

## Export controls Nuclear

### 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).

### The US and EU have virtually controlled all the equipment and components that have been specially designed for the nuclear industry.

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

#### How do export controls impact the nuclear industry?

With growing concerns about climate change, many nations have turned towards nuclear power to address energy needs. With such nuclear aspirations, these nations struggle with political problems, including corruption and ineffective government regulations. As a consequence, the US and EU have placed numerous controls on the exports of nuclear related items, as they provide the ability to develop nuclear weapons.

More so than any other industry, the US and EU have virtually controlled all equipment and components that have been specially designed for the nuclear industry



by applying stricter export control regulations to ensure that they are not misused. As such, the nuclear industry is a key focus of export control regulations, and effective export compliance procedures are essential for businesses operating in this space.

Notwithstanding the multitude of national and international legal requirements the nuclear industry must comply with, export controls 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.

The following dual-use items, frequently used by nuclear companies, may require a licence for export:

- Uranium (UF<sub>6</sub>).
- Depleted uranium.
- Plutonium 238.
- Heavy water (deuterium oxide).
- Magnesium oxide.
- Gas centrifuges and oxidation systems.
- Separation and diffusion plates.
- Alloys and heat exchangers.
- Pumps, valves and nozzles.
- Converters and inverters.
- Lasers, magnets and vacuums.
- Software and technology.
- Nuclear reactors and plants, and specially designed or prepared equipment and components.

#### What other related issues should the nuclear industry consider?

Merger and acquisitions (M&A) in the nuclear 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.

There are an increasing number of civil nuclear cooperation agreements being signed between countries. These agreements are allowing greater access for companies in the EU to previously inaccessible markets. As the purpose of these agreements is to help promote and facilitate a wide range of cooperation in the nuclear field, including nuclear trade between countries, export control compliance must still be a priority.

Business activities may be impacted by more than one jurisdiction. For example, a multinational nuclear company may be obligated to comply with both UK 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. To illustrate this point, in 2009, a major UK company was fined \$350m for breaching US sanctions on Iraq, Libya, and Sudan. US controls must therefore be built into effective overseas export compliance programmes.

### 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 (for example, in June 2009, three men were jailed in the UK for a total of ten years for illegally exporting controlled items to Iran).

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, technical data, formulas, chemical analysis specification sheets) 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 used to develop a potential WMD or military application?

- **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. For example, do you conduct business with government or military owned companies?
- **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 sanctioned destination?

### How can Deloitte help?

Deloitte's multidisciplinary Customs and Global Trade team is market leading in this field with specialists in European and US 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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