4. Preservation of regional peace, security and stability.
5. National security of the Member States and of territories whose external relations are the responsibility of a Member State, as well as that of friendly and allied countries.
6. Behaviour of the buyer country with regards to the international community, as regards in particular its attitude to terrorism, the nature of its alliances and respect for international law.
7. Existence of a risk that the military technology or equipment will be diverted within the buyer country or re-exported under undesirable conditions.
8. Compatibility of the exports of the military technology or equipment with the technical and economic capacity of the recipient country, taking into account the desirability that states should meet their legitimate security and defence needs with the least diversion of human and economic resources for armaments.

The Ministry of Foreign Affairs (MFA) has a responsibility for the control of export and transit of military goods, and consequently for assessing transactions against the Common Position (EC) 2008/944 defining common rules governing control of exports of military goods and technology. Within the MFA the department for Security Policy focuses on the international policy aspects of arms control policy and international security policy. The department for International Trade and Economic Governance has primary political and juridical responsibility for implementation of export and transit controls (in particular, decisions on license applications).

#### Dual-use goods

The export control system is based on risk analysis, with emphasis on ex ante analysis. The objective is to employ risk analysis and, where necessary, ask for additional guarantees in order to reduce to a minimum the risks of undesired use or diversion to an undesirable destination. A



license will only be granted if the government is convinced that the goods will be put to the stated and approved end-use.

In deciding whether or not to issue a dual-use export license, EU Member States – this including the Netherlands - take the following into account:

- the commitments and obligations to which Member States have agreed either because they are party to the international conventions regarding non-proliferation and export control or because they have endorsed relevant international treaties;
- the commitments to sanction measures arising from a common position or common action adopted by the Council of the Community, or arising from a decision of the OSCE, or pursuant to a binding resolution of the Security Council of the United Nations;
- considerations of national foreign and security policy, including criteria of Common Position (EU) 2008/944 defining common rules governing control of exports of military goods and technology;
- considerations regarding intended end-use and the risk of diversion.

In their assessment of a license application, the CDIU and the MFA consider various types of information. These would include:

- Information on the country of final destination. Is it party to relevant treaties and regimes? Does it have an active WMD programme? Does it have a good track record on non-proliferation?
- Technical specifications of the goods. Are they suited to the stated end-use? What else could they be used for? Are there any (less sensitive) alternatives?
- Information on the end-user. What activities does it perform? Has it ever been involved in proliferation-sensitive activities?
- Information on acquisition attempts from the country of final destination. Is the country actively searching for specific goods or parts?
- Information on the nature of the transaction, for example, how the order is to be fulfilled, the proposed mode of transportation, countries to be visited during shipment, the mode of payment, the broker involved.
- Information from foreign colleagues. For example, license denials and presentations at export control regime meetings.

## 5.2 Classification of goods

You can check whether export of your goods is subject to a license requirement by referring to the lists of strategic goods. Weblinks to the lists are shown in the annex to this user guide. It is the exporter's responsibility to classify his goods correctly.

If you are uncertain whether the specifications of your goods match the descriptions in the lists, get in touch with the CDIU. In that case you should make sure that you have the technical details of the goods close by.

## 5.3 Declaration of license-exemption

Even if the goods turn out to be non-strategic and for that reason no export or transit license is required, it may be practical for Customs to be informed of this. Also, a bank may request the exporter to provide a certified statement to the effect that the CDIU or MFA have seen the goods and consider them to be license-exempt. On request, the CDIU will issue a statement (in Dutch or in English) to the effect that the goods are not subject to a license requirement.

## 5.4 'Sondage'

#### 5.4.1 What is a 'sondage'?

If you intend to export goods subject to a license requirement, but – before entering into commercial talks – as an exporter you wish to have a prior indication whether or not you will receive an export license, you can submit an informal and preliminary application (the so-called 'sondage'). After all, getting a contract sealed and signed can sometimes be a lengthy and costly procedure, and it would be unfortunate if the license were to be refused after all your efforts. The reply to a sounding request represents an indication of whether, under present circumstances, the Netherlands export control authorities would respond favourably or unfavourably to an application for a license to export the goods stated in the 'sondage' to the stated end-user. Clearly, the ultimate application will be judged in the light of relevant circumstances at that time, while a 'sondage' remains a snapshot.

