



Import and Export Compliance

Presented By:

Peggy Chaplin Louie
Sandler, Travis & Rosenberg, P.A.

MAIL: P.O. Box 509 Eau Claire, WI 54702-0509 • TELEPHONE: 866-352-9539 • FAX: 715-833-3953
EMAIL: customerservice@lorman.com • WEBSITE: www.lorman.com • SEMINAR ID: 399948

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SANDLER, TRAVIS & ROSENBERG, P.A.
An International Trade and Business Practice

Import and Export Compliance & Enforcement: Keeping Up With Changing Rules

Presented by:

Peggy Chaplin Louie, Esq.

202-296-9307

pchaplin@strtrade.com

www.strtrade.com

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Today's Agenda

- Missions and Priorities
- Broker and Forwarder Relationships
- Import/Export Agencies
- Restricted Parties and Transactions
- Import/Export Definitions
- Importer/Exporter of Record
- Documentation
- Classification, Value and Preference Claims
- Post Import/Export Corrections
- Penalties, Seizures & Disclosures
- Import/Export Compliance Programs

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I. Missions & Priorities



Import Mission

- Detecting, deterring and preventing terrorists and their weapons from entering the U.S.
- Protect revenue by assessing and collecting duties, taxes and fees.
- Controlling, regulating, facilitating movement of carriers, people and commodities.
- Protecting against hazardous, toxic or noxious products.
- Protecting against unfair foreign competition.
- Detecting and interdicting smuggling and illegal entry of narcotics, drugs, contraband or other prohibited articles.

Export Mission

- National security – prevent enemies of U.S. from obtaining superior tactical and strategic advantage.
- Diplomatic perspective – protect strong economy to ensure continued success and superiority in global politics.
- Commercial perspective – ensure continued competitiveness of U.S. exports in global arena by creating a level playing field among all exporters.

II. Broker and Forwarder Relationships

Import – Customs Broker

- Customs broker is licensed to transact “customs business”:
 - Entry, admissibility, classification, valuation, payment of duties, taxes, other CBP charges.
 - Preparation and activities related to preparation of entry documents in any format and electronic transmission of documents to be filed with CBP.

Import - Powers of Attorney

- Required prior to licensed broker transacting customs business for principal.
- May be executed for specified part or all the principal's (importer's) customs business
- Customs Form 5291 may be used – a standard form PoA for brokers.
- POAs may be granted for unlimited time, but partnerships for two years.
- May be revoked at any time by written notice to port director.
- Can include POA as freight forwarding agent

Importer/Broker Considerations

- Level of experience
- Product line knowledge/expertise
- Trade preference experience
- Admissibility issues
- Training/education
- Automation
- Adaptability to new products, source countries
- Procedures for disseminating information and communicating
- Periodic review and audit

Export – Freight Forwarder/Agent

- Authorized agent: physically located in U.S., with POA or written authorization from USPPI or FPPI to complete and file EEI.
- Forwarding agent: U.S. party authorized by USPPI or FPPI to facilitate movement of cargo to foreign destination and/or prepare and file required documentation.
- Some companies may handle both agent and forwarder responsibilities. Must be licensed by Federal Maritime Commission (FMC) to be ocean forwarder.

Export – POA or Authorization

- Agent for export control, Census reporting and CBP purposes.
- Prepare and transmit any EEI or other documents and records.
- Perform any other act required by law or regulation in connection with exportation or transportation of goods.
- USPPi certifies all statements and information will be true and correct.
- USPPi understands civil and criminal penalties for false or fraudulent statements or violations.

Export – Managing the Relationship

- Build relationship via regular communication with agent or forwarder
- Schedule regular visits
- Conduct an export process audit at least annually
- Establish a point of contact
- Develop procedures for record retention

Broker/Freight Forwarder Relationship

- Know which party is serving what role.
- Many entities provide both brokerage and forwarding services.
- Broker required to directly transmit to importer true copy of brokerage charges if FF will collect them. Otherwise, importer to waive requirement.



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You Make the Call! Number 1



Which of the following is an accurate statement:

- A. An importer or exporter has the option to provide a power of attorney (or authorization) to its customs broker or authorized agent.
- B. Both customs brokers and forwarding agents are licensed by CBP.
- C. A critical import and export mission is national security.
- D. CBP is responsible for collecting both import and export duties.

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III. Import/Export Agencies

Agencies Impacting Imports



Importance of OGAs

- Agriculture Programs and Import Safety are “priority trade issues”
- Two of every three CBP exams involves OGA involvement
- 42% of all shipments held in 2010 were detained by OGAs



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Why OGAs?

CBP enforces literally hundreds of laws and regulations for over 40 other government agencies (OGAs) to:

1. Protect the economy and security of the U.S.
2. Safeguard consumer health and well-being
3. Preserve plant and animal life
4. Apply import quotas or restraints under trade agreements

