

## Bans and Restrictions

Navigating the regulatory maze safely and efficiently



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# 1. Management Summary



“The more laws and restrictions there are, the poorer people become!” Looking at the relative prosperity of today’s European Union despite the sheer number of EU restrictions and regulations, you’d have to conclude that the Chinese philosopher Lao Tzu got it a bit wrong. And yet, this quote from the founder of Taoism does contain a kernel of truth. Bans and restrictions can grow into serious trade barriers unless businesses keep track of them and efficiently integrate them into their business processes. This is especially true in global trade, where compliance with complex national and international rules and regulations is a basic prerequisite for long-term success. But the effort required to run checks and obtain the necessary permits must remain within reason. Otherwise, businesses face an uphill battle trying to match the lead times and costs needed to thrive in the highly competitive global marketplace.

Only very few businesses are able to achieve the necessary efficiency in dealing with bans and restrictions without any IT support whatsoever. The broader the product portfolio and the more international the sales markets, the more complex the task of screening business transactions becomes.

That’s why you can now find excellent IT solutions that manage the screening processes automatically in the background. Many exporters now deploy export control solutions that screen all ongoing business transactions against restricted party lists, national embargoes, restricted product lists, and designated use definitions. But the full functionality of such software often goes unutilized. The same software can be used to reliably screen against bans and restrictions from other jurisdictions and countries and even define in-house restrictions, for example. Such functions can be programmed to run as manual restrictions alongside the software’s standard screening processes.

Using IT to support the monitoring of these manual restrictions offers many benefits:

- **Much lower processing times**
- **Lower personnel costs**
- **Streamlined processes**
- **Much greater transparency and legal protections in the screening process**

This white paper from AEB provides an overview of the most common bans and restrictions and offers tips for automating and simplifying screening processes through manual restrictions.

## 2. Bans and restrictions at a glance

Bans and restrictions (B&R) are legal regulations that ban or restrict the trade in goods with non-EU nations (“third countries”).

In addition to political actions (embargoes against countries and individuals, foreign trade regulations on dual-use goods and munitions) and sector-specific import restrictions (for iron and steel products, for example), various bans and restrictions are in place.

“Bans and restrictions” is an established term in global trade for rules that are overseen by the customs authorities. It would be inaccurate, however, to imagine “bans and restrictions” as a single list of items that can simply be checked off. A plethora of laws and regulations ban or restrict the import, export, or transit of many goods. This includes provisions of laws governing animal disease control, genetic engineering, guns, narcotics, pharmaceuticals,

trademark rights, waste management, and wildlife protection. Global enterprises must also comply with the bans and restrictions applicable in third countries for their foreign offices.

But bans and restrictions stemming from laws and regulations are not the only things that count in business practice. A company’s own in-house “bans and restrictions” must be respected with the same diligence.

### 2.1 ... narrowly defined

The sheer volume of legislation involving bans and restrictions is so great that it cannot be accounted for in full within the scope of this white paper. For example, the website of Germany’s Central Customs Authority distinguishes eight categories for classifying the various B&R.

#### Protecting public order and security

The aim is to protect the basic principles of freedom, democracy, and public safety. This category includes export controls for dual-use goods and munitions such as explosive substances defined under Germany’s Explosive Substances Act (Sprengstoffgesetz). It also covers written materials and media deemed harmful to minors or unconstitutional.

#### Protecting the environment

The aim is to protect the natural environment. This category includes rules for transporting, removing, and recycling waste as well as restrictions on exports of substances that deplete the ozone layer such as those defined in the EU Ozone Regulation.

#### Protecting human health

The Central Customs Authority is responsible for monitoring compliance with the EU’s rules governing cosmetic goods, tobacco products, food, wine, organically grown food, and pharmaceuticals – including products imported from third countries.

#### Protecting wildlife

The aim is to promote biodiversity and a healthy animal population. This requires compliance with many very detailed regulations such as those governing the international trade in animals, animal feed, animal transports, and animal products.

#### Protecting plant life

A number of B&R are focused on protecting biodiversity, avoiding the spread of plant diseases and pests, and upholding EU regulations on the import of crop protection products and seeds from third countries.

### Protecting cultural heritage

Import and export bans are in place to protect the unauthorized cross-border movement of objects of cultural heritage. Works of art and other cultural artifacts whose removal from Germany or the European Union would constitute a significant loss for national or European cultural heritage are subject to special protections. The customs authorities also monitor the ban on trade in protected Syrian and Iraqi cultural artifacts.

