



Overview of the basic principles of export controls

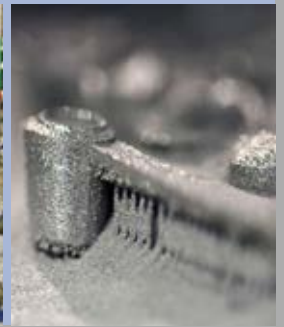
The documents in this folder provide an insight into the international export control regimes and the international agreements in which Switzerland participates and their legal implementation (Arms control and arms control policy; Export control regimes; Chemical Weapons Convention). They explain in particular how the licensing procedures work, which criteria are taken into account and which administrative authorities are involved. A specific chapter also describes how Switzerland participates in international negotiations on the export control regimes and the challenges this brings (Additive manufacturing). Finally, there is a chapter which outlines the duties of exporters of controlled goods (Compliance).

Compliance

- War Material Act
- War Material Ordinance
- Goods Control Act
- Goods Control Ordinance
- Ordinance on the Export and Brokerage of Goods for Internet and Mobile Communications Surveillance
- Safeguards Ordinance



- Chemicals Control Ordinance



Arms control and arms control policy

The Swiss War Material Act (WMA) has as its aim the fulfilment of Switzerland's international obligations and the respect of its foreign policy principles by means of controlling the manufacture and transfer of war material and related technology. Not only the export of weapons, parts of weapons and accessories is controlled, but that of munitions too.

Export control regimes

At international level, export controls are regulated by four international regimes which are not binding under international law: the Australia Group, Nuclear Suppliers Group, Missile Technology Control Regime and Wassenaar Arrangement. Gas masks and CNC machine tools are two examples of the many goods that are controlled.

Chemical Weapons Convention

The CWC is a binding disarmament and non-proliferation treaty under international law which aims to achieve a global ban on chemical weapons. It is the first convention to prohibit, and monitor the prohibition of, a whole category of weapons of mass destruction. The CWC is significant for Switzerland due to its sizeable chemical and pharmaceutical industry.

Additive manufacturing

Today, goods are not only produced by using subtractive methods, they are also produced additively. In industry jargon, this is known as additive manufacturing. Selective laser melting is an example of additive manufacturing where layers of metal powder are heated by a laser to combine them.



Legal framework in Switzerland

The Swiss War Material Act (WMA) has as its aim the fulfilment of Switzerland's international obligations and the respect of its foreign policy principles by means of controlling the manufacture and transfer of war material and related technology, while at the same time maintaining an industrial capacity adapted to the requirements of its national defence.

Initial and specific licences

The purpose of the Act is to be achieved with the aid of a dual licensing requirement. Firstly, the manufacture of, trade in and brokerage of war material to recipients abroad requires an *initial licence*. This is to ensure that the intended activity is not contrary to the national interest. Secondly, a *specific licence* is required for the import, export, transit or brokerage of or trade in war material to recipients abroad. Entering into agreements relating to the transfer of intellectual property, including know-how, or the granting of rights thereto is also subject to the licensing requirement.

There is relief for states listed in *Annex 2* of the Swiss War Material Ordinance (WMO). No specific licence is required for brokerage, trade and technology transfer to these states. However, a specific licence is always required for the export of war material. Like Switzerland, the countries listed are members of all four international export control regimes¹ for controlling strategically sensitive goods.

Federal popular initiative for a ban on financing war material manufacturers (“Kriegsgeschäfte-Initiative”)

On 14 June 2019, the Federal Council has approved the message on the popular “Initiative for a ban on financing war material manufacturers” and recommend it for rejection without a counter-proposal.

The initiative limits the capacity to act of the Swiss National Bank, foundations and pension funds too severely. The ban would also affect the Swiss financial sector and the machinery, electrical and metal industries, among others. In addition, the strict Swiss War Material Act already prohibits the direct and indirect financing of war material banned in Switzerland.

The ban on financing at international level that the authors of the initiative want Switzerland to strive for is not realistic – there is no desire for similar efforts within the United Nations or in other international bodies. The global supply of armaments and their global demand would remain unchanged even after the adoption of the initiative. An adoption of the initiative would therefore not lead to a more peaceful world or fewer causes of flight, as intended by the authors, and would therefore remain ineffective. Nevertheless, Switzerland would have to bear the economic consequences, particularly with regard to pension funds.

The popular initiative was submitted on 21 June 2018 with 104,612 valid signatures.

What is war material?

The following are deemed to be war material: weapons, weapons systems, munitions and military explosives;

equipment that has been specifically conceived or modified for use in combat or for the conduct of combat and which is not as a general rule used for civilian purposes.

Individual components and assembly packages, which may also be partially processed, are considered war material, provided it is discernible that such components cannot be used in the same form for civilian purposes. (WMA Art. 5 para. 1 and 2)

See Annex 1 WMO (Art. 2) List of war material.



Insignificant parts in accordance with the Swiss Weapons Act such as muzzle brakes, magazines, Picatinny rails, etc. and weapons accessories such as bipods, tactical lights with assembly, etc. are also war material in accordance with the War Material Act.

¹ Nuclear Suppliers Group – NSG; Missile Technology Control Regime – MTCR; Australia Group – AG; Wassenaar Arrangement – WA.



Political developments with regard to the licensing criteria for exports of war material

September 2017 to February 2018	15. June 2018	26. September 2018	31. October 2018	11. December 2018	11. March 2019
The Security Policy Committee of the Council of States (SPC-S) discusses the economic situation of the Swiss armaments industry, whose exports from Switzerland are regulated more restrictively than those of its foreign competitors. This is due to concerns that Switzerland's industrial capacity for armaments is decreasing, particularly as a result of transfers to neighbouring countries.	The Federal Council holds a discussion on the licensing criteria for the export of war material. In order to enable the maintenance of an industrial capacity for defence to benefit the Swiss Army, the Federal Council is intending to slightly relax the licensing criteria for war material exports. The aim is to create conditions similar to those for European competitors.	The National Council adopts motion 18.3394 of the Conservative Democratic Party Group, ² thus supporting the enshrinement of the licensing criteria for the export of war material at the legislative level, among other aspects. This would transfer responsibility for revisions from the Federal Council to the Parliament.	Due to the loss of political support in Parliament, the Federal Council dispenses with a relaxation of the licensing criteria. Swiss export controls therefore remain much more restrictive than those of neighbouring European countries.	The Alliance against Arms Exports to Civil War Countries and the Group for Switzerland without an Army (GSoA) start to collect signatures for the "Corrective Initiative". Its aim is to enshrine the pre-2014 licensing criteria for the export of war material in the Federal Constitution.	The Council of States rejects motion 18.3394 of the Conservative Democratic Party Group. The outcome of the "Corrective Initiative", which provides for the establishment of the licensing criteria at constitutional level, should not be pre-empted.

