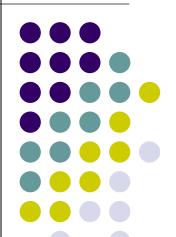
Routed Export Transactions and Other Mysteries of the Foreign Trade Regulations Export Reporting Requirements

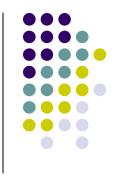
June 25, 2009

Presented by

George R. Tuttle, III
George R. Tuttle Law Offices
One Embarcadero Ctr, Suite 730, San Francisco
Phone (415) 986-8780 / Fax (415) 986-0908
www.tuttlelaw.com



What will we cover?



- Understanding "routed export transactions"
 - Who can file Electronic Export Information (EEI)?
 - Examples of U.S. Principal Parties In Interest (USPPI)
 - When is an export transaction "routed"?
 - Do INCO terms matter?
 - Responsibilities of USPPIs and filing agents in "routed" export transactions
- Determining the USPPI in multi-tiered export transactions
- Export values for multi-tiered export transactions
- New Foreign Trade Regulation Penalties and Prior Disclosure Provisions

Evolution of The Routed Export Transaction



- Current Foreign Trade Regulations published June 2, 2008 (73 FR 31548)
- Proposed rule published February 17, 2005 (70 FR 8200)
- Bureau of the Census: Clarification of Exporters' and Forwarding Agents' Responsibilities; Final (July 10, 2000, 65 FR 42556)
- Bureau of the Census: Clarification of Exporters' and Forwarding Agents' Responsibilities; supplementary Proposed. October 4, 1999 (64 FR 53861)
- Bureau of the Census: Clarification of Exporters' and Forwarding Agents' Responsibilities; Proposed. Vol. 63, No. 151 / Thursday, August 6, 1998 / Proposed Rules p. 419

Responsibility for Filing Export Information



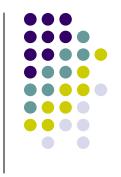
- Who is responsible?
 - Prior to July 10, 2000 filing a SED was the responsibility of the "Exporter of Record"
 - "Exporter of Record" was defined as the owner or party who has control over the export or disposition of the goods
 - Census said this led to confusion as to who had the obligation to file if the terms of sale were "Ex-works" because the foreign purchaser owned the goods prior to export and could "control" their export.

Census Introduces The "Principal-Party-In-Interest" Concept



- Commerce (BIS) and Census clarified roles and responsibilities of parties in a joint Federal Register notice (July 10, 2000, 65 FR 42556)
- Census adopted the "Principal-Party-In-Interest" (PPI) approach
 - The "U.S. Principal Party In Interest" (USPPI) is <u>always</u> responsible for filing the SED unless it is a "<u>routed transaction</u>."
 - USPPI defined as "a person in the United States that receives the primary benefit, monetary or otherwise of the transaction."

Electronic Export Information



- Current Foreign Trade Regulations published June 2, 2008 (73 FR 31548)
- Mandated electronic filing of export information or "EEI" for all applicable shipments
 - The electronic equivalent of the export data formerly collected as Shipper's Export Declaration (SED) information
 - Must be filed through the AES or AESDirect
 - "AES" is the "Automated Export System."
 - "AESDirect" is a special web based portal that exporters may use to file EEI directly



📑 Remote E-mail Access ಶ Windows 🡺 http://rulings.cbp.gov/ 🛕 https://www.rcucon... 🚼 ear_data.html 👺 http://apps.cbp.gov/...





True Innovation In Export Automation

Home

Log In

- AESDirect
- Certification Quizzes

Account Set-up & Management

- Register New Account
- Registration Help
- Re-Activate an Account
- Terms & Conditions
- Privacy Policy
- Account Administration

Vendor Account Set-up

- Developers Center
- Register Vendor Account

Training

- User Guides
- Sample Shipments
- Online Training
- Workshops
- AES Compliance

Using AESDirect

- Who to Contact
- Support Center
- Browser Support
- Developers Center
- News

- **AESPcLink**
- About AESPcLink
- Getting Started Terms & Conditions

AESDirect VPN

- About AESDirect VPN
- Set up AESDirect VPN

Related Sites

- Government Sites
- Partner Sites

AESDirect Tutorial

Dowload the **AESDirect** Tutorial

The AESDirect Tutorial is an executable file that you download and run from your computer. You will not need your AESDirect user name and password to take the tutorial.

Click here to download and install the Tutorial

- 1. Save the file to your desktop. (If you are using Microsoft Internet Explorer you may be prompted to either run the program from the current location or save to disk. Make sure you choose Save to Disk. The download may take up to 30 minutes with a dialup connection.)
- 2. Minimize all windows and find the file "tutpack.exe" on your desktop. If you cannot find it you can use the "Files or Folders" option on the "Find" section of the Start Menu on your computer.
- 3. Double click "tutpack, exe" to start the tutorial installation. Follow the instructions on the screen to install the AESDirect Tutorial.
- 4. When the installation is finished, it will place an icon on your desktop labeled "AESDirect Tutorial". Double click this icon to start the tutorial, and follow the instructions on the screen. The tutorial runs on your desktop, so you need not be connected to the Internet while running the tutorial.