#### 5.4.2 How to apply for a 'sondage'?

For the purpose of a 'sondage' you must provide - in writing only - information on the destination and end-user, together with an accurate description of the goods concerned. This must be done using the official 'sondage' form, which is available at [http://www.belastingdienst.nl/wps/wcm/connect/bldcontentnl/belastingdienst/douane\\_voor\\_bedrijven/veiligheid\\_gezondheid\\_economie\\_en\\_milieu/vgem/cdiu/cdiu\\_strategische\\_goederen/cdiu\\_strategische\\_goederen\\_content/](http://www.belastingdienst.nl/wps/wcm/connect/bldcontentnl/belastingdienst/douane_voor_bedrijven/veiligheid_gezondheid_economie_en_milieu/vgem/cdiu/cdiu_strategische_goederen/cdiu_strategische_goederen_content/). The form has to be sent to the CDIU, where it will be assessed in the same way as an export license application. Applicants receive written notification of the outcome.

### 5.5 Licenses and notifications for military goods

This section contains information on the documents and forms needed to apply for export and/or transit licenses or to notify a transaction. The CDIU is authorised to require additional information and documents, such as an (international) Delivery Verification Certificate. Chapter 7 of this user guide shows a simplified flowchart showing the documentation requirements discussed in this section.

#### 5.5.1 Export of military goods

##### Applying for an individual license<sup>29</sup>

An application is complete once the following documents have been received by the CDIU:

1. A duly completed and signed license application form with a brief but detailed description of (the technical specifications of) the goods.
2. A copy of the (signed) contract or order.<sup>30</sup>
3. A declaration on the end-use of the goods (end-user declaration – see 6. Summary of documents and forms). The declaration must be legalised by the authorities or by a duly authorised agency. In many countries this will be the Chamber of Commerce. If the customer is a government agency and the end-use is apparent from the contract to which that agency is party, a separate end-user declaration may often be omitted.
4. For countries with International Import Certificates (IICs – see 6. Summary of documents and forms) an IIC may be submitted instead of an end-user declaration. This can be useful particularly in the case of component supplies to manufacturers in IIC countries should uncertainty exist as to the exact identities of that industry's customers. The buyer can then request an International Import Certificate from the authorities in his country and pass it to the exporter in the Netherlands.

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<sup>29</sup> If it would not be possible to receive one or more of these documents, please submit with the application all documents that confirm the originality of the transaction.

<sup>30</sup> If a signed contract is not yet available, you can submit a concept of the contract in the meantime.

Applying for a global license

For the export of military goods to EU countries, NATO countries, Australia, Japan, New Zealand and Switzerland a global license may be requested. An application is complete once the following documents have been received by the CDIU:

1. A license application form, duly completed and signed, and containing a substantiated request for the global license in the "additional information" box.
2. A copy of the signed contract or order (in so far as applicable). If there is insufficient space on this form, you may add an annex containing all necessary particulars. In the box marked "value" you should enter the total value of the global license; if values can be assigned to individual countries you are requested to specify those on a separate sheet.

Using a general transfer license

The general transfer licenses NL003 to NL006 can only be used for transfers to EU Member States, Norway, Iceland and Liechtenstein. In addition, all other conditions of the general license have to be complied with, among others the registration requirement. The procedure to use a general license is as follows:

- By means of a written procedure a once-only written registration request has to be filed at the CDIU (use form "Aanvraag registratie CAV/NAV/NL");
- The CDIU will reply by letter confirming the applicants registration number;
- With every transfer under a general transfer license the user should indicate a description of the military items to be transferred including a full ML-category reference to the EU Common Military List. Also with every transfer the following reference should be mentioned on the documents that accompany the shipment:
  - 1°. The registration number as provided by the CDIU, and the EORI number if the user has an EORI number;
  - 2°. The country of destination;
  - 3°. NL003, NL004, NL005 of NL006, dependent on the general transfer license that is used.

*5.5.2 Transit of military goods*

Applying for an individual license

An application is complete once the following documents have been received by the CDIU:

1. A license application form, duly completed and signed, with a brief but detailed description of the (technical specifications of the) goods.
2. A copy of the (signed) contract or order.<sup>31</sup>
3. A declaration concerning the end-use of the goods (end-user declaration – see 6. Summary of documents and forms). The declaration must be legalised by the authorities or by a duly authorised agent. In many countries this will be the Chamber of Commerce. If the customer is a government agency and the end-use is immediately apparent from the contract to which such agency is party, a separate end-user declaration may often be omitted.
4. An export license from the country of origin if available.