International framework

Switzerland's arms export control policy is based on the War Material Act, the international Arms Trade Treaty (ATT)³ and the Wassenaar Arrangement (WA) for controlling the export of conventional armaments and dual-use goods.

What is the Wassenaar Arrangement?

The Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies is an international non-binding agreement. It was established on 19 December 1995 in Wassenaar (Netherlands) and signed on 12 May 1996 in Vienna (Austria) by 33 founding members, including Switzerland. Lists of goods relevant to armaments are maintained. The states decide for themselves whether to accept or deny supply requests from third countries but inform the other participating states via the office in Vienna. This is intended to prevent denied requests from being accepted by other participating states.

What is the ATT?

The ATT, which was adopted by the UN General Assembly on 2 April 2013 and entered into force on 24 December 2014, regulates *international trade in conventional arms* in a way that is *binding under international law* for the first time, with the aim of contributing to *peace and international and regional security and stability* and reducing unnecessary suffering (see Art. 1 ATT). For Switzerland, the Treaty entered into force on 30 April 2015. It was actively involved in the negotiations and was able to assert itself as the *host state of the Permanent Secretariat*. The Secretariat is located in Geneva.

The ATT is in Switzerland's *foreign, security and economic policy* interest (see dispatch on the approval of the Arms Trade Treaty, BBl 2014 1541). It is therefore committed to ensuring that as many countries as possible join it. *Swiss export controls comply with the provisions of the Treaty*.



CPU

Electronic assembly packages and individual components such as the central processing units (CPUs) of computers conceived for battle and combat purposes are covered by war material legislation as a basic principle.



Munitions control

Munitions are used by both the police and the military for maintaining the rule of law and for defence. If they fall into the wrong hands, however, they can also aggravate armed conflicts and be misused for terrorist purposes. It is therefore important for the import and export of munitions to be controlled.

² Motion 18.3394 of the Conservative Democratic Party Group of 28 May 2018: "Broadening the democratic basis of arms exports".

³ In force in Switzerland since 30 April 2015.



Licencing criteria and procedure for exports of war material

The manufacture, trading, brokerage, export and transfer of intellectual property and the transit of war material for recipients abroad shall be authorised if this is not contrary to international law, international obligations and the principles of Swiss foreign policy. The granting of an export licence is also not permitted if enforcement measures under the Swiss Embargo Act have been ordered.

Assessment criteria

- The maintenance of peace, international security and regional stability
- The situation in the country of destination, in particular with regard to respect for human rights and the non-use of child soldiers
- The efforts made by Switzerland in the area of development cooperation, and in particular the possibility that the country of destination is listed as one of the least developed countries
- The conduct of the country of destination towards the international community, in particular with regard to compliance with international law
- The attitude of the countries which are participating with Switzerland in international export control regimes

- In the country of destination there is a high risk that the exported war material will be used against the civilian population
- In the country of destination there is a high risk that the exported war material will be passed on to an undesirable end recipient

Exceptions to the licensing exclusion

- Individual weapons and munitions for private and sports purposes
- If the country of destination violates human rights in a systematic and serious manner but there is only a low risk that the exported war material will be used for serious human rights violations

Exclusion criteria

- The country of destination is involved in an internal or international armed conflict
- The country of destination violates human rights in a systematic and serious manner

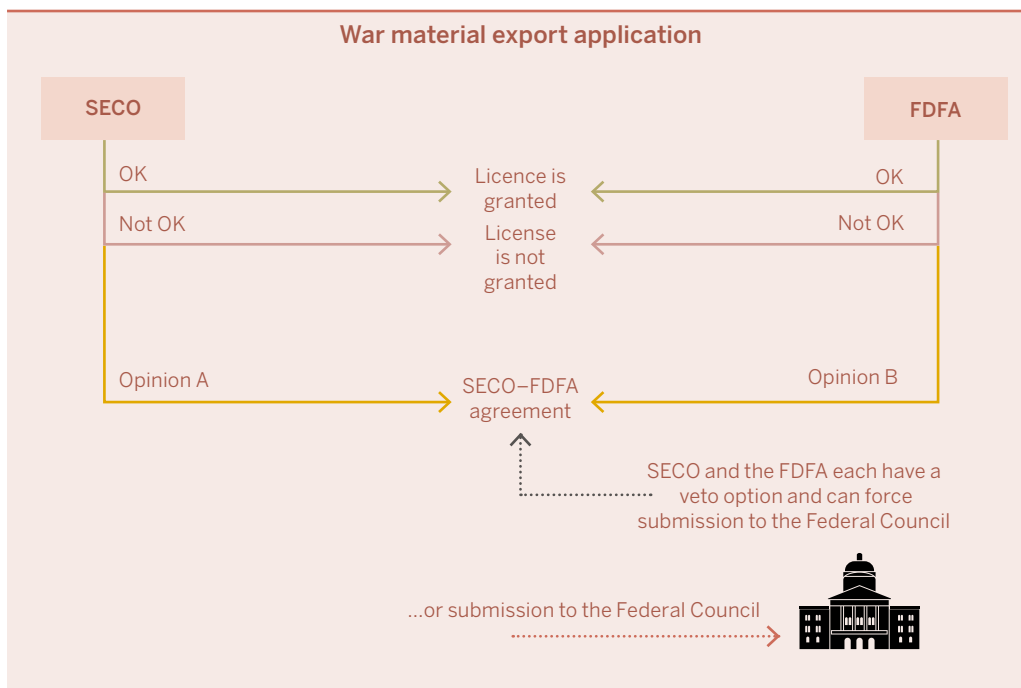


Air defence systems

Some of Switzerland's most exported goods by value are air defence systems. They are used to defend against attacks from the air. The picture shows an Oerlikon Skyshield® – Air Defence System (Rheinmetall Defence).

Who decides on the granting of export licences?