System Requirements: The AESDirect tutorial works with the following operating systems: Windows 95, Windows 98, Windows NT 4.0, Windows Millenium (Me), Windows 2000, and Windows XP. Please make sure your screen resolution is set to at least 800 x 600 pixels.



Who can file Electronic Export Information?



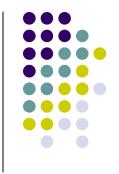
- Definition of an "EEI filer" (FTR 30.3(a)):
 - USPPI or authorized agent (of either the USPPI or the FPPI)
 - Must be approved to file EEI directly in the AES system or AESDirect Internet application
 - Must be physically located in US <u>at the time of filing</u>
 - Responsible for the truth, accuracy, and completeness of the EEI
 - (Except to extent that filer can demonstrate reasonably relied on information furnished by other responsible persons participating in the transaction.)

Who can be a "USPPI"?



- FTR Section 30.3(b)
 - (2) *USPPI*. For purposes of filing EEI, the USPPI is the person or legal entity in U.S. that receives the primary benefit, monetary or otherwise, from the (export) transaction.
 - USPPI is person or entity that is any one of the following:
 - U.S. seller
 - U.S. manufacturer
 - U.S. order party
 - Foreign entity purchasing or obtaining goods for export.

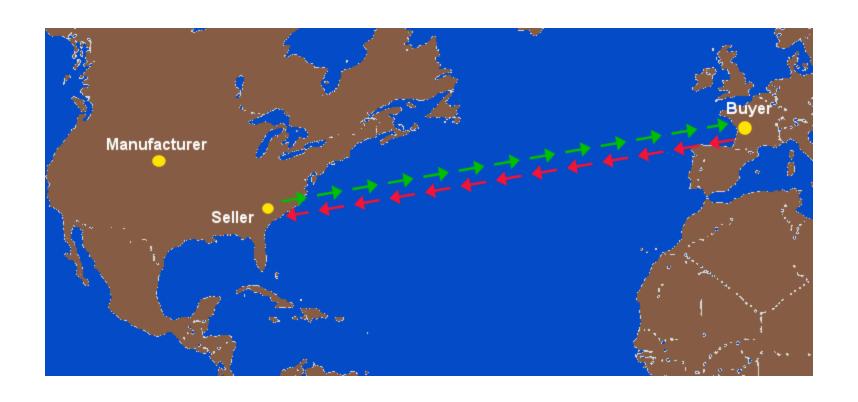
Who can be a "USPPI"?



- US Manufacturer Is USPPI
 - If a U.S. manufacturer sells goods directly to an entity in a foreign area, the U.S. manufacturer is listed as the USPPI in the EEI.
- Wholesaler/distributor is USPPI
 - If a U.S. manufacturer sells goods, as a domestic sale, to a U.S. buyer (wholesaler/distributor) and that <u>U.S. buyer sells the goods for export to a FPPI</u>, the U.S. reseller is listed as the USPPI in the EEI.
- U.S. Order party is USPPI
 - If a U.S. order party <u>directly arranges for the sale and export of goods to a foreign entity</u>, and requests the U.S. Mfg or other party to ship the goods to the FPPI, the U.S. order party must be listed as the USPPI in the EEI.

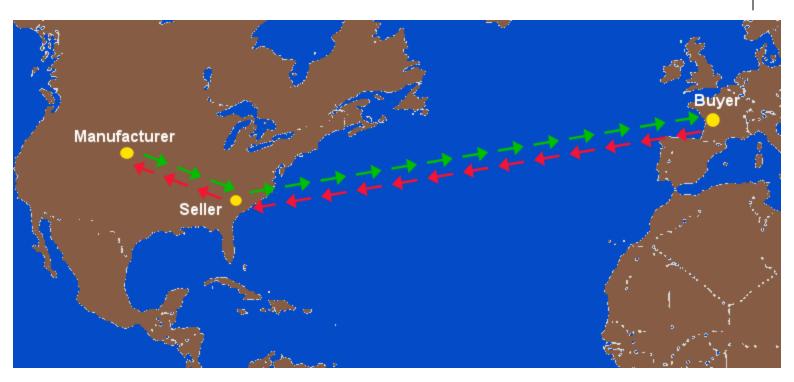
Single Tier Buy-sell Export Transaction





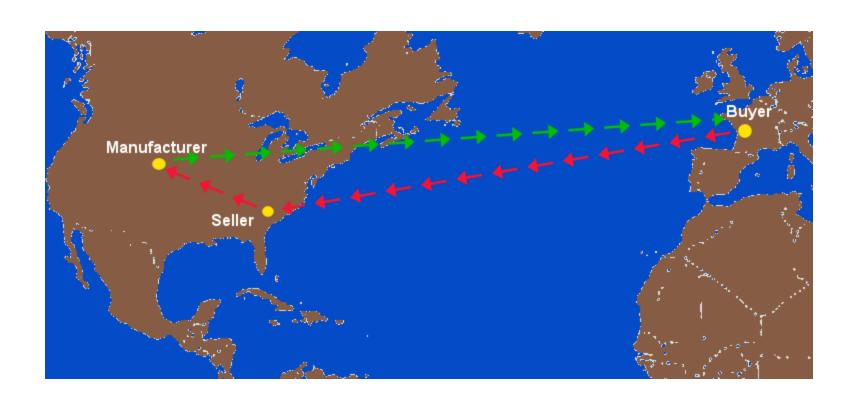
Two-Tier Buy-Sell Export Transaction





Two-Tier (Drop-Shipment) Export Transaction







- A foreign entity may be the USPPI <u>if it is in the United States</u> when the items are purchased or obtained for export.
- If a <u>foreign person</u> is listed as the importer of record when:
 - Entering goods into U.S. for immediate consumption or warehousing entry
 - The Customs broker who entered the goods, may be listed as the USPPI in the EEI, if
 - the goods are subsequently exported without change or enhancement.

