



## Customs Alert

### Update on Export Control Measures (DUIs)

#### Introduction

The Department of Foreign Trade (DFT) recently introduced a draft Notification regarding the export controls on Dual-Use Items (DUIs) and held a public hearing to inform the business community and other stakeholders about the status.

Entry into force of the Notification is expected by the **beginning of 2022**.

#### What to know?

##### *Initiation of DUI investigation*

Originally, DFT had announced that exporters of DUIs – goods with a civilian and potential military purpose – would require export licenses with. This requirement has been abandoned, at least for a first phase.

Instead, exporters will be expected to exercise ‘due diligence’ on the **destination, end use and end user** for their exported goods (those on the DUI list and any others).

According to the draft notification, if any of 15 industry-specific government agencies suspect that a transaction is potentially in violation of the rules on the controls of DUI due to certain red flags (e.g. identity of the importer, country of destination, or potential illicit use of the goods), these agencies have the obligation to report their suspicion to the Department of Foreign Trade (DFT).

According to the draft Notification, these controls extend to export, re-export, transit, transshipment, as well as transfers of technology or software.

##### *Imposition of Catch-all Control measures*

If, following a review of the destination, end-user, end-use and other supporting factors, the DFT Director-General (DG) finds that the suspicious transaction is in any way related to the production or proliferation of Weapons of Mass Destruction (WMD), the DG will issue a letter to prohibit the trade of the investigated item.

The exporter will have to immediately suspend their trade-related activities of the item(s) under investigation. The prohibition will be effective from the date that the exporter receives the letter and can only be lifted if the exporter receives a new letter

from DFT which ends the prohibition. In addition, once imposed, DFT will notify the measure to Customs to prevent the exportation of the prohibited item.

It is recommended that, even when an investigation is still ongoing and prohibition measures have not yet been imposed, the exporter should suspend the concerned exports to avoid any potential retroactive non-compliance issue that may arise at the later stage if DFT ultimately imposes the prohibition. Once the decision is made that the exporter is subject to the prohibition, the suspect transaction must be immediately suspended. Failure to do so (e.g., the exporter still proceeds with the transaction or did so already), will result in a maximum fine of 200,000 THB per transaction and/or up to 2 years imprisonment. However, if DFT concludes that the violation happened with intention, the exporter could expose to a higher fine with a maximum 1,000,000 THB/ and up to 10 years imprisonment.

Exporters who are subject to prohibition measures may submit a request with supporting documents to reconsider the measure, provided that the risk of WMD proliferation was eliminated or circumstances have changed. The DFT DG will review the request and make a decision as follows: -

- If the risk of WMD proliferation remains the same, they will continue to impose the prohibition measure.
- If the risk has changed, the DG may issue a letter to impose new/additional measure as they deem appropriate.
- If the risk is completely eliminated the prohibition measure will be revoked and DG will inform the decision to the exporter, and Customs.

#### *Internal Compliance Program (ICP)*

The ICP is a DFT approved company policy and procedural framework, whereby the exporter implements the following features as laid out in the draft Notification:

- Responsibilities and resources for export compliance;
- Product, end use and end user screening process;
- Training for employees on DUI export controls;
- Periodical auditing;
- Reporting and corrective action procedures.

The ICP is not an obligation but is highly recommended by the DFT to help companies effectively manage their export compliance risks. Companies that opt for an ICP can link it to the DFT's online portal "e-TCWMD" to facilitate information sharing with the authorities. In return, exporters with an ICP in place will be considered more 'trustworthy' and subject to less scrutiny than non-ICP companies.

#### **What can you do?**

Exporting companies should assess whether their products could fall in the scope of controls under the TCWMD Act, and the draft Notification regarding the export controls on Dual-Use Items, 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 export control trainings for employees.

For further information or support, do not hesitate to reach out to our Deloitte Customs & Trade professionals.

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