Using a general transit license

The general transit licenses NL007 and NL008 can only be used if the conditions of the general licenses are met. The procedure to use a general transit license is as follows:

- By means of a written procedure a once-only written registration request has to be filed at the CDIU (use form "Aanvraag registratie CAV/NAV/NL");
- The CDIU will reply by letter confirming the applicants registration number;
- With every transit under a general transit license the user should indicate a description of the military items to be transited including a full ML-category reference to the EU Common Military List. Also with every transit the following reference should be mentioned on the documents that accompany the shipment:

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<sup>31</sup> If a signed contract is not yet available, you can submit a concept of the contract in the meantime.

- 1°. The registration number as provided by the CDIU, and the EORI number if the user has an EORI number;
- 2°. The country of destination;
- 3°. NL007 or NL008, dependent on the general transit license that is used.

Notification of transit

In certain cases a notification will suffice for the purpose of military goods transit movements.<sup>32</sup> Notifications of such movements through the Netherlands have to be made to the CDIU in writing either by the one competent to decide, or by the person who on his behalf performs the customs formalities for export or transit, or, if no customs formalities are performed, by the person transporting the goods. Once any one party has made the notification, the others are no longer required to do so. The CDIU may nevertheless give the one competent to decide a written authorisation to notify in another form than in writing.

There is no standard form for making notifications. However, the notification must state clearly:

1. The country of origin and whether an export license has been issued there;
2. The country of final destination and who the consignee and/or end-user there is, and
3. The description of the goods to which the notification refers in accordance with the Common list of military goods, their makes and registration numbers, number and type of packages, or in the case of unpackaged goods the number of items.
4. An accurate rendering of the full address where the goods may be examined.

The notification is to be made:

1. At the latest at the moment of entry into Netherlands territory;
2. For export to Belgium and Luxembourg: at the latest one day before departure of the outgoing transport mode.

An application to obtain an entry consent<sup>33</sup> as referred to in article 14 of the Arms and Munitions Act is equivalent to a notification of transit through the Netherlands.

**NB:**

The summary declaration for temporary storage of goods brought into the Netherlands either by sea or air, or the declaration for re-exit that have been lodged in another Member State for goods that enter the Netherlands by land, can be considered as transit notifications as well.

In order for those types of declarations to be accepted as valid transit notifications the information mentioned above has to be mentioned in the declaration. In addition to the description of the goods (see above under no. 3), a specific indication has to be inserted into the declaration.

The indication consists of "EU", directly followed by a full ML-category reference to the EU Common Military List and followed by a short description as provided for in the EU Common Military List. The level of specificity of the brief description may vary, however the reference to the category should be complete. Example: For a transit of energetic materials (ML8) more specifically pyrotechnics (ML8c), specifically zirconium (ML8c.5b.1) the indication that has to be inserted is the following:  
EU ML8c) 5b) 1 energetic materials, or  
EU ML8c) 5b) 1 pyrotechnics, or  
EU ML8c) 5b) 1 zirconium.

It's important to notice that the EU reference should be mentioned first, followed by the goods description. If the required information is written in reverse order the declaration is not considered to be a valid transit notification.

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<sup>32</sup> See 4.2 Transit.

<sup>33</sup> A *consent* is a license for the import, export or transit of certain arms under the Arms and Munitions Act (Wwm).

## 5.6 Licenses for dual-use goods

This section contains information on the documents and forms required in connection with applications for export or transit licenses. The CDIU is nevertheless authorised to demand additional information, such as an (international) certificate of receipt.

Chapter 7 of this user guide shows a simplified flowchart showing the documentation requirements discussed in this section (only available in Dutch).

### 5.6.1 Export of dual-use goods to destinations outside the European Community

The text below, which is divided into export scenarios A, B and C, explains the procedure for exporting goods listed in Annex I of the Dual-use regulation to non-EC destinations. A refers to the Union General Export Authorisation (UGEA), B to the National General Export Authorisation (NGEA). C refers to miscellaneous exports of dual-use goods.

#### A. Use of a Union General Export Authorisation (UGEA)

The UGEAs can only be used for the export of goods and to destinations mentioned explicitly in the authorisations (see Annex II of the Dual-use regulation).

