LAW360

Portfolio Media. Inc. | 860 Broadway, 6th Floor | New York, NY 10003 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

The Latest In UK Export Licensing Trends

Law360, New York (August 3, 2015, 10:33 AM ET) --

The United Kingdom's Export Control Organization (ECO) recently released its latest set of data on export licensing, covering the period from Jan. 1, 2015, to March 31, 2015. For the first time, this has been produced to be compliant with the U.K. Statistics Authority's code of practice for official statistics. It includes a range of new data tables and a statistical commentary which reveal some interesting trends.

Richard Tauwhare

Licenses Issued

The numbers of licenses issued have held broadly steady over the last 12 months, with some 12,500 Standard Individual Export Licenses (SIELs), 250 Open Individual Export Licenses (OIELs), 130 Standard Individual Trade Control Licenses and 1600 Open General Export License registrations per year.

It is too early to judge how far the ECO's initiative launched in February to encourage greater use of OIELs will translate into a substantial shift from SIELs to OIELs. Nonetheless, the number of OIELs applications rose by 18 percent compared with the previous quarter, from 68 to 80. If this trend is sustained, it should lead to a corresponding reduction in SIELs and thereby relieve some of the workload pressure in the ECO as well as the administrative burden on exporters. This has been a long-cherished objective of the ECO in promoting greater use of Open Licenses but the numbers of SIELs continue to remain stubbornly high.

This could reflect an increase in the volume of trade. But in terms of value, SIELs have remained broadly unchanged over the last several years at some $6.2 billion (4 billion pounds) annually.

However, this is an unreliable guide to the total value of controlled exports since many are conducted using Open Licenses, whose value is not recorded and some SIELs are not fully utilized: i.e., while the statistics give the total value of goods licensed for export, not all the licensed goods may in fact be exported and some may of those goods may then be included in a new license, leading to the value of the same goods being counted twice or more.

Licenses Refused, Revoked and Rejected

The level of refusals for SIELS has been averaging 2 percent or 250 per year since 2008. Having risen during 2014, due primarily to the introduction of sanctions on Russia and parts of Ukraine, the start of 2015 has seen the figures returning closer to average.

SIEL refusals in Q1 of 2015 totaled some 65. These concerned primarily:

- Russia: 17 refusals, all on the basis of the embargo on all items for military end use;

- Ukraine: Five refusals and five revocations, mainly of firearms and body armor, on the grounds of the risks of their use in civil conflict or diversion;

- China: Eight refusals, for biotechnology and cryogenic equipment, sonars and imaging cameras, refused on the grounds of the risk of diversion to an undesirable end use, U.K. national security and human rights concerns;

- Pakistan: Seven refusals, all on the grounds of WMD end use, for chemicals, generators and alloys;

- Iran: Six refusals, all under the sanctions regime, for corrosion resistant piping, pumps and seals (potentially of use in a nuclear weapons program);

- Thailand: Four refusals of imaging and cryptographic equipment and riot control gear, given the risks of their use for internal repression;

- India: Three refusals, for components for submarines and instrumentation cameras, on the grounds of U.K. national security and risk of diversion (presumably to India's nuclear weapons program);

- Egypt: Two licenses refused, for firearms and weapons sights, given the risks of their use for internal repression;

- Qatar: Two refusals for general laboratory chemicals, on the grounds of diversionary risk (presumably to Iran);

- Other refusals were primarily on the basis of arms embargoes (one each in Argentina, Azerbaijan, Burma, Liberia and Syria) and risk of diversion to a prohibited or undesirable end use (Cyprus, Singapore, South Africa, Sri Lanka, Tanzania, Turkey and UAE).

Israel is notable by its absence from this list, as most licensing activity was suspended pending clarification of the security context there following the actions of the Israeli Defense Force in Operation Protective Edge in Gaza last summer, in which many Palestinian civilians died in allegedly indiscriminate attacks. This provoked a vocal campaign for a halt to all U.K. arms sales to Israel. The government announced on July 14 that it was now in a position to resume its risk assessments and lift the suspensions, presumably having taken into account the findings of the independent UN Gaza Inquiry, released on June 22 (although this found "information" on serious violations both Israel and by Palestinian armed groups).

The consistently low level of SIEL refusals, at about 2 percent, tends to reinforce the argument made by some exporters that the U.K. licensing process is unduly risk-averse. Given that 98 percent of all SIEL applications are approved, there is a case for more lower risk products and destinations to be included in Open General licenses, which do not require the same levels of scrutiny applied to SIELs.

This would however increase the risk of a U.K. export being misused, which the entire system is designed to prevent. The U.K. government is proud of its record in this respect, pointing out that there has been no clear evidence in recent years of such misuse. Critics in Parliament, the media and nongovernmental organizations point out that the government does not conduct verification of the end use of controlled exports and, in the absence of that, cannot be confident that some of those exports are not in fact being misused. Ultimately, the balance between open and standard licensing depends on the government's risk appetite and there is no immediate evidence of a significant change in this.

