



Due Diligence When Exporting Aircraft Parts

ASA/AFRA Annual Conference

Quality Committee Meeting

June 4, 2023



Outline

- Opening Statements
- General Prohibitions
- Strategies for building your export toolbox
- Resources
- Promoting compliance to your management and colleagues



Definitions: Export

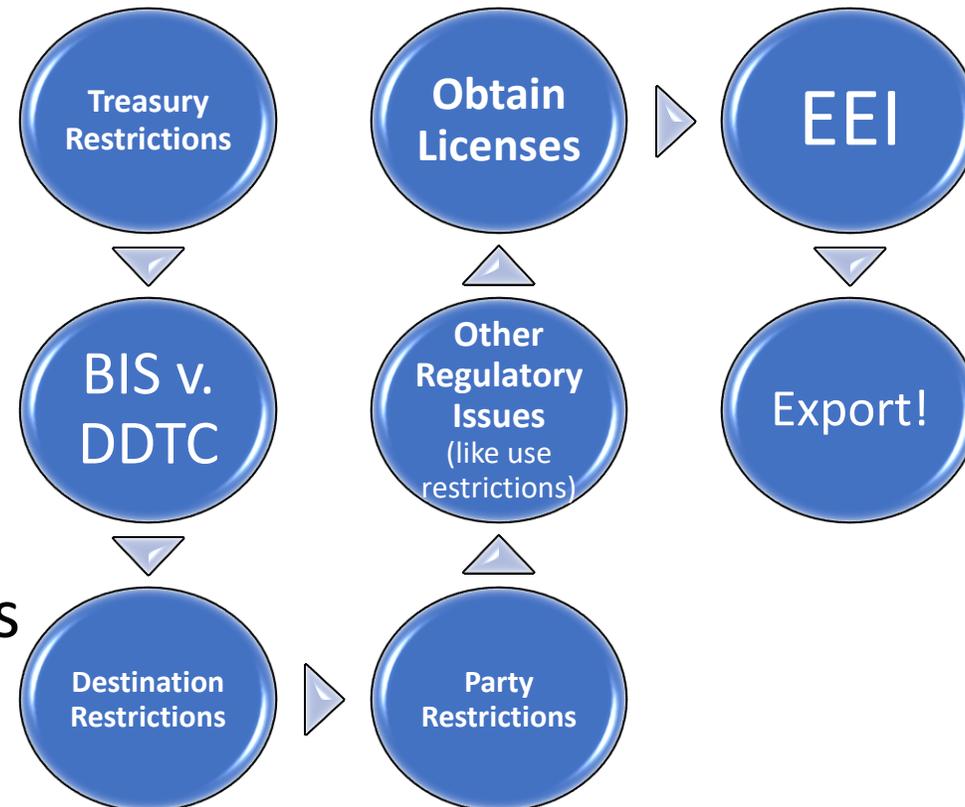
What is an export?

- 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!

- This differs from the FAA definition of export!!

Steps to Compliance – *these will be covered in more depth in the export workshop tomorrow*

- Look at Treasury restrictions
- Identify whether the article is State or Commerce restricted
- Examine appropriate destination restrictions
- Check party-level restrictions
- Identify other regulatory issues
- Obtain licenses as necessary
- Document the transaction





Lisa Matos

Settlement Agreement between the U.S. Department of the Treasury's Office of Foreign Assets Control and American Express National Bank

Background

- Walter Alexander Del Nogal Marquez (“Marquez”), an American Express Card holder, was placed on the SDN List on May 7, 2018
- American Express internal sanctions screening system generated a “high confidence” alert
- An operations analyst responsible for conducting the alert review, erroneously closed the alert without reviewing
- On June 26, 2018 an internal audit identified and escalated Marquez, and the following day his account was suspended
- On June 28, 2018 the a customer service representative received a call enquiring about the status of the card, and released the hold

Settlement Agreement between the U.S. Department of the Treasury's Office of Foreign Assets Control and American Express National Bank

- The following day, the error was caught, and the account was suspended, however an incorrect suspension code was applied and 7 additional transactions were allowed before the account was officially closed on July 6, 2018
- Between May 7, 2018 and July 6, 2018, 214 transactions totaling \$155,189.42 were allowed