SECO shall decide on applications for the granting of an initial license after consulting the Federal Intelligence Service. SECO shall decide on applications for specific licenses such as exports in consultation with the Federal Department of Foreign Affairs (FDFA) and together with other departments depending on the content of the application. If the offices involved are unable to agree on the treatment of a request, the application shall be submitted to the *Federal Council* for a decision. The *Federal Council* also decides on applications of major significance to foreign policy or security policy.





Small arms and light weapons – the transparency barometer

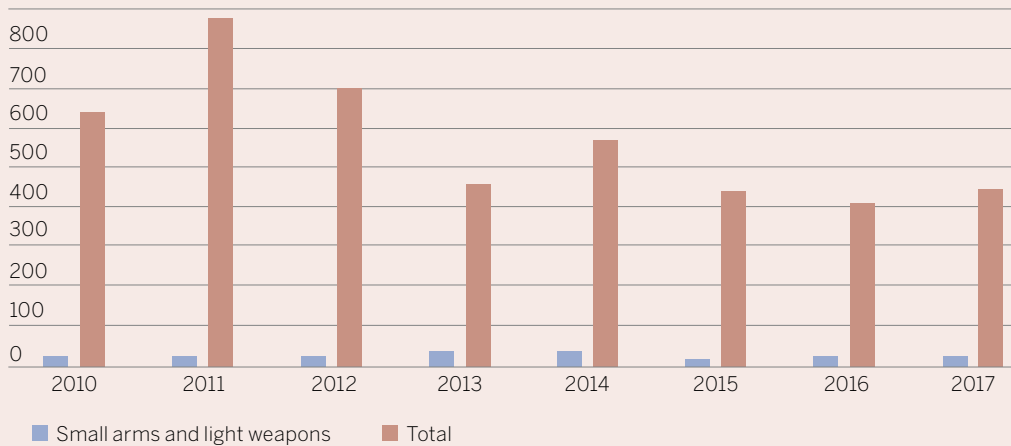
What are small arms and light weapons?

The abbreviation SALW (Small Arms and Light Weapons) will be used below. The term SALW is based on the definition commonly used by the United Nations.⁴ According to this definition, small arms are intended for use by individuals, whereas light weapons are used by more than one person working as a team.

Since 2010, exports of SALW have made up approximately 5% of total exports of war material in the same period.

Exports of small arms and light weapons in relation to total exports of war material

900 in CHF million



Small arms

- Revolvers and pistols
- Rifles
- Carbines
- Assault rifles
- Sub-machine guns
- Light machine guns



The sub-machine gun pictured (B&T MP9-N/TP9N) belongs to the small arms category.

Light weapons

- Portable anti-aircraft guns
- Portable anti-tank guns
- Portable launchers of anti-aircraft missiles and mortars of calibres of less than 100 mm
- Heavy machine guns



Mortars belong to the light weapons category.

Trade in small arms and light weapons – the transparency barometer

The Small Arms Survey is an independent research project about international trade in small arms and light weapons led by the *Institut de Hautes Etudes Internationales et du Développement in Geneva*. This research project has published a transparency barometer every year since 2003.⁵

Transparency barometer assessment criteria (this list is not exhaustive):

- Timeliness (in delivering reports)
- Access to reports and consistency: e.g. using the same or a similar template and definitions over a long period of time to enable reports to be compared.
- Clarity: e.g. differentiating between private and public recipients or between small arms and light weapons and conventional armaments.
- Comprehensiveness: e.g. listing individual sub-categories of SALW separately (revolvers, pistols, rifles, assault rifles, etc.)
- Separate information about deliveries, licences granted and licences refused.

Switzerland (SECO) publishes a report about exports of small arms and light weapons every year: “Die Exportkontrolle im Bereich Small Arms and Light Weapons (SALW) unter der Kriegsmaterialgesetzgebung” (“Export controls for small arms and light weapons (SALW) under war material legislation”).

Small Arms Trade Transparency Barometer names Switzerland the most transparent country

“It (Switzerland) is the only major exporter that releases a dedicated national report on small arms exports, which contains information on export authorizations, including denials, deliveries, transit, and brokering of small arms (SECO, 2016). Switzerland submitted its first ATT annual report in May 2016, despite not being obliged to do so until 31 May 2017 (ATT Sekretariat, 2018).”⁵

⁴ See also: Small Arms Survey 2018. Definitions of Small Arms and Light Weapons [www.smallarmssurvey.org/weapons-and-markets/definitions.html (04.12.2018)]

⁵ THE 2018 SMALL ARMS TRADE TRANSPARENCY BAROMETER, Paul Holtom and Irene Pavesi, August 2018



Illegal transfer

Non-re-export declarations (EUC)

Based on Art. 18 WMA and Art. 5a WMO, SECO requires a *non-re-export declaration* (End-use Certificate, EUC) to be submitted before a licence for the export of war material can be granted. This is a document in which the recipient of the war material confirms that the material will not be re-exported. It is intended to prevent war material supplied to a foreign country from being re-exported against Switzerland's will to countries for which Switzerland would not authorise deliveries.

Import licences

The export of war material to Non-governmental recipients is only authorised if the authority responsible in the country in question can present to SECO an *import licence* or confirmation that no licence is required. If individual parts and/or assembly packages are to be exported, confirmation of installation is also to be enclosed with the export application if the goods are worth CHF 100,000 or more.

Requirements

In addition to confirmation that the goods must not be passed on to third parties abroad, confirmation that the goods will not be used against the civilian population is required and/or consent to a post-shipment verification (PSV, see below) must be given depending on the type of war material and recipient country.

Controls in Switzerland and abroad

Post-shipment verifications (PSV)

On 1 November 2012, Art. 5a para. 3 WMO entered into force to enable SECO to stipulate that it has the right to verify compliance with the non-re-export declaration on site as part of a PSV. This provision was added to the WMO by the Federal Council following an incident in 2012 where hand grenades exported from Switzerland to the United Arab Emirates in 2003 and 2004 appeared in the possession of insurgents in Syria. PSVs have been performed systematically by SECO since 2013 with the aid of the FDFA and the Federal Department of Defence, Civil Protection and Sport (DDPS). As a confidence-building measure, PSVs are one of the best methods for preventing exported war material from being passed on to undesirable recipients. Each year, SECO verifies compliance with non-re-export declarations in five to ten recipient countries that are not listed in Annex 2 of the WMO. Switzerland was the first country in Europe to introduce this measure. Germany now also performs PSVs, while other European countries are currently considering introducing them.

