

The Netherlands arms export policy in 1999

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1. *Tables showing the value of licences for exports of military goods issued in 1999 by category of goods and the value of licences for exports of military goods issued in 1999 by country of final destination*
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1. *Introduction*

The present report on the Netherlands arms export policy in 1999 is the third annual report drawn up in accordance with the "Policy paper on greater transparency in the reporting procedure on exports of military goods" (Parliamentary Proceedings 22 054, No. 30). In Appendix 1 to the report, the Government informs Parliament of the value of licences for exports of goods issued in 1999 by category of military goods and by country of final destination. The Government points out that the licence value indicates the maximum export value, although as at the time of publication that value need not necessarily have been reached in the exports realised.

The value of the licences issued in 1999 amounted to NLG 807.3 million (1998: NLG 951.7 million). For reporting purposes it has been decided to state the figures for the first half and second half of 1999 separately as well. Appendix 2 lists the denial notifications made to the EU member states in accordance with the EU Code of Conduct.

The report further presents summaries of the principles and procedures of the Netherlands arms export policy, describes the Netherlands defence-related industry, developments within the EU, the UN Register on Conventional Arms and the Wassenaar Arrangement, and under "Other developments" it deals with a number of initiatives in the area of small arms.

2. *Instruments and procedures of the arms export policy*

Licences for the export of military goods are issued on the basis of the Import and Export Act. Companies or persons intending to export goods and technology appearing on the list of military goods pertaining to the

Annex to the Strategic Goods Import and Export Order, apply to the Central Import and Export Service (Centrale Dienst voor In- en Uitvoer, CDIU) for an export licence. The CDIU forms part of the Tax and Customs Department of the Ministry of Finance and, with regard to arms export policy aspects, receives its instructions from the Ministry of Economic Affairs.

Applications for the export of military goods to NATO member states and equated-status countries (the EU member states Austria, Finland, Ireland, and Sweden, together with Australia, Japan, New Zealand and Switzerland) are in principle dealt with exclusively by the Ministry of Economic Affairs. An exception to this rule is currently made for Greece and Turkey. Applications for exports to these two NATO member states as well as to all other countries are submitted to the Minister of Foreign Affairs for advice. The latter's advice plays an essential role in the decision-taking process on the issue of an export licence. If no objections are found to exist with regard to the intended export, the Ministry of Economic Affairs will issue an export licence.

In the case of applications for exports to developing countries appearing on Part 1 the OECD DAC list, the Minister of Foreign Affairs will first consult with the Minister for Development Co-operation, and then advise the Minister of Economic Affairs on the basis of that consultation.

In the case of exports of weapons systems being disposed of by the Netherlands armed forces, Parliament receives prior confidential notification from the State Secretary of Defence. If commercial interests and the interests of the country of final destination so permit, Parliament can also be informed of the intended transactions on a non-confidential basis. In addition, the regular licence procedure has to be completed for the export of surplus matériel as well.

In 1999 an amendment was made relating to the procedure which is followed in the denial of licence applications. In future firms will receive a ruling that includes the reasons underlying the denial and refers to the relevant ground for denial on the basis of the EU Code of Conduct. This approach increases policy transparency to industry.

3. *Principles of the arms export policy*

Applications for licences for the export of military equipment are assessed on a case-by-case basis against the eight criteria of the arms export policy with due consideration for the nature of the product, its country of final destination and end user. These eight criteria were agreed by the European Councils of Luxembourg (1991) and Lisbon (1992), and they read as follows:

1. *Respect for the international commitments of EU member states, in particular the sanctions decreed by the UN Security Council and those decreed by the Community, agreements on non-proliferation and other subjects, as well as other international obligations.*
2. *The respect of human rights in the country of final destination.*
3. *The international 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. *The 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. *The behaviour of the buyer country with regard to the international community, as regards in particular to its attitude to terrorism, the nature of its alliances and respect for international law.*
7. *The existence of a risk that the equipment will be diverted within the buyer country or re-exported under undesirable conditions.*
8. *The compatibility of the arms exports with the technical and economic capacity of the recipient country, taking into account the desirability that states should achieve their legitimate needs of security and defence with the least diversion for armaments of human and economic resources.*