(b) Parties to the export transaction— (b)(2)(iii), (iv), an (1) Principal parties in interest. Those (c) General res persons in a transaction that receive the in export transac primary benefit, monetary or otherwise, responsibilities. are considered principal parties to the (i) The USPPI transaction. Generally, the principal EEI itself, or it ca parties in interest i "The foreign entity le t the seller and buye forwarding or other shall be listed as the principal party in iUSPPI if it is in the (2) USPPI. For putthe USPPI is the per United States when the in the United State items are purchased or primary benefit, m obtained for export." ng t person or entity is manufacturer, orde entity purchasing or obtaining goods for (B) Providing t export. The foreign entity shall be listed with a power of a as the USPPI if it is in the United States authorization to when the items are purchased or paragraph (f) of t obtained for export. The foreign entity authorization rec shall then follow the provisions for (C) Retaining d filing the EEI specified in § 30.3 and support the infor \$ 30.6 pertaining to the HSPPI authorized agent

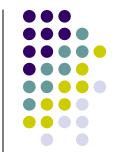


- June 12, 2008 Fed Reg.
 Notice, page 31561 . . .
- A routed export transaction is a transaction in which:
 - FPPI authorizes a U.S.
 agent to facilitate the
 export of items from the
 United States
 - And to prepare and file EEI.

(e) Responsibilities of parties in a routed export transaction. The Census Bureau recognizes "routed export transactions" as a subset of export transactions. A routed export transaction is a transaction in which the FPPI authorizes a U.S. agent to facilitate the export of items from the United States and to prepare and file EEI.

(1) USPPI responsibilities. In a routed

(1) USPPI responsibilities. In a routed export transaction, the FPPI may authorize or agree to allow the USPPI to prepare and file the EEI. If the FPPI agrees to allow the USPPI to file the EEI,



FTR . . . Parties are free to structure commercial transactions, obligations, and responsibilities as they wish . . .

> Clarification of Exporters' and Forwarding Agents' Responsibilities: Authorizing an Agent To Prepare and File a Shipper's Export Declaration on Behalf of a Principal Party in Interest

AGENCY: Bureau of the Census. Commerce.

ACTION: Supplementary notice of proposed rulemaking.

SUMMARY: The U.S. Census Bureau (Census Bureau) proposes amendi ". . . the regulations do Foreign Trade Statistics Regulation (FTSR), 15 CFR part 30, to clarify responsibilities of exporters and forwarding agents in completing the between the foreign Shipper's Export Declaration (SED to clarify provisions for authorizin buyer and the U.S. forwarding agents to prepare and fseller . . . " SED or file the export information electronically using the Automated Export System (AES) on behalf of a principal party in interest.

amending the FISK to clarify responsibilities of exporters and forwarding agents in completing the SED and to clarify who should be listed in the "Exporter" box on the SED and in the exporter field on the AES record. This proposed rule defines new terms, including "U.S. principal party in interest" and "routed export transaction," and clarifies existing ones (notably the definition of "exporter") for purposes of completing the SED. The

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blished a notice

on this subject

n August 6

not intend to interfere with the terms of sale

result of comments received on that proposed rulemaking and subsequent discussions with the Bureau of Export

to the proposed rule concerned identifying the U.S. seller or principal as the "exporter of record" in EX WORKS (EXW) transactions. EXW is a "term of sale" whereby the foreign buyer takes possession of the merchandise in the United States, and the foreign buyer takes responsibility for facilitating the export of the merchandise out of the United States. including export documentation responsibility. The major concern the U.S. sellers presented, when required to be listed as the "exporter of record" in these transactions, is that the U.S. seller does not have effective control over the merchandise once it is turned over to the foreign buyer's agent. The U.S. seller does not want to be held liable for any export control violations that may occur in such a transaction.

The proposed Census Bureau export regulations do not intend to interfere with the terms of sale between the

Federal Register/Vol. 64, No. 191/Monday, October 4, 1999/Proposed Rules

foreign buyer and the U.S. seller in the export transaction. However, in order to collect accurate trade statistics, it is

53862

transaction. The U.S. principal party in interest is the person in the United States that receives the primary benefit,

Providing the forwarding agent with the information necessary to complete the SED or AES record; (B) Providing the

DEC 14 2006



UNITED STATES DEPARTMENT OF COMMER Economics and Statistics Administration U.S. Census Bureau Washington, DC 20233-0001

Mr. George R. Tuttle, III Law Offices of George R. Tuttle Three Embarcadero Center, Suite 1160 San Francisco, CA 94111

Dear Mr. Tuttle:

