



The US Government is placing increasing pressure on businesses located outside the country to comply with its export and re-export laws. However, as Iqbal Pannu (left) reports, some reforms mean there are also increasing opportunities for UK companies.

The US controls how its goods are traded throughout the world, so it is vital that any UK businesses using American materials fully understand the regulations.

US law follows the goods, so to speak, so all companies who have any dealings with US-sourced goods or technology, are, whether they know it or not, subject to its export controls, no matter where they are located.

Successive American administrations have claimed worldwide application of their export control laws (extraterritoriality) and will seek to penalise those who breach them.

The key legislation to be observed includes the international traffic in arms regulations (ITAR) and the export administration regulations (EAR), while the relevant authorities are the Department of State, the Department of Commerce and the Department of Treasury.

Under both ITAR or EAR, non-US companies must obtain prior approval from the American Government for any re-exports of US-sourced materials or technology. Additionally, products made outside the country can also be subject to its trade controls if the end item is sensitive and based on, or derived from, US-origin technology.



With EAR, a re-export is classed as a controlled article that is being shipped or transferred from one country (outside the US) to another.

EAR applies a 'de minimis' rule in order to identify whether an article is controlled, which also applies to non-US companies manufacturing goods using US-originating materials.

This generally means that goods with a content of US components of 25% or more, based on value (de minimis threshold), are subject to EAR. There are exceptions to this rule, including certain shipments to Iran or to destinations on the list of state sponsors of terrorism.

Beware of regulations born in the USA...



The de minimis rule applies only to exports and re-exports of EAR-controlled goods. There is no de minimis rule for munitions, aerospace technology or any other technologies which are controlled under ITAR.

As soon as even a single ITAR component is installed, the regulations apply. Under ITAR, a re-transfer refers to an article being transferred or sold to another recipient not named on the original licence, and authorisation must be sought prior to a re-transfer.

A company handling US-controlled articles has a duty of care to ensure it implements a technology control plan to manage these within the terms of the applicable licence or agreement.

There are, however, changes afoot with the US export control reform (ECR), which may benefit UK companies.

Under the current system, an exporter may be required to apply for export licences from multiple agencies, depending on the materials being

exported and, consequently, jurisdiction is sometimes unclear and processes cumbersome.

ECR seeks to implement a single licensing agency with a single control list and a single IT system for all licence applications.

Under ECR, the existing US munitions list (USML) is being reviewed to determine what should continue to be controlled on the USML and what can be moved to the control of the EAR.

The first ECR changes were implemented in October 2013, with the second set of rules in effect since January 2014. More have followed since and are continuing.

Most articles moving from the ITAR to EAR are referred to as the '600 series', as the third character of each export control classification number (ECCN) for these articles begins with a 6 (eg 9A610); similarly, in the space sector, the previously ITAR-controlled items are being reclassified as the '500 series' within EAR.

There are also some very basic items that are now being made EAR99 (ie no licence required) under ECR.

There are some ECCNs already on the commerce control list (CCL), which will additionally move into the '600 series'.

Exporters will also be able to export less sensitive military items without a licence to 36 of the United States' closest allies, if they meet the requirements of licence exception strategic trade authorisation (STA), which has been specifically revised to cover controlled articles in the '600 series'.

The changes being introduced under the ECR could open up new opportunities for businesses to save costs and speed up processes. Companies should, therefore, review their current export controls procedures in light of the new licence exceptions and possible reduced or eliminated registration fees.

Additionally, as the de minimis principle would apply to the '600 series', there may be benefits from a reduced licensing burden, thus making it easier to source articles from the US.

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