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Navigating export controls

FW discusses export controls with Nidhi Rao, Nathalie Terrazas and Leilei Wu at BDO.



THE PANELLISTS



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FW: Could you provide an overview of recent trends in global trade? What overarching themes are you seeing in trade policies and regulations pertaining to export controls?

Rao: Geopolitical tensions, including the Russia-Ukraine war, US-China friction and instability in the Middle East, are reshaping global trade policies. These tensions, along with increased tariffs and regulatory barriers, have highlighted supply chain vulnerabilities, prompting companies to reevaluate their sourcing strategies. Export controls are increasingly leveraged as foreign policy tools. The US Bureau of Industry and Security (BIS) has expanded its entity list and commerce control list (CCL) to limit transfer of dual-use items – products or technologies that can have both civilian and military applications to potential adversaries. Additionally, the US government has strengthened its export

control enforcement through interagency collaboration and creation of the Disruptive Technology Strike Force. US officials have emphasised this renewed focus on export enforcement in various speeches. For instance, Lisa Monaco, deputy attorney, remarked that “sanctions are the new Foreign Corrupt Practices Act”, while Matthew Axelrod, assistant secretary for export enforcement at the BIS, warned of “more big-ticket corporate resolutions” for export control violations. The message from the US government is unequivocal: violations of export control laws will lead to increased penalties, more prosecutions and significant settlements.

FW: What types of companies are now having to think about export control?

Terrazas: Export control regulations now impact a wide array of companies across industries, particularly those involved in the

procurement, development, sale or export of dual-use items. Sectors like software and cloud computing, automotive and electric vehicle manufacturing, with a focus on critical minerals and battery components, and renewable energy are now subject to greater scrutiny. Financial institutions are also increasingly required to conduct due diligence on the end-users and end-use of financed products or services, ensuring that they do not inadvertently facilitate the violation of export controls. In 2023, the US Department of Commerce imposed a multimillion-dollar penalty on a US-based manufacturer for exporting low-level items – such as wires and pressure and temperature scanners – to Chinese military-linked entities. This case highlights the need for vigilance in both end-use and the end-user screening. Export control compliance is now critical for all companies operating internationally that sell products,

technology and software with potential dual uses.

FW: What are some of the strategic and operational challenges that companies are facing due to the evolving export control compliance landscape?

Wu: Companies are grappling with the increasing complexity of export control regulations, which are subject to frequent updates. For example, in 2024, the BIS and other regulatory bodies introduced multiple updates to the entity list and CCL, adding more companies and individuals while expanding restrictions on a wider range of products and technologies. This requires companies to make significant investments in their compliance infrastructure, including employee training and implementing upgrades to internal systems as necessary. The changing landscape also forces companies to reassess and reconfigure supply chains and production strategies and reevaluate market presence, balancing compliance risks against growth opportunities. For instance, in 2022, many multinational companies faced difficult choices regarding their operations in Russia following the imposition of sanctions. These changes underscore the need for companies to stay agile and proactive in managing both the regulatory and operational risks associated with export control compliance.

FW: How important is it for companies to establish a robust export compliance programme? What role do internal audits, employee training and compliance manuals have in maintaining adherence to export controls?

Rao: Given the complexity and ever-changing nature of export control regulations, it is crucial for companies operating in global markets to establish a robust compliance programme. Regulatory bodies like the BIS and the Department of Justice expect companies to implement comprehensive compliance programmes. These agencies have issued guidance outlining the key components of an effective compliance programme. These key elements include establishing clear

policies and procedures, including internal controls, providing ongoing employee training, and conducting compliance audits to assess effectiveness and identify areas for improvement. Clear policies guiding employees on obtaining licences, conducting due diligence screenings, verifying end-use and end-users, and managing day-to-day export operations are critical in avoiding inadvertent violations. This ensures that employees understand their responsibilities in complying with complex export control regulations, while compliance audits help monitor adherence and identify areas for improvement, thus facilitating evolution of the compliance programme alongside new regulations and business needs.

FW: What challenges do companies encounter when implementing technologies to support export control compliance?

