



## A top 50 commercial law firm.

From Shipping, Transport and Logistics through to Banking, Finance and Tax, we provide commercial, solutions-driven legal advice that will add value to your business.  
Contact: Partner, Jane Hobbs on 0207 653 1617 or email [JHobbs@gateleyuk.com](mailto:JHobbs@gateleyuk.com)

**Gateley**  
[www.gateleyuk.com](http://www.gateleyuk.com)

## U.S. export controls - a global challenge that applies to the UK

By Claire Umney, General Manager, AEB (International)

The U.S. Government exerts increasing pressure on businesses located outside the U.S. to comply with U.S. export controls. The latest changes under the export controls reform (ECR) will affect UK traders subject to U.S. EAR (Export Administration Regulations governed by the U.S. Department of Commerce) and ITAR (International Traffic in Arms Regulations governed by the U.S. Department of State). Companies involved in global trade with U.S. originating materials and technology must master both regulations, adapt to latest changes and ensure compliance with the applicable U.S. law.

It's crucial to note that U.S. export controls do not only apply to companies in the aerospace and defence sector - they also apply to products and technology considered to be 'dual-use.' Such dual-use goods are primarily commercial or civil in nature, but also have potential military applications. They may come from various industry sectors including telecommunications, electronics, chemicals and IT. Dual-use goods are controlled under EAR and categorised in the U.S. Commerce Control List (CCL).

Under EAR, a re-export describes a controlled article that is shipped or transferred from one country (outside the U.S.) to another country - including movements within the European Community. Generally, if the share of critical U.S. components in dual-use goods is above 25% of their value, they must be classified and are subject to export controls under EAR. There are exceptions, in the case of embargo countries, where the threshold lies at 10%, for example. No such threshold ('de minimis rule') exists for munitions, aerospace technology or space technology; as soon as a single ITAR component is installed in any traded product, ITAR applies. Even non-sensitive products of U.S. origin can be restricted under U.S. trade controls, and be subject to prohibitions on retransfers to countries such as Iran, Syria and Sudan.



The requirement to comply with U.S. export controls is not - in any way - a replacement for national laws. It must be complied with in addition and separate from any national export control legislation and licensing requirements.

### Spoken words?

Controlled articles extend to both physical goods and technology. The U.S. Government's definition of "technology" is wide-ranging and can include software, instructions, technical specifications, drawings, models, operational manuals and catalogues. Technology transfers of controlled U.S. articles can even take place by talking to a foreign national in the U.S. This means the same U.S. licensing requirements that apply to physical goods also apply to technology transfers, which presents an interesting challenge for compliance officers controlling this type of transfers.

### Hefty fines!

Export control violations of munitions regulated under ITAR can result in criminal penalties up to £630,000 per violation, up to 20 years in prison for an individual, and possible civil penalties and debarment from exporting defence articles. Export control violations of dual-use goods regulated under EAR can result in criminal penalties of up to five times the value of the goods, or up to £630,000 per violation (whichever is greater), fines up to £157,000 for individuals and/or up to 10 years in prison, and possible civil penalties and denial of export privileges.

### Play it safe

Given the complexity and frequent updates of national and international laws,

it's not easy for traders to ensure they're always 'playing by the rules' - complying with all applicable global export bans and anti-terrorism regulations. Depending on trading volumes, it's nowadays close to impossible to ensure global trade compliance without IT support, considering the number of business transactions from procurement to fulfilment, the number of applicable national and international laws, and the numbers of required checks for critical business partners, critical countries, critical goods, critical end-use, and of course, checks based on U.S. re-export controls.

AEB's ASSIST4 Compliance & Risk Management is the comprehensive global trade solution to ensure compliance in all global trade and logistics processes. With powerful modules for tangible and in-tangible export controls, restricted-party screening, license management and U.S. re-export controls it is the right tool to keep business transactions safe, and to protect businesses from unintended violations, resulting penalties and export bans. ASSIST4 Compliance & Risk Management integrates directly into business workflows and automatically screens all transactions in the background at every step of the process while seamlessly working with any system architecture through open interface concepts. AEB's solution helps to meet requirements effectively and affordably, automatically checking all processes for possible violations of applicable EU and U.S. law. AEB is one of the few software companies whose compliance solution has been certified by a public auditing firm.

[www.aeb-international.co.uk](http://www.aeb-international.co.uk)