

The UPDATE Report



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Air Parts International Sales, Inc.
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U.S. Updates the List of Antiboycott Countries – Are You Doing Business There?

Under the U.S. Antiboycott rules, U.S. persons are prohibited from complying with certain aspects of unsanctioned foreign boycotts. The antiboycott rules include elements in both the Export Administration Regulations (EARs) and the Internal Revenue Service (IRS) regulations.

EAR Rules

The antiboycott laws were adopted to forbid U.S. companies from participating in foreign boycotts that the United States does not sanction. They prevent U.S. businesses from being used to implement foreign policies of other nations which are contrary to U.S. foreign policy. Currently, the most prevalent boycotts that are contrary to foreign policy are the boycotts of Israel. Under the EARs, prohibited conduct includes:

- Agreements to refuse or actual refusal to do business with or in Israel.
- Agreements to discriminate or actual discrimination against other persons based on race, religion, sex, national origin or nationality.
- Agreements to furnish or actual furnishing of information about business relationships with or in Israel or with blacklisted companies.
- Agreements to furnish or actual furnishing of information about the race, religion, sex, or national origin of another person.

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MESSAGE FROM ASA'S PRESIDENT

THE UPDATE REPORT

is the newsletter of the Aviation Suppliers Association.

OUR COMMITMENT

ASA is committed to providing timely information to help members and other aviation professionals stay abreast of the changes within the aviation supplier industry.

The **UPDATE Report** is just one of the many benefits that ASA offers members. To learn more about our valuable educational programs, please contact ASA.

THE UPDATE REPORT STAFF

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Dear Colleagues,

ASA marked its 20th anniversary with members in the Miami area. The reception coincided with the 1st quarter Board of Director's meeting. Miami was the location of the first ASA member meeting and South Florida continues to be the largest location for ASA members. Last month we honored the original members who are celebrating 20 years with ASA and this month we want to recognize the first companies to embrace ASA-100 and AC 00-56: Avio-Diepen and AvioSupport. Through their executive vision and team support, these companies embraced third party accreditation and lead the industry. Both companies worked with ASA on the ASA-100 program, were industry advocates for accreditation and have continued to maintain ASA-100 systems.

There are more than 630 distributors on the database for accreditation to AC 00-56 with 300 companies choosing ASA-100.

ASA will be promoting distributors as key players in the supply chain while exhibiting at MRO US in Atlanta and the Airline Purchasing and Maintenance Expo in London. These venues drawn global attendance and attract customers and members alike. Jason will be speaking on a disassembly panel at the MRO convention. Both Stephanie and I will be in the exhibit hall.

The 2013 workshop series begins in April with the first stops in New York and Florida. The workshop series focuses on rules/regulations, unapproved parts, counterfeit parts, documentation, 8130-3s, export laws and hazmat. The workshops are located where a concentration of members are and are priced to allow for a member company to afford to send multiple persons. ASA does not look to the workshops as a revenue source rather as a "break even" member benefit.

Registration for the annual conference has opened and a word of caution: the Four Seasons Las Vegas always sells out so make your reservations soon. The schedule of events has changed and this year the meeting is held during the week instead of on a weekend. Over the next few weeks we will be announcing speakers and highlighting certain events, like a 20th anniversary celebration at the Foundation Room. Stay tuned for more information.

Take care, Michele

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The EAR requires U.S. persons to file quarterly reports to disclose any requests to advance an unsanctioned foreign boycott. If you have been asked to participate in, or take an action in support of, an unsanctioned foreign boycott then you should file a quarterly report on BIS form 621-P for a single transactions or BIS form 6051P for multiple transactions experienced in the same calendar quarter. The forms are available online in a fillable pdf format, or you can also obtain paper copies of the reporting forms by calling the Office of Antiboycott Compliance in Washington, DC at (202) 482-2448.

Tax Reporting Rules

A lesser known aspect of the U.S. antiboycott rules is that any person or business that has operations in, or related to, a country that is known for violating the U.S. antiboycott rules must report those operations to the Treasury Department. Such reports are filed with tax returns on IRS form 5713. This form is available online from the IRS' website.

