



FIOD  
*Belastingdienst*

# Strategic Trade Control

## Investigation and Prosecution

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FIOD – The Netherlands

Kiev - Ukraine  
May 20-24, 2019



This is fake





# Introduction

- Introduction
- Key players
- Legislation
- Enforcement
- Investigation and prosecution
- Case example





# Introduction

Wim Boer Criminal Investigator

FIOD Fiscal Information and Investigation Service  
Tax and Custom Administration  
Ministry of Finance

Terrorist Financing, Sanctions and Strategic Goods



# FIOD – The Netherlands

- Ministry of Finance
- 5 Regions
- 1.400 personnel
- Fiscal, Financial and Economic Fraud
- Organized Crime
- Terrorist Financing, Sanctions and Strategic Trade Control





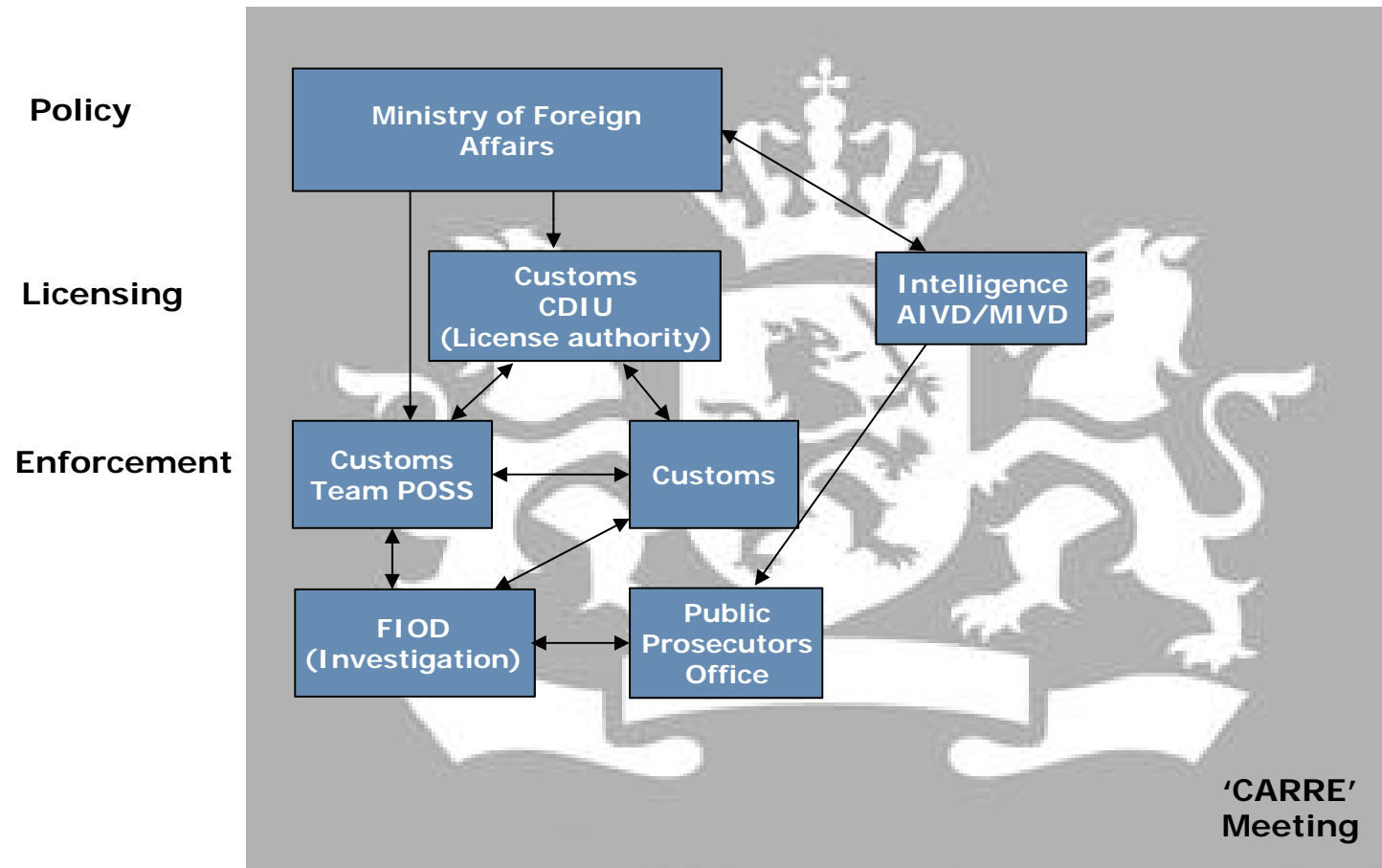
# Dutch Authorities

- Ministry of Foreign Affairs:  
(Inter)national policy decisions / Legislation
- Customs Central Licensing Office (CDIU):  
Licenses / Preventing sensitive exports / Technical knowledge
- Customs and Customs Team POSS:  
Border controls / Enforcement / Company audits / Investigations
- General Intelligence and Security Service (AIVD):  
Information / Analysis
- Fiscal Information and Investigation Service (FIOD):  
Criminal investigation and Prosecution
- Public Prosecutor:  
Prosecution





# Dutch Carre Meeting





# Dutch Cooperation

- Regular national meetings:
  - International Regimes / Treaties / Weapon trade
  - Cases
  - Legislation
  - Organizational / Institutional memory
  
- Knowledge of:
  - how to exchange information
  - who is responsible for what
  - the 'possibilities' of each partner (KYP)





# International

- Non Proliferation Treaty (NPT)
- Biological and Toxin Weapons Convention (BTWC)
- Chemical Weapons Convention (CWC)
- Australia Group (AG)
- Missile Technology Control Regime (MTCR)
- Nuclear Suppliers Group (NSG)
- Wassenaar Arrangement (WA)
- Zangger Committee
- UN Resolution 1540
- EU legislation



# International

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- UN Resolution 1540
- EU Legislation





# STC National Legislation (Dutch)

- EU Regulation 428/2009
- Strategic Goods Order 2012
- Strategic Services Act
- Sanctions Act 1977
- Economics Offences Act (violations)
- General Customs Act (violations)

