



A Military or a Dual-use good

Exemptions from the requirement for an export licence or import authorization:

One same battle but not on equal terms!

For once, the regulation on military and related goods serves as an example to follow. Indeed, the military field provides an exemption mechanism to import authorization or export licence obligation in the context of special customs procedure.

With regards to the dual-use goods (both civil and military purposes), no such exemption exists for export licences, although it is eagerly awaited by operators, especially those concerned by both regulations. So why not granting dual-use goods exporters the benefit of such exemptions?

Two distinct regulations but a same purpose

There are major differences in the legal treatment of physical flows¹ of military goods and dual-use goods.

Thus, the control of military and related goods is subject to the national regulation of each Member State, whereas the control of dual-use goods is governed by an EU regulation that has been amended in 2021².

The regulatory environment for military goods is based on the principle of prohibition³ unless when an authorization or a general exemption is granted. Therefore, some goods⁴ are subject to import authorization of military goods and those⁵ covered by an Order of 27 June 2012 are subject to an export licence.

Conversely, **dual-use goods** are not controlled at the import and, as a principle, their export is not prohibited but supervised⁶. Therefore, all dual-use goods listed in the Annex I of the EU Regulation 2021/821 are subject to licencing in case of exportation.

Given the sensitive and strategic nature of these products, the two applicable regulations have the same objective, namely to guarantee non-proliferation, peace, security and regional stability, respect for human rights and international humanitarian law.

¹ Given the Customs scope of this note, only flows of goods are considered here. Intangibles and other goods are therefore not considered, as they fall outside the scope of this note.

² Regulation (EU) 2021/821 of the European parliament and of the council of 20 May 2021 setting up a Union regime for the control of exports, brokering, technical assistance, transit and transfer of dual use goods.

³ Articles L.2335-1 and R.2335-1 of French Defence Code for import and L.2335-2 of the same Code for export.

⁴ Military goods, weapons and ammunition in categories A, B, C, 1° a), b) and c) of category D as referred to in article L.23331-1 of the French Defence Code and detailed in article R.311-2 of the French internal Security Code

⁵ Including military goods, related goods, and defence-related products

⁶ Article 3 of Regulation (EU) 2021/821 of the European parliament and of the council of 20 May 2021 setting up a Union regime for the control of exports, brokering, technical assistance, transit and transfer of dual use goods.

In addition, it should be noted that the customs administration is competent to control the physical flows of these goods.

Moreover, the two French electronic procedures, 'SIGALE' for military goods and 'EGIDE' for dual-use goods, are now linked to the customs system 'DELTA' as part of the deployment of the National Single Window "GUN". Indeed, since January 16, 2023, export licences of military goods ("LMEG") required during customs clearance may be submitted to the customs authorities in a dematerialized form.

The specific exemption for military goods

Regarding military and related goods, there is an exemption to the import or export licence requirement.

It applies only in the context of some special customs procedures. A customs special procedure allows non-Community goods⁷ to be imported into the European Union under suspension of Customs duties, VAT, and trade policy rules, in order to transport, store, use or transform them, before re-exporting outside the EU or releasing them for free circulation on the European market. The rules related to the customs reliefs are governed by the Union Customs Code⁸.

Those special customs procedures involve customs control as they are subject upstream to a prior administrative authorization. Therefore, beyond the authorization itself, they imply a financial guarantee and a significant traceability for the operator, under the control of the customs administration.

Several special customs procedures are concerned by the « *military goods* » exemption⁹ :

- ***Temporary admission*** for testing, experiment, expertise, exhibition, demonstration, or presentation: "*under the temporary admission procedure, unaltered non-EU goods intended for re-export can be temporarily imported, under suspension of customs duties and taxes suspension*"¹⁰. The end-use relief applies in the case of particular uses of the goods provided for by the regulations. This is the case for the above-mentioned uses to which the exemption is limited.

- ***Inward processing relief for repair*** which consists of importing non-EU goods for repair, processing or transformation, before re-exporting or releasing them for free circulation under suspension of duties and taxes.
The import exemption (AIMG) or export exemption (LEMG) is limited to repair. Then, processing or transformation of equipments are not covered.
This exemption is one of the reasons why this customs relief is widely used in the defence sector.

- ***Returned Goods Relief***: it consists of re-importing goods within 3 years of their initial export, provided that they are re-imported by the same exporter and in the same condition – i.e., unaltered.

⁷ Which means from countries outside the European Union and not placed under Customs relief.

