

New Export Control Law for Mexico

November 2011

In order to comply with its obligations under UN Resolutions 64/40 and 1540, on June 16, 2011 the Mexican Secretary of Economy issued an "Accord" (Acuerdo por el que se sujeta al requisito previo por parte de la Secretaría de Economía la exportación de armas convencionales, sus partes y componentes, bienes de uso dual, software y tecnologías susceptibles de desvío para la fabricación y proliferación de armas convencionales y de destrucción masiva) establishing a system of export controls for arms, parts, and dual-use goods, software, technology and goods that could be used in the manufacture and proliferation of conventional weapons and weapons of mass destruction. In addition, Mexico also requested accession to the Wassenaar Arrangement, one of the most important international regimes on export control for conventional arms and dual-use goods and technologies. The Accord will enter into force on October 21, 2011.

The new Accord follows some concepts under the US export control regime.

Under the Accord, the following items listed on the Accord's annexes require an export permit from the Secretary of the Economy before they may be exported:

- Dual-use goods listed on Annex I;
- Conventional arms, parts and components listed on Annex II; and
- Software and technology listed on Annex III

Dual-use

"Dual-use" is defined broadly to include any product, regardless of how small or innocuous, that could be incorporated in both military and civil products or put to military use. Examples include computers and software, drawings, bearings, electric/integrated circuits and cellular phones having a potential for dual use. Thus all dual-use software, technology and goods leaving Mexico, including by electronic means, are considered "exported" and, therefore, may be subject to obtaining an export permit from the Secretary of Economy prior to their export.

Exemptions from Export Permit Requirement

The following persons and transactions are exempt from obtaining an export permit:

- The Mexican Government;
- If the final customer is located in the United States, Canada, or a member state with similar export controls;
- Any other entity or person exempted by the Secretary of the Economy.

Obtaining an Export Permit

In order to obtain an export permit, the exporter must submit to the Secretary of the Economy a "Declaration of Final Use" that must contain the following information:

- Exporter's name and address;

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- Foreign importer's name and address;
- Industry or business activity of foreign importer;
- Description of goods to be exported; and
- Description of the operations or activities related to end use of the goods to be exported.

The export permit will be valid for one year, which can be extended for one more year as long as the circumstances remain the same. The Secretary of the Economy may refuse or cancel the exporter's authorization if the above requirements are not met, if false information is presented, if the exporter cannot provide sufficient evidence of accurate export controls or if the Secretary of the Economy knows or suspects involvement by the exporter activities controlled by the Accord.

How Can My Company Be Affected?

The Accord contains three annexes listing the specific goods and tariff codes of the goods that are subject to the export permit requirement. These lists will be reviewed and updated at least once a year. There are nine categories of dual-use goods in Annex I, which are comprised of the following broad categories:

I. Special materials and related equipment

II. Material Processing

III. Electronics

IV. Computing

V. Part I Telecommunications

V. Part II Information Security

VI. Sensors and Lasers

VII. Navigation and Avionics

VIII. Marine

IX. Aerospace and Propulsion

The Accord contains a fourth annex. Annex IV is a list of exempted destination countries. This annex has no listings at present.

The main industries affected by the new export controls are:

- Aerospace
- Aeronautic
- Electronic and electric components

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- Machinery and equipment
- Nanotechnology
- Robotics
- Software

Sanctions for Non-Compliance

Failure to comply with the Accord will be sanctioned according to the Foreign Trade, the Customs and/or any other applicable regulations, and may include tax and criminal penalties.

Companies doing business in Mexico need to carefully evaluate both the products listed as requiring an export permit, and also whether the ultimate customer is located in one of those countries that is exempt from the export permit requirement.