This is in response to your faxed letter of November 21, 2006, requesting clarification as to the applicability of the provision for routed export transactions under the Foreign Trade Statistics Regulations (FTSR), Part 30, Section 30.4(c). Since there are differences in reporting requirements among the U.S. Census Bureau and the Bureau of Industry and Security (BIS), conformity of documentation is not required. In a routed export transaction as defined in Title 15, Code of Federal Regulations (CFR), Part 772.1 of the U.S. Department of Commerce Export Administration Regulations, the authorized agent can be the "exporter" for export control

purposes. the Shippe U.S. Princ

The Censo Principal United Sta defines th transactio responsib It is the responsibility of the U.S. agent, designated by the FPPI, to prepare and file the SED/AES record. The USPPI is responsible for providing the statistical information pertaining to the transaction. I can only address your concerns pertaining to the FTSR. The FTSR was not written to accommodate Incoterms and there are no terms that relate exactly to the requirements of the FTSR. Clearly Incoterms address common business responsibilities for the buyer and the seller, but these requirements are not carried over to the FTSR.

It is the responsibility of the U.S. agent, designated by the FPPI, to prepare and file the SED/AES record. The USPPI is responsible for providing the statistical information pertaining to the transaction. I can only address your concerns pertaining to the FTSR. The FTSR was not written to accommodate Incoterms and there are no terms that relate exactly to the requirements of the FTSR. Clearly Incoterms address common business responsibilities for the buyer and the seller, but these requirements are not carried over to the FTSR.

We appreciate the opportunity to assist you with your efforts to maintain compliance with export regulations. If you have further questions concerning this or other regulatory matters, please call Mr. Joey Morales, ROEB, FTD, on (301) 763-2238.

Sincerely,

Joes Morch for

Dàle/C. Kelly

Chief, Regulations, Outreach, and Education Branch

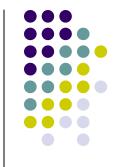
Foreign Trade Division

RECEIVED GEORGE R. TUTTLE

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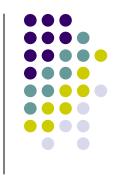
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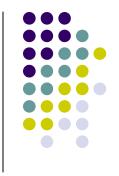


- Do INCOTERMS Matter?
- Incoterms are standardized trade definitions that appear in international sales contracts
- Incoterms define the obligations of the parties with respect to:
 - Clearance
 - Documentation
 - Delivery of the goods to specified location
 - Arranging for contract of carriage

INCOTERMS 2000 ©					
	Ex Works	FCA	FAS	FOB	CIF
Export Customs Formalities	Buyer	Seller	Seller	Seller	Seller
Contract of Carriage	Buyer	Buyer	Buyer	Buyer	Seller



- In a routed transaction, USPPI is always responsible for filing EEI unless:
 - FPPI accepts responsibility for export clearance <u>as evidenced</u> by terms of sale or other agreement with USPPI, and FFPI "<u>authorizes</u>"...
 - U.S. agent to <u>facilitate the export and file EEI</u>



- 30.3(e)(1) . . .
 - FPPI may authorize the USPPI to be <u>authorized agent</u> and prepare and file the EEI.
 - FPPI must provide a <u>written authorization</u> to the USPPI so that it may assume the responsibility for filing.
 - If the FPPI authorizes USPPI to file EEI, the filing is still treated as a routed export transaction.
 - If the USPPI prepares and files the EEI, it must retain documentation to support the EEI filed.
 - The USPPI may <u>not</u> provide a copy of the filing to the FPPI
 - The USPPI may also authorize (sub delegate) an agent to file the EEI on its behalf.



• 30.3(f):

"In routed export transactions the USPPI is not required to provide the filing agent of the FPPI with a power of attorney or written authorization."

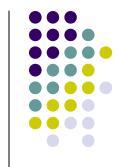
on its behalf. A power of attorney or written authorization should specify the responsibilities of the parties with particularity and should state that the agent has authority to act on behalf of a principal party in interest as its true and lawful agent for purposes of creating and filing EEI in accordance with the laws and regulations of the United States. In routed export transactions the USPPI is not required to provide an agent of the FPPI with a power of attorney or written authorization.

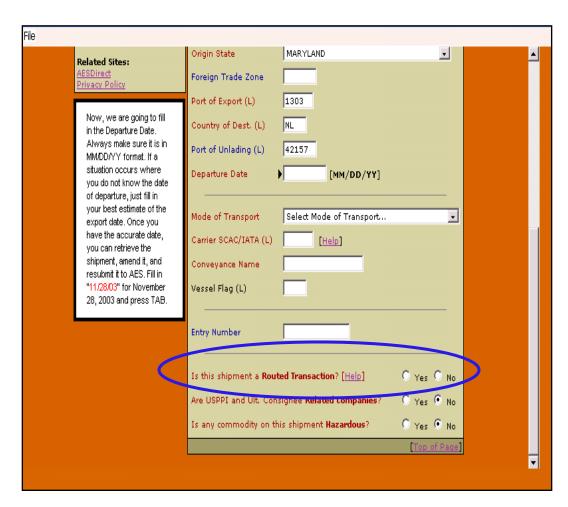


• 30.3(e)(2) provides:

"Upon request, the authorized agent must provide the USPPI with a copy of the power of attorney or written authorization from the FPPI."