The procedure is as follows:

- By means of a written application, the exporter submits a once-only written registration as a UGEA user to the CDIU (use form 'Aanvraag registratie CAV/NAV/NL'). The CDIU then checks whether the applicant complies with the requirements for the UGEA<sup>34</sup>;
- The CDIU will reply by letter confirming the applicant's registration number;
- On the export return, the exporter should indicate (in box 44 of the Enig Document (Single Document) or in the box "Bijzondere vermeldingen" (Special notes) on an electronic return) that for the purpose of this transaction he is making use of the UGEA, stating the reference X002 followed by the registration number of the authorisation (i.e. EU001) and the eight-digit registration number.

#### B. Use of the National General Export Authorisation (NGEA)<sup>35</sup>

The NGEA can only be used for the export of the following goods:

- 1A001, 1A003, 1A004, 1A005, 1B003, 1C003, 1C004, 1C005, 1C006, 1C008, 1C009, 1C011, 2A001, 2B005, 2B008, 3A001.a.3, 3A001.a 6 to 12 inclusive, 3A002.c to f inclusive, 4A003.b to e inclusive, 4A003.g;
- To all destinations with the exception of Australia, Canada, Japan, New Zealand, Norway, Switzerland, United States<sup>36</sup>, Afghanistan, Burma/Myanmar, Iraq, Iran, Lebanon, Libya, North Korea, Pakistan, Sudan, Somalia and Syria.

The procedure is as follows:

- By means of a written application, the exporter submits a once-only written registration as an NGEA user to the CDIU. The CDIU then checks whether the applicant complies with the requirements for the NGEA.
- The CDIU will reply by letter confirming the applicant's registration number;
- On the export return, the exporter should indicate (in box 44 of the Enig document (Single Document) or the box "Bijzondere vermeldingen" (Special notes) of an electronic return) that for the purpose of this transaction he is making use of the NGEA by means of his eight-digit registration number followed by "NL002"(xxxxxxxxNL002).

#### C. Application for a license for dual-use goods without an UGEA or a NGEA<sup>37</sup>

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<sup>34</sup> For requirements please check Annex II of the Dual-use regulation.

<sup>35</sup> See [http://wetten.overheid.nl/BWBR0026717/geldigheidsdatum\\_28-03-2012](http://wetten.overheid.nl/BWBR0026717/geldigheidsdatum_28-03-2012) (in Dutch).

<sup>36</sup> For export of these items to this group of countries UGEA EU001 can be used. See 5.1.1 Types of licenses and period of validity.

A license may be requested for the export of:

- goods listed in Annex I of the Dual-use regulation;
- to all countries of final destination outside the European Community.

Application for an individual license<sup>38</sup>

An application is complete once the following documents have been submitted:

1. A license application form, duly completed and signed, with a brief but detailed description of the (technical specifications of the) goods.
2. A copy of the (signed) contract or order.<sup>39</sup>
3. A declaration concerning the end-use of the goods (end-user declaration – see 6. Summary of documents and forms). The declaration must be legalised by the authorities or by a duly authorised agent. In many countries this will be the Chamber of Commerce. If the customer is a government agency and the end-use is immediately apparent from the contract to which such agency is party, a separate end-user declaration may often be omitted.
4. For the goods numbered 300 to 399, as well as for the goods to which an [A], [C2] or [C3] is added, a legalised statement explaining the activities of the receiving company is necessary. The statement has to be legalised by the authorities or by a duly authorised agent. In many countries this will be the Chamber of Commerce.

If the goods are or will be present in another country at the moment of departure, the exporter is required to state this on the license application.

Application for a global license

An application is complete once the following documents have been submitted:

1. A license application form, duly completed and signed, with a brief but detailed description of the (technical specifications of the) goods. In the box marked “additional information” you should enter a substantiated request to receive a global license. If this form has insufficient space for your application, an annex containing all details may be added. In the box marked “value” the total value of the global license should be entered.
2. A copy of the signed contract or order (in so far as applicable).<sup>40</sup>
3. If the goods are or will be present in another Member State at the moment of departure, the exporter is required to state this on the general application.