### Protecting intellectual property

Intellectual property laws aim to protect technical and aesthetic achievements that can be commercially exploited. They also protect business trademark rights. Defined more broadly, this includes copyrights and the right to fight unfair competition.

### Sector-specific restrictions

One current example is the monitoring of incoming transports of iron and steel products. In April 2016, the European Union resumed monitoring imports of certain iron and steel products originating in non-EU countries (except Norway, Iceland, and Liechtenstein). The reason for this monitoring is the precarious economic state of the EU's steel industry amid worldwide overcapacities in the steel sector. Importers that are planning to import such products must request a monitoring document. This document must then be presented when the import clears customs.

## 2.2 ... broadly defined

In addition to the "bans and restrictions" monitored by the customs authorities, businesses face many other restrictions in their day-to-day operations. This includes regulations that fall under the purview of other government agencies as well as company-specific restrictions. An example: Company A instructs its shipping department not

to supply hydraulic pumps to customers in Japan, even though that would not be a problem under foreign trade regulations. The reason: Company A has signed an exclusivity agreement with a Japanese company that includes territorial protections in this area.

### 3. Violations of bans and restrictions

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The consequences of violating B&R depend on the underlying laws of the corresponding country. A tourist returning from East Asia who is caught at customs with a fake designer T-shirt will, depending on the specific circumstances, likely face different consequences than a company that tries to import large volumes of counterfeit brand-name goods. Criminal or regulatory penalties are possible, depending on the violation, and civil action such as damage claims cannot be ruled out.

The risk of losing customs and foreign trade privileges looms especially large for exporters. Such privileges depend on a company's trustworthiness, which is generally called into question if the company violates foreign trade restrictions. As a result, privileges are either revoked or not granted in the first place, severely impairing the competitiveness of the company. In addition to the aforementioned consequences, the damage to the company's reputation if news of the violations leaks to the media should not be underestimated.

## 4. Practical approach to bans and restrictions for businesses

The responsibility for taking the necessary precautions to comply with bans and restrictions lies with companies themselves. In practice, different companies take different approaches to fulfilling this responsibility. Some use written operational and organizational procedures, for example, while others might hold employee workshops or make a note of bans and restrictions in the master product data. In some companies, responsibility for individual B&R is decentralized. In recent years, however, many companies have created the position of a Compliance Officer whose responsibilities include centrally monitoring bans and restrictions and the precautions taken at the departmental level.

The conventional wisdom, especially in large enterprises with a broad spectrum of goods and large customer base, is that manual processes alone are neither adequate nor

efficient for complying with what are sometimes very complex regulations. That explains the rise in IT-based export control solutions, which screen business transactions against restricted party lists and check for embargoes, critical goods, and critical end-uses. Software solutions not only streamline export controls, they also provide an option for monitoring compliance with all in-house B&R, which may affect imports as well as exports. An IT solution can even be configured to automatically check in-house specifications or legal requirements from non-EU countries. The company itself can decide what the software should display if a check identifies one of the defined restrictions: “prohibited,” “license required,” or just a warning, for example. Users have almost unlimited flexibility in configuring their processes in such software solutions.

### 4.1 Export controls

Export controls significantly restrict the freedom of international trade through bans and licensing requirements. The aim of export controls is to fight the spread of weapons of mass destruction and conventional munitions in order to protect the security interests of national states and the whole world. To achieve these goals, exporters are obliged to implement in-house export control checks. These checks should cover the following four key elements:

- **Check of critical business partners – restricted party screening**

Companies are prohibited from providing funds or economic resources to any persons or organizations on whom EU and UN Security Council financial sanctions have been imposed. Restricted party screening has proven to be an effective tool in practice for meeting this requirement. All business contacts that are maintained in the ERP and logistics system can be automatically checked for any matches with the defined

restricted party lists using specialized screening software. Restricted party screening is required for domestic business relationships as well, not only foreign transactions. That’s why it is a good idea to run regular automated checks of all master data.

- **Check of national embargoes**

A core element of any export control screening is to look at the countries involved: Is there an embargo in place against this country? If so, which areas of the economy are affected by the sanctions? Iran, Russia, Syria, Libya, Tunisia, North Korea, Congo, Sudan ...? Which goods are actually allowed to ship to which country, and what are the restrictions defined in each specific embargo?

- **Check of critical goods**

Which goods can I ship without hesitation? Which goods require a license? Classifying goods according to export control product lists is at the very center of export control screening, as this determines whether they require a license to be exported from or moved within the EU. Export control law distinguishes between controlled munitions and the listed dual-use goods.

