

Business background: the legal basis of export control practices.

Companies that ship goods within the European Union or export goods outside
the EU must screen such transactions against regularly
updated lists of goods, persons and countries to see whether embargoes
apply or licenses are required.



Theory

Foreign trade among European Community member states is, in principle, free. However, some restrictions and licensing requirements based on resolutions of the United Nations, OSCE and the Council of the European Union still apply. Such limitations help protect the security of the countries and their foreign trade relationships. The United States also regulates exports through licensing

requirements, limitations and restrictions. US regulations are more far-reaching, however, due to their extra-territorial claim. US law follows the goods, so to speak. This means that US regulations also apply to companies that are not in the US but maintain trade relations with the US. Limitations, restrictions and licensing requirements are regulated by various US government agencies.



Practice

One way of implementing restrictions is through country- or person-specific embargoes such as anti-terrorism measures. There are three different types of embargo. Depending on the type, they cover all export, import and transit activities of goods, monetary and payment transactions or the provision of services. Besides checking a transaction against current embargoes, it is also important to check whether the export or transport of goods or services is subject to licensing requirements. The US

takes a broader interpretation of US export control laws and asserts the claim that these laws also apply to transactions outside the US and carried out by non-US citizens. Goods are subject to US (re-)export law if they are in the US or originated there. American law also applies if the goods have a US component above a certain de minimis threshold or were produced using US technology or software. Software, technology and know-how are also subject to US regulations.



Solution

ATC :: Export Controls screens exports against EU and US law on the basis of documents in the SAP® system. The company's designated export manager is notified if – and only if – export control restrictions, embargoes or licensing requirements apply.

— Export control in detail: how companies must screen.

Screening task number 1: Is the shipment prohibited?

Foreign trade restrictions include embargoes and anti-terrorism measures directed against countries, persons or organizations.

TOTAL EMBARGO

A total embargo refers to comprehensive foreign trade restrictions prohibiting business relations with a particular country.

PARTIAL EMBARGO

Partial embargoes are also directed against defined countries but are limited to specific economic areas, activities or legal transactions.

ARMS EMBARGO

Some countries under UN, EU and OSCE sanctions are subject to an arms embargo. All arms shipments to such countries are prohibited.

PERSONAL EMBARGO

Any direct or indirect trade, consultation or financial support with or on behalf of persons, companies and organizations that appear on sanctions lists is prohibited.

Screening task number 2: Does the shipment require a license?

A license is required for the export or transport of goods deemed critical, shipped to specific countries or intended for a particular end use.

INDIVIDUAL EXPORT LICENSE

An individual export license is issued on the basis of an order to supply goods to a recipient. There are also other types of individually issued licenses that allow shipments to multiple recipients or shipments up to a defined maximum quantity or value.

MAXIMUM AMOUNT LICENSE

The maximum amount license is a special type of individual export license that allows the shipment of multiple orders to a single recipient up to an approved maximum monetary value.

COLLECTIVE EXPORT LICENSE

The collective export license allows the export of a group of goods to various recipients based on a large number of exports in the previous year.

GENERAL LICENSE

General licenses may be issued at the national or EU level or by US authorities (“license exceptions”). General licenses do not require an application but typically require a one-time registration. Some general licenses or license exceptions require that you submit regular reports to the licensing authority on how the licenses were used – over the past six months, for example.

Screening task number 3: Does US (re-)export law apply?

The first step is to determine whether the transaction is subject to EAR. If so, you must carry out US EAR export control checks and may need to obtain a US license. US ITAR always applies to arms that originated in the US.