Strategic control offences (dual-use, military and sanctions are considered **economic offences** according to article 1 of the Economic Offences Act



# Dual-use and military goods

- General Customs Act:
  - Strategic Goods Order
  - Strategic Goods Decree
  - Strategic Services Act:
    - ITT
    - Technical Assistance
    - Brokering
- Council Regulation (EC) 428/2009
- (Dutch) Arms and Munitions Act



# Economic Offences Act (Dutch)

Article 1: Economic offences are:

- 1°. violations of the following regulations:
  - General Customs Act, article 1:4 sub 1 and 2
  - Sanctions 1977, articles 2, 7 and 9

Article 2 sub 1:

- Economic offences mentioned in article 1 under 1° and 2°, are considered a felony (serious offence) when committed with intent. Otherwise they are considered a misdemeanour (minor offence)



# Relevant Legislation (Dutch)

- Code of Criminal Procedures
  - Special Investigative Powers (Decree)
- Economic Offences Act (procedures)
- General Customs Act (definitions and procedures)
- Criminal Code
- Arms and Munitions Act
- National Tax Law
- Foreign Trade legislation
- Genocide legislation



# Enforcement objectives

- To prevent the illegal export of Strategic Goods
- To identify and disrupt Procurement
- To seize
- To investigate
- To prosecute
- To support legitimate trade
- To promote awareness and compliance



# Criminal investigation





# Criminal investigation

- *“The process by which the perpetrator of a crime, or intended crime, is identified through the gathering of facts (of evidence) – although it may also involve an assessment of whether a crime has been committed in the first place.”*





# Start of an investigation [1]

An active criminal investigation:

You receive information that company X, owned and lead by director Y, will export within several day listed dual use goods to a sensitive country. Director Y has said that he will not apply for an export license

Possible investigative approaches are:

- Direct approach
- Take no action
- Give the information to another authority
- Initiate a full-scale, discreet investigation



# Start of an investigation [2]

An inactive criminal investigation:

You receive information that company X, owned and lead by director Y, exported some months ago listed dual use goods to a sensitive country. Director Y hadn't applied for an export license

Possible investigative approaches are:

- Direct approach
- Take no action
- Give the information to another authority
- Initiate a full-scale, discreet investigation



# Next steps

- Establishing case objectives
- Procuring cooperation from other agencies conducting investigations
- Gathering sufficient man power
- Bringing a prosecutor on board
- Conducting the least intrusive investigative techniques
- Law enforcement and public agency record checks
- Credit records
- Financial, utility, telephone and credit card agency checks
- Mail covers
- Contacting informants
- Deploying more intrusive investigation techniques



# Criminal investigation - phases

- Information and Preparation phase
  - Break down of information
  - Start collecting further information and evidence
  - Reasonable suspicion
- Tactical phase
  - Gathering information and evidence
  - Make use of investigation tactics and techniques
  - Action day
- End phase
  - Reports and case files
  - Hand over to the Public Prosecutor



# Information and preparation phase

- Formal (customs) report with the relevant information
- Company audit report
- Intelligence report
- Secret Service report
- Information from other authorities
- Formal report from another country
- MLAT information



# Investigative questions

- Offended article(s)
- Relevant EU and national (Dutch) legislation:
  - Who is the exporter? Who is the suspect?
  - Which goods are exported?
  - Moment of export? Where are the goods?
  - Is there an export license or permit?
  - Criminal intent?
- Threshold: Is there a reasonable suspicion?



# Tactical phase [1]

- Verification of the intelligence information
- Open source information
- Collecting information and evidence:
  - Telephone and email tap for a period of 4 weeks
    - Possible pending exports
  - Observations
  - Airport / luggage checks
  - Other special investigative tools
  - Financial information from banks





# Tactical phase [2]

- Identifying exports – each export a case file
- Preparing an action day – Action day script
- Search warrants
- Search for evidence and seizure of administration, files and computer data - Data servers in another country!
- Further search for evidence – selection of solid cases
- Expert interviews
- Witness interviews
- Suspect interviews



# A search





# Criminal Investigation

## Seven Golden W's

- Who
- What
- Where
- With what
- Which way
- When
- Why





# Finding evidence

- Witness interviews:
  - Business associates
  - Government officials – MFA/MEA; licensing authority
  - Technical experts
- Information from:
  - Email and/or telephone tap
  - Results of the special investigation tactics/techniques
  - Seized administration: invoices, custom declarations, contracts, board meeting minutes, financial records, etc.
- Cooperation with other countries



# Catch-all

- Catch-all: non listed (dual-use) goods under control
- Based on article 4 of Regulation 428/2009
- Possibility to subject the exporter of non-listed goods to a license requirement by means of a Catch-all Provision





# Catch-all – some lessons learned

- Is the Catch-all Provision formally addressed to the exporter?
- What is the exact content of the Catch-all Provision:
  - Description of the goods
  - The amount of goods
  - Special conditions
- Case examples:
  - Wrong address
  - Amount of goods exported vs amount of goods mentioned in the Catch-all Provision
  - Description too broad