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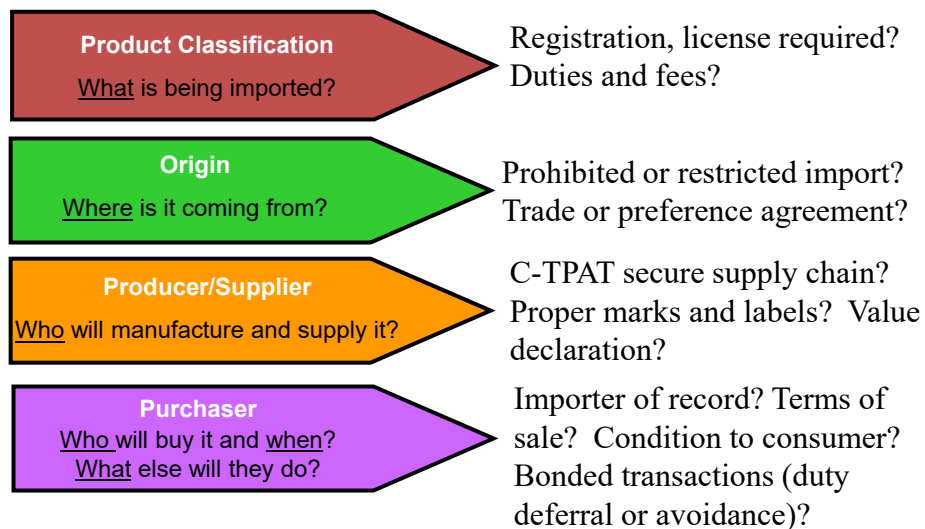
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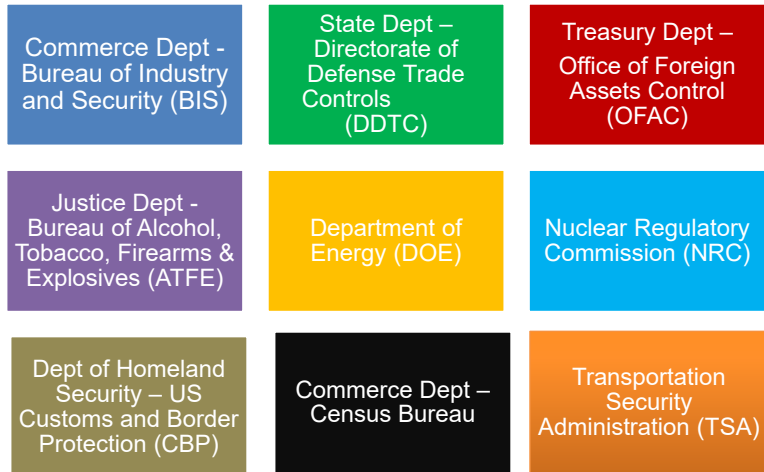
Import Safety – Priority Trade Issue

- Prevent unsafe products from entering U.S.
- Create nationwide uniformity on detention, seizure, destruction and/or other enforcement measures
- Create automated system with ‘single window’ concept permitting information gathering and sharing
- Coordinate and communicate intra-agency and inter-agency risk assessment, targeting and responses
- Collaborate with trade community to further develop import safety initiatives and maintain awareness

Essence of U.S. Import Admissibility & Duties



US Agencies Controlling Exports & Reexports



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Commerce Department – Bureau of Industry and Security (BIS)

Controls exports/reexports/transfers of purely commercial and dual-use goods, software and technology to foreign persons—most exports fall under BIS jurisdiction.

Issues licenses if required per classification, destination country, end-user and end-use.

Requirements found in:

- Export Administration Regulations (EAR) (15 CFR 730 to 744) (currently supported by the International Emergency Economic Powers Act – IEEPA).
- Commerce Control List (CCL) (15 CFR Part 744)

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State Department – Directorate of Defense Trade Controls (DDTC)

Activities Controlled

- Exports, reexports, temporary imports, brokering, facilitating
- Political Fees and Contributions
- Manufacturing/selling ITAR-controlled goods

Items Controlled

- Listed on US Munitions List or subject to “See Through Rule”
- Specially designed, developed, configured, adapted or modified for military applications or intelligence gathering use, and have no predominant civil applications

Laws & Regulations

- Arms Export Control Act (AECA)
- International Traffic in Arms Regulations (22 CFR 120 – 130)
- US Munitions List (USML – 22 CFR 121)

License Requirements

- License required for temporary imports unless exemption applies
- License required to export/reexport/transfer to foreign persons unless a license exemption applies

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Treasury Department – Office of Foreign Assets Control (OFAC)



Administers embargoes and economic sanctions against certain countries



Controls US person dealings with Specially Designated Nationals



Issues licenses to engage in certain controlled activities



- Foreign Assets Control Regulations (31 CFR 500 *et seq*)
- Trading with the Enemy Act (TWEA) or IEEPA (depending upon program)

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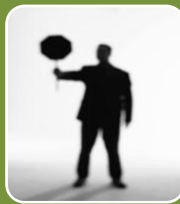
Commerce Department – Census Bureau

Compiles foreign trade statistics

Oversees Automated Export System (AES)

Administers Foreign Trade Regulations (15 CFR 30)

US Customs and Border Protection



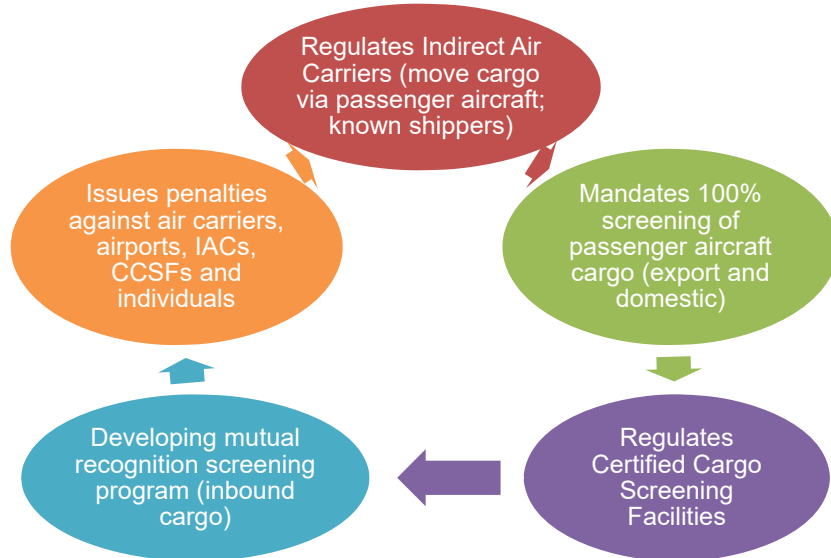
CBP has authority to:

- Inspect, investigate, detain or seize
- Request records or information



Census delegated authority to CBP to issue civil penalties for violations of the FTR

Transportation Security Administration (TSA)