Settlement Agreement between the U.S. Department of the Treasury's Office of Foreign Assets Control and American Express National Bank

Settlement

- The maximum statutory civil monetary penalty applicable in this matter is \$331,228,050.00.
- Due to American Express's cooperation with OFAC's investigation and undertaking of additional compliance measures and training, OFAC settlement amount was \$430,500.00

Settlement Agreement between the U.S. Department of the Treasury's Office of Foreign Assets Control and American Express National Bank

Takeaways

- This settlement highlights the importance of:
 - Enterprise-wide compliance programs and ensuring they are followed
 - Properly training employees on compliance
 - Preventing other department personnel from overriding compliance alerts or decisions

For the full Settlement please see

<https://ofac.treasury.gov/media/924406/download?inline>

Jared Knight

15 CFR 736 - General Prohibitions

- Prohibitions against activities that are not allowed without authorization from the BIS
- Apply to all items subject to the EAR unless otherwise specified
- Items subject to the EAR
 - Items of U.S. Origin or physically located in the United States
 - EAR99 – Consumer Goods
 - ECCN – Dual-Use
 - ITAR/USML
 - Foreign manufactured goods are exempt from EAR export requirements if they contain less than a “de minimis” level of U.S. content by value



General Prohibition Eight

15 C.F.R. § 736.2(b)(8)

General Prohibition Eight—In transit shipments and items to be unladen from vessels or aircraft (Intransit) —

(i) ***Unlading and shipping in transit.*** You may not export or reexport an item through, or transit through a country listed in paragraph (b)(8)(ii) of this section, unless a license exception or license authorizes such an export or reexport directly to or transit through such a country of transit, or unless such an export or reexport is eligible to such a country of transit without a license.

(ii) ***Country scope.*** This General Prohibition Eight applies to Armenia, Azerbaijan, Belarus, Cambodia, Cuba, Georgia, Kazakhstan, Kyrgyzstan, Laos, Mongolia, North Korea, Russia, Tajikistan, Turkmenistan, Ukraine, Uzbekistan, Vietnam.

15 CFR 736 - General Prohibition Eight

- Restricts export or reexport of items through countries specified in General Prohibition Eight without a license or license exception or NLR
 - License may be required for sale to broker/MRO
 - License may not be required to End-User
 - Specialized End-Use statements that cover 744.7 requirements are advisable
- Country Scope
 - Armenia, Azerbaijan, Belarus, Cambodia, Cuba, Georgia, Kazakhstan, Kyrgyzstan, Laos, Mongolia, North Korea, Russia, Tajikistan, Turkmenistan, Ukraine, Uzbekistan, Vietnam



General Prohibition Ten

15 C.F.R. § 736.2(b)(10)

General Prohibition Ten—Proceeding with transactions with knowledge that a violation has occurred or is about to occur (Knowledge Violation to Occur). You may not sell, transfer, export, reexport, finance, order, buy, remove, conceal, store, use, loan, dispose of, transport, forward, or otherwise service, in whole or in part, any item subject to the EAR and exported, reexported, or transferred (in-country) or to be exported, reexported, or transferred (in-country) with knowledge that a violation of the Export Administration Regulations, the Export Control Reform Act of 2018, or any order, license, license exception, or other authorization issued thereunder has occurred, is about to occur, or is intended to occur in connection with the item. Nor may you rely upon any license or license exception after notice to you of the suspension or revocation of that license or exception. There are no license exceptions to this General Prohibition Ten in part 740 of the EAR.

