

Jason Dickstein  
General Counsel  
Aviation Suppliers Association

# ACPC 2010 Workshop

“The Dirty Dozen of International  
Parts Transactions”

*Monday, August 16<sup>th</sup>: 10:45-12:00*

# Overview

- Major Regulatory Concerns
- Determining Which Regulations Apply
- Tips and Tricks for Exporting Aircraft Parts

# Warning

- The law is constantly changing
- This presentation is meant to provide some guidelines, but does not purport to be a complete method for compliance with the law
- If you have particular legal issues then you should seek the assistance of an attorney

# I. Who Regulates Exports

- **BIS – Bureau of Industry and Security**
  - Commerce Department office responsible for the regulation of most exports
- **DDTC – Directorate of Defense Trade Controls**
  - State Department office responsible for the regulation of exports of defense-related articles
- **OFAC - Office of Foreign Asset Control**
  - Treasury Department office responsible for certain additional export controls meant to advance particular interests of the United States

## II. Definitions: Export

*What is an export?*

- Actual shipment or transmission of items out of the U.S.
  - Includes software
  - Includes technology
  - Can include technical documents in some cases
  - Includes repaired items!

# III. Six Steps to Compliance

- Look at Treasury restrictions
- Identify whether the article is State or Commerce restricted and examine appropriate restrictions
- Check party-level restrictions
- Identify other regulatory issues
- Obtain licenses as necessary
- Document the transaction (EEI)

# First, Can I Transact Business Here At All?

Are there General Treasury  
Restrictions that Regulate  
Transfer of Assets?

# IV. OFAC Lists

- **Embargoed Destinations List:**
  - <http://www.ustreas.gov/offices/enforcement/ofac/programs/index.shtml>
- **Specially Designated Nationals List:**
  - <http://www.ustreas.gov/offices/enforcement/ofac/sdn/index.shtml>

# Nations Restricted by OFAC

- Balkans
- Belarus
- Burma (Myanmar)
- Cote D'Ivoire
- Congo (Dem.Rep.)
- Cuba
- Iran
- Iraq
- Liberia
- Lebanon
- North Korea
- Somalia
- Sudan
- Syria
- Zimbabwe

# V. Commerce or State?

- Distinguish the U.S. Department with jurisdiction
  - Is it a US Munitions List Item?
    - Articles made or modified for military use
    - Check ITARs
    - State has export jurisdiction
  - Otherwise subject to BIS restrictions
    - Check the ECCN and the BIS regulations
    - Commerce has export jurisdiction

# Is it Regulated by the State Department?

- Follow this short outline to assess need for State Department export license on aircraft parts:
  - Developed primarily for military purposes (e.g. MS parts)? It *may* be subject to licensing
  - Developed primarily for civilian purposes (e.g. parts conforming to civilian specs)? It *may* be considered a civilian item, which does not need a license from DDTC
  - Developed primarily for civilian purposes but later modified to military specifications? It is likely considered a military item!

# VI. State's Export Jurisdiction

## *State Department (USML / ITAR) Jurisdiction*

- Aircraft, parts, accessories, and components that are within Categories VIII (*Aircraft, [Spacecraft] and Associated Equipment*) and IX (*Military Training Equipment*) of the US Munitions List are under the export licensing authority of the U.S. Department of State

# Examples of USML Avionics

- Certain inertial navigation systems (INS)
  - Certain Inertial Measurement Units (IMUs)
  - Certain Attitude and Heading Reference Systems (AHRS)
  - Certain Global Positioning Systems (GPS)
  - Infrared focal plane array detectors
- 
- Restrictions generally apply to military versions *and versions that meet certain technical requirements*

# Export Administration Act Exclusion (Pres. Order)

## *Excluded from State Department Jurisdiction*

- If the export is not going to a “controlled country,” and
- If the export is standard equipment, certified by the FAA, in civil aircraft and is an integral part of such aircraft
- Then you can ignore the USML provisions and go straight to Commerce Provisions

# Part 768 Controlled Countries

- Albania
- Armenia
- Azerbaijan
- Belarus
- Bulgaria
- Cambodia
- Cuba
- Estonia
- Georgia
- Kazakhstan
- Kyrgyzstan
- Laos
- Latvia
- Lithuania
- Moldova
- Mongolia
- North Korea
- Romania
- Russia
- Tajikistan
- Turkmenistan
- Ukraine
- Uzbekistan
- Vietnam
- People's Republic of China

# And C-130 / L-100 Parts?

- State has specifically determined that airframe parts and components common to the L-100 and C-130 aircraft are subject to State Department jurisdiction

# VII. Dual Use Parts

- State and Commerce Department wrangle over who has jurisdiction over dual-use aircraft parts
  - Items originally designed as defense related articles are clearly subject to State Department control
  - Standard equipment, integral to a FAA certificated aircraft is supposed to be subject to Commerce Department control
- But what about an engine part that can be used in both the CFM56-2 and the CFM56-3?