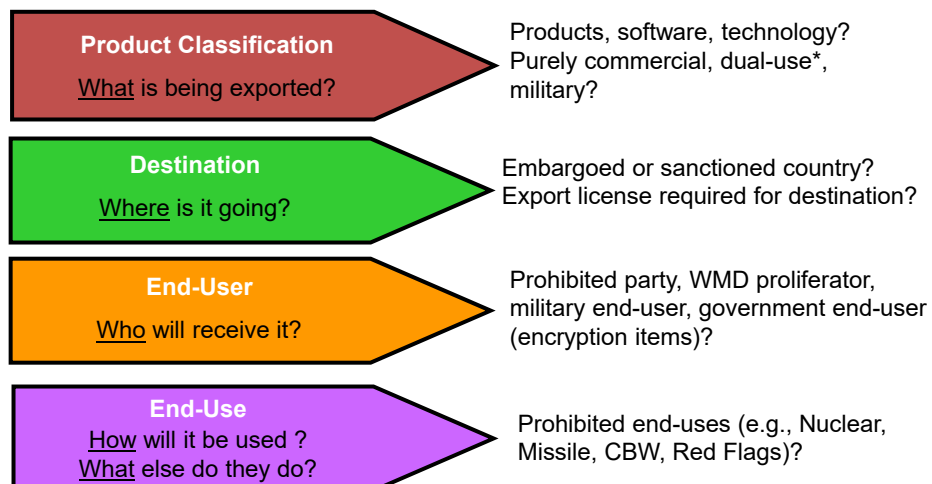


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Essence of U.S. Export Controls



*Dual-use: Items that have both commercial and military or proliferation applications. (15 C.F.R 772)

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Export Licenses

Commerce Control List

- CCL includes all items (commodities, software and technology) subject to BIS export licensing authority
- If other agency jurisdiction, refers you to that agency
- Consider if ECCN applies to item and controls

ECCN Categories & Controls

- Nuclear, Chemical, Materials, Electronics, Computers, Telecommunications/IT, Lasers/Sensors, Navigation/Avionics, Marine, Propulsion Systems/Space Vehicles
- National Security, Missile Technology, Nuclear Nonproliferation, Chemical and Biological, Antiterrorism, Crime Control, Regional Stability, UN Sanctions, etc.

OFAC

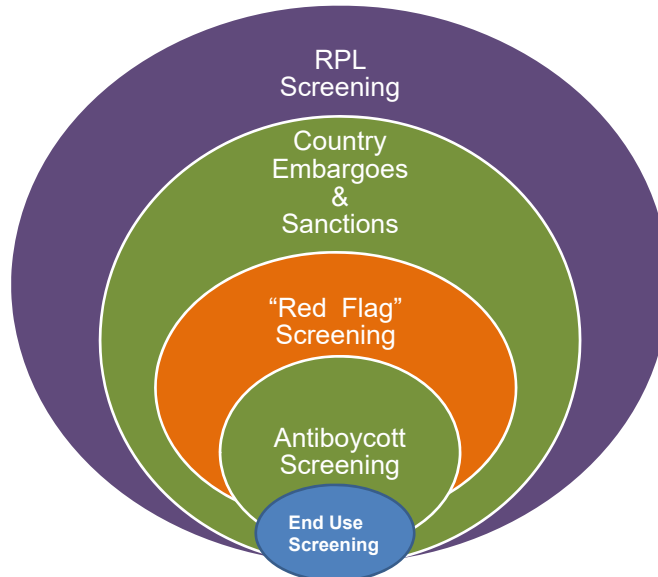
- General licenses (akin to license exceptions/exemptions)
- Specific licenses (must apply to OFAC)

State Dept. License Requirements

- International Traffic in Arms Regulations (22 CFR 120 – 130)
- US Munitions List (USML – 22 CFR 121)
- Specifically designed, developed, configured, adapted or modified for military application; no predominant civil applications

IV. Restricted Parties & Transactions

Screen Exports & Certain Imports



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Restricted Parties List Screening

US persons are prohibited from dealing with individuals and entities designated on published restricted parties lists without a license:



US **exporters** expected to screen **ALL PARTIES** to their transactions against these lists and establish processes for handling any "hits." US **importers** should be aware of **SDN List**.

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You Make the Call! Number 2



Which of the following does not publish a restricted party or entity list that may prohibit exports or imports into the U.S.:

- A. Department of Homeland Security - CBP
- B. Department of Treasury - OFAC
- C. Department of Commerce - BIS
- D. Department of State - DDTC
- E. They all publish such lists

V. Import / Export Definitions

Import - Definition

- All goods provided for in the HTSUS and imported or reimported into the customs territory of the U.S., are subject to duty or exempt, as prescribed in the general notes
- Customs territory of U.S. includes the states, District of Columbia and Puerto Rico
- Import when merchandise arrives in U.S. customs territory; for vessels, date when it arrives in U.S. port limits with intent to unlade
- General Note 3(e) provides exemptions including telecommunications transmissions and business records, data and diagrams.



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Export- Definition

- An actual shipment or transmission of items out of the U.S. or release of technology or software subject to the EAR to a foreign national in the U.S.
- United States is the fifty (50) states, including offshore areas within their jurisdiction, the District of Columbia, Puerto Rico and all territories, dependencies, and possessions of the U.S., including foreign trade zones, and also including the outer continental shelf.
- Reexport: shipments or transmissions from one foreign country to another foreign country (or technology/software to a foreign national outside of the U.S.)



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Export- What may be subject to control?

- Exports and reexports of dual-use commodities, software and technology – including deemed exports/reexports (BIS)
- Exports, reexports and temporary imports of commodities, software, technical data specially designed for military applications (DDTC)
- Export and reexport of defense services (DDTC)
- Exports/imports, financial transactions, travel activities involving certain individuals and countries (OFAC)
- Exports/reexports of nuclear-related parts, materials and facilities (NRC)
- Exports/reexports of nuclear-related technology (DOE)

Export- Examples of what is subject to the EAR

- All commodities, software and technology located in the US (including items in-transit and items in FTZs)
- All US-origin commodities, software and technology, wherever located in the world
- Foreign-origin commodities, software and technology incorporating US-origin content or technology that exceeds applicable *de minimis* levels

You Make the Call! Number 3



Which answer is true about the regulation of both U.S. imports and exports:

- A. They include telecommunications or electronic transmissions
- B. They include shipments between foreign countries of U.S. origin commodities
- C. They include foreign origin commodities with U.S. content.
- D. They include multiple shipments (re-import/re-export) of the same commodity.

