



Customs Alert

Entry into force of Thai export control enforcement measures

Introduction

Following the release of the DFT Notification on the Criteria for Internal Compliance Program (ICP) Certification in September 2021, the DFT Notification on Catch-all-Control (CAC) measures was officially published in the National Gazette on 27 October 2021 and will enter into force 60 days from publication on 26 December 2021*. This latest Notification concludes the implementation of the export controls on Dual-Use Items in Thailand under the Trade Controls of Weapons of Mass Destruction (TCWMD) Act.

Brief Summary of the Notification on Catch-All-Control Measures

This Notification sets out rules to control trade related activities of dual-use goods and suspends transactions of goods which are found to be traded for the purpose of weapons of mass destruction (WMD) development or terrorism.

Covered Items

The Notification includes an Annex with items that can be subject to control measures including:

- 1) List 1 – Dual-use Items (DUI) list.

Goods which are considered to have dual civilian and military applications can be assigned an Export Control Classification Number (ECCN) or DUI code in accordance with the EU's 2019 Dual-Use List. ECCNs or DUI codes are alphanumeric codes which can be determined based on product categories and applications/technical characteristics. DUI codes are different from tariff codes which Customs uses for import/export purposes.

Please find example as below:

The ECCN of 3A001 can be classified as electronics (3), systems/equipment /components (A), electronic items (001).

| DUI code | ECCN explained | | |
|----------|-------------------------|---------------------|-------------------------|
| | Product Category (0-10) | Product Group (A-E) | Specific types of goods |
| 3A001 | 3 | A | 001 |

Beyond a classification at 5-character, there can be further subclassification based on specific characteristics.

- 2) List 2 – Any items that could potentially be used in the development of WMDs or for terrorism purposes. DFT has put together a list of tariff codes (HS codes) which they consider to be potentially risky products. Please find example as below:

| No. | Items | Tariff code |
|-----|---|--------------------|
| 1 | Uranium or thorium ores and concentrates. | 2612.10 2612.20 |

DFT established the e-TCWMD portal which provides assistance to Thai exporters to verify whether their goods potentially fall under List 1 or 2. The link to the e-TCWMD is: <http://tcwmd.dft.go.th/>.

Controlled activities

5 Trade-related activities are covered under the catch-all control measures, being:

- 1) Export,
- 2) Re-export,
- 3) Transit,
- 4) Transshipment, and
- 5) Transfers of technology or software

Catch-all Control (CAC) measures

Controlled activities of DUIs or any other goods that may raise suspicions will not be subject to standard control requirements such as export licenses at this time. Instead, companies and government authorities in Thailand have an obligation to perform due diligence that the covered transactions will not lead to the development of Weapons of Mass Destruction (WMD) or support terrorism.

Selected Thai government agencies and the Thai Department of Foreign Trade (DFT) will be tasked to monitor trade-related activities (i.e., export, re-export, transshipment, transit, technology and software transfer) of goods in the designated lists by companies in Thailand that may potentially be used for WMD or terrorism.

Exporters of DUIs are expected to know whether their goods are DUIs and perform controls on the destination, end-use and end-user to mitigate the risk of the goods being used for illicit purposes overseas. In case the company detects a potential issue or has doubts about the end-use, end-user or destination, they are expected to contact DFT.

In case one of the responsible government agencies or DFT detects a suspicious transaction involving a DUI and/or illegal end-use/end-user, DFT will review the transaction and can decide to order the company to immediately suspend the targeted activities (i.e., export, re-export, transit, or transshipment) of these items. In addition, once the measure is imposed, DFT will notify Customs of such imposed measures to ensure that the company cannot violate the suspension.

However, the company subject to the suspension has the right to appeal the case within 30 days from the date of receipt.

Any time after the measures have been imposed, the company may also request the DFT to re-consider and adjust the measures imposed on their trade-related activities if they can provide evidence that the risk of WMD-proliferation has been eliminated.