- **Check of critical end-use**

In addition to checking for critical goods, you need to look at the end-use. If the exporter is aware of a critical end-use for the goods to be shipped, this may lead to licensing requirements. An example of critical end-use is if non-listed goods are to be used in a nuclear power plant or for chemical, biological or nuclear weapons. A license is also required for non-listed goods if there is knowledge of a military end-use in a country under an arms embargo.

It is not usually easy for businesses to integrate export controls into their day-to-day operations, given how many areas are impacted. Strict business process organization is required to ensure compliance with bans and licensing requirements. Export controls are not concentrated in any one part of the company: Compliance must be a company-wide mindset. IT support makes it possible to run automated checks of the various requirements. Software solutions are an important tool for optimizing processes and minimizing the risk of violating bans and restrictions in international trade.

IT solutions highlight where bans and licensing requirements are in place and where simplified procedures might be applicable.

## 4.2 Importe

The logic and algorithms developed for automated export controls can be used to check all bans and restrictions – both imports and exports. Software solutions are capable of checking a broad spectrum of criteria, from the ban on petroleum imports from the “Islamic State” to the most arcane provisions of national embargoes. The monitoring of iron and steel imports referred to earlier serves as an example of import-related B&R. The

requirement covers imports classified under the commodity codes in Chapters 72 and 73 of the Combined Nomenclature exceeding a net weight of 2,500 kg originating in non-EU countries with the exception of Norway, Iceland, and Liechtenstein. Even this requirement, with no fewer than three variables, can be defined as a manual restriction in any good software solution.



## 5. Case study: frequency changers for Iran

How can software be used to manage a complex screening process in a manual restriction? Let's illustrate this with a case study:

The German machinery and equipment supplier Blitz AG has a Swiss subsidiary named Voltage GmbH that manufactures frequency changers and exports them worldwide directly from its plants in Switzerland. Now a request has been received from Iran for an order consisting primarily of lower-output frequency changers but also including some high-output units. What is Voltage GmbH required to screen? And how can software support this process?

The export specialists and Compliance Officer of Voltage GmbH have put together a checklist of questions:

- **Is the prospective customer in Iran on a restricted party list?**
- **Which embargo measures does Switzerland have in place against Iran?**
- **Are the requested frequency changers listed?**

Voltage GmbH is obligated to evaluate the answers to these questions and determine how it will proceed:

- **Implementing in-house decisions with the help of software**

And because Iran can also impose import restrictions on certain goods:

- **Are our goods subject to any import restrictions in Iran?**



### Is the prospective customer in Iran on a restricted party list?

The software-based screening against restricted party lists yields no hits.



### Which embargo measures does Switzerland have in place against Iran?

The Compliance Officer knows that Iran is under United Nations sanctions. A look at the embargo lists maintained by the State Secretariat for Economic Affairs (SECO) confirms that Switzerland also has sanctions in place against the Islamic Republic of Iran. A closer look at the embargo lists against Iran shows that frequency changers classified under goods control number

3A225 in the SECO list of goods (Annex 2, Part 2 of the Goods Control Ordinance GCO) may only be shipped to Iran after approval has been obtained from the UN. Number II. A3.004 includes lower-output frequency restrictors whose multiphase output power is 10 W or greater. The lower-output frequency changers are subject to authorization under SECO.



### Are the requested frequency changers listed?

For Switzerland, it is the SECO lists that are relevant. The list of goods (GCO Annex 2, Part 2) includes a note under goods control number 3A225 referring to "frequency changers and generators not covered by sub-number OB001b13, usable as variable-frequency or fixed-frequency motor drives" and having all the following characteristics:

- a) Multiphase output power of 40 VA or greater
- b) Operating frequency of 600 Hz or greater and

frequency stabilization less (better) than 0.2% Voltage GmbH compares these specifications to the requested products and finds that its frequency changers exhibit the described characteristics and are therefore dual-use goods under the definition of GCO Annex 2, Part 2. Some of the requested frequency changers – the weaker ones – meet the requirements set forth under II.A3.004.



## Implementing in-house decisions with the help of software

The company decides that obtaining UN approval for the more powerful frequency changers would take too long and involve too much red tape. For this reason, it prohibits exports of the higher-power frequency changers. Exports of the lower-output frequency changers require only a SECO authorization. The company decides to supply the lower-output changers to the Iranian customer under these terms.