5.6.2 *Transfer of dual-use goods to an EC Member State*

Annex I goods – no license requirement but other requirements

Within the Community, there is no license application for dual-use goods listed only in Annex I (and therefore also not occurring in Annex IV) when sent from one Member State to another. Consignments of these goods within the Community are nevertheless subject to one requirement, namely:

- The relevant commercial documents must state clearly that control is required in the event of export from the Community.

Application for an individual license for Annex IV goods<sup>41</sup>

An application is complete once the following documents have been received by the CDIU:

1. A license application form, duly completed and signed, with a brief but detailed description of the (technical specifications of the) goods.
2. A copy of the (signed) contract or order.<sup>42</sup>

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<sup>37</sup> For some transactions a UGEA or a NGEA can be valid. In these cases it is easier to get registered for use of a UGEA or a NGEA.

<sup>38</sup> If it would not be possible to receive one or more of these documents, please submit with the application all documents that confirm the originality of the transaction.

<sup>39</sup> If a signed contract is not yet available, you can submit a concept of the contract in the meantime.

<sup>40</sup> See 39.

<sup>41</sup> See 38.

<sup>42</sup> See 39.

3. A declaration concerning the end-use of the goods (end-user declaration – see see 6. Summary of documents and forms). The declaration must be legalised by the authorities or by a duly authorised agent. In many countries this will be the Chamber of Commerce. If the customer is a government agency and the end-use is immediately apparent from the contract to which such agency is party, in many cases a separate end-user declaration may be omitted.

In contrast to a regular license application for dual-use goods, this application is made not in the country where the exporter is established but in the country where the goods are present.

#### Application for a global license for Annex IV goods

An application is complete once the following documents have been submitted:

1. A license application form, duly completed and signed, with a brief but detailed description of the (technical specifications of the) goods. In the box marked "additional information" you should enter a substantiated request to receive a global license. If this form has insufficient space for your application, an annex containing all details may be added. In the box marked "value" the total value of the global license should be entered.
2. A copy of the signed contract or order (in so far as applicable).<sup>43</sup>

In contrast to a regular license application for dual-use goods, this application is not made in the country where the exporter is established but in the country where the goods are present.

## **5.7 Exemptions and licenses for export or import of scheduled chemicals of the Chemical Weapons Convention**

### *5.7.1 Schedule 1 chemicals*

The rules on import and export of Schedule 1 chemicals are very specific. In effect these are commercially non-obtainable and non-tradable chemicals, transfer of which is prohibited. For that reason, the relevant import and export restrictions are not dealt with any further here. Should your organisation at any time come across any such product, you would be well advised contact the CDIU.

### *5.7.2 Schedule 2 and Schedule 3 chemicals*

This section explains the export procedures for Schedule 2 and 3 chemicals to various destinations, divided into scenarios for export classes A, B, C, and D.

#### **A. Export of**

- **Schedule 2 and Schedule 3 chemicals**
- **to the following CWC states: Australia, Canada, Japan, New Zealand, Norway, United States and Switzerland**

For the export of almost all Schedule 2 and 3 chemicals to any of the above destinations, exporters may use the Union General Export Authorisation (UGEA EU006) for chemicals.

#### Application for a general license

For this procedure please refer to 5.6.1 Export of dual-use goods to destinations outside the European Community.

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<sup>43</sup> If a signed contract is not yet available, you can submit a concept of the contract in the meantime.

## B. Export of

- **Schedule 2 and 3 chemicals**
- **to CWC states not mentioned in A<sup>44</sup>**

For these transactions the exporter can in principle apply for an individual or a global license.

### Application for an individual license<sup>45</sup>

An application is complete once the following documents have been received by the CDIU:

1. A license application form, duly completed and signed, with a brief but detailed description of the (technical specifications of the) goods.
2. A copy of the (signed) contract or order.<sup>46</sup>
3. A declaration concerning the end-use of the goods (end-user declaration – see 6. Summary of documents and forms). The declaration must be legalised by the authorities or by a duly authorised agency. In many countries this will be the Chamber of Commerce. If the customer is a government agency and the end-use is immediately apparent from the contract to which such agency is party, in many cases a separate end-user declaration may be omitted.
4. For goods numbered 300 to 399 inclusive and also goods marked [A], [C2] and [C3], a legalised statement of the consignee's business activities is required. The statement must be legalised by the authorities or by a duly authorised agency; in many countries the Chamber of Commerce.