15 CFR 736 - General Prohibition Ten

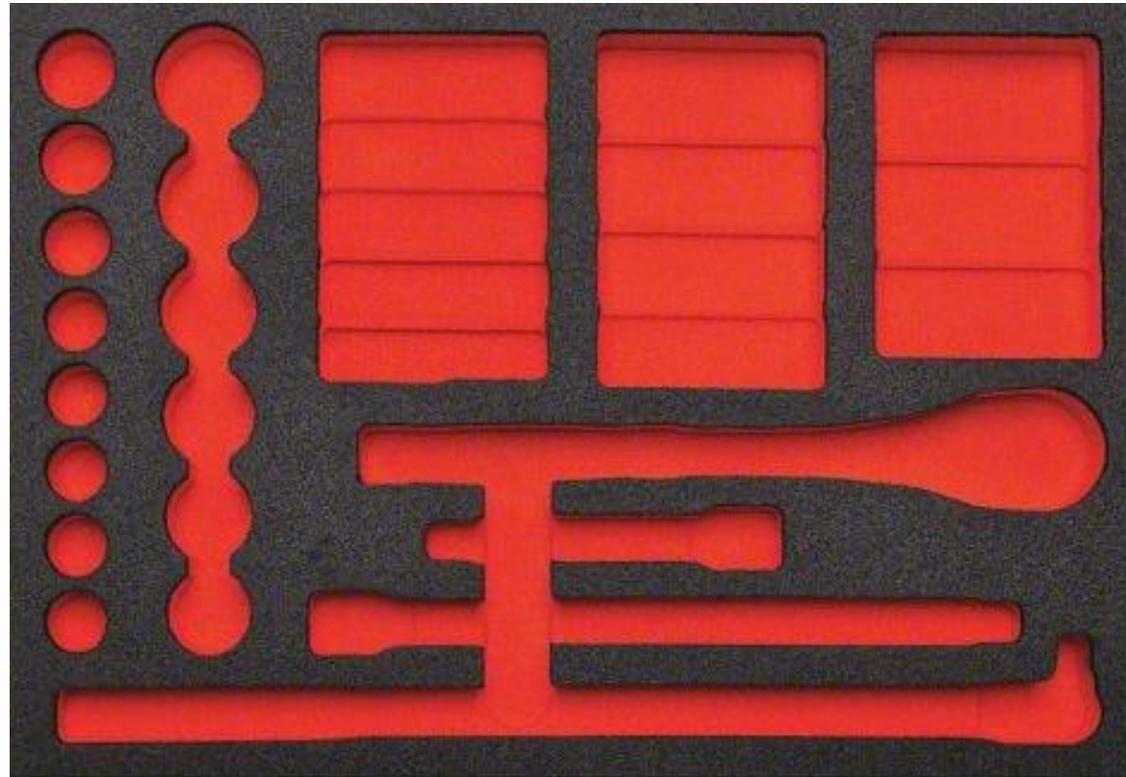
- Proceeding with transactions with knowledge that a violation has occurred, is about to occur, or is intended to occur
 - If you suspect a violation will occur in the future regarding a specific transaction, proceeding may violate General Prohibition Ten
 - If you know a violation has occurred in the past, proceeding further with the transaction may violate General Prohibition Ten
 - There are no license exceptions applicable
 - Encourages asking deeper questions
 - Who is involved in the transaction – customer, freight forwarder, end user, tail number, ship to location
 - Are there red flags
 - Can the red flags be cleared or are they indicators of a potential violation



General Prohibition Ten Example

- You are purchasing an article from the Dickstein Aviation
- Review of traceability documentation shows Dickstein Aviation bought the article from a Russian Airline on the Transaction Date
 - The Russian Airline was subject to a temporary denial order (TDO) that was issued before the Transaction Date
 - The TDO specifically makes it illegal to acquire an article of this sort from the Russian Airline
- General prohibition ten applies to this transaction!

Building Your Export Tool Box



DISCLAIMER

- The material in this presentation is meant to give you tools to be used in order to make your own decisions.
- This material is not intended to classify activity as a violation or to tell you or your company what you must or must not do.
- This is intended to provide awareness, insight on possible best practices, tools, resources, and methods for you to evaluate information related to your exports and customers.

Develop Training and Awareness Programs

- Awareness of current global situation and sanctions
 - DON'T ASSUME PEOPLE KNOW
 - Document trainings
- Awareness of consequences for violations
 - Case studies and real-world examples
 - “Don’t let this happen to you” is useful and there have been multiple editions.
 - These have been published for years, read the old ones. Just because it happened a long time ago, we should still learn from it.