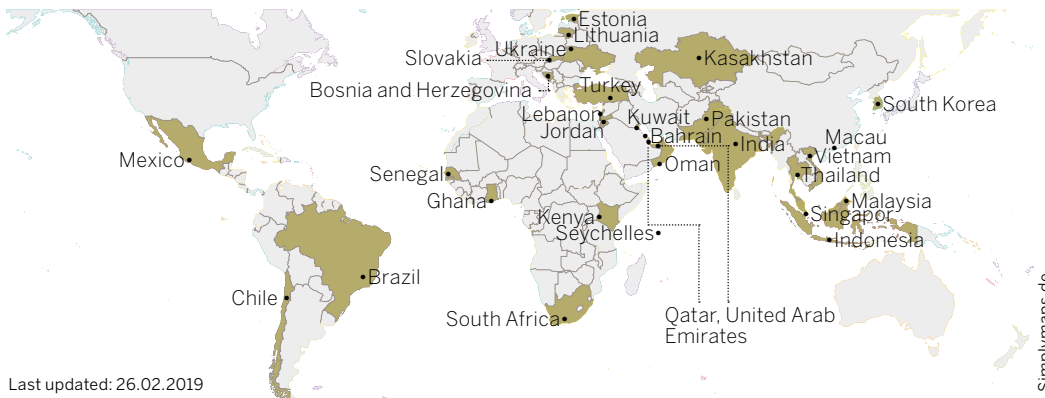
Data records that form the basis for controls

- Customs data on consignments delivered
- Data saved in the Elic electronic licensing system

Scope of controls

- The documents relating to a consignment are verified to check if they correspond to the details mentioned in the licence. A check is performed to look at whether all the key information was available when the licence was granted. The verification process also involves ensuring that all customs clearances are recorded in Elic.
- When temporary consignments are controlled, a check is performed to verify whether the goods exported or imported have actually been re-imported or re-exported. SECO will also carry out controls of invoices relating to the consignment to check if the declared value is correct and, in the case of a repair, that the costs have actually been notified to SECO.

Countries where Switzerland has performed PSVs



Controls of companies

SECO carries out controls of companies to verify maintenance of records in accordance with Art. 17 WMO.



Electronic licencing system (Elic)

On 1 October 2014, SECO introduced Elic, an electronic licencing system. The aim of this project was to simplify the licencing procedure under the War Material Act and the Goods Control Act for all parties involved and to improve the control options.

The screenshot shows the login interface for the Elic system. At the top, there is a navigation bar with the Swiss Confederation logo and the name of the State Secretariat of Economic Affairs SECO. Below this, there are language options: Deutsch, Français, Italiano, and English. The main content area is titled 'Elic > Login' and contains a login form with the following elements:

- Login ID:** A text input field.
- Password:** A password input field with a 'Log in' button below it.
- Login with SuisseID:** A button with the SuisseID logo and the text 'LOG-IN'. A link for 'Manual' is also present.
- Login with adminPKI certificate:** A button with the text 'AdminPKI LOG-IN'.

On the right side, there is a 'Contact' sidebar with the following information:

- State Secretariat of Economic Affairs SECO**
- Export controls
- Holzlikofenweg 36
- CH-3003 Bern
- Phone: +41 (0)58 464 84 86
- info.elic@seco.admin.ch

Links and references

War Material Act: www.admin.ch/opc/en/classified-compilation/19960753/index.html

War Material Ordinance including Annexes: www.admin.ch/opc/en/classified-compilation/19980112/index.html

Arms Trade Treaty, ATT: [thearmstradetreaty.org/WassenaarArrangement, WA](http://thearmstradetreaty.org/WassenaarArrangement_WA): www.wassenaar.org/

Small Arms Survey <http://www.smallarmssurvey.org/>

Transparency Barometer: www.smallarmssurvey.org/weapons-and-markets/tools/the-transparency-barometer.html

Die Exportkontrolle im Bereich Small Arms and Light Weapons (SALW) unter der Kriegsmaterialgesetzgebung [Export controls for small arms and light weapons (SALW) under war material legislation]: www.news.admin.ch/news/message/attachments/51443.pdf

Elic: www.seco.admin.ch/seco/en/home/Aussenwirtschaftspolitik_Wirtschaftliche_Zusammenarbeit_Wirtschaftsbeziehungen/exportkontrollen-und-sanktionen.html

Zahlen und Statistiken [Facts and figures]: www.seco.admin.ch/seco/de/home/Aussenwirtschaftspolitik_Wirtschaftliche_Zusammenarbeit_Wirtschaftsbeziehungen/exportkontrollen-und-sanktionen/ruistungskontrolle-und-ruistungskontrollpolitik-bwrp-zahlen-und-statistiken0.html

Contact address
armscontrol@seco.admin.ch



The four export control regimes and Switzerland's role

The control of exports in particular, but also of imports, transit and brokerage of nuclear goods, goods for civilian and military use (dual-use) and specific military goods implemented by the State Secretariat for Economic Affairs (SECO) together with other federal offices is based on Switzerland's participation in four international export control regimes.

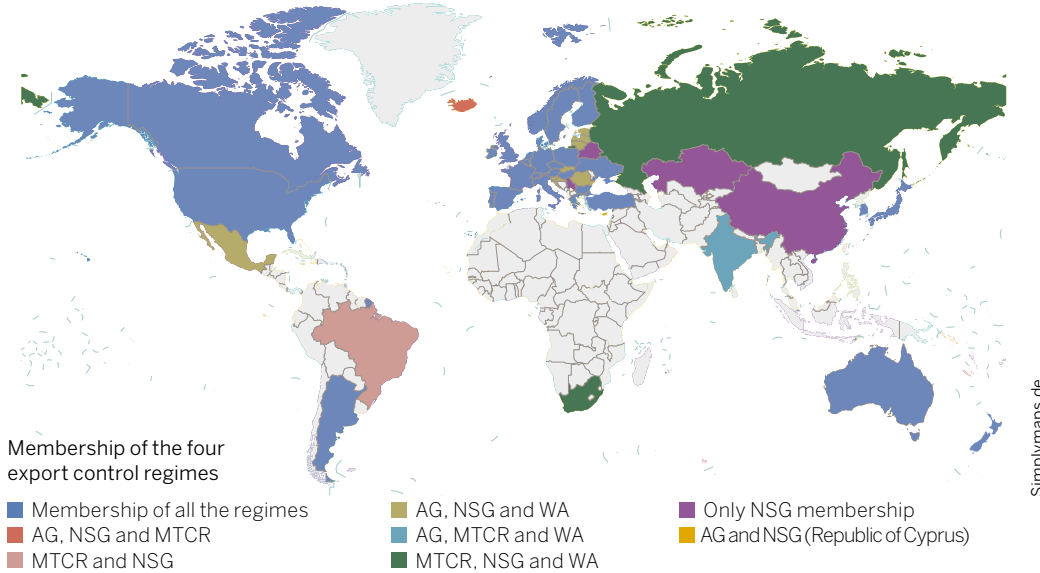
The objective of these regimes is to prevent the proliferation of weapons of mass destruction and their delivery systems and the destabilising accumulation of conventional arms. For this purpose, the participating states agree on detailed lists that specify which goods must be controlled nationally. These include commodities and software as well as tangible (technical data) and intangible (technical assistance) technologies.