How do you know whether you are doing business ("operations in or related to") in such a country? First of all, the Department of the Treasury publishes a current list of countries which require or may require participation in, or cooperation with, an international boycott. The current list is:

- Iraq
- Kuwait
- Lebanon
- Libya
- Qatar
- Saudi Arabia
- Syria
- United Arab Emirates
- Yemen

In addition, the antiboycott provisions also require reporting if you are asked to participate in an unsanctioned boycott, even if the source of the request was from a country other than the above-listed countries.

Second, you must assess whether you have operations in or related to one of these affected countries. The IRS guidance on the subject explains it like this:

"The term 'operations' means all forms of business or commercial activities and transactions (or parts of transactions), whether or not productive of income, including, but not limited to: selling; purchasing; leasing; licensing; banking, financing, and similar activities; extracting; processing; manufacturing; producing; constructing; transporting; performing activities related to the activities above (for example, contract negotiating, advertising, site selecting, etc.); and performing services, whether or not related to the activities above.

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Operations in a boycotting country. You are considered to have operations “in a boycotting country” if you have an operation that is carried out, in whole or in part, in a boycotting country, either for or with the government, a company, or a national of a boycotting country.

Operations with the government, a company, or a national of a boycotting country. You are considered to have operations “with the government, a company, or a national of a boycotting country” if you have an operation that is carried on outside a boycotting country either for or with the government, a company, or a national of a boycotting country.

Operations related to a boycotting country. You are considered to have operations “related to a boycotting country” if you have an operation that is carried on outside a boycotting country for the government, a company, or a national of a nonboycotting country if you know or have reason to know that specific goods or services produced by the operation are intended for use in a boycotting country, or for use by or for the benefit of the government, a company, or a national of a boycotting country, or for use in forwarding or transporting to a boycotting country.”

If you cooperate with or participate in an international boycott, you may lose a portion of the following:

- The foreign tax credit (section 908(a));
- Deferral of taxation of earnings of a CFC (section 952(a)(3));
- Deferral of taxation of IC-DISC income (section 995(b)(1)(F)(ii));
- Exemption of foreign trade income of a FSC (section 927(e)(2), as in effect before its repeal); and
- Exclusion of extraterritorial income from gross income (section 941(a)(5), as in effect before its repeal).

If you suspect that your business relationships may affect your tax liability, then you should consult with a qualified tax advisor for more details.

References:

BIS Form 621P: <http://www.bis.doc.gov/antiboycottcompliance/doc/bis-621p.pdf>

BIS Form 6051P: <http://www.bis.doc.gov/antiboycottcompliance/doc/bis-6051p.pdf>

IRS Antiboycott Guidance: <http://www.irs.gov/pub/irs-pdf/i5713.pdf> 

Do You Have 121.5 MHz ELT Inventory?

On January 30, 2013, the Federal Communications Commission (FCC) published a proposed rule that would prohibit the certification, manufacture, importation, sale, or use of 121.5 MHz emergency locator transmitters (ELTs). Distributors with 121.5 MHz ELTs in inventory could be adversely affected by a rule that prohibits sale or use of these units. ASA members who think they may be affected by the proposed rule should contact the Association so that we can file comments reflecting your concerns.

ELTs are radiobeacons that are activated manually or automatically to alert search and rescue personnel that an aircraft has crashed, and to identify the location of the aircraft and any survivors. They are carried aboard most aircraft in the U.S. In the event of an aircraft accident,

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REGULATORY UPDATE

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these devices are designed to transmit a distress signal. Currently, ELTs are required to be installed in almost all U.S.-registered civil aircraft.

The FCC originally proposed this ban in 2010 because the Cospas-Sarsat satellite system, which is an international system that relays distress alerts to search and rescue authorities, stopped monitoring the 121.5 MHz frequency in 2009 (in favor of using the 406 MHz frequency). However, many 121.5 MHz ELTs are still in use and the 121.5 MHz frequency is still monitored by other search and rescue entities in the United States.

In response to the original proposed ban, the FAA stated that 121.5 MHz ELTs can continue to provide beneficial means of locating missing aircraft even without satellite monitoring because the frequency is still monitored by the U.S. search and rescue community, including the Civil Air Patrol. The FAA also expressed concerns about the costs and availability of replacements for the 121.5 MHz ELTs.

In 2011, FCC issued a stay of their original ban. Now, they are seeking information to decide whether the ban should move forward.

