

Lipstick, Underwear and Tennis Balls – Are Fast Moving Consumer Goods Slowed Down by Export Control Law?

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Did you know that exporting lipstick under the wrong circumstances could get you in serious trouble? As innocent and trivial as they may seem, lipstick and many more so-called fast moving consumer goods (FMCG) are often covered by several export restrictions. As a result, the export of these goods may be subject to authorisation requirements or entirely restricted, with hefty fines and other sanctions associated with non-compliance. In this instalment of our briefing series on FMCG, we highlight how export control law applies to FMCG and what pitfalls you should be wary of.

Basics of Export Control

Free (foreign) trade is generally highly regarded in Germany and in the EU, but restrictions of this freedom may exist to preserve higher-ranking interests such as the national security of Germany and its allies. Moreover, export control law works to prevent exports of certain (potentially) harmful goods to conflict areas or other contexts in which these goods may contribute to repression and human rights violations. Furthermore, export control law serves to implement the various sanctions regimes installed by the UN and the EU, most notably the far-reaching EU sanctions recently imposed on Russia.

The export of certain goods from Germany may thus either be subject to prior authorisation by the German export control authority (Bundesamt für Wirtschaft und Ausfuhrkontrolle, *BAFA*) or even be entirely restricted. The applicable rules are highly dependent on the specificities of the individual case. Central questions are thus:

- What kind of good is to be exported?
- To where and to whom is it meant to be exported?
- What is the destined use of the good in question?

It may be rather simple to determine that the export of certain goods is restricted in some cases, for instance when military goods are involved or when the country of destination is publicly known to be placed under severe trade embargos. However, it may also prove to be very difficult to conduct this analysis as many goods can be of so-called “dual-use”. These items can be produced and used for both civilian and military applications and are placed under export restrictions in particular by being listed under the

EU Regulation 2021/821 (EU Dual-Use regulation). In addition, many FMCG may seem innocuous but can end up being covered by export restrictions where these goods are, for example, deemed to unduly contribute to the Russian State's war effort against Ukraine. For instance, German-manufactured components such as engines or cameras have been found in military drones used by Russia on multiple occasions.

The violation of export restrictions may result in significant fines for both employees and executives of non-compliant companies. Furthermore, sanctions for involved individuals may go as far as prison sentences. The company itself may also face hefty fines, along with further sanctions including the withdrawal of existing export licenses next to significant reputational damage.

Lipstick as ammunition

Aluminium lipstick cases and the machines producing them are a striking example of dual-use goods. The seemingly innocuous cases containing the lipstick may also be used as cartridge cases for firearms. Equally, the machines manufacturing these cases may also end up being used to produce ammunition for firearms. These items can therefore be subject to an authorisation requirement under the EU Dual-Use Regulation before they can be exported. In addition, the export of lipstick to Russia specifically can also be restricted under the existing EU Sanctions regime. As such, lipstick may qualify as a luxury good barred from export to Russia under Regulation (EU) 833/2014 (Russia-Regulation).

Luxurious tennis balls and much more

However, the classification as luxury goods can be misleading. One might be surprised to find that the list of such goods barred from export to Russia also extends to items such as tennis balls or deodorant. Moreover, the list also covers items destined for physical consumption such as malt beer. Further "luxurious" items under the sanctions on Russia include underwear and nail files, which many would likely see as classic and harmless FMCG without any direct connection to the Russian State's war effort. Nonetheless, these goods and many more may fall under sanctions restrictions. Moreover, the provision of services or financial assistance related to those goods is also restricted.

How to ensure export control compliance when handling FMCG

Companies need to continuously monitor their exposure to export restrictions by comparing their own portfolio of goods and services to the various lists of goods set out by notably the EU Dual-Use Regulation and several sanctions regulations. One might go about this by comparing the respective customs tariff numbers and use the so-called Umschlüsselungsverzeichnis (a conversion directory to identify goods covered by the Dual-Use Regulation and the national export list) to guide their due diligence.

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These tools certainly provide valuable assistance and may give preliminary insights on companies' and certain goods' exposure to export restrictions. However, these tools cannot replace a full technical and legal assessment of a specific export operation in order to fully mitigate any risk of non-compliance.

BLOMSTEIN continuously monitors the developments in export control and sanctions law and pays particular attention to the FMCG industry. If you have any questions on the topic, [Anna Huttenlauch](#), [Florian Wolf](#), [Laura Louca](#) and the entire BLOMSTEIN team will be happy to assist you.

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