In June 1998 the member states of the European Union adopted the EU Code of Conduct on Arms Exports, in which they agreed a common interpretation of the criteria of the arms export policy. The Code also incorporates a mechanism for information exchange, notification and consultation in cases where a country has an export licence under consideration for a destination for which a similar licence has previously been denied by another member state. The code of conduct acknowledges the authority of member states nationally to apply a more restrictive arms export policy than required by the code.

The coalition agreement of the present Government announced that the Cabinet seeks to introduce a new criterion for the arms export policy, preferably with the largest possible number of relevant EU partner states, namely the denial of export licences to countries not participating in the UN Register on Conventional Arms. In the letter to Parliament dated 4 December 1998 (Parliamentary Proceedings 22 054, No. 40), the Government wrote that the logical move was to seek support for this initiative first of all among the EU partner states.

In 1999 the Government requested the attention of the EU partner states for this question, both in the General Council and on a bilateral basis. None of the EU partners saw the merit of incorporating a reference to the UN Register as a separate new ("ninth") criterion. A number of EU partners were nevertheless in favour of the idea of including participation of the country of final destination in the Register as a factor for assessment against the sixth criterion of the arms export policy (see also the relevant progress report in Parliamentary Proceedings 22 054, No. 44, 1998-1999). Subsequently, on 22 February 2000 the Government informed Parliament that the new criterion had been introduced into the Netherlands policy in this manner (Parliamentary Proceedings 22 054, No. 47, 1999-2000).

4. *Information on the arms export policy*

In accordance with a pledge made by the Minister of Foreign Affairs in the course of a debate in December 1997 on the Foreign Affairs budget, the Government submitted, in February 1998, a policy paper on greater transparency in the reporting procedure on exports of military goods (Parliamentary Proceedings 22 054, No. 30). The present report is the third public report which has been issued since then. The 1999 annual report is based on the value of the licences issued by category of military goods and by country of final destination. In order to represent the trend with clarity, it has been decided to present both the consolidated figures for 1999 as a whole, and the figures for the first half and the second half of 1999 separately. In addition to these figures on the export licences granted, information is also included on licence denials reported to the EU partners in the context of the EU Code of Conduct (see Appendix 2).

In addition to this Government report on Netherlands exports of military goods in 1999, public information is also otherwise available on the arms export policy. For example, the Central Import and Export Service

publishes the "Strategic Goods Manual" (Handboek Strategische Goederen). This manual is intended for persons, companies and institutes with professional interests in procedures governing imports and exports of strategic goods. It provides users with information on the policy objectives and relevant legislative measures and procedures, besides containing a wealth of practical information. In this way the manual increases user awareness of this specific area of policy. The manual is regularly updated in the light of national and international developments in this area.

5. *The Netherlands defence-related industry in 1999*

With very few exceptions, the Netherlands defence-related industry consists above all of civil enterprises and research institutes with divisions specialising in military production. Although this sector is small in size, nevertheless it is characterised by high-tech production, ongoing innovation and highly skilled personnel. Within the bounds of a responsible foreign and security policy, the Government's policy is aimed at retaining this technologically valuable capability for the Netherlands. To this end, Netherlands companies are involved in national military tenders, either directly or indirectly through offset orders. Because the Netherlands market is clearly too small to maintain the available expertise, the Netherlands defence-related industry is also encouraged to take part in international joint ventures and co-operation in the field of defence equipment. This has led to the establishment of commercial relations with above all British, German, French and American enterprises, also involving joint commitments relating to systems maintenance and subsequent components delivery. This applies equally where the systems produced by a joint venture are supplied to third parties. In that light, the scope for Netherlands companies to enter into long-term international joint ventures and co-operation arrangements depends in part on the transparency and the consistency of the Netherlands arms export policy.