# Finding evidence

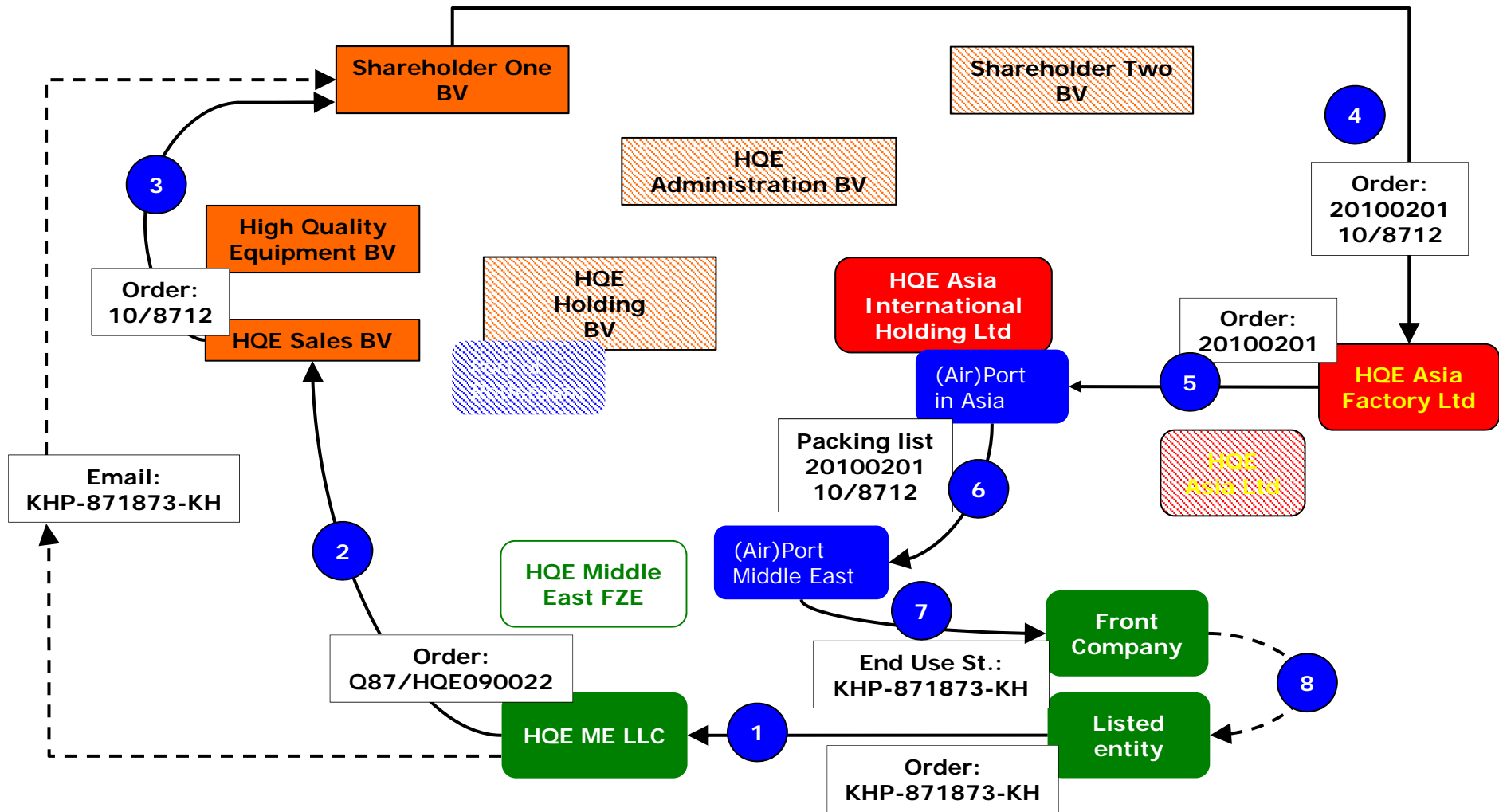
- Exporter / suspects
- Goods – already exported
- Criminal intent – level of awareness
- Diversion routes, use of middlemen, use of aliases, etcetera
- Other types of violation:
  - Criminal organisation
  - False documents
  - Tax evasion

