



Customs Alert

Update on Thai Export Control Measures (DUIs)

Introduction

The Department of Foreign Trade (DFT) held public hearings in August about the supporting measures to enforce compliance with the Trade Controls on Weapons of Mass Destruction (TCWMD) Act. These measures are expected to come into force later this year when the draft Notification on Catch-all-Control (CAC) measures will be implemented. Under the upcoming Notification, Thai exporters of dual-use items (DUI) will have to screen their products, transactions and overseas customers before export to mitigate the risk of global weapons of mass destruction development.

In the meanwhile, DFT already implemented a Notification on the Criteria for Internal Compliance Program (ICP) Certification as of 6 September 2021.

What to know?

Notification on the criteria for ICP certification

Similar to other jurisdictions where export control rules are enforced (e.g. US, EU, Singapore), the Thai government has created a legal framework for companies to set up an Internal Compliance Program (ICP). The purpose of the ICP is for companies to secure their international transactions and to move the control on compliance with export control rules from the government to the business sector.

The Notification on the Criteria for the ICP Certification provides guidance and a procedural framework to set up an ICP. Essentially, a fit-for-certification ICP must contain the following 6 core elements:

- 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
- 5) Self-Audit and Corrective Actions
- 6) Reporting

According to the Notification, a company ICP can receive 3 levels of certification from the DFT:

1. **Good** – A certificate will be granted to an ICP with at least 2 out of 6 mandatory elements.
2. **Very good** – A certificate will be granted to an ICP with at least 4 out of 6 mandatory elements.
3. **Perfect** – A certificate will be granted to an ICP with all mandatory elements.

At this stage, the set-up of an ICP will not be mandatory, but the DFT highly encourages it for companies to effectively manage their export compliance risks. With a certified ICP, exporters will be considered more trustworthy and subject to less scrutiny from customs, DFT and other responsible government agencies compared to non-ICP companies. The DFT will also support companies with a certified ICP by publishing their ICP credentials on the DFT official website.

Draft notification on the CAC measures

According to the TCWMD Act B.E. 2562, exporters of DUIs must exercise 'due diligence' on the **destination, end use and end user** of their exported goods (those on the DUI list and any others), also known as **catch-all-controls (CAC)**. If either the destination, the end-use or end-user of the product point to illegal activities related to WMD production or terrorism, the exporter must suspend their transaction and report to the DFT. The draft DFT Notification on CAC sets out the rules, conditions and penalties of these catch-all controls and is expected to enter into force by the end of 2021.

Covered Items

The Notification will include an Annex with items that are subject to CAC measures including:

- 1) Those items that are regarded as DUI Items, i.e. goods with both a civilian and a military purpose, and
- 2) Those items that are not DUIs but could still be used in the development of WMDs or for terrorism purposes.

Controlled activities

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

Penalties

When the DFT or other monitoring government agencies detect or are made aware that the exported products are destined for illegal activities overseas, the transaction will be blocked. In instances where the exporter proceeds with an illegal transaction or did so already, in violation of the CAC measures, they can face a fine up to 200,000 THB per transaction and/or up to 2 years imprisonment. Exporters can also be subject to higher fine with a maximum of 1,000,000 THB/ and up to 10 years imprisonment if such violation happened with intention.

In addition to penalties imposed by DFT under the CAC Notification, exporters may also be in violation of Section 244 of the Customs Act, according to which exporters who avoid export restrictions or prohibitions will be liable to an imprisonment for a term not exceeding 10 years and/or a fine not exceeding THB 500,000 per transaction.

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 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 export control trainings for employees.

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