Due to UN Security Council resolution 1540, Switzerland is obliged under international law to implement effective controls. They also serve to protect Switzerland's constitutional and foreign and security policy interests. In addition, controls also protect and reinforce the reputation of Swiss companies and research institutions as responsible partners and therefore facilitate their access to cutting-edge technologies traded worldwide.

Export control regime	Established (Switzerland joined)	Participants	Controlled Goods
Australia Group (AG)	1985 (1987)	42 states (+EU)	Dual-use goods: chemicals, biological agents, toxins, manufacturing facilities, equipment, technologies, software
Nuclear Suppliers Group (NSG)	1974 (1991)	48 states	Nuclear goods Dual-use goods
Missile Technology Control Regime (MTCR)	1987 (1992)	35 states	Systems and components Dual-use goods
Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies (WA)	1996 (1996)	42 states	Conventional armaments Dual-use-goods



Participating states of the four export control regimes



The Australia Group (AG)

In response to the use of chemical weapons in the Iran–Iraq war, 15 states came together in 1985 on Australia’s initiative with the objective of curbing the spread of chemical and biological weapons. Today, 42 states – including Switzerland since 1987 – and the European Union participate in the AG. The participating states are providers of or transit countries for dual-use chemicals, biological agents and toxins, manufacturing facilities, equipment and associated technologies and software. They are also parties to both the Biological and Chemical Weapons Conventions and, by harmonising controls within the AG, ensure that their industries do not contribute to the spread of these universally banned weapons.

Nuclear Suppliers Group (NSG)

The NSG was created in 1974 to supplement the 1967 Treaty on the Non-Proliferation of Nuclear Weapons with export control mechanisms and lists of nuclear goods and dual-use goods that can be used in the nuclear field. While the former category, including nuclear reactors and uranium enrichment facilities, is subject to stringent requirements from the International Atomic Energy Agency (IAEA), the NSG also aims to prevent dual-use goods from contributing to the manufacture of nuclear weapons or being used in a nuclear fuel cycle that is not safeguarded by the IAEA. Switzerland has been among the 48 states now participating in the NSG since 1991. In addition to making a commitment to the non-proliferation of nuclear weapons, the reason is that Swiss industry can be affected by NSG controls, particularly with regard to dual-use goods such as machine tools.



Missile Technology Control Regime (MTCR)

Originally established in 1987 with the objective of preventing the proliferation of ballistic missiles for nuclear weapons, the MTCR has also covered smaller delivery systems suitable for biological and chemical weapons as well as cruise missiles and drones since 1991. Unlike the weapons of mass destruction themselves, delivery systems are not regulated or banned by any international treaty, which puts the regime, comprising 35 states, in a special position. The control measures are correspondingly strict: while a de facto export ban applies to Category 1 items (complete systems or key components), discretion may be used when assessing export applications for dual-use items in Category 2. It is particularly important to check whether the country of destination has any missile or weapons of mass destruction programmes or whether the export applied for could advance such a programme. In line with its commitment to preventing the proliferation of weapons of mass destruction, Switzerland has been part of the MTCR since 1992.

Wassenaar Arrangement (WA)

Unlike the other export control regimes, the WA, established in 1996 with the involvement of Switzerland, does not deal with weapons of mass destruction and their delivery systems. Instead, it focuses on conventional arms and dual-use goods that can be used therefor. The aim is to prevent their destabilising accumulation and thus contribute to regional and international security and stability. This is why the 42 participating states negotiate the dual-use list and the munitions list, which covers conventional armaments. While the former has been adopted in Switzerland as an annex to the Goods Control Ordinance, the latter forms the basis for controls in accordance with the War Material Act, with the exception of specific military goods that are also regulated by the goods control legislation.



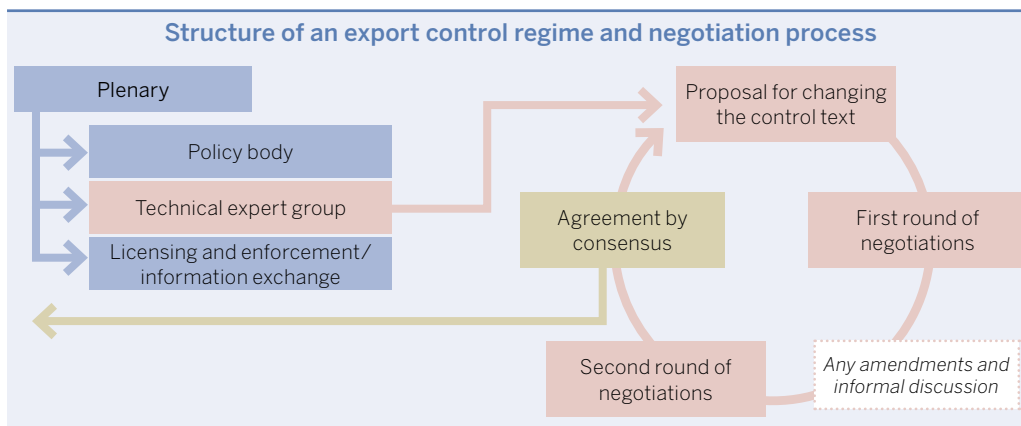
Institutional structure and negotiation process

The four export control regimes have a similar structure, each having four bodies:

- The plenary is held once a year and brings together decision-makers from all participating states. During the meeting, proposals discussed in advance in the subordinate bodies are voted on and unanimity is required for them to be formally adopted.
- The policy body meets several times a year, exchanges relevant information and discusses administrative matters and the development of the regime.
- The licensing and enforcement or information exchange meetings bring together licensing and non-proliferation experts. During these meetings, practical experiences and methods to effectively implement and enforce export controls are exchanged.
- The technical experts negotiate proposals for amendments to the control lists submitted by participating states twice a year. The aim is to reflect technological developments in order to ensure the effectiveness of non-proliferation efforts without restricting industry too severely. As list changes require a consensus from experts from around 40 participating states, negotiations can be lengthy. The AG, NSG and MTCR do not set a time limit for discussing proposals, meaning that some negotiations last several years. By contrast, the WA has negotiation cycles; if no agreement is reached within a year, proposals are dropped.