Designating a Routed Export Transaction





- The Routed Export
 Transaction indicator
 advises Census
 whether the EEI
 reported is a routed
 export transaction, or
 not.
- Failure to designate a transaction as routed can subject the filer to a penalty under 30.71 for filing false or misleading information

Authorizing A Filing Agent



- Section 30.3(f)
 - Where an authorized agent is filing EEI, agent must obtain from the appropriate PPI (USPPI or FPPI) either
 - a power of attorney <u>or</u>
 - written authorization



Appendix A to Part 30-Sample for Power of Attorney and Written Authorization SAMPLE FORMAT: Power of Attorney

POWER OF ATTORNEY U.S. PRINCIPAL PARTY IN INTEREST/AUTHORIZED AGENT

Know all men by these presents, that		
	(Name of U.S. Principal Party in Interest (USPPI))	
USPPI organized and doing business	under the laws of the State or Country of	
and	having an office and place of business	
at	hereby	
(Address of USPPI)	•	
authorizes	, (Authorized Agent)	
(Name of Authorized Age	ent)	
of		
(Address of Author	rized Agent)	
to act for and on its behalf as a true a	and lawful agent and attorney of the U.S. Prince	cipal
Party in Interest (USPPI) for, and in	the name, place, and stead of the USPPI, from	ı this
date, in the United States either in w	riting, electronically, or by other authorized me	eans to:
act as authorized agent for export co	introl, U.S. Census Bureau (Census Bureau)	
reporting, and U.S. Customs and Bo	rder Protection (CBP) purposes. Also, to prep	pare
-	nformation (EEI) or other documents or recor	•
	reau, CBP, the Bureau of Industry and Securi	
•	and perform any other act that may be required	•
	the exportation or transportation of any goods	-
•	SPPI, and to receive or ship any goods on beha	

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Sample Written Authorization

SAMPLE FORMAT: Written Authorization

WRITTEN AUTHORIZATION TO PREPARE OR TRANSMIT ELECTRONIC EXPORT INFORMATION

, authorize
(Name of U.S. Principal Party in Interest)
to act as authorized agent for
(Name of Authorized Agent)
oort control, U.S. Customs, and Census Bureau purposes to transmit such export
ormation electronically that may be required by law or regulation in connection with
exportation or transportation of any goods on behalf of said U.S. Principal Party in
erest. The U.S. Principal Party in Interest certifies that necessary and proper
cumentation to accurately transmit the information electronically is and will be
vided to the said Authorized Agent. The U.S. Principal Party in Interest further
derstands that civil and criminal penalties may be imposed for making false or
adulent statements or for the violation of any U.S. laws or regulations on exportation
l agrees to be bound by all statements of said authorized agent based upon information
documentation provided by the U.S. Principal Party in Interest to said authorized
ent.
dit.
nature:
(U.S. Principal Party in Interest)
pacity:
te:

Responsibilities of USPPI In Routed Export Transactions



Provide Filing Agent of FPPI with:

- Name, address, IRS or EIN number of USPPI
- Point of origin of shipment
- Origin of merchandise (f) or (d)
- Description of merchandise
- Schedule B or HTSUS number
- Quantity
- FTR Export Value
- ECCN and export license or license exception information

15 CFR § 30.3(e)(1)

Export Control ResponsibilitiesIn Routed Exports



- 30.3(e)(1). Even in a "routed export transaction" USPPI is responsible for providing filing agent with:
 - ECCN or sufficient information to determine
 - All licensing information necessary to file the EEI
 - Any other information that USPPI knows would affect the licensing authorization
- Unless FPPI has <u>also</u> assumed responsibility for determining and obtaining license authority. See 15 CFR 758.3 of the EAR

Export Control ResponsibilitiesIn Routed Exports



(b) Routed export transactions

All provisions of the EAR, including the end-use and end-user controls found in part 744 of the EAR, and the General Prohibitions found in part 736 of the EAR, apply to routed export transactions. The U.S. principal party in interest is the exporter and must determine licensing authority (License, License Exception, or NLR), and obtain the appropriate license or other authorization, unless the U.S. principal party in interest obtains from the foreign principal party in interest a writing wherein the foreign principal party in interest expressly assumes responsibility for determining licensing requirements and obtaining license authority, making the U.S. agent of the foreign principal party in interest the exporter for EAR purposes. One writing may cover multiple transactions between the same principals. See §748.4(a)(3) of the EAR.

Example of FPPI written acceptance:

"I undertake to determine any export license requirements, to obtain any export license or other official authorization, and to carry out any customs formalities for the export of the goods"

-- BXA Federal Register Notice, July 10, 2000, page 42566.

