

Order in council of 2 October 1992 relating to the procedure for importation and exportation of war material, arms and munitions, and analogous material.

The Prime Minister, the Minister of State, the Minister of Foreign Affairs, the Minister of the Interior and of Public Health, the Minister of Defence, the Minister of the Economy and of Finance and the Minister of the Budget,
Given articles 11, 12, and 13 of the decree-law of 18 April 1939, as amended, establishing a regime for war material, arms, and munitions;

Given the decree no. 73-364 of 12 March 1973 relating to the application of decree-law of 18 April 1939, as amended, establishing a regime for war material, arms, and munitions;

Given the decree no. 55-965 of 16 July 1955 relating to the reorganisation of the Interministerial Commission for the Study and the Export of War Material;
Given the order in council of 20 November 1991 establishing a list of analogous material subject to a special procedure for export and derogation to that procedure,

Hereby Decree:

Title I

Procedure for the delivery of importation authorisations

Article 1

When the Minister of the Budget (general directorate for customs and excise) delivers an import authorisation, the latter takes the place of the exceptional authorisation to derogate from the prohibition to import provided for under article 41 of the aforementioned decree of 12 March 1973 .

Article 2

Importers must address their import authorisation requests to the Minister of the Budget (general directorate for customs and excise) under conditions stipulated by the latter.

Article 3

The Minister of the Budget (general directorate for customs and excise) can deliver an exceptional derogation from the prohibition to import upon favourable advice from the Ministers of Foreign Affairs, of Defence, and of the Interior, each insofar as it concerns them.

However, in the following cases, the Minister can directly deliver exceptional authorisation to the prohibition to import:

- weapons and munitions of the first and fourth categories imported by persons, physical or moral, upon presentation of the authorisation provided for at article 15 of decree-law of 18 April 1939;

- weapons and munitions of the fifth category;
- weapons of the sixth category.

Article 4

The importation of material, arms, and munitions destined to the Minister of Defence are the object of import authorisations delivered upon simple request and addressed to the Minister of the Budget (general directorate for customs and excise).

Title II

Procedures for the delivery of preliminary consent and export authorisations.-derogation

Chapter 1

Procedures for the delivery of preliminary consent and export authorisations

Section 1

Preliminary consent

Article 5

Are subject to the regime of preliminary consent provided for at article 12 of the decree-law of 18 April 1939, the following operations when they concern material belonging to categories defined in order in council of 20 November 1991, except in cases enumerated in chapter II of the present title:

- the prospecting of foreign markets as well as the diffusion or dissemination, under any form, of information, the nature of which would permit or facilitate the manufacturing or the reproduction of those materials or compromise their effectiveness;
- the presentation and the testing performed with a view to obtain foreign orders, with the exception of presentations made by France in the context of international exhibitions;
- the delivery of an offer, as well as the negotiation of a contract with a view to cede or transfer or deliver abroad;
- the transfer or assignment of any industrial property rights and of and of any documentation relating to the material mentioned above;
- the transfer, trade, or communication to the exterior of studies or their results (including prototypes) as well as conceptual or manufacturing technologies directly associated to those material.

The granting of prior consent for an operation provided for above does not impede in any way from the right of the administrative authority to refuse the corresponding export authorisation. The administrative authority does not presume the granting or the refusal of another prior consent authorisation even with regard to identical material.

Article 6

Prior consent is given by the Prime Minister upon advice from the Interministerial Commission for the Study and Export of War Material and notified by the Minister of Defence.

However, in cases where the Prime Minister authorises it, the Minister of Defence can deliver the authorisation of prior consent directly.

Article 7

The request for prior consent, established under conditions defined by order from the Minister of Defence, is submitted to the Minister of Defence (General Delegation for Armament, International Relations branch).

Article 8

The validity of prior consent authorisations is fixed at one year starting from the date of notification.

Exceptionally, upon request from the concerned party, and upon favourable counsel from the Interministerial Commission for the Study and Export of War Material, the term of validity can be extended to three years.

Mention of the term bears on delivered prior consent authorisations.

Section 2

Export authorisations

Article 9

Exportation of material targeted at article 13 of the decree-law of 18 April 1939 is subject to the obtaining of an export authorisation, except in cases enumerated in chapter two of the present title.

Article 10

The exporter must establish a request for an export authorisation under conditions defined by order of the Minister of the Budget (general directorate for customs and excise).

This request is submitted to the Minister of Defence (General Delegation for Armament, International Relations branch).