VI. Importer / Exporter of Record

Import – Importer of Record

Party Qualifying as “Importer of Record”

- Owner or Purchaser of Merchandise
- Consignee (owner or purchaser)
- Licensed Customs Broker
- Authorized Sub-Agent

Legal Standard:

- Possession/title, or
- Financial interest in goods

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Import – Importer of Record (2)

1. File IRS Employer Identification Number (EIN) with CBP as IOR No. (CF 5106)
2. Post Bond with Surety (CF 301)
3. Non-resident IOR:
 - CBP assigns IOR No.
 - Post bond with U.S. surety
 - Authorize resident agent to accept service of process

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Export- U.S. Principal Party in Interest

- USPPI – Person in the U.S. that receives the primary benefit, monetary or otherwise, of the export transaction.
- In most cases, a forwarding or other agent is NOT a principal party in interest.
- However, if a customs broker or foreign person is listed as the importer of record when entering goods into the U.S. for immediate consumption or warehousing entry, the customs broker may be listed as the USPPI in the Electronic Export Information (EEI) if the goods are subsequently exported without change or enhancement.



Export- U.S. Principal Party in Interest (2)

- Parties include:
 1. US Manufacturer – Sells merchandise directly for export to foreign principal party in interest (FPPI)
 2. U.S. Buyer – U.S. manufacturer sells domestically to U.S. wholesaler/distributor (buyer) and sells for export to FPPI.
 3. U.S. Order Party – Arranges for sale and export to foreign buyer. Conducts direct negotiations or correspondence with FPPI, and as a result, receives order from FPPI.
 4. Foreign Entity – In the U.S. when items are purchased or obtained for export.



Standard Versus Routed Export Transactions

- **Standard Export Transaction:**

- US Principal Party in Interest (USPPI or US Seller) sells to the Foreign Principal Party in Interest (FPPI or Foreign Buyer).
- USPPI is the exporter of record responsible for export clearance and compliance.
- USPPI or its freight forwarder files the EEI.



- **Routed Export Transaction:**

- USPPI sells to the FPPI.
- FPPI assumes responsibility for export clearance and compliance.
- FPPI's US agent (i.e., freight forwarder) files the EEI.

Standard Export Transactions: Responsibilities of Parties

USPPI



- ▶ Accurately and timely files EEI record itself; or
- ▶ Authorizes US Forwarder or other agent to file the EEI—
 - Provide POA to FF/agent
- ▶ Provides agent with accurate and timely shipment info
- ▶ Retains documentation to support info given to agent

Forwarder

- ▶ Obtains POA from USPPI
- ▶ Obtains shipment information from USPPI
- ▶ Accurately and timely files EEI
- ▶ Provides USPPI with EEI data elements and AES confirmation upon request
- ▶ Retains documentation to support EEI filed

Routed Export Transactions: Responsibilities of Parties

USPPI

- Obtain writing from FPPI assuming responsibility for export
- Provide FPPI's forwarder with accurate information re shipment
- Retain supporting documentation of info provided for EEI filing
- Obtain copy of the EEI filed/AES confirmation

Forwarder

- ▶ Obtain a POA from the FPPI to file EEI
- ▶ Obtain shipment information from USPPI
- ▶ Accurately and timely file EEI
- ▶ Provide USPPI, upon request, with EEI/AES confirmation
- ▶ Retain supporting documents for EEI filing



VII. Import / Export Documentation

Import – Required Entry Documentation

1. Entry Document (CF 3461)
2. Evidence of Right to Make Entry
3. Invoice
4. Packing List
5. Other documents necessary to determine admissibility
6. Coverage by bond or cash deposit

*Entry Summary requires release documents (above), CF 7501 and duties, taxes and fees

Import – Entry Time Limits

Entry Time Limit – Fifteen calendar days after:

- a. Landing from vessel, aircraft or vehicle
- b. Arrival at port of destination for merchandise transported by bond

Entry Summary Time Limit - Ten working days after date of entry (release date)

Import - Entry Types

1. **Consumption entry:** immediate movement into U.S. commerce generally for commercial purposes
2. **Warehouse entry:** movement to Customs bonded warehouse for maximum of 5 years. Delays payment of duties, taxes and certain fees.
3. **Temporary importation under bond:** not imported for sale; for export or destruction within one year unless receive extensions.
4. **Transportation entries:** movement of goods in the U.S. without entering U.S. commerce nor payment of duties, taxes or fees (e.g., immediate transportation, transportation and exportation, immediate exportation).



Import - When 7501 Not Required (Informal Entry)

- Shipment not exceeding \$2,000, except for articles valued in excess of \$250 in sections VII, VIII, XI and XII, Chapter 94 and Chapter 99, Subchapters III and IV, HTSUS
- Express consignment operator or carrier shipment not exceeding \$2,000
- Installment less than \$2,000 of a shipment arriving at different times
- Portion of one consignment not exceeding \$2,000 (except as excluded above)
- Certain household effects, personal effects or tools of trade
- Certain books, theatrical scenery, films, etc.
- U.S. products when aggregate value of shipment does not exceed \$10,000 and products are imported: for repair or alteration prior to re-exportation or having been either rejected or returned by foreign purchaser to U.S. for credit.
- Shipments qualifying for administrative exemptions: not exceeding \$200, certain bona fide gifts not exceeding \$100 (\$200 for USVI, Guam or Samoa) and certain personal or household articles not exceeding \$200.