# Dueling Agencies

- In August 2008, The State Department defined “standard equipment” to be limited to standard parts
- In December 2008, the Commerce Department issued its own interpretation that expanded the definition and included anything subject to a proprietary standard to be “standard equipment”

# VIII. Defense Item Analysis: What Next?

- Is it on the Munitions List?
  - Assess whether particular State Department Restrictions apply
  - Register with State Department
  - Obtain appropriate licenses

# Defense Items: Can I Do Business With this Country?

- Identify whether your customer is in an embargoed country
- Consult the **Department of State's Embargo Reference Chart:**
  - [http://www.pmddtc.state.gov/embargoed\\_countries/index.html](http://www.pmddtc.state.gov/embargoed_countries/index.html)

# Defense Items: Embargo Reference Chart

- Afghanistan
- Burma
- Belarus
- China (People's Republic)
- Congo
- Côte d'Ivoire
- Cuba
- Cyprus
- Eritrea
- Haiti
- Iran
- Iraq
- Lebanon
- Liberia
- Libya
- North Korea
- Rwanda
- Somalia
- Sudan
- Syria
- Venezuela
- Vietnam
- Yemen
- Zimbabwe

# Defense Items: Forbidden Persons or Entities

- Identify whether your customer is debarred from trade
- Consult the Department of State's **Statutorily and Administratively Debarred Parties List:**
  - <http://www.pmddtc.state.gov/compliance/debar.html>
  - [http://www.pmddtc.state.gov/compliance/debar\\_admin.html](http://www.pmddtc.state.gov/compliance/debar_admin.html)
  - Provides listing of individuals and corporations with whom trade is barred

# Defense Items: Registration

- If what you want to export is on the Munitions List, then you must be registered with DDTC:
  - <http://www.pmdtc.state.gov/registration/index.html>
- Registration requirement applies to all U.S. persons that
  - Manufacture ...
  - Export ...
  - Broker ...

... defense articles, defense services, etc.; it also applies to US and foreign arms brokers
- Registration does not confer any export privileges, but is a prerequisite to export licensing approval

# Defense Items: Licensing

- After you are registered, you must apply for an export license (unless there is an exception).
  - Any person or company who intends to export or to temporarily import a defense article must obtain the approval of DDTC prior to the export or temporary import
- D-Trade is a convenient mechanism for applying for an export license for Munitions List items:
  - <http://www.pmdtcc.state.gov/DTRADE/index.html>

# IX. But What if it is Not a Munitions List Item?

If State Doesn't Regulate It, Then  
Commerce Might

Most Civil Aircraft Articles will Fall  
Within Commerce's Jurisdiction

# Export Commodity Classification Numbers (for items on the CCL)

- Determine ECCN
  - Alphabetical index to the CCL provides ECCNs:  
<http://www.access.gpo.gov/bis/ear/pdf/indexccl.pdf>
  - Ask the manufacturer
  - Online via the Simplified Network Application Process:  
<http://www.bis.doc.gov/snap/index.htm>
- If it is not in the CCL, then a license may be unnecessary
- Call 1-202-482-4811 for ECCN help!



# General Aircraft Parts ECCN

- Other aircraft parts/equipment not covered under another ECCN are ECCN 9A991.d
- Demilitarized items are restricted from export to Iraq, North Korea and Rwanda due to UN embargos
- Such items are restricted from export to some countries under anti-terrorism restrictions
  - Column AT1 on the CCL country chart
  - Current restrictions include: Cuba, Iran, North Korea, Sudan, and Syria

# X. Do You Need a Commerce Department License?

- Check the specific reasons for control in CCL
- Check the Export Control Country Chart (cross reference country and reason for control):
  - <http://www.access.gpo.gov/bis/ear/pdf/738spir.pdf>
  - **If the aircraft on which the part is to be installed is identified, then you should also consider**
    - The country in which the aircraft is located, and
    - The country in which the aircraft is registered, or will be registered in the case of an aircraft under construction, and
    - The country, including a national thereof, which is currently controlling, leasing, or chartering the aircraft.
- If there is an “X” in the cross-reference, then you need a Commerce license for export

### Commerce Country Chart

#### Reason for Control

Countries	Chemical & Biological Weapons			Nuclear Nonproliferation		National Security		Missile Tech	Regional Stability		Firearms Convention	Crime Control			Anti-Terrorism	
	CB	CB	CB	NP	NP	NS	NS	MT	RS	RS	FC	CC	CC	CC	AT	AT
	1	2	3	1	2	1	2	1	1	2	1	1	2	3	1	2
Turkmenistan	X	X	X	X		X	X	X	X	X		X	X			
Tuvalu	X	X		X		X	X	X	X	X		X		X		
Uganda	X	X		X		X	X	X	X	X		X		X		
Ukraine	X					X	X	X	X	X		X	X			
United Arab Emirates	X	X	X	X		X	X	X	X	X		X		X		
United Kingdom	X					X		X	X							
Uruguay	X	X		X		X	X	X	X	X	X	X		X		X
Uzbekistan	X	X	X	X		X	X	X	X	X		X	X			
Vanuatu	X	X		X		X	X	X	X	X		X		X		
Vatican City	X	X		X		X	X	X	X	X		X		X		
Venezuela	X	X		X		X	X	X	X	X	X	X		X		X
Vietnam	X	X	X	X		X	X	X	X	X		X	X			
Western Sahara	X	X		X		X	X	X	X	X		X		X		
Yemen	X	X	X	X		X	X	X	X	X		X		X		

