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Export controls
Metals and mining

Managing risk in your supply chain.

What are export controls?

Export controls are regulations that support national security policies and prevent the proliferation of weapons of mass destruction (WMD) and related terrorist activities. Export controls have been around for many years, but due to recent terrorist activities and developments in technology, governments and industry have sharpened their focus. Today, export controls are a high-profile topic and we have seen a recent surge in enforcement, particularly around dual-use goods (for example, items that are designed for a commercial application, but that also have potential military end-use).

Companies must ensure compliance with national export control regulations, as well as, US regulations which can impact any company dealing with US origin products/software/technology, US persons, or US-owned companies, wherever located.

How do export controls impact the metal and mining industry?

As a highly regulated industry, the metal and mining industry is no stranger to regulatory complexity. Yet, metal and mining companies must contend with a number of regulations in countries in which they operate. In addition to these and other national and international legal requirements, the metal and mining industry must also comply with export control rules and regulations. These regulations are compulsory and if not complied with, can lead to major disruptions in the supply chain, significant monetary fines, custodial sentences and denial of export privileges.

Recently, there have been developments in export control regulations that affect specialty metals manufacturers and apply to superalloy products and their ancillary melting and processing technologies. These developments include an increased emphasis on: ensuring companies screen exports to ensure they are not dealing with "denied parties", enforcement and penalties, and expanding the number of controlled equipment used by metal companies.

Furthermore, in the current environment, as international demand begins to increase, the mining industry will face the challenge of finding new quality assets. As such, exploration will inevitably lead to expanding operations in remote areas of the world. Keeping pace with this shift, will lead to mining companies needing to move equipment and assets to these regions.

As a consequence, export control obligations need to be considered as these assets and their related technologies maybe controlled.

For example, the following dual-use items, frequently used by metal and mining companies, may require a licence for export:

- Mining and drilling equipment.
- Equipment for producing metal alloys, metal alloy powder or alloyed materials.
- 40 different subcategories of aluminides, nickel alloys, niobium alloys, titanium alloys and aluminium alloys.
- Ballistics and explosives.
- Pumps and valves.
- Storage tanks and heat exchanges.
- Pipes and seals.
- Single point diamond cutting tool inserts.
- Related software and technology.

What other related issues should the metal and mining industry consider?

Merger and acquisitions (M&A) in the metal and mining industry can often result in significant export compliance risks for the purchasing company. 100% successor liability is applied to export control violations, with the acquiring company inheriting all of the violations committed by the acquired company. This means that a company potentially opens itself up to significant penalties if these issues are not considered and mitigated in advance of the acquisition.

Business activities may be impacted by more than one jurisdiction. For example, a multinational mining company may be obligated to comply with both national and US export control regulations as the US rules have extra-territorial application and extend to control US persons, goods, technology and companies wherever they are located.

There has also been significant US regulator and prosecutor activity which reinforces the need to comply with US law if payments are being made in US dollars via US banks. To illustrate this point, in 2009 two non-US companies were fined $350m and $536m for breaching US sanctions on Iraq, Libya, and Sudan. US controls must therefore be built into effective overseas export compliance programme.

What is the impact of breaching export control regulations?

There are often significant monetary penalties for non-compliance, as well as, in extreme cases, custodial sentences.

However, a major cost to business is often reputational damage that results from supply chain delays and late licensing decisions, which impact a company's ability to serve its internal and external customers and to compete in the marketplace.

How could my business be impacted?

Your business could be impacted by export controls in one of four ways:

- Product controls – your products, services, technology (for example, the "recipes" for manufacturing certain controlled powders, alloys, or metals, or technical manuals and other materials related to manufacturing equipment) and software may require a licence to be exported.

- End-use controls – the final end-use of items can trigger a licence requirement. For example, could one of your products be specifically designed, developed, configured, adapted, or modified for a military application or defence article.

- End-user controls – exports to specific entities or persons can be prohibited or may require a licence, and companies must screen entities in the supply chain against applicable denied party lists. In general, companies are not permitted to export to, import from, or conduct financial transactions with companies or individuals on these lists.

- Destination controls – embargoes and sanctions against specific countries, entities or individuals can restrict exports of products, technology or activities. For example, are you supplying any of your products to a US, EU or UN sanctioned destination?

How can Deloitte help?

Deloitte's multidisciplinary Customs and Global Trade team is market leading in this field with specialists in global export control regulations, covering both dual-use and military controls. Our team consists of lawyers, ex-government officials, industry experts and consultants, providing years of export control experience. The team has unrivalled experience in reviewing, developing and implementing comprehensive, customised, user-friendly export compliance programmes, from basic must-have procedures through to leading practice methodologies.

Our service offerings include:

- Developing or enhancing of leading practice compliance programmes.
- Automation/systems support and guidance on organisational structure.
- Licence management programmes.
- Training.
- Due diligence services.
- Risk reviews and audits.
- Supply chain analysis and optimisation.

As well as improving risk management, our methodologies can drive improved operational performance throughout the supply chain by eliminating ineffective processes, improving lead times and minimising supply chain disruption. Ask our experts about how we can help to improve your global trade practices from both a risk management and cost reduction perspective.

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