

## Export Compliance / February 2005

# Is There a Problem, Officer?

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***“The Bureau of Industry and Security, United States Department of Commerce (“BIS”) has reason to believe that on two occasions, Aircraft Repair Limited, Inc. (“Aircraft Repair”) violated the Export Administration Regulations (the “Regulations”), which are issued under the authority of the Export Administration Act of 1979 (the “Act”). Specifically, BIS charges that Aircraft Repair committed the following violations:”***

The letter always arrives certified mail, return receipt requested. It is NEVER good news.

### **Export compliance is not optional**

The above is the start of a costly, avoidable, time-consuming process. Usually, a U.S. manufactured part shipped to any FAA regulated repair station for a repair order (but not a replacement) can be repaired and shipped back to the foreign company without a license. A simple statement of facts on the inbound Customs documents can avoid seizure and potential fines or worse.

Many parts shipped to ARSA members from overseas fall into this category. When imported correctly, many export problems can be avoided. Missing that simple statement, they can be seized by Customs and the results can do more than ruin a good day.

Think you're off the hook? Not so fast. Before you dismiss the need for export compliance here are a few questions you should ask:

- Do parts you are shipping have any potential military use?
- Are you exporting aircraft components directly? Do you hold any licenses for export?
- Are the parts being installed on foreign registered aircraft? Could you be indirectly exporting through an exchange or a broker?
- Do you sell aircraft components or parts to other repair stations, distributors, or other customers? Do you have exchange agreements with any customers?

If you answered Yes to any of these questions, you need to review exactly how you are or are not complying with U.S. export regulations.

The primary source for government regulations regarding export compliance is found in the Export Administration Regulations, the “EAR”. These frequently updated codes rule who, what, and where parts can be exported and governs the various export compliance jurisdictions. Access the EAR at <http://www.access.gpo.gov/bis/index.html>.

The EAR can seem a bit overwhelming, but once you locate the items that apply to you, it will become clear how it covers your business. Here are several other important questions you need to ask:

- Who is the actual end-user for the part being exported?
- Do I have the correct Export Control Number [ECN] for this part?
- How can I find out if the destination country is on the banned list?
- What is a “denied party”? How do I determine if the party I am dealing with is on the denied party list? What happens if I've already shipped to a denied party?

Let's take these questions one at a time:

**1. End Use.** To the government these questions come under the heading “Know Your Customer”. You must have signed end-user certificates for all customers receiving military and “dual use” parts. We will cover “dual use” in a future article.

Basically, you must prove you made the attempt to determine where this part was going BEFORE it left your shop.

**2. What is the ECN?** An Export Control Number is designed to follow all U.S. manufactured parts whenever they are shipped, repaired, and/or replaced anywhere in the world. The number needs to appear on both inbound and outbound documents. When you are exporting a part it is as important as the part number. Most manufacturers can supply you with this number – make it part of your database.

**3. How do I check on the acceptable countries?** There are several sources to use, beginning at: <http://www.bxa.doc.gov/AntiboycottCompliance/Default.htm>. The government may add or drop countries from this list at any time, so it is important to check this list for every export. Some countries are acceptable for commercial-only parts while others may be barred by reason of a boycott.

**4. Am I dealing with a “denied party”?** This is probably the most critical check you can make in exporting. The list is updated almost daily and can be found at <http://www.bxa.doc.gov/dpl/Default.shtm>.

Some of the parties on this list often have several aliases and operate under many different names. Check the list carefully. A number of vendors simplify the task by offering a database check as part of their export software. It is still your responsibility to verify the accuracy of the documentation and the end use of any item you ship overseas.

If you are repairing or shipping any parts with potential military use, it is expected that a system is in place logging all required licenses and to prevent parts from being shipped to certain countries and individuals. If you have any question about whether you have encountered an export problem (via a denied party's attempt to circumvent the law) you may contact BIS's Office of Export Enforcement at 202 482 2252 or go to this page to report any problems: <https://www.bis.doc.gov/forms/eeleadsntips.html>.

The aviation maintenance industry plays an important role in preventing exports and re-exports contrary to the national security and foreign policy interests of the United States. BIS (the Bureau of Industry and Security) will continue to work in partnership with the industry to make this front line of defense effective, while minimizing the regulatory burden on exporters.

A good source for Best Practices in Export Control is <http://www.bis.doc.gov/licensing/exportingbasics.htm>.