Article 11

The Minister of the Budget (general directorate for Customs and Excise) delivers the export authorisation, except if the Prime Minister, the Minister of the Economy and of Finance, the Minister of Foreign Affairs, the Minister of Defence or the Minister of the Budget asks that the dossier be examined by the Interministerial Commission for the Study and Export of War Material. In that case, the export authorisation is granted by the Prime Minister and notified by the Minister of the Budget (general directorate for customs and excise).

Article 12

The delivery of an export authorisation can be subject to:

- proof that the envisaged material for export is directly delivered to the qualified authorities in the importing country or, with the consent of those authorities, to a private establishment, designated and agreed to by the authorities of the importing country to that end;
- the commitment of the qualified authorities of the importing country not to authorise, without prior consent of the French authorities, the resale or transfer under any form

whatsoever to a third country, of all or part of the material whose expedition is envisaged.

The delivery of the export authorisation can be differed until the Minister of Foreign Affairs and the Minister of Defence have been able to carry out, each for what concerns them, the verification that they deem necessary.

Article 13

The beneficiary of an export authorisation must address a declaration containing the nature and the quantity of material to be expedited, the modalities of transportation, the customs office, and the point of exit of the territory to the prefect of the department in which is situated the point of departure of the material.

Upon declaration to the prefect, the exporter is given a receipt that must be presented to the designated customs office.

Exportations made by the Minister of Defence and temporary exports are not subject to the formalities provided for in the present article.

Article 14

The arrival at the country of destination and the marketing of the material is assured through as permit delivered according to provisions of the customs code.

The said permit cannot be issued unless a document, delivered by the customs services of the importing country establishing that the exported material has arrived at the designated country and has been declared for consumption.

When the non re-exportation commitment, alluded to by article 12 of the present decree, has not been required, the general directorate for customs and excise can limit the object of the permit to the simple assurance of the arrival at the country of destination of the material in question. In the aforementioned case, the permit is issued upon presentation of a document, delivered by the customs service of the importing country establishing that the material has arrived at the country designated on the permit.

The direct shipment of material transferred by the Minister of Defence to foreign governments, as well as material exempted by derogations provided for at article 15 are not subject to the formalities of the permit.

When expeditions are of slight importance, customs and excise administration can grant an exemption from the permit.

Chapter II

Derogation of the obligation of prior consent and of export authorisations

Section 1

Derogation in favour of certain transactions

Article 15

Prior consent and export authorisation are not required for export transactions regarding:

- a) Heavier-than-air aircraft listed in category E defined by article 1 of the aforementioned order in council of 20 November 1991, when they are duly

- registered in order to ensure a commercial service or when they perform flights of an industrial, commercial, or touristic character;
- b) Material transported by railway in direct border-to-border transit with the simple use of the national territory or transshipment from end to end without landing or docking (in the ports and airports of France);
 - c) Material admitted temporarily for testing, experimenting, or reparation;
 - d) Elements destined for phases of development, adjustment, production and maintenance of war material and analogous material in the context of an intergovernmental agreement of co-operation or an international arrangement by the Minister of Defence;
 - The list of these agreement and arrangements is established and maintained by the Interministerial Commission for the Study and Export of War Material. The Minister of Defence communicate this list to the secretariat of the commission;
 - e) Arms, munitions, and parachutes exported temporarily for international competitions;
 - f) Material, arms, and munitions exported temporarily for repair.

However, upon request of one of the members of the Interministerial Commission for the Study and Export of War Material or one of the concerned ministries and under advisement from the Interministerial Commission for the Study and Export of War Material, the aforementioned derogation can be suspended, either generally or for shipments destined to certain designated countries, by a notice to exporters from the Prime Minister and inserted in the Official Journal.

In the case of a derogation for certain countries only, the shipments that remain authorised will give rise to, upon exit, the issuing of a customs permit ensuring the arrival in the country of destination and the non re-shipment to a country of which the transit, transshipment, or re-exportation is forbidden. The delivery and the discharge of the permit will be performed under conditions stipulated to in article 14.

Article 16

Are not subject to the prescriptions of the present order, exportations of weapons and munitions by persons leaving the national territory and authorised to hold those same weapons and munitions in conformity with the dispositions of articles 16 to 21 of the decree of 12 March 1973.

Section 2

Derogation in favour of certain categories of material

Article 17

Prior consent and export authorisations are not required for the exportation of spare parts destined for reparation and maintenance of machinery used by French companies benefiting from an order from the Minister of Transport granting authorisation and consent to air transport.