FCC is seeking public comment on several issues, including the costs of purchasing and installing a 406 MHz ELT to replace a 121.5 MHz ELT, the availability of 406 MHz ELTs, and whether some general aviation aircraft would be grounded due to an inability to acquire a 406 MHz ELT. FCC also seeks comment on alternatives to the proposed rule that minimize the economic impact on small entities, such as continued use of 121.5 MHz ELTs, grandfathering those currently in use, or providing an extended transition period.

Comments are due to the FCC by March 1, 2013. They should reference WT Docket No. 01-289, FCC 13-2.

References

Proposed Rule: <http://www.gpo.gov/fdsys/pkg/FR-2013-01-30/pdf/2013-01871.pdf>

FCC Presentation: http://www.nts.gov/news/events/2012/GA_Search_Rescue/presentations/Tobias.pdf

FCC Discussion "Part 87 Third FNPRM Concerning Aviation Radio Service:" <http://www.fcc.gov/document/part-87-third-fnprm-concerning-aviation-radio-service>



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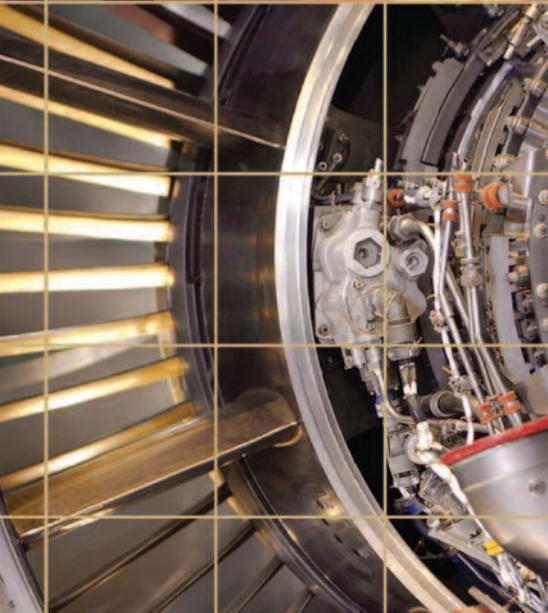
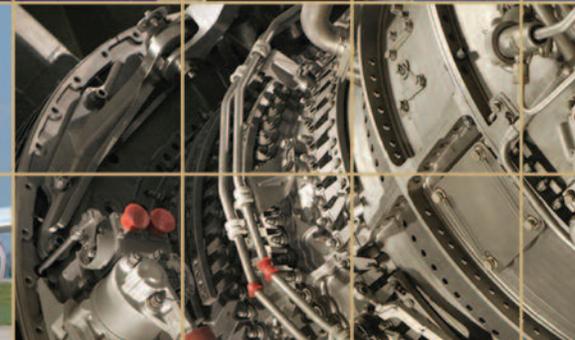
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Pratt & Whitney Canada Debarment – What Does it Mean for U.S. Distributors?

We recently have had inquiries from our members about the statutory debarment of Pratt & Whitney Canada, and how this affects their ongoing business with that company.

First of all, yes, Pratt & Whitney Canada is debarred from export trade by the United States State Department. They were debarred last summer. Debarment was a part of the penalty associated with exports that the company made to China for the Z-10 helicopter. More details are available in the Justice Department Press Release, which is available online at <https://www.bis.doc.gov/news/2012/doj06282012.htm>.

The debarment applies to Pratt & Whitney Canada, located in Quebec, but it also applies to all of their other Pratt & Whitney Canada Corporation locations. This does NOT appear to apply to Pratt & Whitney (headquartered in Hartford, CT) nor to the remainder of United Technologies Corporation (although they were part of the settlement agreement).

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Celebrating 20 years

**ASA would like to recognize our initial set of Member Companies
and thank them for their twenty years of support of the Association:**

- Boeing Commercial Airplanes
- Flight Director, Inc.
- International Aircraft Associates, Inc.
- Intertrade Limited
- Jet Midwest, Inc.
- Mitchell Aircraft Spares/Expendables
- Pacific Air Industries/Air-Cert, Inc.
- Technitrade, Inc.

Thank you to our staff for their hard work.

**ASA would like to give a special recognition to the following
that have been with the Association for over 5 years:**

- Michele Dickstein (19 years)
President
- Kelly Lyon (17 years)
ASA Auditor
- Jason Dickstein (16 years)
General Counsel and Government Affairs
- Richard Smith (13 years)
ASA Auditor
- Michelle Billoir (10 years)
ASA Auditor
- Stephanie Brown (8 years)
Director of Programs
- Diane Leeds (6)
Financial Services



REGULATORY UPDATE

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What Does This Mean for Non-Defense-Related Articles Regulated by BIS?