### Application for a global license

An application is complete once the following documents have been received by the CDIU:

1. A license application form, duly completed and signed, with a brief but detailed description of the (technical specifications of the) goods. In the box marked "additional information" you should enter a substantiated request to receive a global license. If this form has insufficient space for your application, an annex containing all details may be added. In the box marked "value" the total value of the global license should be entered.
2. A copy of the signed contract or order (in so far as applicable).<sup>47</sup>

If the goods are or will be present in another country at the moment of departure, the exporter is required to state this on the license application.

## C. Export of

- **Schedule 2 chemicals**
- **to non-State Parties of the CWC<sup>48</sup>**

Export of Schedule 2 chemicals to non-State Parties of the CWC is prohibited. Accordingly, no such export licenses are issued.

## D. Export of

- **Schedule 3 chemicals**
- **to non-State Parties of the CWC<sup>49</sup>**

For these transactions, one may only apply for individual licenses.

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<sup>44</sup> For an overview of all States Parties to the Chemical Weapons Convention, see [www.opcw.org/about-opcw/member-states](http://www.opcw.org/about-opcw/member-states). For countries that did not sign or ratify the Convention, please check [www.opcw.org/about-opcw/non-member-states](http://www.opcw.org/about-opcw/non-member-states).

<sup>45</sup> If it would not be possible to receive one or more of these documents, please submit with the application all documents that confirm the originality of the transaction.

<sup>46</sup> If a signed contract is not yet available, you can submit a concept of the contract in the meantime.

<sup>47</sup> See 46.

<sup>48</sup> For an overview of all States Parties to the Chemical Weapons Convention, see [www.opcw.org/about-opcw/member-states](http://www.opcw.org/about-opcw/member-states). For countries that did not sign or ratify the Convention, please check [www.opcw.org/about-opcw/non-member-states](http://www.opcw.org/about-opcw/non-member-states).

<sup>49</sup> See 48.



Application for an individual license<sup>50</sup>

An application is complete once the following documents have been received by the CDIU:

1. A license application form, duly completed and signed, with a brief but detailed description of the (technical specifications of the) goods.
2. A copy of the (signed) contract or order.<sup>51</sup>
3. A declaration concerning the end-use of the goods (end-user declaration – see 6. Summary of documents and forms). The declaration must be legalised by the authorities or by a duly authorised agency. In many countries this will be the Chamber of Commerce. If the customer is a government agency and the end-use is immediately apparent from the contract to which such agency is party, in many cases a separate end-user declaration may be omitted.

## **5.8 Introduction and import into the Netherlands**

Application for an International Import Certificate (IIC)

Where strategic goods are procured from abroad, the supplier may request an International Import Certificate (IIC), so that he can apply for a license at his authorities. An IIC is a document with which the importer undertakes to apply for an export license from his export control authorities prior to re-export, if any, of the goods stated on the certificate. For most NATO allies and also for a number of comparable partner states in multilateral export control regimes, such an IIC is accepted as an effective guarantee that the supplied components will receive a safe final destination.

The application procedure for such a document is as follows:

- Submit an IIC application form, completed and signed, to the CDIU together with a copy of the signed contract<sup>52</sup>, order or confirmation of order of the buyers, signed by both parties to the contract;
- Upon approval, the CDIU sends the original IIC together with an identical copy to the importer;
- The importer then sends the original document to the supplier and retains the copy;
- Upon receipt of the goods from an EU Member State, on the rear of the copy the importer must write off the value and quantity of the consignment (or part-consignment);
- At importation from other countries, the importer must at the time of importation or placing in bond hand the copy to the customs officer;
- On the rear of this copy, Customs will note the value and quantity of the consignment (or part consignment) and place their stamp. Customs then returns the copy to the importer or forwarder;
- After the total consignment has been delivered, or when the IIC is of no further use, the copy should be returned to the CDIU;
- If the supplier has also asked to be sent a Delivery Verification Certificate, a completed application form for a DVC should be enclosed with the copy returned to the CDIU.

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<sup>50</sup> If it would not be possible to receive one or more of these documents, please submit with the application all documents that confirm the originality of the transaction.

<sup>51</sup> If a signed contract is not yet available, you can submit a concept of the contract in the meantime.

<sup>52</sup> See 51.

