DECISION
OF THE COUNCIL OF STATE ON THE GENERAL
GUIDELINES FOR THE EXPORT AND TRANSIT OF DEFENCE MATERIEL
(474/1995)

Promulgated in Helsinki on 24 March 1995

On the recommendation of the Ministry for Foreign Affairs, the Council of State has decided, pursuant to Section 3, Subsection 2 of the Act on the Export and Transit of Defence Materiel as amended on 17 February 1995 (197/95), to adopt the following:

Section 1

The following general guidelines shall be adhered to in the export and transit of defence materiel:

1. Object and Purpose of the Guidelines

1.1. These Guidelines items subject to the Act on the Export and Transit of Defence Materiel (242/90, 197/95), as well as to the Decree (409/95) and the Decision of the Ministry of Defence (470/95) including the knowhow, licences to manufacture, machine tools and equipment to manufacture and computer software referred to in Section 1 of the Act.

1.2. When applicable, the Guidelines may also concern the firearms and ammunition of civil character referred to in the Act and Decree on Firearms and Ammunition.

1.3. The Ministry of Trade and Industry has issued separate regulations containing guidelines and rules for the export and transit of products which can contribute to the development and production of weapons of mass destruction (dual-use products).

1.4. The purpose of the Guidelines is to assist in the implementation of the Section 3 of the Act, according to which an authorization shall not be granted if it jeopardizes Finland's security or if it is in contradiction with Finland's foreign policy.

1.5. At the same time, these Guidelines assist in the implementation of the international agreements and obligations which commit Finland in the export of defence equipment.

1.6. The Annexes of these Guidelines shall be approved by a Decision of the Ministry for Foreign Affairs which is responsible for updating the Annexes as necessary. The Annexes and amendments thereto shall be published in the compilation of Decisions of the Ministry for Foreign Affairs.

2. International Agreements and Obligations

2.1. In authorizing transfers the following shall be adhered to:

2.1.1. the relevant international agreements (as listed in the Annex to this paragraph);

[the following treaties which also concern exports of defence materiel have been listed in Annex:
- the Biological and Toxin Weapons Convention
- the Convention on Certain Conventional Weapons

- the Chemical Weapons Convention
- the Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-traps and Other Devices]

2.1.2. the resolutions on sanctions by the United Nations Security Council adopted under the Chapter VII of the Charter. The sanctions, as well as recommendations, in force are listed in Annex to this paragraph. As a rule, UN Decisions on sanctions include an embargo on export of arms;

[an up-to-date list of the countries concerned is in Annex]

2.1.3. arms embargoes decided by the European Union as listed in Annex to this paragraph;

[an up-to-date list of the countries being embargoed by the EU, in addition to the UN decisions, is in Annex]

2.1.4. the relevant restrictions, when multilaterally binding, decided by the OSCE or by other relevant international security organizations or by multilateral export control arrangements.

2.2. In authorizing transfers, the following internationally agreed arms export principles and criteria shall also be taken into account:

2.2.1. the EU common criteria for arms exports which are in Annex to this paragraph;

[The EU Code of Conduct on Arms Exports adopted by the Council of the European Union on 8 June 1998]

2.2.2. the OSCE Principles Governing Conventional Arms Transfers which are in Annex to this paragraph;

[the Principles as approved by the Forum for Security Cooperation on 25 November 1993 are in Annex]

2.2.3. corresponding principles if multilaterally approved in other inter-Governmental negotiating fora;

2.2.4. any guidelines, present or future, approved by multilateral export control arrangements of which Finland is a member and which concern export of defence equipment.

3. Assessment of and decision on authorization

3.1. Classification of defence equipment

3.1.1. In order to facilitate assessment of licence applications the defence materiel has been subsumed (Decree (108/1997), under four categories based on their characteristics, intended of use and military significance.

3.1.2. The first category comprises lethal materiel intended for actual use in the battlefield, the second comprises weapon platforms, the third mainly comprises non-weapon platforms, and the fourth category comprises ancillary equipment.

3.1.3. A separate category consists of the items referred to in Section 1, Subsection 2, of the Act and, when applicable, exports of firearms and ammunition of civil character or for civil use. Export of components is dealt under Chapter 5 below.

3.2. General assessment

3.2.1. In assessing licence applications in general terms the following factors will also be taken into account:

- foreign and security policy aspects, including the possible grounds for denial listed under Chapters 2.1. or 2.2.;
- analysis of the situation prevailing in the recipient country, especially with regard to human rights, including attitudes of other States vis-à-vis the recipient country;
- characteristics, intended use and military significance of the item to be exported;
- significance of the item and the export for the material preparedness of Finnish national defence and for the development of the domestic defence industry.