Export Control Responsibilities In Routed Exports: Review

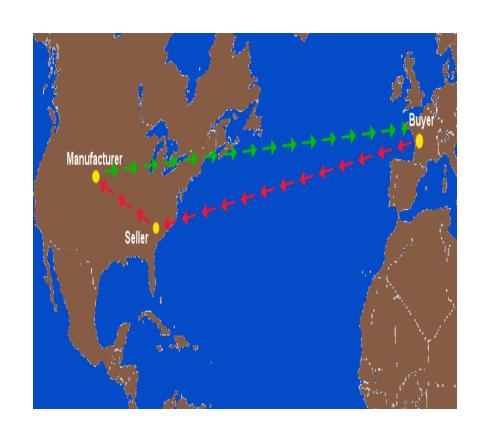


- Under EAR 758.3, in routed transactions USPPI is:
 - the "exporter" for purposes of compliance with EAR and licensing requirements, <u>unless</u>
 - FPPI has expressly assumed licensing responsibility in 758.3 writing
 - In such cases the U.S. Agent of the FPPI is the <u>"exporter" for EAR compliance and liability</u> <u>purposes.</u>

USPPI in multi-tiered export drop shipment transactions



- USPPI in multi-tiered export transactions
 - U.S. distributor or reseller receives order from foreign PPI.
 - U.S. distributor or reseller places order with U.S. manufacturer
 - Requests U.S. manufacturer to ship goods directly to FPPI



APR - 7 2009



UNITED STATES DEPARTMENT OF COMMERCE Economics and Statistics Administration U.S. Census Bureau

Washington, DC 20233-0001

RECEIVED
GEORGE R. TUTTLE

Mr. George R. Tuttle, III

Law Offices of George R. Tuttle

A Professional Corporation

One Embarcadero Center, Suite 730

APR - 8 2009

Orig to GEO

Copy to

Dear Mr. Tuttle:

San Francisco, CA 94111-4044

This letter is in response to your letter dated May 21, 2008, and subsequent e-mail of March 20, 2009, to Ms. Melannie Walker, Regulations, Outreach, and Education Branch (ROEB), Foreign Trade Division (FTD, requesting clarification of the Foreign Trade Regulations (FTR), Section 30.3. You are requesting clarification of who should be reported as the United States Principal Party in Interest (USPPI) in a drop shipment. Specifically, when a U.S. manufacturer sells to a reseller or distributor and the reseller or distributor then sells the commodity to a Foreign Principal Party in Interest (FPPI) and a U.S. manufacturer ships directly to the FPPI.

The FTR, Section 30.3 (b)(ii), states that "If a U.S. manufacturer sells goods, as a domestic sale, to a U.S. buyer (wholesaler/distributor) and that U.S. buyer sells the goods for export to a FPPI, the U.S. buyer (wholesaler/distributor) shall be listed as the USPPI in the Electronic Export Information (EEI)." Therefore, since the U.S. manufacturer sells and receives payment from the U.S. reseller, this is considered a domestic transaction and the U.S. reseller will be listed as the

USPPI. In addition, selling price between manufacturer and the

We appreciate the opcompliance with the l matters, please contact Information (EEI)." Therefore, since the U.S. manufacturer sells and receives payment from the U.S. reseller, this is considered a domestic transaction and the U.S. reseller will be listed as the USPPI. In addition, I would like to clarify that the value to be reported in the EEI would be the selling price between the U.S. reseller and the FPPI and not the selling price between the U.S. manufacturer and the U.S. reseller.

Sincerely,

Joe A. Cortez

Chief, Regulations, Outreach, and Education Branch

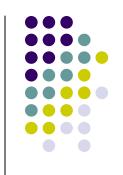
Foreign Trade Division

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USPPI in multi-tiered export drop shipment transactions

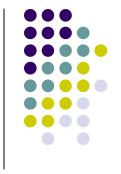


- In a drop-shipment transaction:
 - U.S. party receiving the foreign order is the USPPI and responsible for POA or written authorization with EEI filing agent.
 - Value to be reported is the selling price from USPPI (U.S. Distributor/ reseller/ order party) to the FPPI
 - U.S. manufacturer is <u>not</u> the party receiving the benefits of the export transaction . . . so it can not be the USPPI





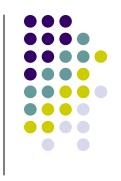
- EEI shall not be disclosed by the USPPI or the authorized agent for any "non-official purpose"
- including electronic transmission, paper printout, or certified reproduction.
 - to . . . nongovernmental entities or individuals for any purpose;
 and
 - foreign governments for any purposes.



Subpart H--New Census Penalties (30.71)

- Failure to file and late filings
 - \$1,000 per day per delinquency not to exceed \$10,000 per violation
- Non-filing violations, i.e., incorrect/ false Information
 - Civil Penalties = \$10,000 per violation
 - Criminal Penalties = \$10,000 per violation and/or 5 years in jail
- Enforcement delegated to DOC/OEE

Enforcement Guidelines



- On January 2, 2009 CBP published guidelines for the Imposition and Mitigation of Civil Penalties for failure to comply with the FTR.
- The guidelines became effective on February 1, 2009 and apply to violations incurred <u>after</u> that date.
- Copy of the guidelines are attached

Enforcement Guidelines



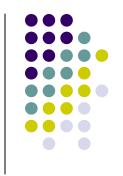
- Guidelines provide separate mitigation structure for penalties assessed for:
 - failure to file export information
 - late filing of export information
 - failure to file all the necessary information in AES, as well as:
 - the filing of incorrect information in AES
 - failure to comply with some other requirement of the FTR, and
 - the failure of the exporting carrier to provide certain documents or certain information to CBP

