

Export Controls & the Petroleum Industry



Karla L. Haynes
Export/Import Compliance Counsel
Chevron Corporation
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This presentation is intended to inform the readers about legal issues for this subject area and is not a substitute for legal advice. Due to potential changes in applicable laws and regulations, readers should not act upon the information contained in this document without professional counsel.

Agenda



- The Basics
 - Applicable Regulations
 - Export Licensing
- The EAR, Applied
 - Items Subject to Export Controls
 - Key Issues & Challenges
- Navigating Export Controls
- Resources



U.S. Export Controls: The Basics





Export Administration Regulations (BIS)

- Regulates exports, deemed exports and re-exports of dual-use items to foreign countries
- Export licenses required for certain exports, deemed exports and re-exports
- Enforced by Export Enforcement, CBP, others
- Penalties include civil penalties, loss of export privileges and criminal penalties (fines and imprisonment)

International Traffic In Arms (DDTC)

- Regulates exports, deemed exports and re-exports of military items to foreign countries
- Export licenses required for exports, deemed exports and re-exports
 - Some, but limited exceptions
- Enforced by DDTC, CBP, others
- Penalties include civil penalties and criminal penalties (fines and imprisonment)



U.S. Trade Sanctions Regulations (OFAC)

- U.S. maintains trade sanctions against a number of countries. Scope of the sanctions vary by country
- Example: U.S. has comprehensive sanctions against Iran - Among other prohibitions, these sanctions prohibit the export of goods, technology and services
- Authorizations required for most all exports and re-exports of goods, technology and services
- Enforced by OFAC, Export Enforcement, others
- Penalties include civil penalties and criminal penalties (fines and imprisonment)

•Federal Trade Regulations (Census)

- Requires Automated Export System (AES) filing for certain export transactions
- Filings have multiple uses
 - Trade statistics
 - Export enforcement
- Enforced by Census, Export Enforcement, CBP, others
- Penalties include civil penalties, loss of export privileges and criminal penalties (fines and imprisonment)

Types of Exports



- **Exports:** any direct shipment of goods from the U.S. to an entity/individual outside of the U.S.
 - Includes items hand carried, information sent via e-mail, fax, uploaded or downloaded from intranet or server, method of transport does not matter
- **Re-Exports:** actual shipment or transmission of items from one foreign country to another foreign country. Shipment of goods from the U.S. to England, then to France.
- **Deemed Exports:** export of “technology” or source code (except encryption source code) that is deemed to take place when it is “released” to a “foreign national” within the United States.
 - The “release” of technology is deemed to be a release to the home country of the foreign national.
 - Deemed exports of controlled technologies and exports of software to nationals of countries other than the U.S. may require export license.
 - Deemed exports of controlled technologies and exports of software to nationals subject to trade sanctions may require export licenses and/or authorization from OFAC.
- **Deemed Re-Exports:** a release or disclosure of U.S.-origin technology outside the U.S., to a third- country non-U.S. national overseas.

Is an export license required? It Depends...

▪What are you exporting?

- Export Control Classification No. (ECCN)

▪Where are you exporting to?

- Sanctioned country? (Cuba, Iran, North Korea, Sudan, Syria)

▪Who will receive your item?

- Will the item be re-exported?
- Transshipped?
- Denied Party?

▪What will your item be used for?

- Know Your Customer
- Prohibited End-Use

Export Licensing

▪If required, issued by BIS/OFAC

▪If license is required, item may not ship until license secured

- ECCN and export license number must be provided to freight forwarder/courier
- ECCN and export license number must be reported in Automated Export System Filings
- Parties to transaction should be advised of any conditions or restrictions contained in the export license

The Essentials



- √ Exports are subject to export controls and in some instances may require an export license
- √ If an export license is required, it must be obtained prior to the export and/or deemed export activity
- √ Export license requirements may be required for exports, re-exports and deemed exports to U.S. subsidiaries, joint ventures, partners and personnel
- √ All export transactions must be reviewed to determine if an export license is required.