Import – Invoice Contents

- Country of Origin
- Purchase price
- Kind of currency
- Rebates, drawbacks, bounties
- Goods/services furnished, but not in price
- Time, place, person relating to sale
- Detailed merchandise description
- Quantities in weights and measures
- Value if not shipped pursuant to purchase agreement
- All charges itemized by name and amount (e.g., freight, insurance, commission, cases, containers, coverings, packing, charges to bring goods to exporting carrier)



Export – Electronic Export Information

- | | |
|---|---|
| - Shipment Reference Number (SRN) | - Schedule B/HTS/ECCN |
| - USPPI Name, Address and Federal Tax Identification Number | - Commodity Description |
| - Ultimate Consignee's Name and Address | - Quantity/Unit of Measure (Primary) |
| - Filing Option Indicator | - Shipping Weight |
| - Date of Export | - Value of Goods (US Dollar Value per Schedule B/HTSUS Declared) |
| - Country of Ultimate Destination Code | - Hazardous Material Indicator |
| - Mode of Transportation (MOT) Code | - In bond Code |
| - Carrier ID | - Shipment Filing Action Request indicator |
| - Conveyance Name/Carrier Name | - Line Item Filing Action Request Indicator |
| - Port of Exportation Code | - U.S. State of Origin Code known, report the state in which the commodities are consolidated for export. |
| - Related Company Indicator | - License Code and Expiration/License Exception or Exemption Abbreviation |
| - Domestic/Foreign Origin Indicator | |
| - Routed Export Indicator | |
| - Export Information Code (EIC) | |
| - Line Number | |



Export Documents

- Electronic Export Information /AES Submission (used to control exports and to maintain export statistics);
- Commercial Invoices (bill for goods from buyer to seller);
- Packing Lists (itemizes merchandise and indicates type of package, weights, measurements, markings);
- Air Waybills and/or Bills of Lading (contract between owner of goods and carrier; proof of ownership; references AES XTN number as evidence of filing);
- Licenses (authorizes export of specific goods to particular destination);
- Consular Invoice (describes shipment, parties and value; certified by local consular official of foreign country);



Export Documents (2)

- Certificate of Origin (signed statement as to origin);
- Inspection Certification (performed by third party and may be required to confirm specifications);
- Dock/Warehouse Receipt (transfer accountability when item moved by domestic carrier to port of embarkation and left with ship line);
- Destination Control Statement (on invoice, bill of lading, air waybill to notify carrier and foreign parties that item can be exported only to certain destinations);
- Insurance Certificate (assures consignee that insurance covers loss of, or damage to, cargo during transit)



Export – EEI Filing Options

- Pre-departure EEI filing deadlines:
 - Air: Two hours prior to scheduled departure
 - Rail: Two hours prior to arrival
 - Vessel: Twenty four hours prior to loading
 - Truck: One hour prior to arrival
 - Mail and Others: Two hours prior to exportation
- Post-departure EEI filed within 10 calendar days from date of exportation only for currently approved “Option 4” filers.

Export – EEI Pre-Departure

EEI pre-departure always required for:

- i.) self-propelled vehicles,
- ii.) DEA permitted chemicals,
- iii.) “sensitive” shipments by Exec Order,
- iv.) U.S. govt. agency requires,
- v.) routed export transactions,
- vi.) shipments to countries requiring complete outbound manifests prior to export clearance;
- vii.) USML items of the ITAR;
- viii.) exports requiring BIS license, unless approved for post-departure,
- ix.) shipments of certain rough diamonds,
- x.) where USPPi has not been approved for post-departure.

Export – When EEI Required?

- For all exports of items destined to a Group E:1 Country (Cuba, Iran, North Korea, Sudan, Syria);
- For all exports that require a license, regardless of value, or destination;
- For all exports of commodities and mass market software when the value of the commodities or mass market software classified under a single Schedule B number/HTSUS classification is over \$2,500;

Export – When EEI Required? (2)

- For all exports of items that will be transshipped *thru Canada* to a third destination where the export would have required an SED or AES record or license if shipped directly to the final destination from the US.;
- For all exports of items to Puerto Rico from the U.S. and from the U.S. to Puerto Rico; and
- For all exports of items to the U.S. Virgin Islands from the U.S. or Puerto Rico.

Export –When EEI NOT Required?

- Exports of commodities where the value from **one** exporter to **one** consignee on **one** exporting carrier on **one** day under **one** Schedule B number is \$2,500 or less, unless excepted (country, license, permit, rough diamonds, etc.)
- Inbond shipments transported thru U.S. and exported from another U.S. port – other than by vessel and where no export license required
- Interplant correspondence, business records
- Exports where Canada is ultimate destination unless excepted (license)

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Export - Shipper's Letter of Instructions

- Provides detailed instructions from the shipper for EEI
- Ensures accurate and correct movement of products
- Includes billing terms regarding the freight and other charges
- Prevents interpretational errors



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You Make the Call! Number 4



Which answer is false:

- A. A broker or forwarder always should obtain a power of attorney from the foreign entity if the transaction involves a non-resident importer or is a routed export transaction.
- B. A customs broker may be listed as an importer of record or USPPI in certain cases.
- C. Typical import or export documents include a commercial invoice, packing list, bill of lading and certificate of origin.
- D. The importer or exporter should provide a Shippers Letter of Instruction to its broker or forwarder for each transaction.



VIII. Classification, Value and Preference Claims

Import Guidance - Rulings

Pre-Importation

Importer

|

Ruling

|

FNIS/NIS/HQ

During Importation

Importer/Port

|

Internal Advice

|

Port/HQ/Port

Post-Importation

Importer

|

Protest

|

Port/HQ

Importer

FILE SUMMONS IN U.S. COURT OF INTERNATIONAL TRADE

Classification

- **Imports:** HTSUSA number (book or on-line). Consider the following:
 - General Rules of Interpretation
 - Terms of Headings & Legal Notes of the HTSUSA
 - Explanatory Notes to the Harmonized Commodity Description and Coding System (ENs)
 - U.S. Customs Administrative Rulings (CROSS)
 - Informed Compliance Publications
- **Exports:** Schedule B number or if necessary the HTSUSA number.
 - Consider Notice to Exporters listing provisions applicable for exports instead of HTS provisions and Chapter 98 provisions

Imports - Value

- Usually the transaction value.
- Consists of price actually paid or payable plus additions (packing, commission, assists, royalties, proceeds).
- Excludes international transportation, insurance other incidental expenses.
- Consider relationship between parties.
- Alternative methods of appraisement if no bona fide sale, condition affecting price, etc.
- Valuation encyclopedia and rulings

Exports - Value

- Value at U.S. port of export: selling price or cost if not sold, and other charges to U.S. port of export.
- Selling price is USPPI's price to FPPI, net unconditional discounts.
- Exclude commissions from USPPI to agent abroad or to be deducted from selling price by agent abroad.
- If no sale at export, use market value at time of export.
- Report FAS value –include inland or domestic freight/charges to port but not beyond.
- If goods sold FOB at U.S. point other than port of export – add freight, insurance and other costs to border.
- If goods sold at delivered price, foreign destination - subtract costs beyond port of exportation.

