

Export Compliance Overview

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Export Compliance Overview

- Export Compliance Defined
- Enforcement Examples
- Overview of Export Compliance
- Best Practices of an Export Compliance Program & Current Export Control Challenges
- BIS Stats & Export Compliance Reform
- Benefits of an API Export Compliance sub-committee

Export Compliance Defined

- Export Control laws
 - Dual Use
 - Military
- Sanctions and embargoes
- What is being shipped?
- Where is it being shipped?
- Who is it being shipped to?
- What is it being used for?

Do US Export Laws Apply to Your Company?

- 1) Do you employ any foreign workers who have access to technical data?
- 2) Do you share technical data with any foreign subsidiaries or related entities?
- 3) If you export products, do you know the Export Control Classification Number (ECCN) for each product?
- 4) Do you make products that have been specifically designed for military end use?
- 5) Have you checked whether your foreign customers appear on the government lists that prohibit exports to particular individuals and entities?
- 6) Have you checked to make sure that you do not export products to or from a restricted country?

Export Compliance

»» Enforcement Examples

Penalties for Noncompliance

- Potential for severe penalties (fines and/or imprisonment)
- Disruption to business during investigation
- Loss of reputation
- Loss of government contracts
- Loss of export privileges
- Loss of tax benefits
- Stock value based on corporate governance



Real Life Examples

BJ SERVICES – Houston-based oil and gas field service provider

April, 2009

- ▶ **Paid \$800,000** to settle charges it illegally exported valves without licenses
- BIS Investigation & penalties arose from a voluntary disclosure by BJ Services
- Even a voluntary disclosure may result in a substantial civil penalty.

Real Life Examples

FMC TECHNOLOGIES, INC.

August 2009

- ▶ Agreed to pay a **\$610,000 civil penalty** to settle allegations it exported oil and gas industry service parts in violation of the Export Administration Regulations
- Allegations involved 78 unlicensed exports to a variety of countries of butterfly and check valves
- Controlled for reasons of chemical and biological weapons proliferation
- Violations occurred between 2003 and 2007

Export Compliance

»» Overview

What is an Export?



- Physical exports (across borders):
 - Shipment of goods, software or data on paper
 - Hand carried
 - Services conducted abroad

Other Types of Exports

- Certain technology transfers via:
 - Phone calls
 - Brainstorming
 - Presentations
 - Plant tours
 - Conferences
 - Meetings
 - Trade shows



- Software exports or certain technology transfers via:
 - Email
 - Fax
 - Web downloads
 - Internet/Intranet
 - USB media
 - Shared Servers such as SharePoint/LiveLink



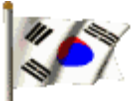
Why Regulate Exports?

- Promotes global security by ensuring that sensitive items, information, and technology have restricted access
- Protects against national security threats
- Promotes political agendas and embargoes
- Short supply issues
- Crime and weapons control

Global Export Control Regimes



- US – Dept of Commerce; Dept of State; Dept of Treasury



- Canada – Dept of Foreign Affairs and International Trade



- UK – Dept for Business Innovation and Skills



- Germany – Federal Ministry for Economics and Export Control



- Italy – Ministry for Foreign Affairs



- Poland – Ministry of Defense



- Australia – Department of Defense

- France – Finance Minister



- Japan – Ministry of Economy, Trade and Industry



- China – Ministry of Commerce, Ministry of Foreign Affairs



- UAE – Ministry of Economy



- Singapore – Customs

- Indonesia – Ministry of Trade



List Based Classification; U.S. Example



Several countries use a "list based" approach to determine classification

Best Practices of an Export Compliance Program

»» And Current Export Control Challenges

Best Practices of an Export Compliance Program

- Training
- Licensing
- Shipping & Clearance
- Contract Management
- Anti-boycott
- Recordkeeping
- Site Assessments
- Screening
- Classification
- Technology

Screening

- Screening ensures a company is:
 - Not doing business with parties found on a Restricted Parties List issued by the U.S. and other governments
 - Not involved in transactions that exhibit suspicious characteristics
 - indicating diversion, or involvement in an end-use prohibited by the U.S. and other governments
 - Not violating Sanctions

Export Compliance “Red Flags”

- Foreign party reluctant to offer information about product’s end-use
- Transaction different from usual business practice
- Swiss, Cayman, or other unusual bank assets involved
- Incompatible end-user with the technical level of the project
- Vague delivery instructions
- Company description does not meet order details



Sanctions & Embargoes

- U.S. sanctions and embargoes apply to:
 - transactions with Iran, Cuba, Syria, Sudan, Burma/Myanmar and other countries
 - entities, persons and subsidiaries, and anyone in the U.S.
- Exporters must comply with U.S. & other government sanctions and export controls
- Administered by Dept. of Treasury, Office of Foreign Assets Control (OFAC)

Screening Challenge

- Using Freight Forwarders, or agents, has unique challenges
 - The company is ultimately responsible for who they use
 - Vendors or vessels could be subject to sanctions or listed as a restricted party
 - Iranian vessels may be listed
 - Example:
 - How can we ensure Freight Forwarders don't put our equipment on "listed" party vessels
 - USG Sanctions on Iran –driving new means to get around sanctions such as by changing vessel names
 - Issues:
 - 1 – What do regulations require for screening?
 - 2 – Need stronger screening options where vessel IMO # is used, which does not change (like VIN)

Classification

- An exporter is responsible for ensuring that all items are classified under applicable regulations prior to export or re-export.
- The classification is a key factor in license determination.

Classification Challenge– Is your item on a Government Control List?