(Text/Photo Margin)



The EAR Applied



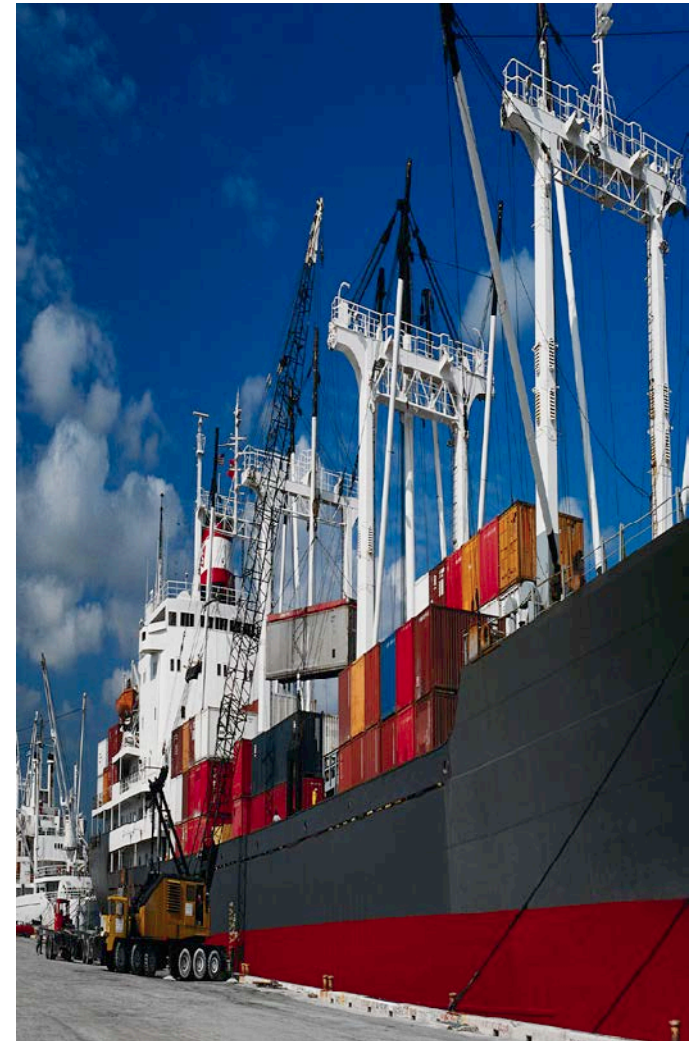
Items Subject to Export Controls



▪ Depending on the item specifications, the following types of items **may** be subject to U.S. export controls

- Crude
- Equipment
 - Exploration & Production equipment
 - IT Equipment
 - Refinery Equipment
 - Security Equipment
 - Subsea Equipment
 - Safety Equipment
- Software
- “Technical Data”
- Chemicals

This list is not exhaustive




Key Focus Areas for Energy Companies



▪ Regulatory Changes

- Export Control Reform Initiative
- Federal Trade Regulation Updates

▪ Obtaining/Determining Export Control Classification Information

- Obtaining information from vendors/suppliers 
- Self-Classification
 - Custom software applications
 - New technologies

▪ Deemed Exports

- Non-U.S. national employees
- I-129 Petition Requirements

▪ Freight Forwarder Oversight

- FF supplying correct information for reporting
- Review of invoices and filings
- Record retention

Key Focus for Energy Companies



▪ **University/Nat'l Lab Partnerships**

- Knowledge Gaps
- Fundamental Research
- Trade Sanctions

▪ **Automated Export System Filings**

- Routed Exports
- U.S. Waters



▪ **Non-U.S. Export Controls**

- Growth and changes of export control regimes
 - Wassanar member countries
 - Encryption controls


– **Trade Sanctions**

- Acceptance of Contractual language
- Imposing screening of entities / individuals by contractors

Navigating Export Controls



▪ **Regular Check-Ups (Compliance Programs)**

- Right processes?
- Who's accountable?
- Central vs. Local
- Audits (internal/external) 
- Visibility and support for compliance personnel?

▪ **Hire Smart**

- Strong compliance counsel?
- Strong compliance professionals?

▪ **Use of Contracts**

- Obligate counterparties where appropriate
- Protect your company
- Mirror your shipping terms where appropriate

▪ **Consider Technology**

- IT Solutions appropriate for your company?
- Using existing IT resources to your advantage?

▪ **Exercise Oversight, often**

- Business decisions that impact Company
- Compliance personnel
- Freight forwarders and other service providers

▪ **Keep Up!**

- Regular training for personnel
- Monitor regulatory changes and carefully consider impact



- U.S. Department of Commerce
 - BIS
 - Internet
 - Webinars
 - Live training/conferences
 - Census Bureau
 - Internet
 - Live training
 - Webinars
- U.S. Dept. of Treasury-OFAC
 - Internet
- U.S. Dept. of State-DDTC
 - Internet
- Industry Associations
 - Training
 - Regulatory updates
 - Advocacy
 - Networking
- Professional Associations
 - Training
 - Networking