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Internal Compliance Program - Series (23) - License Determination

Today, in the hands-on practical advice series on Internal Compliance Programs for Export Control:

Part 23: License Determination

All efforts to draft and submit a perfect Internal Compliance Program are meaningless if your company is not able to determine day by day if an administrative authorization (often called license) must be applied for and obtained before the export (or another export controlled transaction) takes place. As this is not only a complex question, but also the most important one in export control compliance, all resources and available documentation have to be considered in this assessment.

Your ICP should demonstrate that you are mastering the multi-step process to determine if a license is required for a particular transaction and that you are duly documenting relevant criteria assessed during this process.

Here are some tips to draft the relevant ICP chapter:

- Start your process with regard to your product (requires a duly completed product classification sheet).
- Consider the type of transaction with regard to the concerned product (e.g. export, import, transit, transfer, brokering, technical assistance and intangible transfer of technology).
- Review the end-use of the item, the customer and the end-user, and pay attention to potential red flags.
- Assess if the transit, destination and end-use country are sensitive or even sanctioned, meaning indicated on a UN, EU or national sanctions list.
- Determine the license requirement by combining the four previous steps (there must be a clear yes/no answer, but take into account that a prior notification may be due to licensing authorities in order to ask them if a license is required, e.g. due to catch-all or end-use provisions in national or international export control regulations).
- Indicate what type of authorization must be applied for (in general, individual authorizations, nut global or general authorizations on international or national level may be available for use).
- Tell your reader what conditions do apply to the different categories of authorizations, what underlying documents must be attached to the application, what forms may be used, whose signatures are required, what are processing time within the public administration, and who will sign the licenses.

- Indicate the possible post-licensing requirements, for example in case of expiration or loss of licenses, for the assignment of licenses, about conditions of use and return, and above all any reporting requirements.