

Policy on Export Authorisations

Introduction

There are two basic concepts for regulation of foreign trade (exports). The first treats foreign trade as a right and export licenses are usually only required for items on a control list. The second treats foreign trade as a privilege bestowed by government where everything is licensable unless the government says it isn't. While the philosophies differ the outcomes are at the end of the day broadly similar.

It is extremely important to plan in advance. Well before any goods leave the factory or technology/technical data is sent for access by individuals abroad it is necessary to determine whether an authorisation from Government is in place, or whether one needs to be applied for, to permit the export or to allow access to the technology. In every jurisdiction there are a number of different types of authorisation. The most suitable one will depend upon what is to be exported, the intended destination and end-user and whether there are requirements for repeat shipments. In most jurisdictions the determination of whether an authorisation is required, and what authorisation is most suitable, depends on the classification(s) or rating(s) of the item in all relevant jurisdictions. This must therefore be established first, in accordance with the Policy on Classifications. Note that some classifications are established simply for the re-exports of goods or technologies, and that the existence of such a classification does not necessarily require an authorisation from your jurisdiction.

In addition to being subject to national export control requirements, exports from outside the US may also be subject to the US export control regime where the goods or technology were manufactured in the US, manufactured outside the US but using US technology or contain US origin components. It is therefore important to understand US involvement in items and the restrictions this may place on future re-transfer or re-export and the permissions that will be required to facilitate the transfer.

In addition to the export of goods and technology export authorisations may also be required for other activities – most notably brokering (trading) or provision of services (technical assistance and training).

Policy

1. If you are unsure whether an authorisation is required to allow your activity, or whether one is already in place to permit that activity, you should consult your Export Point of Contact (EPOCO or export control manager).
2. If it is determined that an authorisation is required to allow your activity it is your responsibility to provide the export control manager (or EPOC where they are empowered to apply for authorisations) with all the information they need to determine what is the best authorisation vehicle for the case in hand. They need to understand not only the overall intent of your activity, but also the involvement of each foreign party.

3. Additional information could be required (i.e. End-User Certificate, Purchase Order) which would be requested on an as-needed basis. In some cases you may also need to provide a more detailed explanation of the activity to help the Government regulator to understand what the activity entails.
4. For re-transfer or re-export of US origin items, or for export of items with US content, it is necessary to work with your export control manager or EPOC to understand whether a US authorisation will be required to facilitate the transfer. In these cases you should provide full information about the proposed export, including where required the export control classification(s) of the item in all relevant jurisdictions, all proposed destinations (including in your country), the locations of any servers or databases, the identity and location of the IT company providing IT support, and details of the recipients, such as employer, employment status, address, nationality etc.