In our next *Export Compliance* article we will tackle some of the more complex problems involved in making your export business profitable and safe.

**License exemption text for dual use or military parts being returned for repair - [required for both import and export documents]:**

DDTC ITAR EXEMPTION CODE APPLIES  
22 CFR 123.4 (a) (1) Temporary import of U. S.-origin defense items for servicing, inspection, testing, calibration, repair, overhaul, reconditioning, or one-to-one replacement of defective items.

## Export Compliance / March 2005

### Commercial, Dual-Use or Military Exports: Who's in Charge Here?

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A bewildering array of export compliance terms, acronyms, regulations, and regulatory overlap exposes many firms to serious violations out of pure frustration and ignorance. This doesn't have to happen.

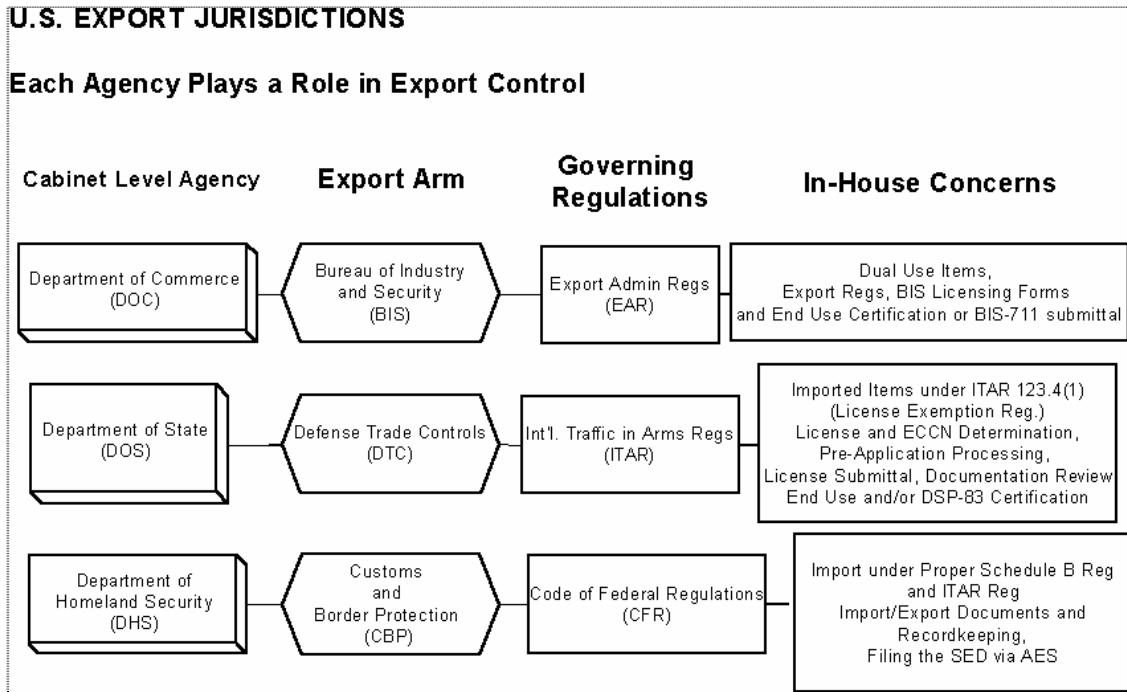
This second article in our series covers the U.S. government departments most involved in export compliance, which laws govern each department, and where you can go for help when you are unsure of the right approach to avoid a violation.

#### The Bureau of Industry and Security (BIS)

Governed by the Export Administration Regulations (EAR)

Let's review a few terms and distinctions. First among these is the somewhat confusing term, "dual-use". According to the Export Administration Regulations (EAR), the term is defined as:

*"Items that have both commercial and military or proliferation applications. While this term is used informally to describe items that are subject to the EAR, purely commercial items are also subject to the EAR (see §734.2(a) of the EAR)."*



The EAR opens the door to other agencies besides the Bureau of Industry and Security (BIS) in the referenced section:

*"(2) Items and activities subject to the EAR may also be controlled under export-related programs administered by other agencies. Items and activities subject to the EAR are not necessarily exempted from the control programs of other agencies. Although BIS and other agencies that maintain controls for national security and foreign policy reasons try to minimize overlapping jurisdiction, you should be aware that in some instances you may have to comply with more than one regulatory program."*

The problem lies in the "end-use" or "end-user" of the item, defined as:

*"The person abroad that receives and ultimately uses the exported or re-exported items. The end-user is not a forwarding agent or intermediary, but may be the purchaser or ultimate consignee."*

The easiest way to determine the jurisdiction is to look to the end use. If the part is going into a military aircraft it will be under the jurisdiction of the Defense Trade Controls section of the Department of State. If you are not certain of the classification of the part, you'll need to know the *Export Control Classification Number (ECCN)* attached to it when it was licensed for export. This is usually available from the manufacturer and is critically important in eliminating many parts that are able to be shipped *No License Required (NLR)*.