Preference Programs

- **Imports:** Consider programs set forth in HTSUS General Notes
 - Ensure country and product are eligible for trade program
 - Consider how goods “originate” in eligible country
 - Maintain Certificate of Origin
 - Back up documents supporting claim (affidavits, POs, invoices, bills of material, production records)
 - Direct import (bill of lading)
- **Exports:** Designate “D” for domestic or “F” for foreign.
 - Domestic:
 - the growth, product, or manufacture of the U.S. including FTZs, Puerto Rico or U.S. possessions, or
 - articles of foreign origin enhanced in value or changed from the form in which imported by further manufacture or processing.
 - Consult specific details of trade and preference agreements. Start with FTA tariff tool.

IX. Post Import/Export Corrections

Import Errors – Post Entry Amendments

- Importers may correct entry summaries prior to liquidation through Post Entry Amendments (PEAs).*
- Covers issues such as –
 - Classification,
 - Overages/shortages,
 - Value (invoice revisions, price adjustments, currency exchange, assists, etc.)
 - Subsequent entry adjustments
 - Trade preference programs
 - Clerical errors

***Post Summary Corrections may be filed 270 calendar days from date 01 or 03 entry summary filed in ACE**

Post Entry Amendments

- Requests for refunds or submission of additional monies owed prior to liquidation.
- File within appropriate time frame.
- Single PEAs – file no later than 20 days prior to scheduled liquidation for:
 - Revenue issue \$20 or more
 - Antidumping/countervailing duty error
 - Statistical error that MUST be reported to Census
- Quarterly PEAs – submit 15 calendar days before last day of quarter for:
 - Non-revenue issues
 - Under \$20 value and below \$10,000 difference
 - Statistical error that must NOT be reported to Census

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Export Errors – AES Corrections

- Corrections, cancellations or amendments are to be electronically identified and transmitted via AES for all required fields as soon as possible.
- Fatal error message: correct and resubmit EEI prior to export for pre-departure and as soon as possible for post-departure, but no later than 10 days.
- Warning message: correct within four days of receiving original transmission.
- Verify message: correct, when warranted, within four days of receiving message.

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Export Errors – AES Corrections (2)

Census 15-Month Sliding Scale for AES corrections:

- EEIs filed Jan. – Dec. 2011: File corrections until March 2012.
- Failure to correct within the 15-month timeframe warrants a Voluntary Self Disclosure (VSD).

AES Corrections vs. VSDs: Per Census—

- VSDs not necessary if routine correction, affecting only a small number of shipments (<10). Consider: shipment volume, licensed goods, non-responsiveness to fatal errors, late filing timeframes.
- Census Examples:
 - Over a 6-month period, EEI was not filed for >10 shipments: VSD warranted.
 - Incorrect EIN in EEI for numerous shipments for >2 months: VSD warranted.
 - Shipment exported without license: VSD warranted regardless of number of shipments or timeframe involved.

X. Penalties, Seizures & Disclosures

Import-Broker Responsible Supervision & Control

A broker must exercise responsible supervision and control over the customs business it conducts.

The supervision and control should ensure that the employee provides substantially the same quality of service in handling customs transactions that the licensed broker is required to provide.

The determination of what is necessary to perform and maintain responsible supervision and control will vary depending on the circumstances in each instance.

Broker Penalties - 1641

19 USC 1641 – Broker Penalties

- 19 USC 1641(b)(6):
 - Liable for \$10,000 penalty if intentionally transact customs business without valid license
- 19 USC 1641(b)(4):
 - Broker to exercise responsible supervision and control over business

Broker Penalties – 1641 (cont'd)

19 USC 1641 – Broker Penalties

- 19 USC 1641(d)(1) and (d)(2):
 - Customs may impose \$30,000 penalty or revoke/suspend license if broker:
 - Provides false, material statement re application/report;
 - Convicted of certain felonies, misdemeanors;
 - Violates customs laws, rules, regulations;
 - Counsels, aids/abets other to violate such laws, rules;
 - Employs convicted felon; or
 - Deceived, misled client intending to defraud.

Import – Commercial Penalties

A commercial negligence or fraud claim under 19 U.S.C. 1592 may be brought against a party that enters, introduces or attempts to enter or introduce merchandise, if Customs establishes the following elements:

- False document/information, statement, act or omission.
- Materiality.
- Fraud, gross negligence or negligence.

Typically importers. Brokers only if fraud, or financial benefit.

Import – Prior Disclosure

- *Limits exposure to civil penalties under Section 1592.
- *Include all pertinent facts, with a tender of the duties owed.
- *Submit in writing, before, or without knowledge of, the commencement of a formal investigation into the matter being disclosed.