The importance of the export activities of this sector is recognised as an essential condition for the continuity of the existing technological base. Equally, it is recognised that in the interests of the international legal order and the safeguarding of peace and security, limits must be imposed on the export activities of the defence-related industry. Within those limits, however, in the Government's judgement the Netherlands industry should be able to meet other countries' legitimate needs for defence equipment.

Bearing in mind the above-mentioned conditions and circumstances, the Netherlands defence-related industry has pursued a policy of increasing specialisation. Those companies with the largest export share in their military production manufacture principally high-tech components and sub-systems. Although the maritime sector in particular still has the capability to undertake all the production stages from drawing-board to launching-slip, Netherlands exports of complete weapons systems in recent years can be virtually entirely accounted for by disposals of surplus Netherlands defence equipment.

Every year the Ministry of Economic Affairs holds a survey among Netherlands defence-related businesses. The information provided by the firms surveyed is disclosed on a voluntary basis and relates to figures such as production (civil/military), exports (as a share of total sales), manpower, etc. For some years the result of the survey has been to indicate that in the Netherlands some 150 companies are in some way engaged in military production. It should nevertheless be noted that for the purpose of these surveys military production is defined as production intended for domestic and foreign defence orders and not as production of goods which are classified as military goods in accordance with the Strategic Goods Import and Export Order.

For the period 1994 - 1998¹ the average total annual turnover of those companies was just over NLG 46 billion, of which NLG 3 billion was attributable to military production. In random order, the main sub-sectors are: maritime applications, electronics, aerospace technology, transport, infrastructure and information technology. The annualised average total exports by the companies concerned in the same period were just over NLG 12 billion, of which slightly more than NLG 1 billion (1992-1996: NLG 1.2 billion) was classified as military exports. The total number of employees working in the sector averaged 143,000, of which according to the survey on average 10,000 (1992-1996: 12,000) were assigned to military production.

6. *Transparency in armaments and the UN Register on Conventional Arms*

In 1991 the General Assembly of the United Nations passed Resolution 46/36 L concerning transparency in armaments, thus introducing the UN Register on Conventional Arms. The Register discloses particulars about the imports and exports of seven categories of conventional heavy weapons, with the objective of thereby increasing trust among nations.

The register contains information on the source country of military goods exports, the transit country if any, and the importing country, together with the size of the goods flows classified in the following categories: tanks, armoured combat vehicles, heavy artillery systems, combat aircraft, combat helicopters, warships, and missiles and missile launch systems. In addition, there is a separate section for remarks, in which countries can give a more detailed description of the arms and comment on the transfer. Furthermore, countries are urged to provide information on their own military stocks and on acquisitions resulting from their own manufacturing production.

¹ Not all the 1998 data have yet been processed. The average figures reported are therefore based on actual numbers for the period 1994-1997 and an extrapolation for 1998.

Each year since 1991 the General Assembly has passed a resolution on transparency in armaments, together with a call to supply particulars to the register. It has become the custom that the Netherlands takes the initiative in proposing this resolution. Traditionally, the resolution can count on the support of a large majority of the UN member states.

Each year the register can count on inputs from some 90 countries. The 1999 report (containing the figures for 1998) stated the figures for 81 countries. Of these, 31 countries provided information on their military stocks and on purchases from their own defence industry.

The EU member states ensure that transparency in armaments and participation in the UN Register on Conventional Arms receive constant attention. For example, after the reporting date has passed, the EU urges those countries that have not presented any information as yet to do so. Furthermore, the Secretary General of the United Nations is notified of the European Union's position regarding transparency in armaments. Lastly, the data are also exchanged within the OSCE.

7. *The Wassenaar Arrangement*

On the multilateral level, developments surrounding arms exports are discussed in the framework of the "Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies" (WA). Altogether 33 countries are party to this forum, which owes its name to the town where, under the presidency of the Netherlands, the negotiations were conducted on the founding of the arrangement. These countries together account for over 90% of total exports of military goods.