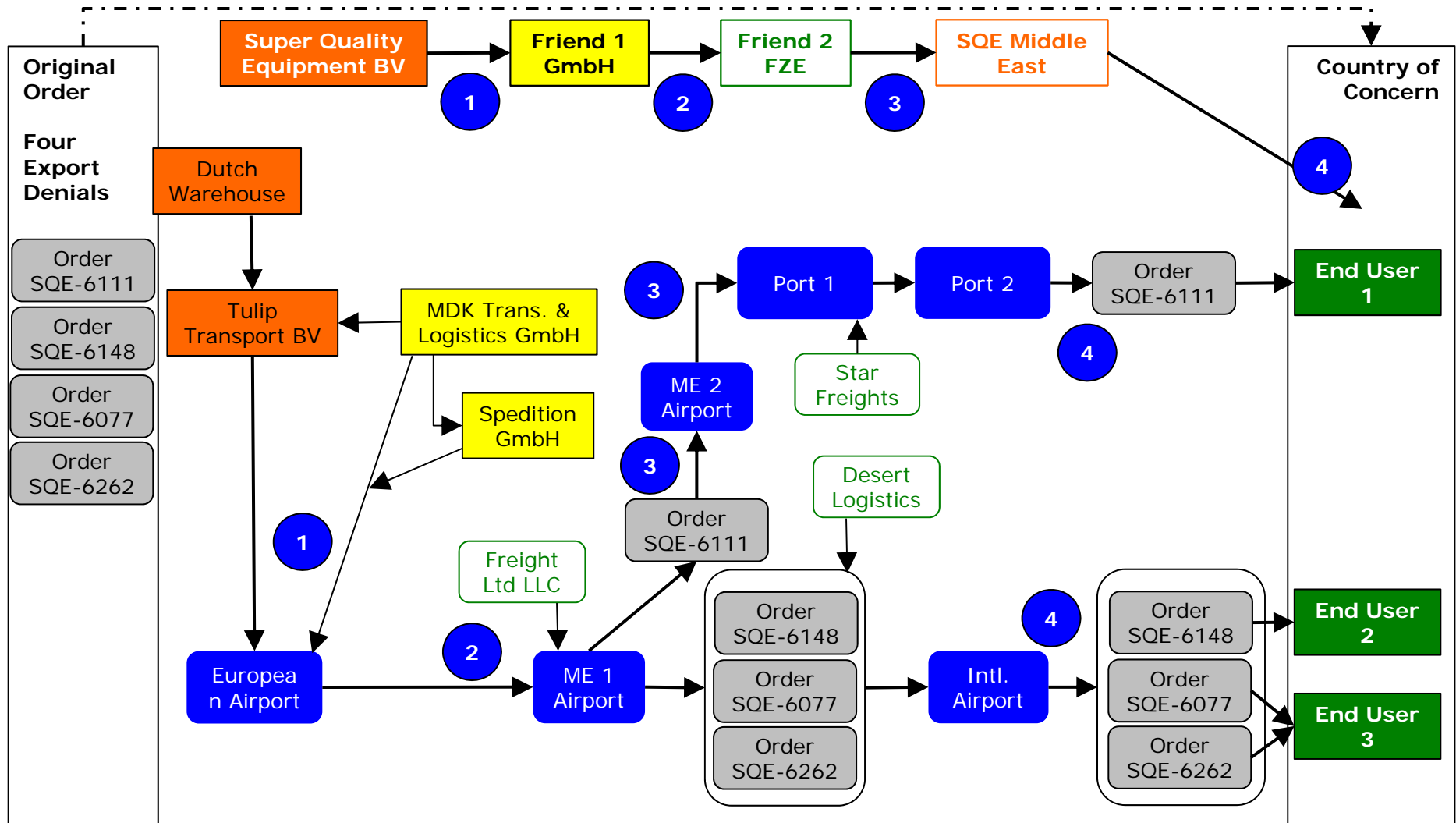


# Finding evidence

- Transport route
- Documents route
- Financial route
- 'The paper trail':
  - Reconstruct the transaction
  - Make a timeline of the transaction









# The normal life span of goods

Manufactured → Ordered → Contract arranged →  
Transportation → Exported → Transshipment → Imported →  
Transportation to consignee → Storage → Used → Serviced →  
Resold → Destroyed or decommissioned

- Of all these moments documents can be found
- These documents provide you with evidence
- Knowledge of such a life span can help you building a time line of the criminal offence



# Documents (examples)

- Manufacturing: product specifications
- Ordering: Tender, inquiry, quotation, order acknowledgement
- Contract arrangement: contract, side letters, L/C, all kind of invoices
- Transportation: B/L, manifests, AWB, Freight invoices, Original Inspection Certificates, Dangerous goods declaration, Customs declaration
- Export, Transshipment and import: Customs documentations
- Storage: invoices
- Used and services: services contract, maintenance reports, travel information from involved service mechanics



# Criminal intent

- Cooperation with the export control authorities
- Knowledge:
  - Awareness
  - Export warnings (on invoices)
  - Catch-all provisions
  - Knowledge of legislation
  - Contacts with authorities
- Use of diversion routes
- Use of false documents
- Statement of the suspects



# Prosecution

- Has a different role during an investigation depending on the country:
  - In control of the investigation
  - Informed after the investigation
- Brings the investigation into court
- Level of knowledge and expertise



Thank you for your attention