- **Negligence:** $\frac{1}{2}$ to 2 Times Loss Becomes Interest (None if Pre-Liquidation)
- **Gross Negligence:** $2\frac{1}{2}$ to 4 Times Loss Becomes Interest (None if Pre-Liquidation)
- **Fraud:** 5 to 8 Times Loss Becomes 1 Times Loss

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Import – Elements of Prior Disclosure

- **Disclose Circumstances of Violation**
 - Class/kind of goods
 - Identify importation
 - Specify material falsities
 - Provide true, accurate information/data
- **Before or without Knowledge of Commencement of Investigation**
 - Commencement of investigation?
 - Presumed knowledge of investigation?
- **Tender Actual Loss of Duties**
 - At time of disclosure or 30 days after written notification of loss

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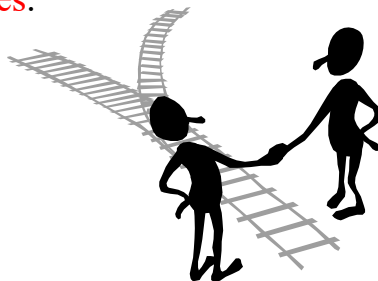
Import - Seizures

Introduction Contrary to Law – 19 USC 1595a(c)

- Primary seizure and forfeiture statute
- Enforce Customs and other agency laws that prohibit merchandise or behavior
- Provides seizure and forfeiture enforcement
- Categories where Customs must, may or does not seize
- Includes merchandise used to facilitate contrary to law

Export - BIS Guidance January 2010

“Forwarding agents have compliance responsibilities under the Export Administration Regulations (EAR) even when their actions are dependent upon information or instructions given by those who use their services.”



Export - BIS Guidance January 2010 (2)

Forwarding agents are responsible for—

- Representations made in EEI filings.
- Suspending a transaction if knowledge that a violation is about to or is intended to occur.
- Export screening (i.e., RPL, embargoed/sanctioned country, “red flags”).
- Ensuring recordkeeping compliance.
- Implementing a formal internal compliance program.
- Filing voluntary self-disclosures when necessary.

FFs as well as their customers may be subject to civil and/or criminal penalties for violations.

Export - Penalty Summary

DDTC:

- Civil Penalties – Maximum \$500k/violation
- Criminal Penalties
 - Up to 10 years’ imprisonment; and/or,
 - Up to \$1 million criminal fines

BIS:

- Civil Penalties: Greater of \$250k or twice the amount of the transaction/violation Criminal: 20 years’ imprisonment

OFAC:

- TWEA sanctions: \$65,000/violation (civil)/10 years’ imprisonment (criminal)
- IEEPA sanctions programs:
 - \$250k/violation or twice the amount of transaction (civil);
 - 20 years’ imprisonment (criminal)

Other Administrative Consequences:

- Detentions/Seizures/Forfeitures/Additional Penalties by CBP
- Revocation, suspension, or revision of license exceptions or licenses
- Exclusion from Practice (FFs, attorneys, consultants)
- Loss of Government contracts/orders
- Bad publicity!

Penalties for FTR Violations

AES Violation	CBP Penalties
Failure to file EEI	\$10k maximum penalties. Subject to mitigating /aggravating factors, # priors. Mitigating guidelines: <ul style="list-style-type: none"> ▪ \$750 - \$2500: 1st recorded offense ▪ \$1000 - \$3500: 2nd recorded offense ▪ \$1500 - \$5k: 3rd recorded offense ▪ \$2k - \$10k: 4th and subsequent recorded offenses
Other FTR Violations <ul style="list-style-type: none"> ▪ Incorrect EEI data elements; ▪ Failure to include license # or code; ▪ Failure to obtain POA; ▪ Failure to identify routed transaction; ▪ Failure to correct AES; ▪ Failure to timely provide carrier with proof of filing citation or exemption legend; and ▪ Failure to retain records. 	\$10k maximum penalties Subject to mitigating/aggravating factors, # priors. Mitigating guidelines: <ul style="list-style-type: none"> ▪ \$500 to \$2,500: 1st recorded offense ▪ \$750 to \$3,500: 2nd recorded offense ▪ \$1,000 to \$5k: 3rd recorded offense ▪ \$2k to \$10k for 4th and subsequent recorded offenses

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Penalty Case Study – Forwarder Penalty

Joint Settlement with OFAC and BIS

OFAC Violations:

- Exported or attempted to export unlicensed shipments to Sudan (4) and Iran (63); and one unlicensed shipment from Iran
- Failure to maintain 32,228 records describing what was shipped to Iran

BIS Violations:

- Transported items subject to the EAR to Syria without required licenses (8)
- Failed to retain AWBs and other export control documents for Syrian transactions (90)

Civil Penalty: \$9,444,744

(Plus required to have third-party audits covering shipments to Iran, Syria and Sudan for the period 2007 – 2011)

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Export - Voluntary Self-Disclosures

- VSDs—
 - Written admissions of an export violation;
 - Must be received by the govt agency before they (or another US agency) obtain knowledge of the violation from other sources;
 - Strongly encouraged by the BIS, DDTC, OFAC and Census;
 - Mitigating factors in export enforcement cases.
- The VSD weight is within the sole discretion of the agency.
 - BIS gives "Great Weight" mitigation (25% reduction) if the company can demonstrate that it has an "effective compliance program" in place.
 - ITAR Section 127.12(a) : "Failure to report a violation may result in circumstances detrimental to US national security and foreign policy interests, and will be an adverse factor in determining the appropriate disposition of such violations."

The Filing of a VSD Is Just That: *Voluntary*.

- Companies considering the filing of a VD/VSD should consider all of the pros and cons associated with filing the disclosure.
 - Is discovery of violation by the govt likely?
 - Were the shipments in question otherwise authorized?
 - Can penalties be significantly reduced by filing a VSD?
 - Can timelines set by the agency be met?
 - Can the company's compliance program withstand scrutiny?
 - Have there been previous reported violations?
- To file or not to file – this is a business decision.

Export - Voluntary Self-Disclosures

- Disclose violations as soon as possible after discovery.
- Submit initial notification (in writing or verbally).
- After notification filed, review all export-related transactions going back 5 years in time and compile supporting documentation.
- While preparing a VSD, review your internal controls and make the necessary process changes as a result of the errors that occurred
- Be thorough in the narrative VSD letter(s), and cover all violations—i.e., exporting without a license could also involve causing, aiding, abetting, acting with knowledge, misrepresentation on EEI/AES, etc.
- VSDs should outline the:
 - Specific errors that occurred and corrective action taken; and,
 - Preventive measures taken to prevent the reoccurrence of the errors in the future.



