

HOW TO ... ASSESS DUAL USE CONTROLS

In this “How to ...” article we are going to summarise a complicated area of international trade: establishing if your goods are subject to export licensing controls under the dual-use regulations. Dual-use controls can apply to the most unlikely goods as it may be down to the material it is made of (rubber o-rings) or the technical capacities of the goods (certain valves) as well as what it might do (fertilizers = explosive). There is a lot of misunderstanding around this term dual use. It is not reliant on the end-use of the goods or just the fact it could be used in both a civil and military environment without modification. It is about the inherent capabilities being specifically described within the Dual-Use Control List.

Why is it important?

Now the UK has left the Customs Union of the EU, dual-use controls are fully in place on the movement of goods and related technology. Before 1st January 2021 companies trading dual-use goods/technology with the EU Member States could do so without hindrance most of the dual-use controlled items did not require an export licence to go UK to EU or visa versa. Now, all such items require licence permissions which means thousands of businesses that have traded without the need for an export licence come under these controls for the first time. The penalties are high: to export controlled items without a licence is a criminal offence.

But what is it?

The Dual-Use controls stem from an international agreement, called the Wassenaar Arrangement, that aims to control the distribution of common, commercial items that could be used, without modification, illegally. This includes:

- Terrorism,
- Development of chemical, biological or nuclear weapons (WMD) or the means to deliver them,
- Being used for illegal activities, ie people trafficking, internal repression, and
- To enhance the military capability, including surveillance and counter measures

The Wassenaar Arrangement (WA) received final approval by 33 co-founding countries in July 1996 and began operations in September 1996 and, it could be argued, has been causing confusion ever since (<https://www.wassenaar.org/the-wassenaar-arrangement/>).

How does it work?

The Dual-Use Control List orders goods/technology and software into 10 categories and exporters must read through the list to ensure their goods do not meet the description or technical parameters outlined in great technical detail. If they are described (what we call “caught”) in the List they are Dual-Use Controlled and you need a licence to export, if they aren’t “caught” they are still termed dual-use goods and could require an export licence for certain end-uses (eg military use, nuclear) or to certain destinations, eg North Korea.

It is worth noting that the controls are not just on physical exports of goods but also on intangible transfer of controlled software or technology, which, in this digital world, is happening more and more.



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How to ...

Step 1:

Know the 10 categories of Dual-Use Controlled items. You should review the relevant national regulations. In Great Britain, the rules governing dual-use item exports are the retained EU Dual-Use Regulation 428/2009 - also known as Council Regulation (EC) No 428/2009. This can be found within the UK Strategic Export Control Lists published on the gov.uk website

(<https://www.gov.uk/guidance/uk-strategic-export-control-lists-the-consolidated-list-of-strategic-military-and-dual-use-items>).

The 10 categories are:

- 0 Nuclear materials, facilities and equipment and miscellaneous
- 1 Materials, chemicals “micro-organism” and toxins
- 2 Materials Processing
- 3 Electronics
- 4 Computers
- 5 Telecommunications and Information Security
- 6 Laser and Sensors
- 7 Navigation and Avionics
- 8 Marine
- 9 Propulsion systems, space vehicles and related equipment

Categories 0, 1 and 2 can control some seemingly standard items such as the “o” rings mentioned in the introduction. In the USA, these category identification numbers are known as the Export Control Classification Number (ECCN), a term that is commonly used internationally.

Step 2

Read through the categories to see if any of your goods are described. There are a couple of short cuts (see below) but none of them absolve the exporter from the legal responsibility to ascertain if their goods, technology and/or software is caught on the list. This activity is known as “rating” the goods in the UK.

NB: If you specifically design, modify or reconfigure goods for a military purpose then they are not dual-use controlled, they are military controlled and require an export licence. A list of Military Categories is outlined separately within the UK Strategic Export Control Lists.

Step 3

If you have the correct commodity code for the goods you can review the EU Dual-Use Correlation table. This is an attempt to link commodity codes to the controlled categories, but it is only an indication that your goods could be controlled, you still must review the technical details within the List. Below is an example using the commodity code for a laptop computer, the DU numbers in the right-hand column open to show the potential areas within the Dual-Use List where a product with this commodity code could be controlled (yes, a laptop!).

Extract from <https://www.gov.uk/trade-tariff> highlights by author

Footnote: Export Licence

Export Control Sanctions

Country	Measure	Value	Conditions that apply	Exclusions	Council Regulation (EEC)	Start date (End date any)	Footnotes
► All third countries	Export authorization (Dual use)		Conditions		R1382/14	31/12/2014	CD464 DU216 DU222 DU223 DU694 DU280 DU435 DU635 DU229
► ERGA OMNES	Declaration of subheading submitted to restrictions (net weight/supplementary unit)		Conditions		R0927/12	01/02/2013	CD651
► ERGA OMNES	Supplementary unit	p/st			R2658/87	01/01/2008	
Belarus (BY)	Export control on restricted goods and technologies		Conditions		R0588/11	21/06/2011	CD994 TM631 TM636 TM637
Iran, Islamic Republic of (IR)	Export control on restricted goods and technologies		Conditions		R0264/12	09/02/2016	CD995 TM637 TM636 TM631 CD983

Step 4

If you can use the Export Control Joint Unit (ECJU) on-line tool called the [Goods Checker](#) where you can search by the description of goods. It isn't a brilliant tool as it selects every reference to the word or words you've typed into the search box, but it is still worth using. to establish this. The Goods Checker does help to establish if your items are controlled and identify the appropriate control entry ('rating') reference from the UK Strategic Export Control Lists.

Step 4

If you need further assistance in rating your goods, software and technology then you should register for the Department for International Trade (DIT) Export Control Joint Unit (ECJU) on-line tool called [SPIRE](#). There is a link from here to the Goods Checker but there is also a Control List Classification Search tool that can provide a clearer view of controls on some goods. Finally, via SPIRE you could submit a 'Control List Classification' Enquiry. This is the process of asking the ECJU advisors whether, what you intend to export, is caught on a control list.

It isn't easy to identify whether your exports are controlled or not but it is the exporter's legal responsibility to be aware of the export regulation that could apply to both your physical and intangible supplies. If the answer to this is 'Yes', then a licence will be required before you can export. If the answer to this is 'No', then you will only require a licence if there are WMD or Military End Use concerns about overseas entities who you intend to deal with.

If the answer is "I don't know" then it takes just one detainment of your exports or a visit from the non-proliferation team of HMRC to stop you from exporting that shipment, or altogether for a period of time until they investigate "intent". To repeat, the penalties are high: to export controlled items without a licence is a criminal offence.

While you are here you may be interested in some Strong & Herd LLP training courses related to this topic:

[Introduction to UK, EU and USA Export Licensing](#)

[Introduction to UK Export Licensing Controls](#)

[The Dual-Use Exporter: Understanding the Dual-Use Export Controls](#)

[Trading with the USA: The Defence Exporter](#)

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