

Recent changes in the Netherlands export control legislation August 2005

Since the EU Dual Use Regulation (Council Regulation (EC) No. 1334/2000) is directly applicable in the Netherlands any changes in that Regulation in fact constitute changes in the Netherlands export control legislation. The most recent changes in the Regulation involved an update of its annexes. By way of Council Regulation (EC) No. 1504/2004 of July 19, 2004, Annex I of the Dual Use Regulation, the list of controlled dual use items, was amended in order to take account of list changes adopted by the Wassenaar Arrangement, the Australia Group and the Missile Technology Control Regime. At the same time Part 3 of Annex II, listing the countries for which the Community General Export Authorisation applies, was amended in order to delete the Czech Republic, Hungary and Poland from that list. The latter, of course due to the fact that these countries had become Member States of the EU.

The first of two other recent changes in the Netherlands export control legislation that can be considered as purely national changes was the introduction as of October 10, 2004, of a general notification requirement for transit and transshipment of military goods as defined by the annex to the Strategic Goods Import and Export Order. That annex is in fact a one on one translation of the Wassenaar Arrangement Munitions List. The general notification requirement completes a set of measures of which the first were introduced on April 27, 2001, to bring the means and methods of control of transit and transshipment of military goods more in line with those of regular export controls. These measures include a general licence requirement for military goods that undergo some economically relevant form of processing whilst on Netherlands territory or that remain on Netherlands soil for longer than 21 or 45 days, depending on the means of transport that is involved in the transit or transshipment. Excluded from this general licence requirement are shipments that are already under effective export controls of other EU Member States, NATO allies or Switzerland, Australia, New-Zealand or Japan or that are destined for these countries. Another of these measures is a legal mandate for the imposition of a ad hoc licence requirement for transit consignments not covered by the general licence requirement. In order to acquire a complete picture of the transit and transshipment of military goods over Netherlands territory but also to generate information useful for the decision whether or not to impose the ad hoc licence requirement these measures have now been supplemented with a general notification requirement for transit and transshipment of military goods. No shipments from

any particular countries of origin or destination have been exempted from that requirement.

The second purely national change in the Netherlands export control legislation also entails a notification requirement. In this case a legal obligation for the recipients of a letter communicating a catch all decision by the Netherlands export control authorities for a certain shipment of goods, to inform those authorities of any intention to transfer the goods involved to any destination not preceded by a formal export. Since the application of the catch all clause imposes a licence requirement only on the “export” of non-listed goods, the intended exporter served with a catch all decision can rightly claim he is still allowed to transfer the goods to other parties within the Netherlands or – since it wouldn’t involve a formal export – to other parties within the EU. The new notification requirement has been introduced as of April 9, 2005, because the Netherlands export control authorities want to be able to either serve a new but similar catch all to the other party in the Netherlands or inform the appropriate colleagues in another EU Member State of their particular concerns over the original export destination of the goods involved.

For general information on export controls in the Netherlands and a fast link to the relevant EU website:

www.exportcontrole.ez.nl