Of the 80 OIEL applications, some 12.5 percent were rejected and 2.5 percent were revoked. The great majority of the rejections were for nuclear, biological and chemical protection equipment (refused for Belize, Bolivia, Brazil, Chile, Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, Honduras, Jordan, Lebanon, Malaysia, Nicaragua, Oman, Panama, Peru, Saudi Arabia, Turkey, UAE, Uruguay and Venezuela). The other main types of items rejected were ammunition, imaging equipment, cryptographic equipment and body armor.

No reasons are given for OIEL rejections. But it is open to exporters to apply instead for a SIEL for the same export. In many cases this may be approved given the tighter control of exports conducted under SIELs.

Application Processing Times

These have taken a dip. The ECO missed its published target to process 70 percent of SIEL applications within 20 working days, managing 68 percent (the figures for April and May, made available separately, are below 50 percent). The median processing time has gone up from around 13 working days last year to over 18 working days. OIELs also missed their target of 60 percent processed within 60 working days, reaching 56 percent. The main explanation remains the introduction of new IT systems in the ECO since their staffing headcount has largely survived the severe cuts experienced in many government departments as part of the deficit-reduction program.

Top 5 Products Licensed by SIELs in 2014

For military goods, these were: aircraft and components (1,592 licenses), firearms (1,141), electronics (674), vehicles and components (450) and bombs, missiles and components (449).

For dual use goods: information security equipment and software (1,800), chemical processing equipment (494), imaging cameras (381), navigation equipment (286) and protective and detection equipment (114).

Perhaps more interesting are the top five lists of items which were refused SIELs. For military goods these were: firearms, armor, ammunition, military technology and military development, test and production equipment. For nonmilitary goods, the top five were: "End use" (i.e., nonlisted items destined for WMD or sanctioned military use), imaging cameras and equipment, "IRN" (i.e., nonlisted items prohibited for export to Iran) and nuclear reactor components and technology. These clearly remain the most sensitive items for licensing purposes and their exporters should be aware of the higher risks of a license being refused.

End User Destinations in 2014 for SIELs

China was the end user destination with the highest number of licenses granted for exportation of strategic goods under Permanent Standard SIELs, with 930 licenses. India, the U.S. and South Korea also topped 500 licenses, with UAE, Turkey, Singapore, Taiwan, South Africa and Saudi Arabia making up the rest of the top 10.

However, Taiwan was the destination with the highest value, with licenses issued for $1.5 billion (980 million pounds) worth of goods (as valued by applicants). China, UAE and the U.S. also topped $782M (500 million pounds). Others in the top 10 were: Iran, Japan, South Korea, Netherlands, Saudi Arabia and Russia. (Iran's presence in this list, as the fifth largest market by value, $463 million (296 million pounds), for U.K. controlled goods licensed by SIELs, may seem surprising. But this largely reflects the fact that some items not controlled for other countries require a license for export to Iran, in particular civil aircraft and their components, which make up the great majority of these licenses.)

Again, this only gives a partial picture of total U.K. controlled exports as it excludes those exported under Open Licenses.

Official Statistics

The shift to publishing the quarterly export licensing data as official statistics means that they must now comply with the U.K. Statistics Authority's code of practice. Broadly, this requires them to meet certain standards including impartiality, objectivity, accessibility, freedom from political or other interests, confidentiality and meeting users needs. It also requires the data to be released according to a pre-published timetable, which will constrain the ECO's previous flexibility; while exact dates have yet to be set, the data from the previous quarter should be published in mid-October, January, April and July.

Conclusions

Of the many possible lessons to be drawn from this latest data, I would pick out three.

First, always use Open Licenses wherever possible, particularly given the additional burden and risk of delays in the processing of SIEL applications.

Second, for always allow sufficient time for SIEL applications: 18 working days is now the median, but sensitive products and/or destinations can take much longer.

Finally, be aware of the types of products and destinations for which SIELs and OIELs are being refused. This is an invaluable guide to business development risks and opportunities. More generally, exporters to sensitive destinations should be alert to the political and security context, which is the primary driver of license refusals and revocations. Although these are rare, a refused license can result in heavy losses in marketing investment and from broken contracts which could in most cases, with some modest due diligence, be avoided.

—By Richard Tauwhare, Dechert LLP

Richard Tauwhare is a senior director in Dechert's London office.

The opinions expressed are those of the author(s) and do not necessarily reflect the views of the firm, its clients, or Portfolio Media Inc., or any of its or their respective affiliates. This article is for general information purposes and is not intended to be and should not be taken as legal advice.