3.2.2. In ambiguous cases, restraint is preferable.

3.2.3. If the item to be exported, by virtue of its characteristics and significance, will not lead to, or will, in all likelihood not be used in, violations of human rights, in offensive armed action or other comparable, unacceptable purposes in or outside the recipient country, granting of a licence may be recommended if the overall assessment is otherwise favourable and if the formal licensing requirements have been met.

3.3. Specific cases for non-denial

3.3.1. No foreign and security policy reason to deny an export exists when the destination of the export is a country listed in Annex to this paragraph and if the prevailing conditions of that country do not give reason to a different conclusion.

> [According to Annex, this paragraph covers member States of the EU, of the EEA, Switzerland, non-European member States of the OECD (Australia, Japan, Canada, New Zealand and the United States) as well as Czech Republic, Hungary, Poland and Slovakia. All these States are or are about to be members in various multilateral export control arrangements which i.a. require that members have an effective national export control system in place and pursue responsible exports policies.
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> The above paragraph is a statement of principle only. The information presented in the application documents will, of course, be duly assessed in each case concerning these countries.]

3.3.2. No reason to deny exists in cases when the export relates to the implementation of an agreement (MOU) in the area of defence materiel cooperation with the recipient country.

3.3.3. No reason to deny exists if the item to be exported are intended for use in a peace-keeping operation or in crisis management mission implemented or authorized by the UN or the OSCE.

4. Treatment of licence applications

4.1. By virtue of Section 4, Subsection 2, of the Act, the Ministry for Foreign Affairs is responsible for advising on any foreign and security policy aspects in relation to licence applications or prior enquiries.

4.2. Matters concerning the definition of defence materiel, prior enquiries and licence applications are dealt with in an inter-agency group established and chaired by the Ministry of Defence with the participation of other authorities concerned. The inter-agency group functions in collaboration with the Advisory Board on Export Controls established by the Ministry of Trade and Industry.

4.3. The purpose of foreign and security policy advice, as a response to a prior enquiry, is to advice the prospective exporter on the acceptability of the intended export before the exporter commits itself any further. Any prior advice given has to be taken into account later when the licence application is dealt with alongside any other factors constituting the overall assessment.

4.4. After it has been established that there are no foreign and security policy grounds to deny the export, the following shall be ascertained prior to licensing and on the basis of the assurances provided to the Ministry of Defence: the end-user, the end-use, and the arrival and non-diversion of the export (through a non-re-export assurance and, afterwards, through an import verification).

5. Export of components

5.1. Pursuant to Section 4, Subsection 3 of the Act, the procedures concerning the assurances on end-use will be adjusted to match the degree of Finnish share and identity in the assembled product. At one extreme, there is an independent product manufactured and assembled wholly in Finland and, at the other extreme, a separate, non-independent subsystem or individual component used in the assembly of the final product in the recipient country.

5.2. A possible re-export of such a subsystem or component from the country where the a Certificate on Use in Own Production has been obtained shall be governed by the export control regulations of that country.

5.3. Export of powder will be equated to the export of components in cases when powder is intended for use as raw material for producing cartridges or ammunition.

5.4. The export policies by the country purchasing components will be taken into account in deciding upon authorization.

5.5. In assessment pursuant to Chapter 3.2., the significance of the component in terms of the final product of which it will be a part will be taken into account.

6. Granting and revocation of a licence

6.1. When the licence relates to an export of defence materiel subject to the Act and the Guidelines, and no foreign and security policy grounds are invoked to deny the export and the formal requirements are met, there will be a presumption to grant a licence or to advise accordingly in case of a prior enquiry if no justification to opposing such a recommendation is presented.

6.2. There will be also a presumption to grant the licence if the export is identical to a previous export, or a sequel or otherwise related thereto. The same applies to the export of spare parts to a previously licensed export.

6.3. Revocation or withdrawal of a licence, when there is sufficient cause in accordance with Section 6 of the Act, may result, inter alia, from the following reasons:

- entry into force of legally binding sanctions, for example an arms embargo established by an international organization referred to in Chapter 2.1., affecting the recipient country and such products as are covered by the licence;
- fundamental change in the situation of the recipient country, leading to a possibility of the defence materiel being exported under the licence being used in violation of human rights, in offensive armed action or for other comparable, unacceptable purposes;
- when the exporter has been charged with an export crime or an export violation under Section 7 of the Act.

6.4. In considering revocation or withdrawal of a licence, existing supply commitments will be taken into account, including commitments to supply services and spare parts related to past or present materiel deliveries.

Section 2

This decision shall enter into force on 1 April 1995.

Minister for Foreign Affairs