National implementation by Switzerland

Switzerland has adopted the international goods lists negotiated in this way as an annex to its goods control legislation, which forms the basis for national export controls. Swiss exporters are obliged to check their goods against the consolidated list and submit applications for transfers requiring a licence to the authorities for a decision. The national implementation of export controls – specifically establishing the assessment procedure and criteria, reviewing applications and making the final decision – is the sole responsibility of the Swiss legislator or the relevant licensing authority of the Swiss Confederation.



Contact

Please contact Licensing/Industrial Products if you have any questions about the classification of goods: licensing@seco.admin.ch

Please contact Export Control Policy Dual-Use if you have general questions about the four export control regimes and export controls: bwep@seco.admin.ch



Background

The Chemical Weapons Convention (CWC) is a binding treaty under international law. It has been in force since 1997 and now has 193 Member States. The Convention prohibits the development, production, stockpiling, transfer and use of chemical weapons and requires the destruction of any stockpiles by its Member States. It also introduces declaration and inspection requirements for Member States with regard to chemicals and activities that are of relevance to the CWC, and a strict verification system to monitor them.

Compliance with the Convention is monitored by the Organisation for the Prohibition of Chemical Weapons (OPCW), which is based in The Hague. The bodies of the OPCW are the Conference of the States Parties, the Executive Council and the Technical Secretariat. The Conference of the States Parties comprises all Member States and usually meets once a year. The Executive Council consists of 41 Member States and meets regularly around three times a year. The Technical Secretariat of the OPCW includes roughly 500 members of staff, of whom around 200 are inspectors.

Switzerland does not have any chemical weapons. However, the CWC is particularly significant for it due to its sizeable chemical and pharmaceutical industry. In Switzerland, around 60 companies currently declare CWC-relevant activities, of which almost two-thirds are subject to inspections. The Swiss chemical industry receives an average of five OPCW inspections each year. Since the Convention entered into force, there have been 85 industry inspections in Switzerland and ten at Spiez Laboratory (as of early 2019).

CWC facts

- International treaty which prohibits chemical weapons
- In force since 1997
- 193 Member States (as of spring 2019)
- Includes an extensive verification system
- Based in The Hague, the OPCW monitors the implementation of and compliance with the CWC worldwide. Its Technical Secretariat employs around 500 members of staff.



OPCW/Flickr (CC BY-NC 2.0)

Two OPCW inspectors examine an explosive device during an exercise.

Glossary

ADAA: Annual Declarations of Anticipated Activities. Declaration of the anticipated CWC-relevant activities in the coming year.

ADPA: Annual Declarations of Past Activities. Declaration of the CWC-relevant activities actually carried out in the past year.

ChKV: Chemikalienkontrollverordnung (SR 946.202.21).

ChCO: Chemicals Control Ordinance (SR 946.202.21).

CWC: Chemical Weapons Convention (SR 0.515.08).

Dual-use goods: Goods for civilian and military use.

GCA: Goods Control Act (946.202).

National Authority CWC: Interdepartmental authority responsible for the implementation of the CWC in Switzerland.

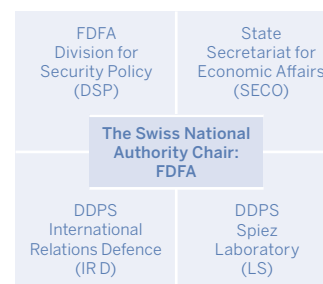
OPCW: Organisation for the Prohibition of Chemical Weapons,

consisting of political bodies (Executive Council and Conference of the States Parties), subsidiary bodies and the Technical Secretariat.

Technical Secretariat: Organisational unit of the OPCW which implements the CWC's verification measures and performs other duties on behalf of the OPCW.

National Authority CWC

The CWC obliges each Member State to establish a national authority for the implementation of the CWC. In Switzerland, the Security Policy Division (DSP) of the Federal Department of Foreign Affairs (FDFA) chairs the National Authority CWC. Other representatives in this authority are the State Secretariat for Economic Affairs (SECO) of the Federal Department of Economic Affairs, Education and Research (EAER), International Relations Defence (IRD) and Spiez Laboratory of the Federal Department of Defence, Civil Protection and Sport (DDPS). Together they implement the various aspects of the Convention in Switzerland and internationally.





Strict declaration and verification system

CWC Member States like Switzerland are obliged to declare CWC-relevant activities and to permit inspections on their own territory. A Member State's compliance with the treaty is thus verified and transparency and confidence are established.

Many of the CWC's scheduled chemicals are dual use, which means that they are used legitimately for a wide variety of applications but could also be misused for manufacturing chemical weapons. The controlled chemicals are divided into three schedules according to their relevance to chemical weapons. In addition to the chemicals listed, certain organic chemicals and compounds containing the elements phosphorus, sulphur and fluorine are subject to CWC controls.

Certain declaration and inspection duties therefore apply to the industry involved in CWC-relevant activities. The export of scheduled chemicals (and their production and import in the case of Schedule 1 chemicals) also requires a licence, while the import and export of specific chemicals from or to non-Member States is completely prohibited.

Declarations

Switzerland as a State Party is obliged to declare the CWC-relevant activities of its industry in annual advance declarations (Annual Declarations of Anticipated Activities – ADAA) and final declarations (Annual Declarations of Past Activities – ADPA) to the OPCW. The national registration office for declarations from industry is Spiez Laboratory, which forwards the data collected to the Technical Secretariat of the OPCW.

Companies are subject to declaration requirements if they are involved in CWC-relevant activities using chemicals beyond a certain threshold. These activities include production, processing and consumption as well as import and export.

