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Export control of dual-use items: the new control regime to note

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Export controls are enforced by many countries and now Thailand is joining in.

Starting on January 1, 2018, goods with both commercial and military uses will be subject to more rigorous export licensing. As well, a wider list of goods based on Harmonised System (HS) classification codes will require notification to authorities.

The dual-use list is based on European Union regulations with some exceptions. It includes a wide range of products that may not be obvious, such as certain chemicals and pathogens, but the potential penalties are likely to be very significant.

What's next?

An electronic application system is under development and a committee will be established to assess applications, and determine whether the goods are actually subject to an export licence.

There could be a high volume of applications to approve, particularly close to the implementation date.

There are open issues, such as the availability of bulk or multiple licences and the penalty regime. Having no bulk or multiple licences will be a major administrative burden for all concerned.

It's unclear how the penalty regime will be established. The settlement penalty for not having an export licence may well match that for an import licence - the total value of the goods, customs duty and VAT (value-added tax) shortfall.

Weapons of mass destruction

There is also expected to be legislation to control weapons of mass destruction, including penalties that could include capital punishment. This is likely to cover intangible dual-use goods - software and technology - and control over activities that are related to the export of specific dual-use goods.

How can companies prepare?

Companies should start thinking about establishing operating procedures and a timeline for obtaining approvals before the last-minute rush late next year.

Start by reviewing the tariff classifications currently applied to your exports. Incorrect tariff classification may easily lead to non-compliance with the Thai export-control regime.

And companies should ensure that their staff are familiar with the Thai dual-use list, and whether export goods are controlled or not.

Other areas to consider are guidelines for due-diligence checks on new clients, developing practical procedures for documentation management for post-verification, implementing systems to trace all of the export transactions and performing a compliance review for exportation.

Export controls will be very important to businesses. Non-compliance may result in reputational damage, financial loss, the loss of clients and criminal penalties.

Although the deadline seems a long way off, many companies will be affected and there will inevitably be delays in approving exports. Companies waiting until the last minute may not be able to export goods pending licence approvals, with all the associated supply-chain problems.

Planning should start soon, as the systems are expected to be launched this June, which is postponed from the initial schedule in March.

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