



Export Week!

Aircraft Part Compliance: Special Destination Sanctions Including the Russia Sanctions, and US Anti-Boycott Rules

Aviation Suppliers Association

October 10, 2024



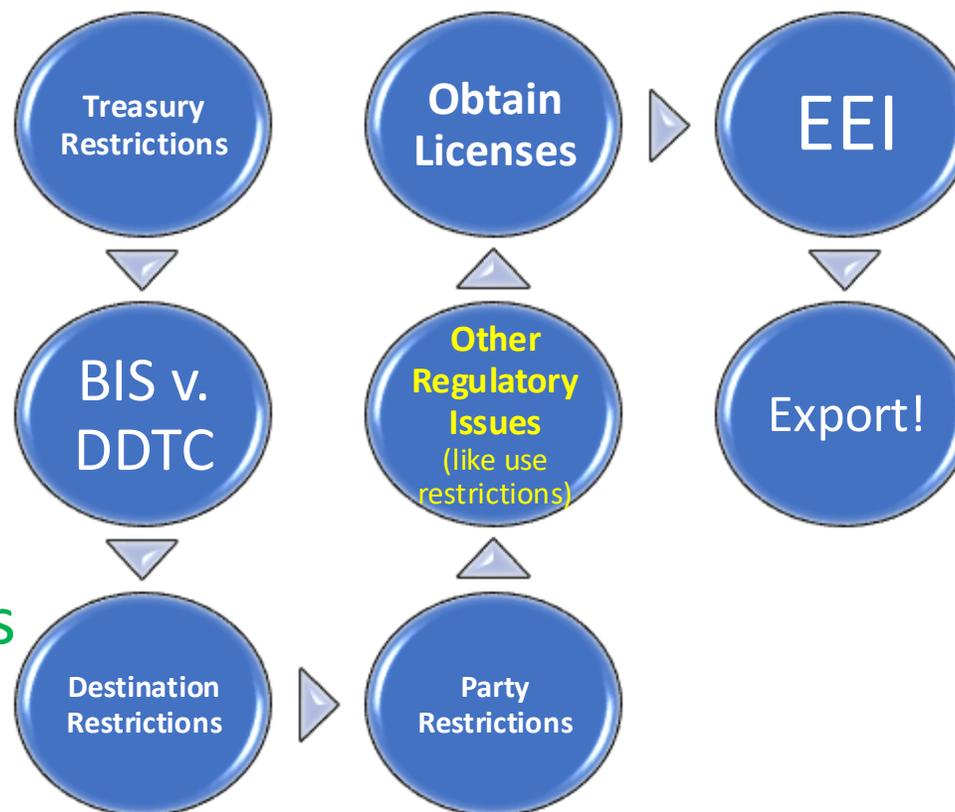
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- Advising aviation companies since 1992
- General Counsel to the Aviation Suppliers Association since 1997
- Our law firm represents and counsels air carriers, manufacturers, repair stations and distributors
- Advise businesses on export and airworthiness compliance

Compliance Can Be a Process

- 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





BIS Embargoed Destinations

Location subject to special BIS rules for BIS-regulated exports:

- Cuba
- Iraq
- Iran
- North Korea
- Russia/Belarus
- Syria
- Occupied regions of Ukraine



Cuba

- License generally required for all items subject to the EAR
 - There is a presumption of denial for most articles
 - There is a presumption of approval for aircraft parts necessary to ensure the safety of civil aviation and the safe operation of commercial aircraft engaged in international air transportation, excluding the export or reexport of such aircraft leased to state-owned enterprises
- License exceptions may be available, but *read the specifics of the exception*



Iraq

- A license is required for the export or reexport to Iraq or transfer within Iraq of any item controlled on the Commerce Control List for UN, NS, MT, NP, CW, CB, RS, CC, EI, SI, or SL reasons
 - ECCN 9A991.d parts would not be included!
- Military end use and end users are subject to licensing
- License exceptions may be available, but *read the specifics of the exception*



Iran

- License generally required for items subject to the EAR and controlled under the CCLs (including things controlled for AT1 reasons)
 - License applications for safety of civil aviation and safe operation of US-origin aircraft treated on a case-by-case basis
 - Other licenses typically subject to a presumption of denial
- Where both have restrictions, licenses for Iran are typically obtained from OFAC and cover both OFAC and BIS compliance
- No license exceptions available



North Korea

- License generally required for all items subject to the EAR
 - License applications treated on a case-by-case basis
- Very limited license exceptions available, and none of them apply to typical commercial aircraft parts transactions
 - AVS for certain flight operations only



Syria

- License generally required for all items subject to the EAR
 - License applications for safety of civil aviation and safe operation of commercial passenger aircraft (as well as aircraft chartered for Syrian government officials) treated on a case-by-case basis
 - Aircraft parts licenses limited to \$2 million over a 24-month period
 - Other licenses typically subject to a presumption of denial
- Very limited license exceptions available, and none of them apply to typical commercial aircraft parts transactions
 - AVS for certain flight operations only



Occupied Ukraine

- Crimea, Donetsk, Luhansk
- License generally required for all items subject to the EAR
 - License applications for safety of flight treated on a case-by-case basis
 - Other licenses typically subject to a presumption of denial
- Very limited license exceptions available, and none of them apply to typical commercial aircraft parts transactions
 - AVS for certain flight operations only



Russia-Belarus



The Russia-Rule (Belarus, too)

- 15 C.F.R. § 746.8
- Restricted Items cannot be exported to Russia or Belarus without a license
 - “Restricted Items” means anything classified in *any* ECCN on the CCL
 - This encompasses most aircraft parts
 - If an aircraft part is not restricted under the BIS rules then it is probably restricted under someone else’s rules
- ***Be wary of intermediaries who might accept in a third country for the benefit of a forbidden target***
- The Russia Rule also limits availability of license exceptions



Can I Use a License Exception?