Inspections

Inspections in the chemical industry are performed by a multinational OPCW inspection team which routinely visits companies that declare CWC-relevant activities. The companies to be inspected each year are selected by a weighted random algorithm. The inspections, which are announced at short notice, may include plant visits, reviewing plant accounts and analysing samples. In Switzerland, these inspections are escorted by a team from the Federal Administration led by the State Secretariat for Economic Affairs (SECO).

More information about the declarations and inspections can be found here:

ChCO

www.admin.ch/opc/de/classified-compilation/20121582/index.html

CWC

www.labor-spiez.ch/en/rue/nbc/index.htm

Contact

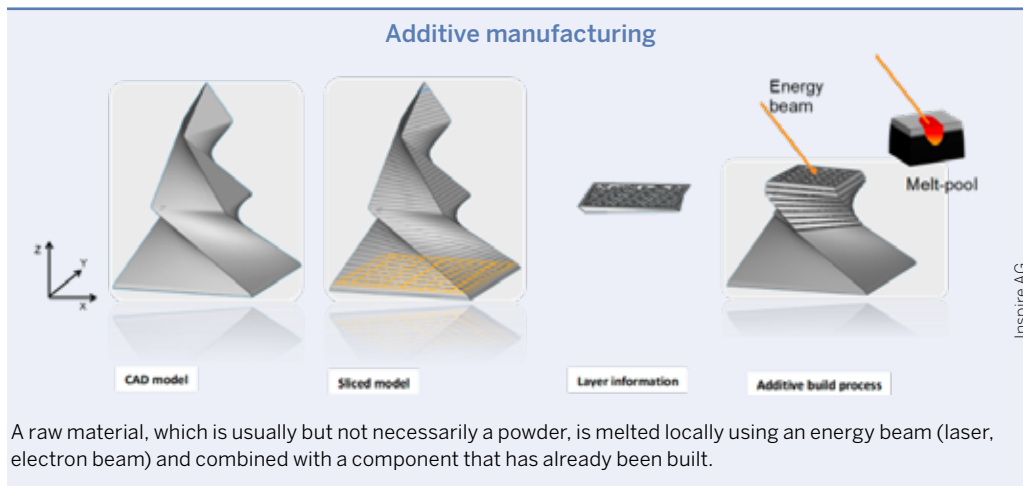
Please contact Licensing/Industrial Products if you have any questions about the classification of goods:
licensing@seco.admin.ch

Please contact Export Control Policy Dual-Use if you have general questions about CWC and export controls:
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Background

Switzerland is one of the world's most successful manufacturers of machine tools. But today, goods are not only produced by parts being removed, they are also produced additively. In industry jargon, this is known as additive manufacturing (AM), and different processes¹ may be used.



A raw material, which is usually but not necessarily a powder, is melted locally using an energy beam (laser, electron beam) and combined with a component that has already been built.

However, as we have seen so far, AM will not replace conventional processes, and will instead enable lighter and more complex components with improved performance to be built. As innovative technologies such as AM also always raise the issue of their relevance for the proliferation of weapons of mass destruction² and conventional armaments, for almost seven years AM has been a topic of discussion in the international regimes³ which establish regulations for goods export controls. The State Secretariat for Economic Affairs (SECO) represents Switzerland in these consensus-based negotiations. The objective of these negotiations is to identify whether AM creates gaps in the control lists⁴ and to find solutions for closing them without restraining research and development unnecessarily. To improve the quality of the negotiations and guarantee the acceptance of any controls decided upon, as in other areas, a dialogue with domestic industry is required. Therefore, a partnership agreement has been in place since early 2018 between SECO and the Swissmem division Swiss Additive Manufacturing Group (SAMG)⁵ which means, among other things, that an expert can advise SECO in technical negotiations.

- 1 An overview of typical additive manufacturing processes (binder jetting, directed energy deposition, material extrusion, material jetting, powder bed fusion (e.g. selective laser melting, electron beam melting), sheet lamination and vat photopolymerisation) is given in ISO/ASTM 52290:2015.
- 2 This refers to NBC weapons (nuclear explosive devices, biological and chemical weapons, and their delivery systems) in accordance with Art. 2 para. 1 letter a of the Swiss Goods Control Ordinance (GCO).
- 3 Export control regimes: Australia Group, Nuclear Suppliers Group, Missile Technology Control Regime, Wassenaar Arrangement.
- 4 The goods lists of the four export control regimes are combined in Swiss legislation in Annexes 1–3 of the Goods Control Ordinance (GCO; SR 946.202.1)..
- 5 www.swissmem.ch/en/organization-members/specialist-groups/swiss-additive-manufacturing-group.html.

Goods are commodities, technologies and software

With regard to export controls, the term “goods” refers to commodities, technologies and software.⁶ The key realisation from the negotiations was that goods manufactured by AM are also subject to licensing requirements if they correspond to the specifications of the control lists. This is because the lists do not stipulate the process by which controlled goods are to be manufactured. The Swiss AM sector also outsources the manufacturing of some individual components to specialist AM service providers. This may include consultations on technical planning, design, rapid prototyping or the production of the finished goods themselves. However, if the latter is to be exported at a later stage, an AM service provider must know whether the goods produced are subject to export controls. It is also important for a company or university to be aware that “technical data” and “technical assistance”⁷ are also counted as technology. In practice, this means that even a 3D CAD model that is to be sent electronically or stored in the cloud to be downloaded, a scientific discussion or even a training session may

⁶ Goods Control Act (GCA, SR 946.202), Art. 3 letter a.

⁷ GCO Annex 1, notes 1 and 2 on the definition of “technology”.



be subject to a licensing requirement. To reduce the risk of proliferation, closer examination of the control lists and, in the event of uncertainty, consultation with SECO, is recommended in all of these cases. Furthermore, unlicensed exports will be prosecuted *ex officio*, even if the final use would actually be of no concern.

Machinery

While conventional machine tools such as turning, milling or grinding machines are mentioned explicitly in the control lists, this is not the case for AM machines. Negotiations to date have also demonstrated that a future listing of this type of machine is rather unlikely because the final products usually need to be finished with conventional machine tools due to their rough surface and insufficient level of precision for certain applications. However, when exported from Switzerland, AM machines may fall under export controls if exporters “know or have reason to believe [they] are intended for the development, manufacture, use, passing on or the deployment of NBC weapons” (known as a catch-all provision).⁸ Hybrid machines, machines which combine processes that remove and add parts, may then be subject to controls if their precision levels correspond to those of the turning, milling or grinding machines listed in Annex 2 of the Goods Control Ordinance.⁹

⁸ GCO, Art. 3 para. 4.