Enforcement Guidelines



- Penalties may be assessed against any culpable party with respect to the export transaction
- Penalties may be assessed against more than one culpable party.
- Penalties are to be assessed against the culpable party or parties based on each AES transmission

Penalties for FTR Violations: Other than Non- or Late Filing



- Incorrect value for shipment.
- Incorrect information in the AES record, such as an incorrect USPPI, consignee, end-user, commodity description, or port of export.
- Failure to cite correct license code or license number.
- Failure to obtain Power of Attorney for AES transmission.
- Failure to identify transaction as a <u>routed transaction</u>.
- <u>Failure to correct information</u> in AES as changes become known to the filer.
- Failure to provide carrier with appropriate proof of filing citation or exemption legend by the time periods set forth in the FTR.
- Failure to retain all records relating to the export shipment for a 5-yr. period from the date of export.

PENALTY MITIGATION:



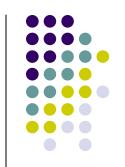
- First Recorded Offense—\$500 to \$2,500
- Second Recorded Offense—\$750 to \$3,500
- Third Recorded Offense—\$1,000 to \$5,000
- Fourth and Subsequent Recorded Offenses— \$2,000 to \$10,000
 - Offenses within a 3 year period
 - First Offense- warning letter; education etc.,

FTR Penalties: Mitigating Factors



C. MITIGATING FACTORS (Not an exhaustive list):

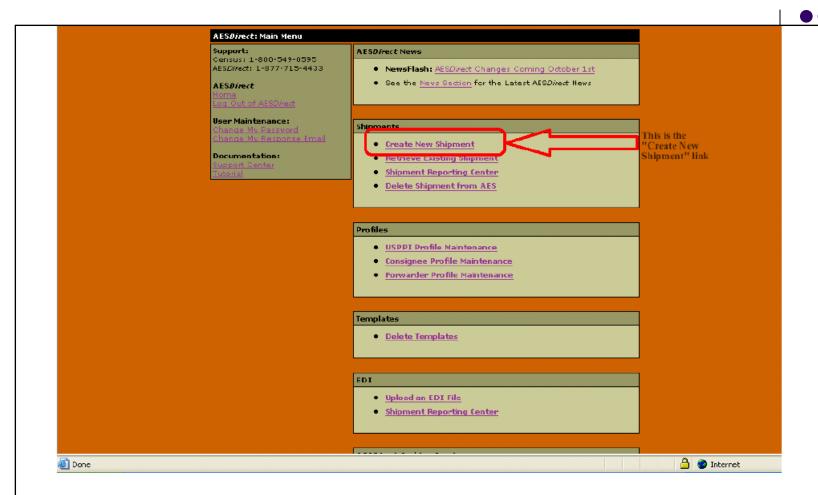
- 1. First—time USPPI or authorized agent, FPPI, carrier, etc.
- 2. Voluntary self-disclosure of the violation, in accordance with 15 CFR 30.74 (Extraordinary Mitigating Factor).
- Clear documentary evidence of remedial measures undertaken to prevent future violations.
- Exceptional cooperation with CBP, Census or the Bureau of Industry and Security (BIS).
- The violation was an isolated occurrence.
- The party has provided substantial assistance in the investigation of another person.
- The party demonstrates that it has a systematic export compliance effort.



FTR Penalties: Aggravating Factors

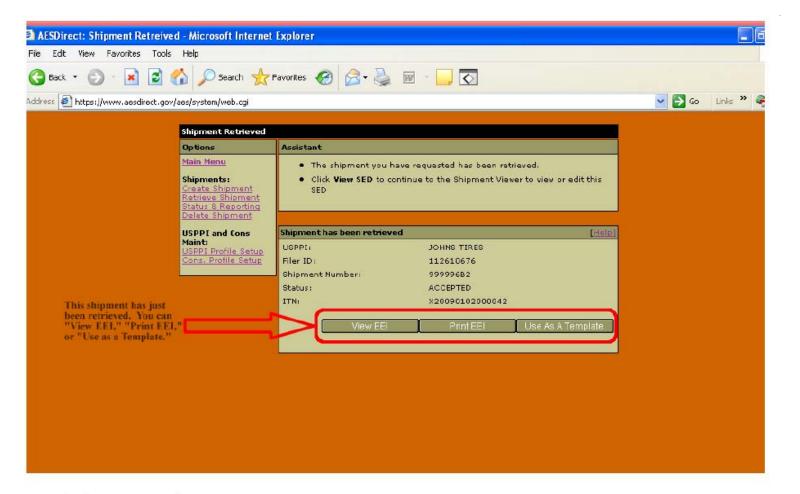
D. AGGRAVATING FACTORS (Not an exhaustive list):

- Several violations in the same export transaction (e.g., wrong port code; incorrect value; missing required data; violations of the regulations of other agencies, such as the Department of State or the Drug Enforcement Administration, in addition to the Census violation).
- Circumstances suggest the intentional nature of the violation (e.g., wrong value where invoices or other documents covering goods show correct value; claiming post-departure to avoid pre-departure filing when filer is not an approved post-departure filer).
- 3. High number of violations in preceding 3-year period.
- Evidence of criminal conviction for a related violation, such as a BIS violation.
- The party exhibits a pattern of disregard for its responsibilities under U.S. export laws and regulations.
- The party exports as a regular part of its business, but lacked a systematic export compliance effort.