The State Department's Directorate of Defense Trade Controls (DDTC) regulates articles that fall within the United States Munitions list (USML). This generally applies to parts that are designed, manufactured, or altered for defense related purposes. It also includes some civilian items (including certain aircraft parts) that meet criteria specified in the USML.

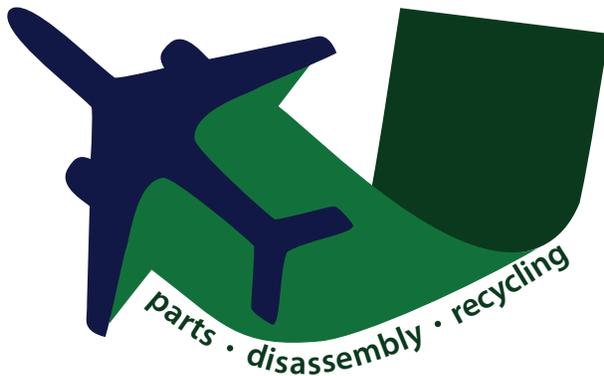
Articles that are not regulated for export trade by the DDTC are controlled by the Commerce Department's Bureau of Industry and Security (BIS). *This includes most civil aircraft parts.* BIS frequently does not require a license for exporting articles, although there are a significant number of aircraft parts (particularly avionics, which can be regulated as missile technology) that may require a BIS export license when exported (significant exceptions exist for articles shipped to Canada).

The mere fact that Pratt & Whitney Canada has been debarred by DDTC does not per se affect their export law treatment for export articles subject to BIS export regulations. As of our last review, Pratt & Whitney Canada was not listed on either the BIS Denied Person List nor the BIS Entity List as those lists are posted on the BIS website. We are not aware of any other BIS restrictions imposed on Pratt & Whitney Canada (restrictions change on a daily basis so please confirm this yourself before acting on the assumption that this remains correct). The original charge was violation of the Arms Export Control Act (the statutory parent to the ITAR) so it makes sense that the penalties would come from DDTC and not BIS.

So long as BIS continues NOT to impose special restrictions on Pratt & Whitney Canada, export of civilian aircraft parts (non USM articles) to Pratt & Whitney Canada should continue to be regulated under normal standards.

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What Does This Mean for Defense-Related Articles?

The general rule is that if you have knowledge that your potential business partner is debarred, then you can only conduct export business with the debarred person if you first obtain written approval for the transaction from the State Department's Directorate of Defense Trade Controls (DDTC). This means that under the general rule, U.S. companies cannot participate, directly or indirectly, in any export from which Pratt & Whitney Canada may (a) derive a benefit, (b) have a direct interest or (c) have an indirect interest. See 22 C.F.R. 127.1(c).

The Pratt & Whitney Canada debarment is not a normal debarment. There are specific (very limited) exceptions.

Normally, DDTC only grants transaction exceptions in highly unusual circumstances. For Pratt & Whitney Canada, based on "overriding national security and foreign policy concerns" the U.S. government provided specific limited carve-outs from the statutory debarment of P&W Canada for the following categories:

1. Support of U.S. Government programs;
2. Support of coalition Operation Enduring Freedom; and
3. Support of government programs for NATO and Major Non-NATO Ally countries.

This does not mean that you can support those programs with impunity. You will still need an export license that comports with the ITARs. But DDTC has pledged to consider license applications that fall within these parameters "in the ordinary course of business," which means that they should apply the same standards that would have been applied pre-debarment (but of course license applications can be delayed or denied for any legal reason).

Pratt & Whitney Canada remains debarred under normal circumstances for all other programs that are not listed above. Their debarment is for three years, although after one year they may be able to petition to end the debarment early.

You can see the DDTC debarment announcement online here: <http://www.pmdtcc.state.gov/FR/2012/77FR40140.pdf>

This article is meant to address US export law provisions ONLY and is meant only to provide basic education. It does not take the place of competent legal advice that is based on your specific fact pattern. 



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PMA Parts for Export to Europe – When is the PMA Part “Critical?”