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⁹ Article 1 I. c) of the Order of 2 June 2014 on exemptions from the requirement to obtain a license for export from the territory of the European Union of military goods, arms and munitions and related goods or a license for the intra-Community transfer of defence-related products and R.2335-4 1° of the Defence Code

¹⁰<https://www.douane.gouv.fr/fiche/regime-particulier-ladmission-temporaire#:~:text=Le%20r%C3%A9gime%20de%20l'admission,aux%20mesures%20de%20politiques%20commerciales> : consulted February the 7, 2023 at 17h20.

- **Outward processing relief for repair:** it allows Community goods to be temporarily exported for the purpose of processing, assembling, repairing, or transforming in a third country, and then re-imported them subject only to taxation on the added value related to the service provided in the third country. The exemption only applies for a repair.

For **inward processing** and **temporary admission reliefs**, it should be added that the exemption from the export licence is subject to the condition that goods "remain the property of an entity established abroad and is re-exported to the original owner."¹¹

As implied by the above-mentioned special customs procedure, this exemption is limited to goods remaining in the same condition or restored to their initial condition. It is therefore essential to keep in mind that there is no possibility of changing their technical characteristics and performance.

The regulations on military and related goods therefore provide that, in the context of special customs procedure under control of the customs administration, goods may be imported or exported into/from France without any import authorization (AIMG) or export licence (LEMG).

The control of the administration and the nature of the operations undergone (lack of transformation) make it possible to justify this exemption which intervenes only for the benefit of the French industrial and technological defence base (a non-Community measure).

France is an exception as it is one of the few EU Member States to have introduced such legal provisions. Even if this regulation is to evolve in the coming weeks, there is no doubt that the very principle of the exemption applicable to military goods will be maintained. Indeed, it constitutes a major competitive asset for the sector, by avoiding the administrative burden that can constitute obtaining a public order document, and the related 'compliance', while guaranteeing the administration the security issues concerned, since the product remains under the control, of the administration, the special customs procedure constituting a major guarantee of traceability.

Nevertheless, no extension to the bounded warehousing customs relief seems to be envisaged. Even if some operators could hope so, in particular in order to avoid abusive use of inward processing, this is justified by the fact that this special procedure does not impose a period of storage / clearance, making control by the customs administration more complex and the risks of 'loss' of materials / lack of traceability more important regardless of the need to justify an economic need for this regime

For an extension of these provisions to dual-use goods

There is indeed a general authorization EU003 for exports after repair/replacement. However, beyond the fact that this is an authorization, it excludes certain products and countries of destination so that it cannot be compared to the aforementioned mechanisms.

However, there is no equivalent to the 'military goods' exemption for dual-use goods. This is even more surprising since, unlike the regulation on military goods, which is national, the one governing dual-use goods is EU-wide, in the same way as customs regulations.

At the equivalent standard, one might have expected clear references to exemptions in connection with the Union Customs Code. This is not the case even though the exemptions provided for in terms of defence target materials even more sensitive than dual-use goods - whose physical flows are based on a principle of prohibition.

¹¹ Article 1 of the Order of 2 June 2014 on exemptions from the requirement to obtain a license for export from the territory of the European Union of military goods, arms and munitions and related goods or a license for the intra-Community transfer of defence-related products

The national GUN/EGIDE/SIGALE links mentioned earlier are procedures that are reminiscent of the role of the customs administration in the control of sensitive and/or strategic products, which is constantly increasing. So, we might as well do it in a regulatory environment that is as harmonized as possible, in any case, as regards exemptions for special customs procedures, in the interest of European economic operators.

In any case, there is no legal reasons for the absence of exemptions for dual-use goods. In practice, those exemptions would not have the effect of weakening the controls of the administration which, on the contrary, would increase its visibility on the flows of those products.

At the time when international competition is stronger than ever, in a disrupted economic and geopolitical environment, extending the exemptions provided for in French law at the Community level would facilitate the physical flows of dual-use goods, while guaranteeing traceability, security, non-proliferation, and other issues.

The competitiveness of our industry internationally is at stake, in the context of enhanced traceability of customs operations and increasing consideration of the proper management of flows by operators (cf. importance and growing place of the Authorised Economic Operator status).

So, when will the exemptions for special customs procedure linked to exports of dual-use goods be provided? If dual-use goods regulation allows Member States to introduce national general export authorization, shouldn't the answer come from the European Commission?

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