## 6. Summary of documents and forms

You can download many of the documents you may require for a license application, a 'sondage' procedure at:

- for strategic goods:  
[http://www.belastingdienst.nl/wps/wcm/connect/bldcontentnl/belastingdienst/douane\\_voor\\_bedrijven/veiligheid\\_gezondheid\\_economie\\_en\\_milieu\\_vgem/cdiu/cdiu\\_strategische\\_goederen/cdiu\\_strategische\\_goederen\\_content](http://www.belastingdienst.nl/wps/wcm/connect/bldcontentnl/belastingdienst/douane_voor_bedrijven/veiligheid_gezondheid_economie_en_milieu_vgem/cdiu/cdiu_strategische_goederen/cdiu_strategische_goederen_content);
- for strategic services:  
[http://www.belastingdienst.nl/wps/wcm/connect/bldcontentnl/belastingdienst/douane\\_voor\\_bedrijven/veiligheid\\_gezondheid\\_economie\\_en\\_milieu\\_vgem/cdiu/cdiu\\_strategische\\_diens\\_ten/](http://www.belastingdienst.nl/wps/wcm/connect/bldcontentnl/belastingdienst/douane_voor_bedrijven/veiligheid_gezondheid_economie_en_milieu_vgem/cdiu/cdiu_strategische_diens_ten/)

It is important to refer to the explanatory notes when filling out the form. The CDIU will also be pleased to help if you have any questions about the official procedure. You can also find more information at: [www.rijksoverheid.nl/exportcontrole](http://www.rijksoverheid.nl/exportcontrole).

### Consent

If export or transit movements of military goods require both a Arms and Munitions Act (WWM) consent as well as a notification, an entry application for an entry consent as referred to in article 14 of the WWM will suffice. In other words, a consent is valid as a notification of export from or transit through the Netherlands for this class of military goods.

### Delivery Verification Certificate (DVC)

A license may include the requirement that, subsequent to export and depending on the country of final destination, a DVC must be sent to the CDIU as proof that the goods have reached their destination.

The buyer must apply to the appointed competent authority in his own country to receive a Delivery Verification Certificate.

### Certificate of receipt ('BVO')

A certificate of receipt may be a copy of the customs document as stamped by customs in the country of final destination. A license may include the requirement that proof of importation must be sent to the CDIU as evidence that the goods have reached their destination.

### End-user Statement (EUS)

An end-user statement is a document to the effect that the goods concerned (state type and quantity) are to be imported into the country of final destination for own use or for use by buyer(s) established there (state name and address). The statement must also indicate the use for which the goods are intended. This statement must be certified by the competent authorities or by a duly authorized agency (in many countries this will be the Chamber of Commerce) in the country of final destination. In so doing the competent authority does not vouch for the end-user's statement but he does indicate that the end-user is known to him as a business and that the transaction is compatible with the customary activities of the business.

For export control purposes it is customary for an end-user statement to be required. The non-proliferation treaties and export control regimes do not impose it as an obligation but there is broad consensus on its value as an export control instrument.

An example of an end-user statement will be found via

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2009:011:0001:0003:EN:PDF>.

### International Import Certificate (IIC)

An IIC is a document with which the importer undertakes to apply to his export control authorities for an export license prior to re-export of the goods listed on the certificate. Most NATO allies as well as a number of comparable partner countries in multilateral export control regimes accept such an IIC as an effective guarantee that the components supplied will receive a safe final destination. See also 5.8 Introduction and import into the Netherlands.

## 7. Annexes

This annex contains references to amongst others lists of items and regulations. You will also find below the contact details of the licensing office CDIU and the Ministry of Foreign Affairs. (In case the web link would not function, please use the search string in brackets and you will probably find the most recent document via a search engine.)

One document is not available via a web link, i.e. the extended goods list with regime references. This document is attached as a PDF document at the export control website.

### **EU Common list of military goods**

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2013:090:0001:0037:EN:PDF>

(search string: Common military list of the European Union)

### **EU dual-use regulation**

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:2009R0428:20120615:EN:PDF>

(search string: Community regime for the control of exports, transfer, brokering and transit of dual-use items)

- Annex I (page 19-275) provides an overview of goods that require a license when exported outside of the European Union.
- The items mentioned in Annex IV (page 298-306) require a license as well for intracommunity transfers.