Those benefits can be extended by the Prime Minister to foreign air transport companies or applied to other material, upon advisement from the Interministerial Commission for the Study and Export of War Material.

Article 18

The derogation provided for at article 17 can be withdrawn at any time.

Article 19

The exportation, under any customs regime, of material targeted at articles 15 and 17 can be subject to the production of a statistical declaration under conditions provided for by order of the general directorate of customs and excise.

Title III

Common dispositions to import and export authorisations

Article 20

No merchant may receive an authorisation to import or to export relating to the first four categories of material unless he holds an authorisation provided for at article 2, paragraph 3, of the decree-law of 18 April 1939.

Persons who do not hold the authorisation who, exceptionally, request an authorisation to import or to export material of the first four categories must indicate precisely in their request for an authorisation to import or to export, the use for which they destine the material to be imported or exported.

Article 21

The validity of the authorisations to import or to export is fixed at six months starting from the date of delivery of the authorisations.

At the request of one of the concerned ministers, the term may be reduced to three months.

At the request of the exporter or importer, and upon positive advisement from the concerned ministers, the term may be extended to one year.

The term of validity is indicated on the delivered authorisations.

Article 22

The customs service, when it deems that, either upon exportation or importation, merchandise declared under a denomination leading it to believe that the said merchandise is not material targeted by the present order but does in fact constitute such material must seize the commodity, provided for by the third paragraph of article 13 of the decree-law of 18 April 1939, who will take a decision.

The same procedure must be applied if the customs service deems that the merchandise belongs to a category other than that which is designated in the declaration or is of different origin than the one declared.

With respect to rifled weapons of the first category (§ 2), weapons of the fourth, of the fifth, or of the seventh category, contestation mentioned in the preceding two paragraphs of the present article will be examined under conditions set forth in the second paragraph of article 23.

Article 23

A list of experts, ordered by the Minister of Defence is provided for the application of the first two paragraphs of article 22.

For the examination of contestations mentioned in the third paragraph of the preceding article, an armourer, designated by the Minister of Defence, will function as an expert.

Article 24

The committee, instituted by article 13 of the decree-law of 18 April 1939, decides without appeal any customs contestation regarding the prohibition to import or to export. To do so it is composed of:

- a president named by the Minister of Defence;
- the expert qualified for the material in question, as it is defined, given the case, by the first paragraph or the second of article 23.

Can take part, in the commission's meetings, with consultative votes, a representative from the General Delegation for Armament (International Relations Directorate) and a representative from the general directorate of customs and excise.

In case of a split vote, the president's vote is predominant.

Title IV

Special dispositions for authorisations to transit by road

Article 25

The direct transit of material from border to border of arms or munitions classified in categories 1, 2, 3, 4, 5, and 6 as provided for in the decree of 12 March 1973 or at article 1 of the order in council of 20 November 1991, and the enacting circulars, transported by road is subject to the delivery of an authorisation.

Article 26

The Minister of the Budget (customs and excise general directorate) delivers a transit authorisation, unless the Prime Minister, the Minister of the Economy and of Finance, the Minister of the Interior, the Minister of Foreign Affairs, the Minister of Defence, or the Minister of the Budget requests that the dossier be examined by the Interministerial Commission for the Study and Export of War Material. In that case, the authorisation to transit is granted by the Prime Minister and notified by the Minister of the Budget (customs and excise general directorate).

Article 27

The request for transit authorisation is established under conditions laid out by order of the Minister of the Budget (customs and excise general directorate) and submitted to the Minister of Defence (general delegation for armament; International Relations branch).

Article 28

The authorisation to transit whose validity is fixed at six months is valid for only one shipment or operation.

Article 29

Are abrogated:

- order in council of 12 March 1973 relating to the procedure of importation and exportation of war material, arms and munitions, and analogous material;
- order-in-council of 2 April 1971 establishing a list of war material subject to a special procedure for exportation and derogation to that procedure.

The present order will be published in the Official Journal of the French Republic. Paris, 2 October 1992.

The Prime Minister,
For the Prime Minister and by delegation:

The Secretary General of the Government
Renaud Denoix de Saint Marc

The Minister of Defence
Pierre Joxe

The Minister of State, Minister of Foreign Affairs,
Roland Dumas

The Minister of the Interior and Public Security,
Paul Quilès

The Minister of the Economy and of Finance,
Michel Sapin

The Minister of the Budget,
Michel Charasse