A thorough reading of the EAR Part 736 (General Prohibitions) is recommended to all engaged in the export of aircraft parts. Since so much MRO business is with commercial aircraft it is critically important to understand these distinctions. If you are unsure of a part's classification, you can submit a commodity jurisdiction request through the BIS Simple Network Application Process (SNAP) system at: <https://www.bis.doc.gov/SNAP/index.htm>

If you believe that it may be a military part you can reach the Directorate of Defense Trade Controls for jurisdiction requests by telephone at 202 663 2719, or via fax at 202 663 3618. Send your fax "ATTN: PM/DTC/CJ".

### **Directorate of Defense Trade Controls (DDTC)**

Governed by the International Traffic in Arms Regulations (ITAR) and the Arms Export Control Act (AECA)

The DDTC controls the export and temporary import of defense articles and defense services covered by the United States Munitions List (USML). It has among its primary missions (a) taking final action on license applications for defense trade exports and (b) handling matters related to defense trade compliance, enforcement, and reporting. Any person or company who intends to export or to temporarily import a defense article must obtain the approval of DDTC prior to the export or temporary import. The appropriate license form must be submitted for the purpose of seeking approval. In most cases, in order for a license to be considered, you first must be registered with DDTC.

If you are simply importing an item for repair and then re-exporting it to the same end user, you can normally utilize an ITAR license exception. We covered this rule in our last *hotline* article. Properly importing the item with the correct exception and ECCN noted on the documents is critical - but do not forget to perform all the screens for denied parties, entities, and the Country Control list.

One of the safest ways to stay on the right side of DDTC Enforcement is to register with the agency. The fees, effective December 8, 2004, require that all new or renewing registrants must pay the increased annual registration fee of \$1,750. Registrants may renew up to a maximum of two years. The website is located at: <http://www.pmdtc.org/registration.htm>.

*USML Category VIII – Aircraft and Associated Equipment.* The regulations covering this category are located in the Federal Register at Part 121 22 CFR Ch. I (4-1-04 Edition). The USML is updated each April. Please access it at <http://www.pmdtc.org/reference.htm>.

*The Arms Export Control Act (AECA) – 22 U.S.C. 2778* of the AECA provides the authority to control the export of defense articles and services, and charges the President to exercise this authority. Executive Order 11958, as amended, delegated this statutory authority to the Secretary of State. (The ITAR, as noted elsewhere, implements this authority.) The various sections of the United States Code (U.S.C.) that constitute the AECA can be accessed via this site: <http://uscode.house.gov/usc.htm>.

### **U.S. Customs and Border Protection (CBP)**

Governed by the Code of Federal Regulations (CFR)

The most important elements of clearing inbound and outbound items through U.S. Customs include:

1. Clear and concise item descriptions on all documents.
2. Full information on the end user of the item(s).
3. Proper ECCN Classification of the item(s).
4. Complete item-by-item review of all documentation and electronic filings.
5. Proper License or License Exception Information.
6. Filing of the *Shippers Export Declaration* (SED) (using the latest forms) and filing via the *Automated Export System* (AES): [http://www.cbp.gov/xp/cgov/export/aes/easy\\_steps.xml](http://www.cbp.gov/xp/cgov/export/aes/easy_steps.xml).

U.S. Customs and Border Protection (CBP) requires the use of the newest SED form (Form 7525-V, dated 7-18-2003). It is available at <http://www.census.gov/foreign-trade/regulations/forms>. When the services of a freight forwarder are used, Census requires the freight forwarder's Employer Identification Number (EIN) be included in block 5b on the paper SED.

As a reminder, the U.S. Census Bureau (Census) also requires mandatory filing for items on the U.S. Munitions List (USML). This requirement applies to filers who were not previously required to file through AES and who chose to file a paper SED rather than filing voluntarily through AES. The implementation date of this rule was October 18, 2003.