- Governments regulate export of products, software and technology using **Control Lists** and **License Determinations**
- **Control Lists**
 - Descriptions of your item are compared to descriptions on the government's control lists
 - When a match is found, a **Classification Number** is assigned to the item
- **License Determination**
 - Using the **Classification Number**, it can be determined whether an export license is required for the item

EAR – Reasons for Control

- AT: Anti-Terrorism
- NS: National Security
- MT: Missile Technology
- NP: Nuclear Proliferation
- CB: Chemical and Biological
- RS: Regional Stability
- FC: Firearms Convention
- CC: Crime Control
- SS: Short Supply – (i.e., crude)

2B350 Chemical manufacturing facilities and equipment, except valves controlled by 2A226 or 2A292, as follows (see List of Items Controlled).

License Requirements

Reason for Control: CB, AT

Control(s)

Country Chart

CB applies to entire entry

CB Column 2

AT applies to entire entry

AT Column 1

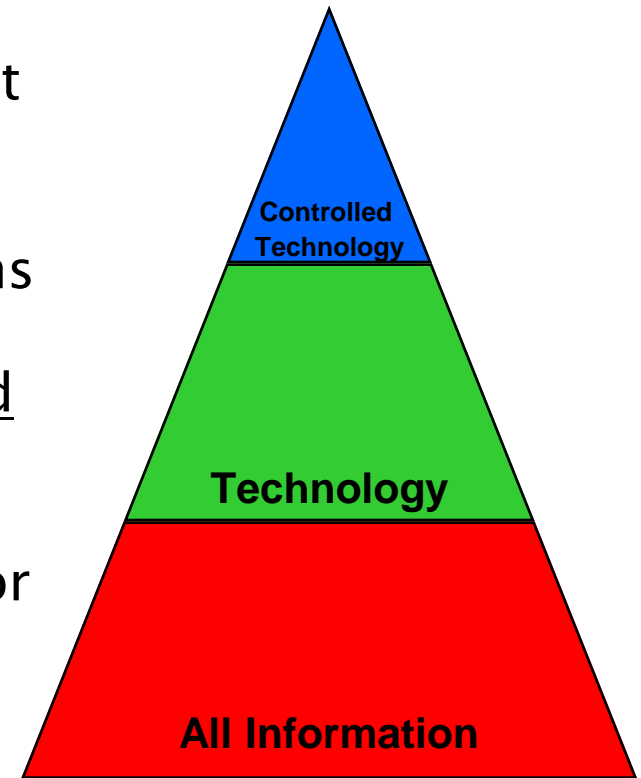
Items used in the Energy Industry that could possibly be controlled

Some of the technologies an energy company may have:

- Agitators/Mixers
- Biological Agents
- Calculation/Modeling Software
- Cameras
- Carbon Fibers
- Compressor Sets
- Furnaces
- Heat Exchangers
- Nozzles
- Pipes
- Pumps
- Reactor Vessels
- Storage Tanks
- Sorbents/Catalysts
- Spectrometers
- Tray Columns
- Valves

Technology Identification

- ▶ **Technology** is defined as
 - Specific know-how necessary to make “things” that require an export license
 - Information required for ‘use’ means
 - **operation, installation, maintenance, repair, overhaul and refurbishing**
 - Information needed for **design** or for **production** of a controlled item.
 - Other specifically-described know-how



Technology Transfers may occur

- Within a company (i.e., posting an electronic document to a electronic site)
- Outside of the company (i.e., email to outside parties)
- “Deemed Exports” through:
 - Release of technology to a foreign national located in the U.S. or in the same country where the information is released
 - Access to technology as part of a technical system maintenance group

Technology Transfers

- First step:
 - Identify controlled technology
- Second step:
 - Citizenship status – Do you have any foreign nationals able to access controlled technology?
- Third Step:
 - Assure controls are in place for foreign nationals where a “deemed” or cross–border export risk exists

Technology Challenges

- How does a company control technology transfers?
 - Technology review process → Determine if there is export controlled technology
 - Citizenship review process → Determine if a foreign national has access to export controlled technology

Bureau of Industry & Security Stats

»» And Export
Compliance Reform

Bureau of Industry & Security (BIS)

– In 2010

- Processed 21,660 export license applications valued at approximately \$66.2 billion.
- Approved 18,020 license applications (83 percent)
- Returned 3,513 applications without action (RWA) (16 percent)
- Denied 127 applications (less than one percent).
- Average processing time to review a license application was 29 days.

Source: “Key Stats from BIS Annual Report” By M.A. Wiens

BIS Enforcements on businesses

- Administrative Penalties:
 - In 2010, issued more than \$25.4 million
 - In 2009, 54 cases and more than \$14.5 million
- Dollar figures do not include company costs related to enforcement cases, such as
 - Delayed product shipments
 - Customer relationship issues
 - Fees for outside counsel or consultants
 - Fees for any required audits, among others
- Company costs can outweigh export control penalty - an important consideration when demonstrating the compliance program's value

Source: "Key Stats from BIS Annual Report" By M.A. Wiens

Export Compliance Reform

- **Export Compliance Update Conference – August, 2010**
 - Statements by current administration about streamlining export control laws
- **State of the Union Speech**
 - “Did you know that there are more than 12 agencies that govern export controls?”

What does reform look like?

- ▶ One Control List
- ▶ One Primary Enforcement Agency
- ▶ One Information Technology (IT) System
- ▶ One Licensing Agency

What does reform look like?

- Streamlined license processes
- Standardize policy and processes to increase efficiencies
- Tiered Licensing – New control criteria based on a new tiered control list structure

Benefits of an API Export Compliance sub-committee

- What would an export compliance sub-committee accomplish?
 - Benchmarking with industry peers on best practices: screening, classification and technology
 - General advocacy on legislative & regulatory reform
 - Global laws & regulation changes

Q & A