

Export Compliance Daily

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Trade Consultant Fears Australian Industry 'Not Ready' for AUKUS Exemptions

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Australian export compliance officers are wary about a new proposed International Traffic in Arms Regulation exemption for defense trade with the U.S., which is causing some compliance confusion and could lead to a host of “operational challenges” for companies subject to trade regulations, said Eva Galfi, a consultant for International Trade Advisors in Australia. She said the new exemption, along with a similar rule by the Commerce Department to reduce certain license requirements for exports to Australia and the U.K., may also increase the risk of large fines for violations.

Galfi, speaking during a webinar this week hosted by Crowell & Moring, said some small and medium-sized companies are “very excited” about the exemption because they think “there will be no more control on ITAR, and their compliance officers can put their feet up, and there won't be anything left to worry about.” But “just because there's no license,” she said, “doesn't mean there's no compliance.”

Both the State (see 2404300050) and Commerce (see 2404180035) departments last month released rules designed to ease export restrictions on certain trade between the U.S., Australia and the U.K. as part of the three countries' AUKUS partnership. Galfi said the new exemption proposed by the State Department's Directorate of Defense Trade Controls, which isn't yet finalized, “has not been met by excitement” by Australian export control officers.

“We fear that we're just not ready for this,” she said. “Our regulatory environment is not such that we can handle just letting everyone loose with an exception or an exemption. They will just use it as if there were no requirements whatsoever.”

She also said some Australian companies have existing export control licensing rules built into their commercial contracts, which means they will still have to comply with those contractual rules even if the AUKUS nations move forward with a new trade exemption. “That's going to complicate things,” Galfi said. “I don't think that the government people working on these changes understand the operational implications of the changes that they're suggesting.”

Australian companies have historically “shied away” from using exemptions under the ITAR or even the Export Administration Regulations, Galfi added, because they would rather obtain a “physical, tangible piece of paper” outlining how their technology is controlled and who it can be shared with. “We don't have anything to point to to control this stuff now,” she said. “Where there's no piece of paper, we won't be able to tell other parties this is in fact ITAR controlled and here are the conditions you must

comply with to control it.”

Despite their concerns, Australian companies fear they will be “bullied” into using the new exemption by an American parent company or others. “We are small, and oftentimes we don’t have the same negotiating power that the U.S. entity or the U.K. entity that we’re trading with does,” Galfi said. “And so companies here are really fearful about what this is going to do to them and the risk profile that it creates.”

The State Department is accepting public comments on its proposed ITAR exemption rule through March 31, and the exemption can only take effect if the U.S. government certifies that Australia and the U.K. have comparable export control systems to the U.S.

Dilan Wickrema, a former DDTC official and now a Crowell lawyer, said he’s expecting the final version of the rule to “look very similar” to the proposed version, although the agency may add some clarifications. Maria Alejandra del-Cerro, also a former DDTC official and now a Crowell lawyer, said she’s “curious” about how the U.S. will approach penalties for violators, including companies in Australia and the U.K.

Galfi said Australian compliance officers are worried about those penalties and feel their risk is rising. “If you accidentally move something to a place it’s not supposed to go, you could be up for a double fine: one from the U.S. government and one from the Australian government,” she said. “And so you can see why companies want to shy away from this shiny new exemption, where they’d rather have a piece of paper to ensure that things are more tightly controlled, and the risk is thereby lowered.”

She also said exporters want DDTC to open an Australian branch so the agency can more quickly answer ITAR licensing questions. She said she thinks a 35- to 45-day response time would be “achievable.”

“Six to nine months to get an approval issued by DDTC was just way too long,” Galfi said. “Shortening that time frame would solve a lot of problems, and we feel that the exemption creates additional complications to solve that very simple problem.”

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