Last but not least, to enable the export controls software to automatically manage similar inquiries in the future, Voltage GmbH configures the following manual restriction:

**The following applies to frequency changers listed under goods control number (GCN) 3A225:**

- **GCN: 3A225**
- **Country group: Iran**
- **Check result: Ban**

**The following applies to frequency changers with a lower output than those described in GCN 3A225:**

- **GCN: II.A3.004 of the regulation against Iran**
- **Country group: Iran**
- **Check result: Authorization required**



## Are our goods subject to any import restrictions in Iran?

The Compliance Officer also checks Iranian import restrictions and finds none in place for frequency changers. Iran does, however, prohibit publications that might violate its strict moral code. The manufacturer of the frequency changer has used photos of scantily clad women to “spice up” its otherwise staid product literature, so Voltage GmbH defines a manual restriction to block the use of these brochures in Iran:

- **Material number: X1234567**
- **Country group: Imports to Iran**
- **Check result: Ban**

The bans and restrictions identified here can now be applied to all future business transactions.

## 6. Five steps to greater transparency

Automatic monitoring of business transactions for compliance with bans and restrictions enhances both the quality and the efficiency of the screening process. A manual check of the various screening lists, which are also periodically updated, is not even manageable. Make sure that the compliance screening software you choose is at least capable of handling standard processes, including integrated screening against restricted party lists, embargo lists (country lists), product lists, and critical end-uses. Software solutions from the leading providers include not only the core screening logic but also a data service that imports the latest versions of the various lists into the screening software.

But what about the more exotic import and export bans and restrictions? Or the export control regulations of other countries not covered by a data service? Or a company's own in-house restrictions? These can be defined as customized "manual restrictions" in the software. ASSIST4 Compliance & Risk Management from AEB offers this type of functionality.

Five steps are required to automate these checks.

### Step 1

#### Define the regulations to be covered

The first step is the daunting task of gathering together all the rules and regulations that the compliance screening should cover. This includes legal sources and the standard operating procedures that define in-house bans and restrictions.

### Step 2

#### Clarify the rules

What exactly is banned or restricted? It helps to express the rules in easily comprehensible terms: An example: "A special license is required to export frequency converters with the goods control number 3A225 to Iran." Some preliminary work is also necessary. Clarify which goods in your own merchandise master are impacted by which bans and restrictions.

### Step 3

#### Define the geographic area in which the rules apply

Wherever necessary, define the geographic area in which the bans and restrictions apply. An example: "Do not ship

article number 0815 to the United States." You can also fine-tune the definitions for specific countries of departure, of course.

### Step 4

#### Define the type of restriction

You also need to define the nature of the restriction. Is it a ban? Or is an authorization or approval required – and if so, from which authority? It's also important to define whether the ban or restriction is absolute or only kicks in above a certain volume or value threshold.

### Step 5

#### Embed the restriction in the software

Depending on the nature and complexity of the restrictions, you can add the B&R to the electronic screening list through a software function – or you will need to have the software provider undertake this small project for you. Once you have completed the preliminary work, you can manage less common B&R or in-house rules through the software. Ideally, the software will clearly identify any critical screening results and offer instructions for how to proceed, along with links to any required paperwork.

Questions on the subject of bans and restrictions or manual restrictions? Get in touch with our in-house expert, Dr. Ulrike Jasper.

You can reach Dr. Jasper by e-mailing [info@aeb.com](mailto:info@aeb.com) or calling +49 (0)711-72842-300.



## 7. What is a white paper?

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AEB defines a white paper as a document providing qualified, unbiased information on a particular topic. White papers may deal with laws and regulations, standards, technologies, solutions, or processes –

analyzed and explained by our experts. A white paper reflects current understanding at the time it is written – subsequent changes in the underlying circumstances cannot be ruled out.

## 8. About AEB: Expertise for SCM, customs, and IT

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AEB is a global enterprise with over 400 employees and 5,000 customers. AEB helps businesses standardize and automate supply chain processes with the ASSIST4 integrated software suite and through consulting and other professional services. AEB solutions integrate global trade and logistics processes, embedding customs clearance, export controls, and preference management in solutions that manage the global supply chain. The result is a faster, smoother, more efficient flow of goods. ASSIST4 also brings greater transparency to the

supply chain and makes it possible to monitor and control shipments all the way to their final destination. AEB is headquartered in Stuttgart, with offices in Hamburg, Düsseldorf, Munich, and Soest and development centers in Mainz and Lübeck. AEB has international offices in the United Kingdom (Leamington Spa), Singapore, Switzerland (Zurich), Austria (Salzburg), Sweden (Malmö), the Netherlands (Rotterdam), the Czech Republic (Prague), France (Paris), and the United States.

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