



Customs Alert Thailand **Export Control update**

Introduction

The Trade Controls on Weapons of Mass Destruction Related Items Act (TCWMD Act) which is mainly aimed at regulating the export of dual-use items came into force on 1 January 2020. The Act originates from Thailand's obligation under the United Nations Security Council (UNSC) resolution 1540 (from 2004) to prevent the weapons of mass destruction (WMD) proliferation.

This Act serves, however, as the overarching legal framework for an upcoming set of supplementary rules for the export controls. Until the scheme will be fully implemented, enforcement of the rules remains on hold. The Ministry of Commerce, Department of Foreign Trade (DFT) has not committed to a specific date by which the enforcement will take place.

Who are impacted

Manufacturers and exporters of items listed on control lists, namely the Dual-use Items (DUI) list (based on the EU Dual Use List of 2019) and military items existing under different Thai regulations are impacted.

In addition, the Act also imposes a common obligation on every Thai exporter, regardless whether goods are on a control list or not, to prove, in case of being suspected by the inspection officer, that the exported product will not be used in the WMD production or for terrorist activities. These, so called "catch all" controls, will require exporters/traders to conduct sufficient due diligence on the destination, end use and end user of the product (to be exported). Hence, the TCWMD Act impacts every exporter.

What to know

DUIs are products with a civilian function, but which can potentially also be used for the production of the WMD. Whether or not a product is considered to be a DUI depends on several factors such as the nature of the product, technical parameters and potential applications.

The TCWMD Act sets up a regime for the control of following activities in successive phases: export and re-export, transit and transshipment, brokering (for goods under Military List only), and technology and software transfer. Non-compliance can expose companies to criminal charges and administrative penalties.

Based on DFT's latest information, exporters of DUIs will be required to apply for an annual license from the controlling agencies via the e-TCWMD. Exporters should apply for one annual export license per DUI per country per customer. To obtain the license, the exporter may have to submit details about the product, the customer, the intended end-use and the country of destination through the e-TCWMD.

Initially, a tariff code list (a product list based on the Harmonized System of the World Customs Organisation) also appeared in the draft Act, which would require the exporter of listed items to perform self-certification, but this has been eliminated from the current Act.

Furthermore, under the "catch-all" controls, provided that Customs or DFT suspects possible offences under these regulations, the enforcing authority can legitimately hold the shipment of any goods and temporarily seize such items before export or transfer to overseas. In some cases, exporters will have to apply for a separate export license with the DFT. Exporting companies will be expected to do their due diligence when it comes to their customers. Inadequate evidence and/or uncommon practices could trigger the authority's suspicion.

What to do

First of all, exporters are recommended to check whether their products are classified as DUIs or not via the Department of Foreign Trade's online tool, the e-TCWMD. If they are, the exporters will be expected to apply for an export license once the authorities officially start to enforce their control measures.

We also suggest companies to review their internal administration in order to mitigate the risk of measures following from the "catch-all" controls. End-use and end-user screening should be considered along with internal rules for audits and monitoring. Red flag questionnaires and transaction checklists are valid tools to perform catch all controls on your customers or business partners for both domestic and international transactions. Once enforcement commences, exporters should keep a recordkeeping system for activities related to controlled items.

In addition, personnel training is essential to foster a company's readiness for the new control scheme so that company's staff will be able to apply these new procedures within their assignments.

Finally, companies must continue to closely follow the announcements of the DFT and publications in the Royal Gazette to be informed about the latest updates on enforcement or other measures.

How can we help?

Deloitte offers tailor-made services based on our multidisciplinary expertise in multiple jurisdictions and full inventory of global best practices. We help companies prepare for export controls by conducting trainings, risk assessments and developing Internal Compliance Programs.

We also provide services for DUI classification and end-user screening.

Contact

- Stuart Simons, Partner Customs & Global Trade, ssimons@deloitte.com
- Sujitra Sukpanich, Director Customs & Global Trade, ssukpanich@deloitte.com



Get in touch



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