# Do You Need a Commerce Department License?

- What will the importer do with it? Certain end-uses are restricted:
  - <http://www.access.gpo.gov/bis/ear/pdf/744.pdf>
  - Rocket systems and unmanned air vehicles may require licensing
  - These restrictions may drive a need to check third party country of registry and control (see “where is it going”)
- What else does the receiver do? Certain types of conduct are prohibited without BIS license
  - Supporting design, development or production of missiles or nuclear explosive devices or chemical weapons or biological weapons
  - Supporting (through financing or logistics) a transaction that would violate the licensing provisions if performed, directly
- Who will receive it? Check the BIS prohibition lists ...

# Forbidden Parties

- Department of Commerce's Bureau of Industry and Security (BIS) lists:
  - Denied Persons List
    - <http://www.bis.doc.gov/dpl/default.shtm>
  - Denied Entities List
    - <http://www.access.gpo.gov/bis/ear/pdf/744spir.pdf>

# What Is Denied?

- Denied Persons may NOT participate in any way in any transaction involving the export from the United States of any commodity, software or technology subject to Export Administration Regulations (EAR)
  - No license transactions
  - No negotiations
  - No benefit from any export transaction
  - May not be the principal nor the agent in an export transaction
  - No facilitation of exports
  - No facilitation of acquisition of an export item
  - No procurement of items from the US for servicing

# Do You Need a BIS License?

- BIS Licenses:
  - A relatively small percentage of total US exports and re-exports require a BIS license
  - Licenses can be used to overcome exclusions

# XI. Short-Circuiting the License Process

- Obtaining a license takes time
- This is inconsistent with AOG service
- There are certain exceptions that can sidestep licensing requirements and can be very useful for AOG situations

# BIS License Exceptions:

## Replacement of Parts (RPL)

- One-for one replacement of parts or servicing and replacement of equipment, e.g. exchange agreements.
  - Aircraft must have been legally exported in the first place - you must confirm the appropriate authority for the original transaction if you were not the aircraft exporter
    - Check the original license to make sure that there are no restrictions on replacement parts exports!
  - SAME part number – no improvements/upgrades
  - Obtain the core or confirm its destruction

# BIS License Exceptions:

## Servicing (RPL)

- If an item is returned to the US for inspection, testing, calibration or repair (including overhaul and reconditioning)
  - No improvements or changes to basic characteristics
  - Only applies to group D:1 nations if you were the original licensed exporter and end-use has not change
  - Does not apply to group E:1 nations
  - See country group listings at:  
<http://www.access.gpo.gov/bis/ear/pdf/740spir.pdf>

# BIS License Exceptions: Civil Aircraft (AVS)

## *No License Required!*

- Exports of equipment and spare parts for
  - Permanent use on an aircraft of any registry
    - Except an aircraft registered in a forbidden country, or owned or controlled by, or under charter or lease to, a forbidden country or a national of a forbidden country
    - The specific aircraft must be identified so you can verify its eligibility
    - Forbidden countries are Cuba and those in group D:1

# BIS License Exceptions (AVS)

## *No License Required!*

- Exports of equipment and spare parts to U.S. or Canadian airlines' installations or agents
  - Intended for maintenance, repair, or operation of US/Canadian-registered aircraft (but the specific aircraft need not be identified at the time of order)
  - Must not be located in (category D1) forbidden country
  - Ordered by the airline and sent to its own installation or agent

# BIS License Exceptions (AVS)

## *No License Required!*

- Exports to a specific U.S. or Canadian registered aircraft for AOG
  - Intended for maintenance, repair, or operation of US/Canadian-registered aircraft *in extreme need*
  - Aircraft must be at an airport NOT in Cuba nor a category D:1 forbidden country (except China)
  - AES record must be filed **unless** article exported by a US air carrier for their own use
- Includes foreign air carrier aircraft of US or Canadian registry

# XII. Don't Forget the “Paperwork”

- Shipper's Electronic Export Information
  - Must be filed on-line: <http://www.aesdirect.gov>
  - Keep copies of your filing for at least five years
    - EEI
    - All other related transactional documents
  - There is an exception for commodities worth less than \$2,500.00 USD

# Questions?

# Thank You

Jason Dickstein, ASA Counsel  
Washington Aviation Group, PC  
2233 Wisconsin Avenue, Suite 503  
Washington, DC 20007

Tel: (202) 628-6776 – Fax: (202) 628-8948

[Jason@WashingtonAviation.com](mailto:Jason@WashingtonAviation.com)