Terrazas: Implementing export control compliance technologies presents several challenges, including integrating systems across different jurisdictions, ensuring real-time updates for frequent regulatory changes, ensuring data integrity, and addressing challenges in customising and scaling the technology. Inadequate or inconsistent data integration across entities and departments, such as procurement, sales, logistics, legal and finance, can impede automation efforts, leading to inefficiencies and potential failures in screening and classification processes. Additionally, deploying technologies such as automated screening tools and classification management software can require substantial financial investment. While off-the-shelf solutions exist, they may not always meet a company's needs, necessitating customisation. Implementing and customising these systems can be costly, especially for smaller companies. Despite these challenges, automated solutions offer more reliability and scalability than manual processes, significantly reducing the risk of human error and ensuring companies can adapt quickly to regulatory changes. In the long run, investing in compliance technology is not just a necessity, but a far

EVEN WITH ITS CHALLENGES, AI-POWERED SYSTEMS WILL LIKELY BECOME INDISPENSABLE FOR COMPANIES TO STAY AHEAD OF EVOLVING RISKS AND EVER-CHANGING REGULATORY DEMANDS.

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WHILE THE US CONTINUES TO TAKE THE LEAD, MANY GOVERNMENTS WORLDWIDE ARE INCREASINGLY UTILISING SANCTIONS AND EXPORT CONTROLS AS KEY INSTRUMENTS OF FOREIGN POLICY.

NATHALIE TERRAZAS
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better alternative than relying on manual controls alone.

FW: To what extent are companies deploying technology to assist them with export control compliance? What impact is artificial intelligence, for example, likely to have on processes and procedures?

Wu: Despite challenges, companies are increasingly deploying technologies to manage export control compliance, particularly in automating screening of customers, suppliers and transactions, as well as to conduct end-user and end-use verification and product classification, to ensure companies meet export licensing requirements. In addition, many companies are employing the use of supply chain mapping software solutions to enhance not only export compliance, but also import compliance, for example to prevent violations of global forced labour prevention laws in supply chains. Artificial intelligence (AI) is transforming these processes by improving their accuracy, efficiency and scalability. AI-powered systems can analyse historical data to identify patterns and high-risk transactions more efficiently than manual reviews.



THE MESSAGE FROM THE US GOVERNMENT IS UNEQUIVOCAL: VIOLATIONS OF EXPORT CONTROL LAWS WILL LEAD TO INCREASED PENALTIES, MORE PROSECUTIONS AND SIGNIFICANT SETTLEMENTS.

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Using machine learning algorithms, AI can minimise both false positives and false negatives, leading to more precise identification of high-risk entities or suspicious transactions. However, regulators are also requiring companies to evaluate the risks associated with using AI within their AI governance and risk management strategies to make sure they have no unintended consequences, further complicating its use. Additionally, AI systems can process large amounts of data rapidly and efficiently, significantly reducing the time required to review and approve export transactions. This, in turn, enables businesses to operate with greater agility. Even with its challenges, AI-powered systems will likely become indispensable for companies to stay ahead of evolving risks and ever-changing regulatory demands.

FW: How important is it to continually assess and improve systems to ensure they allow a company to meet its compliance obligations while pursuing viable export opportunities?

Rao: Export compliance should not be seen as a barrier to trade but as a catalyst for sustainable growth in international markets. An adaptable and well-maintained compliance system, including both exports and imports, enables companies to confidently pursue export opportunities, knowing they are operating within the bounds of legal and regulatory frameworks and taking advantage of the many free trade agreements which exist globally. By regularly assessing and improving compliance systems, companies are better positioned to explore new markets, manage complex global supply chains and seize growth opportunities without being constrained by regulatory uncertainties. Continuous assessment ensures that compliance systems remain aligned with the company’s internal processes and overarching business strategies. Moreover, periodic evaluations allow companies to update their systems in response to regulatory changes – such as updates to the entity list or CCL – and adjust for strategic shifts, like entering new markets or launching new products. By

consistently evaluating and upgrading compliance systems, businesses foster a compliance-driven culture that supports both risk management and business growth objectives.

FW: Looking ahead, how do you envisage export control practices evolving? How can companies best ensure they stay informed about changes in regulations and adapt their compliance strategies accordingly?

Terrazas: While the US continues to take the lead, many governments worldwide are increasingly utilising sanctions and export controls as key instruments of foreign policy. Companies can expect more restrictions driven by national security and shifts in the political landscape, affecting both where and how they conduct business. A growing focus will be placed on emerging technologies with significant dual-use potential. As these technologies evolve, we can expect tighter export controls and increased scrutiny on the end-use and end-users of these products, particularly in sensitive regions or sectors. To stay compliant, companies should regularly monitor regulatory updates. Reviewing reports like the BIS’s ‘Don’t Let This Happen to You!’ can provide valuable insights from case studies and lessons learned from recent enforcement actions. Companies should also engage with legal and trade experts, utilise specialised compliance software, and collaborate with third-party consultants for independent assessments to identify gaps and areas of improvement in compliance programmes and to identify potential violations and correction actions. ■

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