### **Documents needed for requesting individual and global licenses**

Please see the next page (only available in Dutch)

### **Example of an End-Use Certificate**

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2009:011:0001:0003:EN:PDF>

(search string: end-use certificate for dual-use items)

### **National General Export Authorisation (NGEA)**

[http://wetten.overheid.nl/BWBR0026717/geldigheidsdatum\\_28-03-2012](http://wetten.overheid.nl/BWBR0026717/geldigheidsdatum_28-03-2012) (only available in Dutch)

(search string: nationale algemene uitvoervergunning)

### **Union General Export Authorisation (UGEA)**

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:2009R0428:20120107:EN:PDF>

(search string: Community regime for the control of exports, transfer, brokering and transit of dual-use items)

See pages 276-292

**Documents needed for requesting individual and global licenses (only available in Dutch)**

Vergunning: Goederen:	Individuele vergunning				Globale vergunning		
	militair	militair	dual-use bijlage I (incl. CWC lijst 2- & 3)	dual-use bijlage IV	militair	dual-use bijlage I (incl. CWC lijst 2- & 3)	dual-use bijlage IV
Formulieren	Transactie:						
	export	doorvoer	export	export	export	export	export
Een ingevuld en ondertekend vergunningaanvraagformulier met een korte maar gedetailleerde beschrijving van de (technische specificaties van de) goederen.	X	X	X	X	X	X	X
Een ingevuld en ondertekend vergunningaanvraagformulier met in het vak "aanvullende informatie" een onderbouwd verzoek voor de globale vergunning. Als dit formulier te weinig ruimte biedt, kan een bijlage met alle gegevens worden toegevoegd. In het vak "waarde" moet de totale waarde van de globale vergunning worden ingevuld.					X	X	X
Een kopie van het getekende contract of de order, voor zover van toepassing.	X	X	X	X	X	X	X
Eindgebruikerverklaring. De verklaring moet zijn gelegaliseerd door de autoriteiten of een door de autoriteiten gemachtigde instantie. In veel landen is dit de KvK. Als bij uitvoer de afnemer een overheidsinstantie is en het eindgebruik al blijkt uit het contract waarbij zo'n instantie partij is, dan kan een aparte eindgebruikerverklaring in veel gevallen achterwege blijven.	X	X	X	X			
IIC: Voor de landen met Internationale Importcertificaten kan in plaats van een eindgebruikerverklaring een IIC worden overgelegd. Dit kan met name nuttig zijn bij leveranties van componenten aan de verwerkende industrie in IIC-landen in het geval onduidelijkheid bestaat over de exacte klanten van die verwerkende industrie.	X						
Voor de goederen met postnummers 300 t/m 399 alsmede de goederen voorzien van een aanduiding [A], [C2] en [C3] is ook een gelegaliseerde verklaring van de bedrijfsactiviteiten van de ontvanger nodig. De verklaring moet worden gelegaliseerd door de autoriteiten of een door de autoriteiten gemachtigde instantie; In veel landen de KvK.			X				
Een uitvoervergunning uit het land van herkomst indien aanwezig.		X					

\* Het handboek bevat nadere uitleg over de documenten, wanneer welke documenten nodig zijn en waar ze te vinden zijn. Dit schema is een versimpelde weergave van die informatie. De CDIU heeft bovendien de bevoegdheid om aanvullende informatie te vragen.

## 8. Contact

Licensing office: Centrale Dienst voor In- en Uitvoer

Afdeling strategische goederen en sanctiebeleid

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NL – 9700 RD Groningen

Phone +31 (0)88 – 151 2122

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(Dutch)

[http://www.belastingdienst.nl/wps/wcm/connect/bldcontentnl/belastingdienst/douane\\_voor\\_bedrijven/veiligheid\\_gezondheid\\_economie\\_en\\_milieu\\_vgem/cdiu/](http://www.belastingdienst.nl/wps/wcm/connect/bldcontentnl/belastingdienst/douane_voor_bedrijven/veiligheid_gezondheid_economie_en_milieu_vgem/cdiu/)

Ministry of Foreign Affairs

Directoraat-Generaal voor Buitenlandse Economische Betrekkingen

P.O. Box 20061

NL - 2500 EB Den Haag

Phone +31 (0)70 – 348 5954

(Dutch, more detailed) <http://www.rijksoverheid.nl/exportcontrole>

(English) <http://www.government.nl/issues/export-controls-of-strategic-goods>

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