The goal of the WA, as stated in the Initial Elements², is to contribute towards regional and international security and stability. The WA pursues this goal by increasing mutual transparency surrounding exports to third parties of arms and of goods that can be used for arms production, and also by promoting a greater sense of responsibility in the case of national assessments of applications for licences for exports of military goods. The increase in transparency is intended to enable participant countries to identify at an early stage whether the arms build-up of certain countries exceeds their legitimate needs for defence equipment. If that is the case, this should result in participant countries becoming more cautious in their licence issuing policy towards such countries of final destination. The Wassenaar Arrangement also has a list of military goods, which forms the basis for the national export-monitoring activities of participant countries. In the Netherlands, this control list forms an integral part of the Strategic Goods Import and Export Order. Each revision of the WA list therefore automatically results in an amendment to the above-mentioned Import and Export Order.

In 1999 the first interim evaluation of the Wassenaar Arrangement took place. Although almost the entire set of regulations and procedures passed under the review in the course of that year, for many participants in the Arrangement this first assessment presented an outstanding opportunity to endeavour to make some adjustment to the relative imbalance between the two pillars of the WA. Right from the beginning, the information exchange in the field of arms and other military goods has been far smaller in scope than that in the field of dual use goods, and many regarded this as a shortcoming. The Netherlands also regarded the adjustment of that imbalance – in common with a further enlargement in transparency and increasing focus on the special issue of small arms – as an important objective of the assessment.

² Both the Initial Elements and the Elements for Objective Analyses can be found on the website of the Wassenaar Arrangement, www.wassenaar.org.

The most distinctive result of the assessment was an actual broadening and deepening of the categories of exported weapons systems on which the WA participants provide one another with information. While the number of categories remained unchanged, category 2 "Armoured Combat Vehicles" and the renamed categories 4 "Military Aircraft / Unmanned Aerial Vehicles" and 5 "Military and Attack Helicopters" now also include types of weapons systems which hitherto have remained unreported. The addition of a new category of small calibre weapons - as advocated by the Netherlands and a large number of other participants - failed as yet to gain sufficient support.

In addition to new arrangements concerning broadening and deepening of the information to be mutually exchanged, agreement was also reached on the way in which such information can be jointly processed. It was decided that, over and above the customary exchange of data and documents attributable to individual participants, work is also to go ahead on a jointly compiled reference document. This "Global View document" will be updated annually and, as and when necessary, revised in accordance with regional analyses performed by individual participants or groups of participants. Those regional analyses will be modelled on the previously adopted document entitled "Elements for Objective Analysis and Advice Concerning Potentially Destabilising Accumulations of Conventional Weapons"². The Global View document will provide the export control authorities of each of the participating countries with a broad and coherent picture of the regional military and security policy developments world-wide.

8. *EU co-operation*

EU co-operation on arms exports takes place within what is known as the COARM working group on arms export policy. In this group, within the framework of the Common Foreign and Security Policy (CFSP) the EU

member states exchange details on arms exports. In addition, certainly since the realisation of the EU Code of Conduct mentioned in Section 4, there is an increasing degree of policy co-ordination among the member states with regard to the member states' arms export policy. An example of this is the debate – which was opened at the end of 1988 on Netherlands initiative – on the formulation of a political declaration on arms exports to Sub-Saharan Africa, in particular the Great Lakes Region. With this declaration, which was adopted on 18 June 1999, the Netherlands sought to direct political attention in the CFSP context to the problem of arms flows to this region.

The co-ordination of policy within COARM, however, has not always led to immediately identifiable results. For instance, 1999 saw continued failure between the member states to reach agreement on the arms export policy to be applied towards India and Pakistan in connection with the nuclear tests of May 1998. The Netherlands maintained its policy of ceasing all processing of arms export licence applications following these tests. A majority of member states, however, preferred to treat the applications to both countries on the basis of a strict interpretation of the Code of Conduct. This led to neither country receiving an unequivocal signal from the European Union.