Understanding the role of each agency and its requirements will go a long way toward establishing the knowledge base necessary to avoid many export compliance problems. In the next *Export Compliance* article we will cover the need to create and maintain a diligent in-house export compliance function.

## ***Export Compliance / April 2005***

### **What Constitutes Due Diligence?**

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The current climate of enforcement within the USGOV compliance community leaves no room for error or mismanagement of your firm's export compliance. FBI spot inspections are now being conducted in companies rarely targeted for potential violations. The mere production or repair of non-defense items may include components that can be combined in ways that render them lethal in the eyes of the inspectors. ICE (Immigration and Customs Enforcement), BIS (Bureau of Industry and Security) Enforcement Teams and DTC (Defense Trade Controls) Enforcement Teams are all involved in stepped-up inspection regimes.

**How often do companies get caught?** Virtually every day BIS Enforcement, DTC Enforcement or Customs Enforcement teams discover a substantial violation. Did the parties "know" they were violating the law? In most cases they did not – but that never stops the penalty phase from moving forward. [A look at the BIS violations alone](#) should convince anyone that ignorance is not an excuse.

**What do they get caught doing?** Most violations entail the willful circumvention of the Export Administration Regulations (EAR) or dealing with a party or an entity on the Denied Parties Lists. They can be caught via border scans of documentation, Customs inspections of shipments, or tips from anonymous informants – often from employees or diligent forwarders. Occasionally aircraft parts are caught being used in ways they were not intended, or crossing from dual use to military use without the proper licensing.

**Can't we just use the "Don't Ask - Don't Tell" approach?** You can always take the approach that assumes you will be able to slip items through the cracks. Many have tried and a few have even succeeded, temporarily!

### **What happens if you fail**

The penalties for violations of the EAR can include, for criminal or: willful violations": Corporation – A fine of up to the greater of \$1,000,000 or five times the value of the exports for each violation; Individual – A fine of up to \$250,000 or imprisonment for up to ten years, or both, for each violation.

For "knowing violations": Corporation – A fine of up to the greater of \$50,000 or five times the value of the exports for each violation; Individual – A fine of up to the greater of \$50,000 or five times the value of the exports or imprisonment for up to five years, or both, for each violation.

For each violation of the EAR any or all of the following administrative penalties may be imposed: denial of export privileges; exclusion from practice; and/or the imposition of a fine of up to \$11,000 for each violation, except that the fine for violations involving items controlled for national security reasons is up to \$120,000 for each violation. Temporary Denial Orders cut off not only the right to export from the United States, but also the right to receive or participate in exports from the U.S.

Section 11(h) of the Export Administration Act provides that, at the discretion of the Secretary of Commerce, no person convicted of a violation of the EAA, IEEPA, or Section 38 of the Arms Export Control Act (or any regulation, license, or order issued under any of these laws) will be eligible to apply for or use any export license issued under the EAA for up to ten years from the date of the conviction. In addition, Section 11(h) provides that the Secretary of Commerce may revoke any export license in which the party had at the time of the conviction.

Rather than picking up the pieces after a seizure or disastrous audit (or even an anonymous tip from a disgruntled employee) you can seriously reduce your chances of any of these violations with a few simple procedures and an internal audit of your own.

How can you protect your company from potential violations? The best form of due diligence is packaged in the steps you apply to internal controls, export and import compliance management and maintenance of your compliance library.

**Appoint a competent export control manager.** This can be as simple as assigning the task to an individual thoroughly familiar with your ordering, repair, and shipping process. This person should attend at least one BIS seminar a year to stay up on all the changes in the EAR and the Best Practices you should apply to avoid violations. See: <http://www.bis.doc.gov/SeminarsAndTraining/index.htm>

**Do an internal audit to make certain all the proper "denial screens" are applied to each order.** Accurate up-to-date information on these screens can easily be obtained at the BIS website. See "Lists to Check" at: <http://www.bis.doc.gov/complianceand enforcement/index.htm>

**Make certain you are keeping a "Know your Customer" approach** in your marketing and sales departments. Be sure to build and maintain a complete "End-User" file for all items exported to customers or shipped to overseas brokers.

Once you have completed a review of these steps, you'll want to make certain that the due diligence you apply internally is followed by your freight forwarder as well. You are NOT absolved of responsibility for any export compliance violations by using a freight forwarder.

You are far from done eliminating a potential violation. At this point, however, you have at least reduced the risk. Future articles will discuss in detail the Best Practices that the USGOV is looking for when they conduct an export compliance audit.