

## International Trade Alert

March 16, 2018

### Key Points

- European Commission publishes survey on concept of “Specially Designed for Military Use,” and issues request for input for possible EU commercial policy measures targeting the United States
- Netherlands introduces guidance note on Cloud exports, and General Export License NL010 for encryption items
- EU launches consultation on establishment of customs valuation ruling database



### EU Trade Update

#### European Commission Publishes Survey on Concept of “Specially Designed for Military Use”

The European Commission (the “Commission”) has published draft guidance on the concept of “specially designed for military use,” an expression widely used in the EU Common Military List and the Intra-EU Defense Directive. It has also published a survey requesting input from the European defense industry on this draft guidance; see [link here](#). This guidance—once finalized—is aimed at helping achieve a common interpretation of this concept throughout the EU, which concept is currently subject to diverging interpretations between EU Member States. It is based on a two-pronged approach (i.e., it defines positive guidelines (catch), as well as negative guidelines (release)).

Items “specially designed for military use,” as applied to systems, platforms, equipment, components, accessories, materials, software and technology within the respective EU Member State’s national controls, taking into account characteristics, capabilities or functions that, as a result of development, uniquely distinguish them for the purposes described in the controls, are caught by the controls. If these items, however, meet one of the following conditions, they will not be considered “specially designed for military use”:

- They have been assessed by the respective competent national authority in writing not to be controlled on the respective national control list.
- They are of a minor mechanical, electrical or optical nature, they do not inherit unique production technology. and they have all of the following:
  - They are single-purpose.

- They have not been explicitly assessed by the respective competent national authority to be specially designed for military use.
- They are selected from a production line of commodities not specified in the respective national lists as derived from the EU Common Military List and the Intra-EU Defense Directive that happen to meet military specifications.

### **Netherlands Introduces Guidance Note on Cloud Exports**

This guidance note clarifies that an export occurs when controlled technology uploaded to a Cloud is made available to people physically located outside of the Netherlands, even if those people are Dutch nationals. Similarly, the note confirms that an export occurs when the controlled technology is uploaded to a Cloud accessible to people located outside of the Netherlands, even if no such access has yet occurred. Where no such access has been provided, the export occurs at the time this access is granted.

Note that, according to this guidance, every person or entity that has access to the controlled technology will formally be considered a consignee thereof and must therefore be mentioned on the Dutch export license. This would include system administrators and Cloud providers, assuming that they have access to the controlled technology.

### **Commission Requesting Input for Possible EU Commercial Policy Measures Targeting the United States**

The Commission is requesting input from EU stakeholders affected by the announced U.S. tariff increase on imports of certain steel and aluminium products to determine the impact of the U.S. measures, as well as the need and parameters of possible EU commercial policy measures to be adopted in response thereto; see [link here](#).

In accordance with Article 5 of Regulation 654/2014, the commercial policy measures that the EU can adopt include (i) the suspension of tariff concessions and the imposition of new or increased customs duties; (ii) the introduction or increase of quantitative restrictions on imports or exports of goods, whether made effective through quotas, import or export licenses, or other measures; and (iii) the suspension of concessions regarding goods, services or suppliers in the area of public procurement.

### **EU Launches Consultation on Establishment of Customs Valuation Ruling Database**

The EU has published an exploratory public consultation on the establishment in the EU of decisions relating to binding information in the field of customs valuation; see [link here](#). The consultation is aimed at determining whether—similar to the European Binding Tariff Information (EBTI) database for binding information in the field of tariff classification—there is interest for the Commission to create a similar database for decisions on Binding Value Information (BVI). Such a database may be a useful tool for economic operators to understand the valuation treatment that they can expect at a national, EU Member State level under the EU customs valuation legislation. If such an interest exists, the Commission would like to understand the proposed scope of the BVI, as well as the elements (components) of the products' customs value that could be covered by such decisions.

## **Netherlands Introduces General Export License NL010 for Encryption Items**

The Netherlands has introduced a national General Export License NL010 covering the export of encryption items with ECCNs 5A002.a, 5D002.a, 5D002.c and 5E002 to all countries worldwide, with the exception of:

- UGEA EU001 countries (i.e., Australia, Canada, Japan, Liechtenstein, New Zealand, Norway, Switzerland and the United States)
- countries subject to an EU, Organization for Security and Co-operation in Europe (OSCE) or United Nations arms embargo
- Afghanistan, Armenia, Azerbaijan, Bahrain, Bangladesh, Burundi, Cuba, Djibouti, Egypt, Equatorial Guinea, Ethiopia, Gambia, Guinea (Conakry), Guinea Bissau, India, Kazakhstan, Kuwait, Laos, Oman, Pakistan, Qatar, Rwanda, Saudi Arabia, Swaziland, Syria, Tadjikistan, Thailand, Turkey, Turkmenistan, Ukraine, United Arab Emirates, Uzbekistan, Venezuela, Vietnam and Yemen.

### **Note that General Export License NL010 cannot be used:**

- if the exporter is aware, or has been informed by the competent authorities of the EU Member State in which he or she is established, that the products, equipment, technology, software or services in question are, or may be, intended, in their entirety, or in part, for:
- 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 the development, production, maintenance or storage of missiles capable of delivering such weapons
- military end use as defined in Article 4 paragraph 2 of the EU Dual Use Regulation 428/2009
- purposes related to violations of human rights, the democratic principles or the freedom of speech as defined in the Charter of Fundamental Rights of the EU, where use is made of equipment, technology and/or software for the disruption, interception, or monitoring of telecommunication and/or computer networks (for example, with the help of monitoring centers and lawful interception gateways).
- if the final destination of the products in question is a customs free zone or free warehouse. If the products are temporarily stored in a customs free zone or free warehouse, then the final destination of the products in question must be a destination covered by this license.

## Contact Information

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