Violations of catch-all-control measures are punishable under the TCWMD Act with fines ranging between THB 200,000 and THB 1,000,000 per transaction and/or prison

sentences from 2 to 10 years. Under the Customs Act, exporters can also be liable to a statutory fine of imprisonment up to 10 years and/or a fine of THB 500,000 per transaction for violation of export restrictions.

ICP establishment

Companies in Thailand can decide to implement an Internal Compliance Program (ICP) to support compliance with the catch-all-control measures and have it certified by DFT to mitigate the risk of controls.

An ICP must include the following 6 core elements according to DFT Notification on the Criteria for ICP Certification:

- 1) Appointment and implementation of administrative compliance responsibilities and procedures
- 2) Product, end-user, end-use and transaction screening process
- 3) Internal employee Training
- 4) Recordkeeping and documentation, and Corrective Actions
- 5) Self-Audit
- 6) Reporting

Exporters may find further details on this recent Notification in our previous customs alert, which can be found here:

<https://www2.deloitte.com/content/dam/Deloitte/th/Documents/tax/th-tax-customs-alert-oct-2021-eng.pdf>

What can you do?

Exporting companies should assess whether their products could fall in the scope of controls under the TCWMD Act and the Notification on CAC measures, and if yes, take appropriate measures to comply with export control obligations. Such measures may include:

- Manage product inventory and perform internal risk assessments;
- Develop an ICP which includes the key elements as stipulated by the DFT; and
- Conduct an internal export control training for employees.

For further information or support, please contact our Deloitte Customs & Trade professionals.

**This alert was updated to reflect the correct date of entry into force of the Notification.*

Contacts

Nu To Van, Partner Customs & Global Trade,
ntovan@deloitte.com

Sujitra Sukpanich, Director Customs & Global Trade,
ssukpanich@deloitte.com

Tom Cachet, Senior Manager Customs & Global Trade,
tocachet@deloitte.com



Dbriefs

A series of live, on-demand and interactive webcasts focusing on topical tax issues for business executives.



Power of With

Focus on the power humans have with machines.



Tax@hand

Latest global and regional tax news, information, and resources.

Get in touch



Deloitte Thailand | Add as safe sender

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited (“DTTL”), its global network of member firms, and their related entities (collectively, the “Deloitte organization”). DTTL (also referred to as “Deloitte Global”) and each of its member firms and related entities are legally separate and independent entities, which cannot obligate or bind each other in respect of third parties. DTTL and each DTTL member firm and related entity is liable only for its own acts and omissions, and not those of each other. DTTL does not provide services to clients. Please see www.deloitte.com/about to learn more.

Deloitte Asia Pacific Limited is a company limited by guarantee and a member firm of DTTL. Members of Deloitte Asia Pacific Limited and their related entities, each of which are separate and independent legal entities, provide services from more than 100 cities across the region, including Auckland, Bangkok, Beijing, Hanoi, Hong Kong, Jakarta, Kuala Lumpur, Manila, Melbourne, Osaka, Seoul, Shanghai, Singapore, Sydney, Taipei and Tokyo.

About Deloitte Thailand

In Thailand, services are provided by Deloitte Touche Tohmatsu Jaiyos Co., Ltd. and its subsidiaries and affiliates.

This communication contains general information only, and none of Deloitte Touche Tohmatsu Limited (“DTTL”), its global network of member firms or their related entities (collectively, the “Deloitte organisation”) is, by means of this communication, rendering professional advice or services. Before making any decision or taking any action that may affect your finances or your business, you should consult a qualified professional adviser.

No representations, warranties or undertakings (express or implied) are given as to the accuracy or completeness of the information in this communication, and none of DTTL, its member firms, related entities, employees or agents shall be liable or responsible for any loss or damage whatsoever arising directly or indirectly in connection with any person relying on this communication. DTTL and each of its member firms, and their related entities, are legally separate and independent entities.

© 2021 Deloitte Touche Tohmatsu Jaiyos Advisory Co., Ltd.