Export - Voluntary Self-Disclosure Example

- **Summary:** Shipper discovered AES filing errors (i.e., failure to declare several shipments subject to BIS licenses in EEI) committed by the forwarder during its regular post-shipment internal review, and notified the forwarder. FF conducted a 5-year review of shipments handled for that shipper and discovered additional AES filing errors (i.e., transmission of incorrect ECCNs via AES). Correct information had been provided to the FF via the SLI; however, an export clerk was careless in inputting data into AES. Shipper filed a VSD.
- **FF's Corrective Actions:**
 - Engaged outside legal counsel and filed VSDs with Census and BIS;
 - Conducted a review meeting with the export clerk to discuss errors;
 - Export clerk required to undergo additional training on AES and company; policies regarding reliance on customer SLI information;
 - Provided intensive AES training for all employees.
- **Penalties Assessed by Census & BIS:** None—warning letters issued.



Export Controls - Seizures

19 U.S.C. 1595a(d)

Seizure and forfeiture of:

- Merchandise exported or sent from the U.S.
- Merchandise attempted to be exported or sent from the U.S. contrary to law
- Property used to facilitate the exporting or sending of such merchandise
- The attempted exporting or sending of such merchandise
- The receipt, purchase, transportation, concealment, or sale of such merchandise prior to exportation

You Make the Call! Number 5



Which is the best answer:

- A. If an importer or exporter corrects its declarations it automatically avoids a penalty.
- B. After notifying an import or export agency of a violation, a five year review of all transactions should occur.
- C. If an importer or exporter discloses, the broker or forwarder is protected from all penalties.
- D. Both import entry summaries and export EEIs can be filed after the import/export occurred if meeting applicable legal requirements.
- E. B&D both are good answers.

Import/Export Compliance Programs

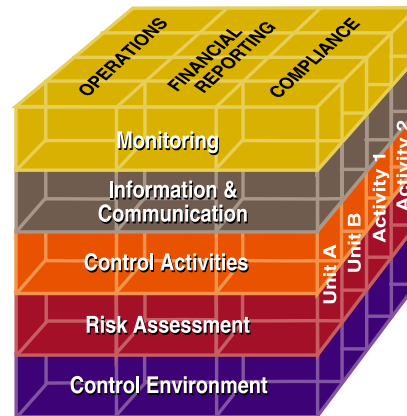
Why Have A Compliance Program?

- Increase business certainty
 - Avoid damage to its reputation and other consequences
- Achieve greater consistency and uniformity
- Strive for improved efficiencies in operations
- Seek out cost cutting measures
- Show your value added to the organization
- Demonstrate compliance and avoid penalties!



5 Components of Internal Control

- **Control Environment** - The control environment sets the tone of an organization, influencing the control consciousness of its people.
- **Risk Assessment** - Every entity faces a variety of risks from external and internal sources that must be assessed. Risk assessment is the identification and analysis of relevant risks to achievement of objectives, forming a basis for determining how the risks should be managed.
- **Control Activities** - These policies and procedures help ensure management directives are carried out.
- **Information and Communication** - Pertinent information must be identified, captured and communicated in a form and timeframe that supports all other control components.
- **Monitoring** - Internal control systems need to be monitored - a process that assesses the quality of the system's performance over time.

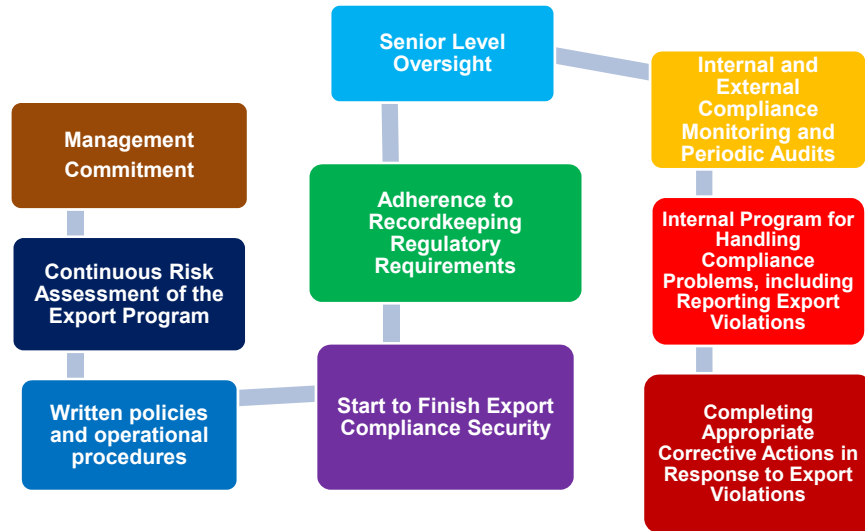


Import - Best Practices

1. Have management's commitment.
2. State compliance and cost goals.
3. Develop formal policies.
4. Establish training programs.
5. Conduct internal control reviews.
6. Create compliance group.
7. Access executives for needed resources.
8. Develop compliance requirements for suppliers.
9. Establish a record-keeping program.
10. Partner with CBP.



Export - Compliance Program Core Elements



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Your Current Import / Export Compliance Program

- Do you have a corporate compliance policy statement?
- Is the policy widely disseminated and reissued annually?
- Does your program cover all import/export process elements?
- Are processes documented in a manual or desk procedures?
- Do you have SOPs with your customers?
- Do you receive invoices/SLIs from your customers?
- Are personnel regularly trained in compliance?
- Is attendance at training sessions recorded?
- Do you conduct regular post-shipment internal reviews?
- Do you conduct formal internal audits on an annual basis?
- Do you have an issue escalation process to senior mgt?
- Do you have a process for reporting errors?



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Questions?



- Peggy Chaplin Louie, Esquire
- Attorney at Law
- Sandler, Travis & Rosenberg, P.A.
- Washington, DC
- 202-216-9307
- pchaplin@strtrade.com

Notes