An important activity of COARM in 1999 related to the discussions on the common list of military goods to which the EU Code of Conduct applies. According to the implementing provisions of the Code, member states shall make every effort to ensure early adoption of a common list. As there proved to be substantial differences in terms of both content and system between the member states' national lists, these discussions took up considerable time and could not be completed in 1999. Great progress was made, nevertheless. De facto agreement was reached on the most important part of the list, i.e. the military section. The member states succeeded in achieving consensus on the comprehensive list of military

goods as applied within the Wassenaar Arrangement (N.B. this list also forms the basis for the military list attached to the Strategic Goods Import and Export Order). The discussions have subsequently focused on non-military goods that can potentially be used in human rights violations.

In 1999, the Netherlands was consulted by EU partners on four occasions in the framework of the EU Code of Conduct with regard to denial notifications issued by the Netherlands. In two cases the consulting country concluded that the goods to be exported were different from those for which the Netherlands had issued a denial. In one case the consulting country decided to permit the export of the goods despite the fact that the same goods were involved as those for which the Netherlands had issued a denial. Lastly, in one case the definitive decision on the consultation procedure had not yet been taken by 31 December 1999.

In 1999 COARM prepared the first public EU Annual Report on arms exports. This annual report is a compilation of the national sub-reports by the member states. The document was published by the Council in October 1999. It was the first time that the EU member states in this way disclosed highlights of European arms exports .

Besides the COARM group, the EU also has the ad-hoc POLARM working group, which concentrates on the policy relating to the restructuring of the European defence industry. Since 1997, this group has been addressing the European Commission's report "Implementing European Union strategy on defence-related industries" (COM(97)583 def.). In this report, the Commission proposes a set of measures designed to assure an efficient defence industry structure. It regards this as including measures in the area of arms export policy. In 1999 the discussions failed to result in consensus on the measures to be taken.

At year-end 1999, EU arms embargoes were in operation vis-à-vis the following countries: Afghanistan, Bosnia-Herzegovina, Burma, China, the Democratic Republic of Congo, Ethiopia and Eritrea, Federal Republic of Yugoslavia (Serbia and Montenegro), Indonesia, Iraq, Croatia, Libya, Sierra Leone and Sudan.

In addition, the following embargoes of the United Nations Security Council were in operation for: Afghanistan, Angola, Ethiopia and Eritrea, Federal Republic of Yugoslavia, Iraq, Liberia, Libya, Rwanda, Sierra Leone and Somalia. Finally, the OSCE operated an embargo vis-à-vis Nagorno-Karabakh.

It should be noted that embargoes may vary in their scope. Since 1991 the EU has applied an embargo list that differentiates between lethal arms and munitions, arms platforms, non-arms platforms and other equipment. Embargoes declared before 1991 are of a *sui generis* nature.

9. Other developments

As in previous years, in 1999 the Netherlands pursued an active regional and global policy aimed at combating the proliferation of small arms.

Within the EU, this led among other things to the adoption of a political declaration on the combating of arms flows to the Great Lakes Region. Furthermore, efforts by the Netherlands helped to elaborate the European Union's co-operation with the Southern African Development Community (SADC) by setting up a small arms working group. Within the NAVO-EAPC framework, the Netherlands and Bulgaria co-organised a seminar on sound management of small arms stocks. In its capacity as monthly President of the UN Security Council, in September 1999 the Netherlands

organised a Ministerial debate on the issue of small arms. The meeting resulted in a presidential declaration. In his national contribution during the debate, Minister van Aartsen also gave the starting shot for the setting-up of a "Forum of Friends", an open-ended partnership of like-minded countries with the goal of providing support for the process of preparing the UN Conference on Small Arms to be held in 2001.

The contacts with the international NGO community were also further consolidated. In May 1999, as a fringe activity to the large-scale Hague Appeal for Peace Conference in The Hague, the International Action Network on Small Arms (IANSA) was set up.