⁹ GCO, Annex 2, category 2.

Controlling key components

During the negotiations, a provisional conclusion was reached to the effect that proliferation can be curbed by controlling key components and thereby creating choke points. Apart from the technology and the software already mentioned, lasers and raw materials were also identified as key components. However, with regard to lasers, the regime members felt that these were already covered by the current controls of the Nuclear Suppliers Group and the Wassenaar Arrangement. Nevertheless, relevant national legislation is to determine whether a country will subject a complete AM machine to export controls purely because it contains a controlled laser. This would be the case in Switzerland if the laser is the machine's main element or if it makes up more than 25% of its value.¹⁰ The issue of raw materials remains a prominent subject of discussion because, unlike conventional manufacturing which primarily uses block materials (e.g. sheets, plates, pipes), additive manufacturing often deals with powders. It is necessary to review once again whether existing controls are sufficient or whether other metal powders which are not yet controlled could be used in AM processes. An appropriate control parameter such as particle size distribution or composition would also need to be found to control powders.

¹⁰ GCO, Art. 3 para. 3.

Contact

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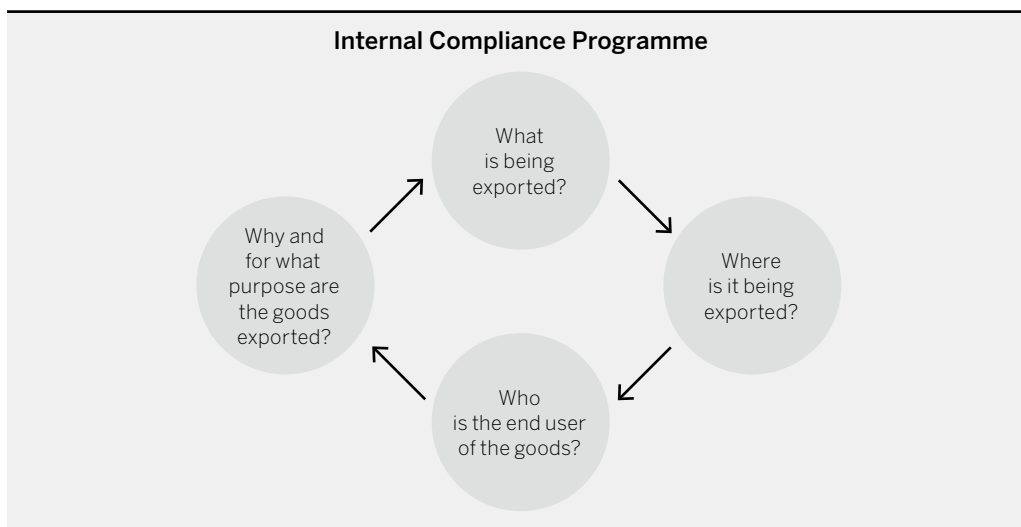


Duties of exporters of nuclear goods, goods for civilian and military use and specific military goods

In Switzerland, trade in goods for civilian and military use (in particular exports, but also imports, transit and brokerage) is controlled based on the Swiss Goods Control Act. This Act authorises the Federal Council to implement the provisions of international agreements and arrangements. The Federal Council has done so by enacting the Goods Control Ordinance, Chemicals Control Ordinance and Ordinance on the Export and Brokerage of Goods for Internet and Mobile Communications Surveillance. In their annexes, these ordinances contain the lists of goods to be controlled, as established by the Chemical Weapons Convention and the international export control regimes.

Exporters must be able to answer the following four questions truthfully: "What? Where? Who? Why?".

To ensure that the questions can be answered correctly, an internal compliance programme to establish the internal processes and responsibilities in relation to the export of goods requiring a licence is essential for exporting companies.



What?

The initial, all-important question is whether a licence is required for an export. Exporters must be able to inform customs whether exports under the Customs Tariff lines specified in Article 17 of the Goods Control Ordinance require a licence. They make this decision on their own authority based on the goods lists in the annexes to the Goods Control Ordinance. The classification of goods under export control numbers (not to be confused with customs tariff numbers) requires in-depth knowledge of the technical specificities of the goods to be exported. Exporters might feel the need to consult with specialists.



Where?

Once the question relating to the licensing requirement is clarified, exporters must find out the destination of the goods to be exported. It is essential to ensure that the regions to which the consignment is delivered are not affected by sanctions. Depending on exporters' business activities, it may also be worth taking into account the legal provisions of other countries because some states apply their legislation beyond their own territory. If transshipment points in other countries are planned, exporters will also inevitably come into contact with the legislation of several countries, whose provisions must all be complied with. Exporters are therefore well advised to be familiar with all the details of their goods' delivery route.

Who?

Knowing the end user of the goods is part of a meaningful compliance programme. Firstly, it is necessary to clarify whether the recipient of the goods is affected by sanctions legislation. Depending on exporters' business activities, it may again be worth taking note of the sanctions legislation of other countries.

Exporters are therefore well advised to know all the parties involved in the transaction process (conclusion of the contract, shipping, payment of the purchase price) and to make sure that they are not affected by sanctions legislation.

The following points, among others, are red flags:

- The end user or its address is similar to a person or an address affected by sanctions legislation.
- The end user is insisting on paying large amounts in cash.
- The end user has little or no business background.
- The end user does not know the possible applications of the product ordered.
- A haulage company is indicated as end user.

Why?

Finally, the question of the intended purpose of the goods to be exported arises. The following situations may be red flags and require further clarification:

- The customer or end user is extremely reluctant to provide information about the end use of the goods ordered.
- The possible applications of the goods ordered do not match the end user's line of business.
- The goods ordered do not correspond to the technical level of the final destination (e.g. delivery of equipment for manufacturing semiconductors to a country without an electronics industry).
- The end user refuses installation, training or maintenance services from the manufacturer for the goods ordered.
- The delivery dates have not been firmly established.
- The itinerary is unusual for the goods ordered or the destination.
- The packaging requested is unsuitable for the delivery route or destination.
- The end user avoids the question when asked how and where the goods ordered are to be used.

Further information

https://www.seco.admin.ch/seco/en/home/Aussenwirtschaftspolitik_Wirtschaftliche_Zusammenarbeit/Wirtschaftsbeziehungen/exportkontrollen-und-sanktionen.html

Contact

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