

Understanding the Four Types of U.S. Export Controls

January 22, 2016

American export controls can cause your business anxiety, fear, confusion and significant expense. Fraught with complex language, more acronyms than you can count, seemingly random changes in the law, and excessive fines — some exceeding \$1 million for a single violation — understanding the types and challenges of these controls is essential to remaining competitive.

This primer provides a framework to understand the four types of U.S. export controls applicable to manufacturing companies. By understanding this framework, you will be better prepared to review a baseline assessment of the export control risks applicable to your business.

So, what are the four types of controls?

- **Item:** Exports of certain items are controlled for national security purposes. These controlled items may include products, components, tooling, materials and software — the variety of items can range from tanks to ball bearings, encryption software to gas turbine engine components. To identify and protect these items, the U.S. government defines their attributes, places the export-controlled items on published lists for exporters to review, and restricts export based upon the U.S. government's national security risk assessment. You should also be aware that providing controlled technical information pertaining to an export-controlled item to a foreign person in the U.S. may be deemed an export of that controlled item.
- **Country:** The U.S. government controls the flow of items, services and money transfers to certain countries through the creation of embargoes. These country-based export controls may restrict activities ranging from the export of military items to a business in China, the provision of services to persons in Iran, and the transfer of U.S. dollars to Syria.
- **End-User:** Certain items, services and money transfers are also controlled depending on the end-user. End-user restrictions are provided by federal designations restricting association with a person or business. End-user restrictions may target a person or business for a variety of reasons, from helping terrorists to the U.S. government being unable to verify information about a business. The impact of an end-user restriction upon the exporter depends upon which list the end-user is listed — and there are many.
- **End-Use:** The U.S. government controls the export of items used for specific purposes or end-uses. Types of restricted end-uses include exporting items for installation on certain drones, for repair of certain nuclear facilities, or for the creation of chemical or biological weapons. These types of end-uses for an export-controlled item may be restricted, unless an export license authorizes the export for the designated end-use.

Your business should perform a baseline assessment to determine applicable item, country, end-use and end-user U.S. export controls. The more applicable issues you are able to spot, the less anxiety, fear, confusion and expense your business will have to face.

Continued

Jeffrey Richardson is a senior attorney in Miller Canfield's export controls group, based in Troy, Michigan. He can be reached at richardson@millercanfield.com.

[Editor's Note: Article previously published in the October 2015 edition of MiMfg Magazine.]