Over the past few months, I have encountered a number of PMA exporters, and European PMA importers, who have asked for clear guidance on how to distinguish a “critical” PMA part from a “non-critical” PMA part. Because the 8130-3 tag needs to include language designating non-critical parts as such, distributors need to know how to tell whether their PMA exports are “critical.”

Under the Bilateral Airworthiness Safety Agreement (BASA) that was signed between the United States and the European Union, there are three types of FAA-PMA parts that are accepted in the European Union (for installation on products certified or validated by EASA) without further showing. Those three “acceptable” situations, as described in the BASA Technical Implementation Procedures (TIP) are:

- (1) The PMA part is not a “critical component”; or
- (2) The PMA part conforms to design data obtained under a licensing agreement from the TC or STC holder according to 14 CFR §21.303; or
- (3) The PMA holder is the holder of an EASA STC which incorporates the PMA part.

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Why should I attend ?

The U.S. Department of Transportation (U.S. DOT) requires that all individuals engaged in handling hazardous materials must be trained at least once every 3 years. Air Carriers are required to be trained annually, and IATA requires training every 2 years.

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All attendees receive a Certificate of Training stating 49 CFR 172 Subpart H training requirements have been met (upon successful completion of all attendance and testing requirements).

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The first category (non-critical PMA parts) is directly acceptable (and they should have text on their export 8130-3 tag that states “This PMA part is not a critical component”). So there is a significant advantage to having a clear understanding of when a PMA part is critical and when it is not critical.

This can be a little confusing if you don’t know where to look. The FAA has used the term “criticality” to define different categories of parts for approval purposes, and to set different levels of FAA involvement in the approval process. The distinct use of the term means that we need to look in the right place for the definition of “critical” that applies to our export/import transactions.

For purposes of US exports of PMA parts that are imported into the European Union, the controlling guidance is found in the BASA’s Technical Implementation Procedures for Airworthiness and Environmental Certification (BASA TIP). The definition of critical component for purposes of that document is found in Section 1.6(i) of the BASA TIP:

“Critical Component” means a part identified as critical by the design approval holder during the product type validation process, or otherwise by the exporting authority. Typically, such components include parts for which a replacement time, inspection interval, or related procedure is specified in the Airworthiness Limitations section or certification maintenance requirements of the manufacturer’s maintenance manual or Instructions for Continued Airworthiness.

Don’t fall for the temptation to draw a semantic difference between a “critical component” and a “critical part.” The PMA acceptance procedures found in section 2.8.2(a)(1) of the BASA TIP explicitly cross reference the definition in section 1.6(i).

In light of this definition found in the BASA TIP, the question of whether a PMA part is “critical” will be based on the decision of the FAA (the exporting authority) about whether it was critical at the time of approval.

The regulatory guidance for critical parts is found in the marking requirements discussion in section 45.15(c) of the FAA’s regulations. That section makes it clear that an article is “critical” if it has a hard time specified in the Airworthiness Limitations section of the manual (instructions for continued airworthiness), like a life limit, then it is a critical part (or critical component).

Under normal circumstances, there are two methods for specifying such a limit on a PMA part. The first is during the FAA approval process (usually as an airworthiness limitation published in the instructions for continuous airworthiness), when the airworthiness limitation section associated with the part would be approved. The second is by an FAA airworthiness directive issued after initial approval in response to an identified safety issue.

Thus the best source for identifying whether a PMA article is “critical” is the PMA manufacturer, who should

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A graphic titled "ASA Social Media" with a blue header. It lists social media links for Facebook, Twitter, and LinkedIn. To the right of the text are colorful icons representing social media: a speech bubble, a location pin, a person icon, a thumbs up, and a RSS feed icon.

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be able to tell customers whether there were any such hard times associated with the article as part of the approval process (or review of the PMA manufacturer's instructions for continuous airworthiness). If the FAA did not establish that the part was critical at the time of approval, and if they did not subsequently issue an airworthiness limit (such as through an airworthiness directive), then the part is not critical. 

ASA Blog

Are you subscribed to the ASA blog? The ASA blog publishes many of these stories FIRST, and it represents an excellent opportunity for you to receive the aircraft parts news that matters AS IT HAPPENS. 



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- **Cavu Café:** Royboy's Prose & Cons
and the
- **ASA Web Log** by Jason Dickstein

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ASA Staff is always interested in your feedback. Please contact us with any comments or suggestions.

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