Checklist or Decision Tree

- For customer vetting **AND** individual order vetting – **Separate the two**
- Establish your own criteria for reviewing a customer
- Document it! –
 - Decisions – Individuals or Companies
 - Refusal or Acceptance of an individual orders
- Follow it every time!
- Record your actions and decisions including your reason for denying or accepting an order
 - If you are doing business with Company A in China, you should be able to show how you arrived at the decision to do business with them

BASIC Customer Vetting Checklist

	A	B	C
1	Company Name:		
2	Date Reviewed:		
3	Reviewed by:		
4		OK	NOT OK
5	EUC Compliance form on file?		
6	KYC form on file?		
7	Owners ID on file?		
8	Other required Docs?		
9	Consolidated Screening list/OFAC/SDN list?		
10	Shipment Records search / Import Genius or Panjiva?		
11	Is this a drop shipment to another customer/ Shipping to a third party?		
12	Check third party against all of the above?		
13	Item related restrictions ECCN vs All of the above!		
14	FINAL DECISION		

Export End Use Compliance Form Options

- A basic Export Compliance/End Use Compliance form
 - A signed, possibly stamped pledge from the customer or end user that they understand and will comply with all applicable export laws.
 - Consult counsel if you are not sure what it should contain. Showing that you had legal guidance adds to credibility.
 - Can be created as a blanket statement for all orders, if you decide you this is safe, rather than every order.

Export End Use Compliance Form Options (continued)

- If using a license exemption, consider obtaining additional confirmations from your end user (example AVS)
 - On Tuesday, Jason will be discussing the information you should collect to support use of license exceptions
- AVS exemption allows exports of components for use on an aircraft if certain conditions are met. Have your customer acknowledge they understand and are following the same requirements:

Example

- We hereby attest that we are purchasing equipment/spare parts for permanent use on an aircraft, necessary for the proper operation of such aircraft. This material will not be transferred to, or installed on any aircraft registered in, owned or controlled by, or under charter or lease to a country included in Country Group D:1, including, Cuba, Iran, North Korea, Syria, Moldova, Mongolia, Russia, Tajikistan, Turkmenistan, Uzbekistan, Venezuela, Vietnam or Yemen, or a national of any of these countries in accordance with U.S. and E.U. laws and sanctions.

Know Your Customers - FORM

- The purpose is to identify red flags or lack thereof in your transaction
- We recommend a simple form to collect information for review
 - There are examples out available
- Picture ID for owners - Its OK to ask!
- Is one company owned by another?
 - This can be used to shield true identities – DIG IN!
 - Copy of business licenses, tax exempt certificate
 - Search sites like Florida's Sunbiz to confirm information where possible. Many states publish this information.
- For BIS KYC guidance, see Supplement No. 3 to 15 C.F.R. Part 732

Keep a Compiled List!

- List of denied/blocked companies
- Include Owners names where possible
- On your list I suggest you record at minimum
 - Reasons
 - Contacts
 - Emails
 - Web Domain
 - Location
 - Notes

Keep a Compiled List! (continued)

You are creating a database to continually use and review against similar fact patterns where you already decided something.

- Using a simple “highlight duplicates” function can show you that someone you dealt with previously is trying again under a new company.
- Don’t be afraid to ask questions to clarify information – Answers provided may be very telling, or SCARY.

Compare and Look for Consistency!!

- Check emails vs Websites vs Information provided on forms!
 - Email domains different from website domains (samename.com/.aero)
 - Website listed on KYC different from email domain or website in signature
 - Websites or Domains hosted in multiple countries
- Owners names vs Business filings
 - Check recent filing changes
- Tail Numbers given vs tail numbers as listed in the Registry
- Fact Patterns similar to previously denied orders!
- Communication to/from other domains or companies – Same as a SUP red flag

Use Your ERP System Controls

- Remove permissions
 - Block companies
 - Don't allow every employee to create new accounts
 - If they can create accounts, don't allow sales orders until vetting can be complete
- Quantum, AvSight, and others have functionality that will not allow your staff to place orders where companies should be blocked
- Some systems will allow you to put a review step in place

Resources – Free

- Whois Database (whois.com/whois)
 - Shows website hosting information including host **city and country**
 - When site was originally registered
 - Question to ask: *Is this information consistent with what I have been told?*
- Wayback Machine – Internet Archive (archive.org/web)
 - Shows years of previously saved images of websites
 - Possible Question to ask: *“I remember this company had more locations, but now they have only one on their site”*
 - Look at pre-2014 versions of the website (before the US started the current round of Russia sanctions)
- BIS Online Training Room (bis.doc.gov)
 - Online Training Room with multiple videos