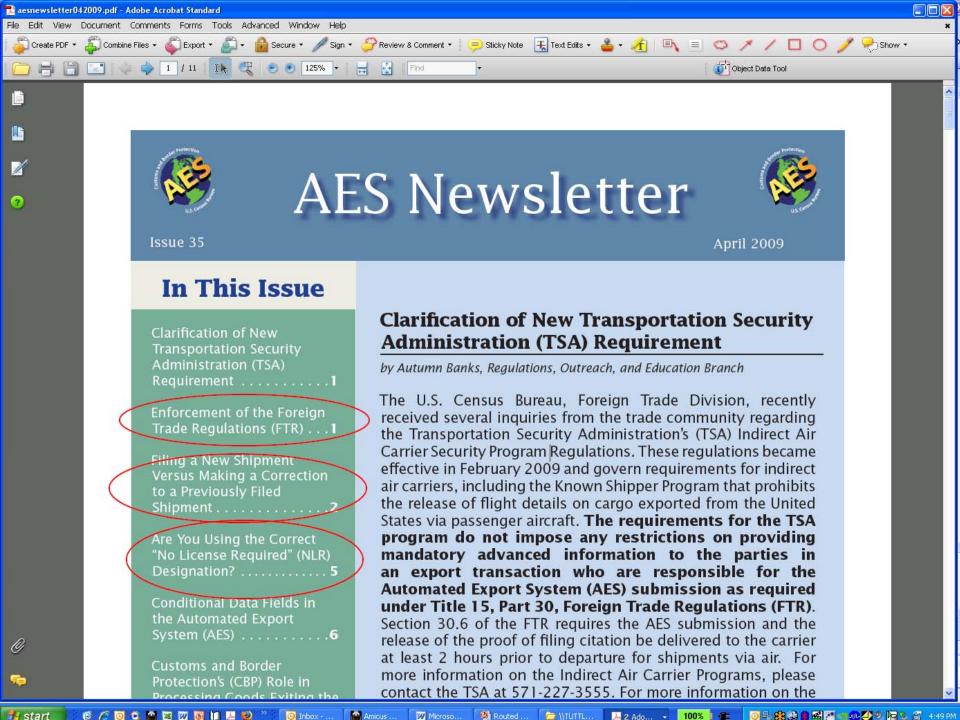
Making a correction to a shipment can be accomplished by following a few easy steps. Retrieve originally filed shipment:

- Log into AESDirect.
- 2. From the main menu under "Shipments," click on "Retrieve Existing Shipment."
- 3. Click "Retrieve Shipment" tab to retrieve by SRN/USPPI ID or "Retrieve Shipment by ITN" tab (Internal Transaction Number).
- 4. Enter the SRN/USPPI ID or ITN, then click "Retrieve Shipment."

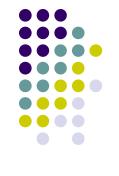


Verify/Correct a Shipment:

- 1. Retrieve shipment.
- 2. If corrections are needed, click "View EEI."
 - a. Highlight the section that needs correction, click "Edit Section."
 - b. Make the corrections.
 - c. Click "View EEI."
 - d. Click "Submit EEI" to send to AES for processing. The corrections will be applied to the original shipment.

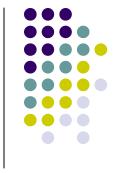


- Voluntary self-disclosure is a mitigating factor in determining what administrative sanctions, if any, will be sought.
 - Does not apply if:
 - agency has the same or substantially similar information from another source and
 - commenced an investigation or inquiry in connection with that information
 - Effect of disclosure weighed against any aggravating factors
 - Must be made with with the full knowledge and authorization of senior management



Initial Notification

- must be in writing and be sent to Chief, Foreign Trade Division, U.S. Census Bureau
- include the name of the person making the disclosure
- The notification should describe the general nature, circumstances, and extent of the violations.
- If violations involve other gov. agency disclosing party is responsible for notifying other agency

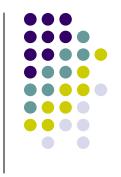


- The narrative account should include:
 - The kind of violation involved, for example, failure to file EEI, failure to correct fatal errors, failure to file timely corrections
 - Describe all data required to be reported under the FTR that was either not reported or reported incorrectly
 - An explanation of when and how the violations occurred
 - Identities and addresses of all individuals and organizations, whether foreign or domestic, involved in the activities giving rise to the violations



- Measures taken to minimize the likelihood that violations will occur in the future
- The nature of the review conducted (conduct a thorough review of all export transactions for the past five years)
- A description of any mitigating circumstances
- Correction of Electronic Export Information
 - Report all data required under the FTR that was not reported.
 Report corrections for all data reported incorrectly.
 - All reporting of unreported data or corrections to previously reported data shall be made through AES

FTR Compliance Manual



- All USPPIs and Forwarders should have FTR Compliance Manual:
 - FTR EEI and exemption statement filing requirements
 - Routed Export Transaction Processing
 - Recordkeeping
 - Audit of EEI filings including those by filing agents
 - How to correct EEI filings
 - Training and refresher training requirements