



Export controls

Renewable energy and cleantech

Managing risk in your supply chain.

If the targets set by the UK and EU for renewable energy and carbon reduction are to be achieved, the supply chain for clean energy needs to scale up significantly and, in many cases, be established. Growing your supply chain is a business critical activity, but it needs to be done in a way that manages the associated risks.

An export licence is required to export carbon fibre and the equipment used to produce turbine blades.

What are export controls?

Export controls are regulations that support national security policies and prevent the proliferation of weapons of mass destruction (WMD) and related terrorist activities. Export controls have been around for many years, but due to recent terrorist activities and developments in technology, governments and industry have sharpened their focus. Today, export controls are a high-profile topic and we have seen a recent surge in enforcement, particularly around dual-use goods (for example, items that are designed for a commercial application, but that also have potential military end-use).

Companies must ensure compliance with national export control regulations, as well as, US regulations which can impact any company dealing with US origin product/software/technology, US persons, or US-owned companies, wherever located.

How do export controls impact the renewable energy and cleantech industry?

The expansion of the renewable energy industry has progressed at an increasing rate as consumers, investors, companies and world governments look to our future energy needs. As renewable technologies continue to develop to achieve higher capacities, speeds and efficiencies, renewable energy companies need to be cognisant of their export control requirements.



For example, many wind power companies are starting to incorporate carbon fibre into their wind turbine blades to allow for increased blade speed and higher energy output.

Although an export licence is not necessary to export the wind turbines themselves, licences are required to export the material (carbon fibre), the equipment (tape laying and tow/fibre placement machines) used to produce the turbine blades, and high technology machines used to produce the wind turbine case assemblies and hubs.

The transfer of technology is another issue companies in the renewable space need to consider. Developing technology in one country and transferring it to another, may have export control implications – particularly with intra-company transfers and transfers of technology to the growing number of projects in developing nations. As companies begin to develop, promote and sell their cleantech solutions worldwide, they need to be aware that many of these items, as well as technologies, are controlled and may require an export licence to export or transfer electronically.

For example, the following dual-use items, frequently used in the renewable energy industry, may require a licence for export:

- Space qualified' solar cells, cell-interconnect-coverglass (CIC) assemblies, solar panels and solar arrays.
- Deep-hole drilling machines and drill bits.
- Rotors and stators.
- Carbon fibre.
- Piping.
- Pumps and valves.
- Vibration testing equipment.
- Chemicals and microorganisms.
- Equipment for handling biological materials.
- Related software and technology.

What other related issues should the renewable energy and cleantech industry consider?

Merger and acquisitions (M&A) in the renewable energy industry can often result in significant export compliance risks for the purchasing company. 100% successor liability is applied to export control violations, with the acquiring company inheriting all of the violations committed by the acquired company. This means that a company potentially opens itself up to significant penalties if these issues are not considered and mitigated in advance of the acquisition.

Business activities may be impacted by more than one jurisdiction. For example, a renewable energy company be obligated to comply with both UK and US export control regulations as the US rules have an extra-territorial application and extend to control US persons, goods, technology and companies wherever they are located.

There has also been significant US regulator and prosecutor activity which reinforces the need to comply with US law if payments are being made in US dollars via US banks. To illustrate this point, in 2009, a major UK company was fined \$350m for breaching US sanctions on Iraq, Libya, and Sudan. US controls must, therefore, be built into an effective overseas export compliance programme.

What is the impact of breaching export control regulations?

There are often significant monetary penalties for non-compliance, as well as, in extreme cases, custodial sentences. However, a major cost to business is often reputational damage that results from supply chain delays and late licensing decisions, which impact a company's ability to serve its internal and external customers and to compete in the marketplace.

How could my business be impacted?

Your business could be impacted by export controls in one of four ways:

- **Product controls** – your products, services, technology (for example, technical data, formulas, chemical analysis specification sheets) and software may require a licence to be exported.

- **End-use controls** – the final end-use of items can trigger a licence requirement. For example, could one of your products be used in a nuclear or military application?
- **End-user controls** – exports to specific entities or persons can be prohibited or may require a licence, and companies must screen entities in the supply chain against applicable denied party lists. For example, do you conduct business with government or military-owned companies?
- **Destination controls** – embargoes and sanctions against specific countries, entities or individuals can restrict exports of products, technology or activities. For example, are you supplying any of your products to a sanctioned destination?

How can Deloitte help?

Deloitte's multidisciplinary Customs and Global Trade team is market leading in this field with specialists in European and US export control regulations, covering both dual-use and military controls. Our team consists of lawyers, ex-government officials, industry experts and consultants, providing years of export control experience. The team has unrivalled experience in reviewing, developing and implementing comprehensive, customised and user-friendly export compliance programmes from basic must-have procedures through to leading practice methodologies. Our service offerings include:

- Developing or enhancing leading practice compliance programmes.
- Automation/systems support and guidance on organisational structure.
- Licence management programmes.
- Training.
- Due diligence services.
- Risk reviews and audits.
- Supply chain analysis and optimisation.

As well as improving risk management, our methodologies can drive improved operational performance throughout the supply chain by eliminating ineffective processes, improving lead times and minimising supply chain disruption. Ask our experts about how we can help to improve your global trade practices from both a risk management and cost reduction perspective.

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