Resources – Free (continued)

- API's for linking to lists like the CSL, OFAC SDN, and SSI lists
- Import Genius (limited access) – Named in NYT article 3/15
- Google and Facebook – Be careful - but this is available
 - A simple google search can stumble across something unknown or conflicting with previously given information
- Government notifications – U.S. Government, DOT, FAA, EASA, TCCA and the ASA Blog that you already subscribe to!
- BIS Counselors – They will call you back

Resources - Paid

- Maxmind.com – Cost is pennies per search (\$)
 - IP addresses for emails – use Maxmind.com to identify the source of that IP address (note that this can be fooled by VPNs)
- Import Genius – Paid version (\$\$)
 - More Detailed information
- Visual Compliance – Professional Consolidator(\$\$\$)
 - Searches multiple lists at once
 - Can compare destination and ECCN as well
 - Can integrate with many systems
 - Keeps Auditable records
 - Multiple options and packages available



Example

- You get a purchase order from a company called NAME WITHHELD
- You check them out on Import Genius
- You find out that they have 100+ imports into Russia
- Their top two Russian clients are
 - Северный Ветер
 - Ао Авиакомпания Россия
- Most recent import into Russia was October 2022

Example

- You get a purchase order from [redacted] NAME WITHHELD
 - Nordwind Airlines
TDO issued June 24, 2022
- You check them out
- You find out that they have 100+ imports into Russia
- Their top two Russian clients are
 - Rossiya Airlines
TDO issued May 20, 2022
 - Северный Ветер
 - Ао Авиакомпания Россия
- Most recent import into Russia was October 2022



Example

- Their top two Russian clients are
 - Северный Ветер
 - Ао Авиакомпания Россия
- Most recent import into Russia was October 2022
- This apparent violation is enough to create a red flag that must be investigated and cleared before transacting business, to make sure your own export to this entity is not diverted to Russia

Observations

Companies will try to convince you in every way possible that what you are seeing on Import Genius or Visual Compliance is incorrect, or that they are not the person listed on the Screening List.

- If you have seen information from one of these systems that matches your transaction you are already blocked by GP-10 Don't Do it.
- If you are leery of someone or don't trust them, you reserve the right to refuse
- Foreign Actors don't care about you, or your company, and they don't care about U.S. laws because you will be the one paying the price for their manipulation.
- Their current tactic to flood the market with requests and new companies has put us in a position of having limited resources. Make unilateral decisions where necessary to protect yourselves.

Promoting compliance to your management and colleagues

- Provide case studies that show what went wrong and the fines and/or imprisonment that have been handed down to others
- Provide training for better understanding of why compliance is important
- Ensure your team knows that the US can bring enforcement actions against non-US Citizens, even if they are not located in the US. If you are working for a US company, you must comply with US export laws.
- Find what motivates your staff – some may be motivated by the need to comply for the sake of complying, while others may be more motivated by knowing the consequences of non-compliance (civil and criminal penalties, incarceration, loss of right to export, etc)

Promoting compliance to your management and colleagues

- Max Civil Penalties are available at:
<https://www.bis.doc.gov/index.php/documents/pdfs/1567-administrative-enforcement-guidelines/file>
- Other Laws and Regs that are useful tools for compliance:
 - 13 USC 305 – Penalties for unlawful export information (false or misleading export information through AES or SED) <https://www.govinfo.gov/content/pkg/USCODE-2021-title13/pdf/USCODE-2021-title13-chap9-sec305.pdf>
 - 50 USC 4801 - Export Control Reform Act of 2018 (ECRA) <https://www.govinfo.gov/content/pkg/USCODE-2021-title50/pdf/USCODE-2021-title50-chap58-sec4801.pdf>
 - 18 USC 554 – Smuggling goods from the United States <https://www.govinfo.gov/content/pkg/USCODE-2013-title18/pdf/USCODE-2013-title18-partI-chap27-sec554.pdf>

Thank You!



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