- There are a limited set of license exceptions that can be used for transactions subject to § 746.8, and the ones most useful for exporting aircraft parts are:
- GOV (for supporting U.S. government operations)
- AVS (for exporting aircraft parts)
 - Excluding any aircraft registered in, owned by, controlled by, or under charter or lease to Russia or to a national of Russia (or any other D:1 nation)
 - You may be able to export an aircraft part to Russia to support a non-Russian aircraft that was AOG at a Russian airport

Note: RPL is not available for exports restricted under the Russia Rule



Combining the General Rule (§ 744.7) with the New Russia Rule (§ 746.8):

- We may not export an aircraft part subject to the EAR for use on a foreign aircraft,
 - If the aircraft is located in Russia, or
 - If the aircraft is registered in Russia, or
 - If the aircraft is controlled, leased, or chartered by Russia or a national of Russia;

unless the export is covered by a license or a license exception.
- Most exports to Russia cannot be licensed ... it is *possible* for “safety of flight” (aircraft parts) transactions to be licensed on a case-by-case basis



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Includes a Russian-registered aircraft that is serviced outside of Russia

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- If the aircraft is located in Russia, or
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Includes Russian-owned aircraft as well as aircraft operated by Russian airlines

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Russia General License 40B

- Russia general license 40B permits exporting aircraft parts to certain Russian manufacturers/lessors for their civil aircraft registered outside of Russia
- This is a general OFAC license, so it authorizes transactions without the filing of a license application with OFAC



Temporary Denial Orders



Temporary Denial Orders – Pay Special Attention (Russia)

- Aeroflot
- AviaStar-TU
- Azur Air
- Belavia Belarusian Airlines
- Nordwind Airlines
- Pobeda Airlines
- Rossiya Airlines
- Siberian Airlines (S7)
- Skywind International Limited
- Ural Airlines
- UTair Aviation



Temporary Denial Orders – Not Just for Russia

- Iran Air
- Mahan Airlines (+ Qeshm Fars Air)
- Kerman Aviation
- Al Naser Airlines



Temporary Denial Orders – Extended Application Can Include Imports

- It is important to read the entire TDO
- Acquisition of parts from TDO parties can be illegal
 - Typically tied to exports due to the limits of BIS jurisdiction
 - Parts previously exported
 - Parts subsequently exported
 - Parts intended to be exported
 - There is an opportunity to obtain a license to support flight safety, but even then, the license is needed
- Providing services to TDO parties can be illegal
 - This can include maintenance on parts owned by a TDO



Export Compliance and the Russian Sanctions

- **We continue to recognize numerous efforts to circumvent the Russian sanctions programs**
 - We have discussed with members a number of transactions that are problematic, including those where the members are affirmatively misled about the destination
 - DHS has said that they continue to investigate freight forwarders
 - Freight forwarders were identified as a red flag in the G7 guidance
- Export training and education continues to be a priority for ASA
 - This includes training on general compliance, as well



Performing Due Diligence

- Validate all parties against the lists
- Check out the ownership of your export customer
 - If an OFAC-sanctioned party controls the business , then the sanctions may flow down to the business
 - If the OFAC-sanctioned owners own 50% or more of the business, then there is a presumption of control (and sanctions may flow down to the business)
 - BIS-sanctioned ownership may reflect a red flag that must be cleared (e.g. to ensure no diversion to the sanctioned party)
- G-7 has identified *sudden changes in business activity during or after 2022* as a red flag
- Consider a written assurance like the one discussed yesterday (an end use/end user statement)



G7 Red Flags

- False, inaccurate, or missing documentation
- Concealing the end user
- Inconsistencies in transactions
- Vague details and/or incomplete information
- Dividing an invoice value into smaller amounts
- Suspicious customer information
- Customer has connections of concern
- Concerning business practices
- Last minute changes to parties involved with the transaction
- Payments from entities located in third countries (not involved in transactions)
- Customer unwilling to provide certification that it will not sell items to Russia (or other sanctioned third countries)



Due Diligence Resources

- “Who is” lookup (<https://lookup.icann.org>) for websites
- Publicly available civil aircraft registration databases (*not every registry is available*) typically identify the aircraft and owner
- Several databases show flight information and you can look up aircraft by registration number and serial number
- Check social media for the company officers
- If you identify a red flag (a fact that suggests a potential export violation) then you must clear it. Consider talking to your customer to gather sufficient facts.
- *I recently had an issue with a registration number that seemed bogus. I asked for a picture of the target aircraft. The number given was not the registration number (it was a flight operation number)! I was able to identify the registration number from the picture and perform due diligence around that information*



Anti-Boycott

- You MUST comply with US embargos
- You may NOT comply with certain non-US embargoes
 - U.S. anti-boycott rules forbid a U.S. person from participating in a foreign boycott that is *inconsistent with U.S. policy*
 - Anti-Israel boycotts are the most common, but you may encounter others, such as:
 - India-Pakistan
 - Ethiopia-Eritrea
 - China-Taiwan
 - Bahrain-Bangladesh
 - Oman-Qatar-Saudi Arabia

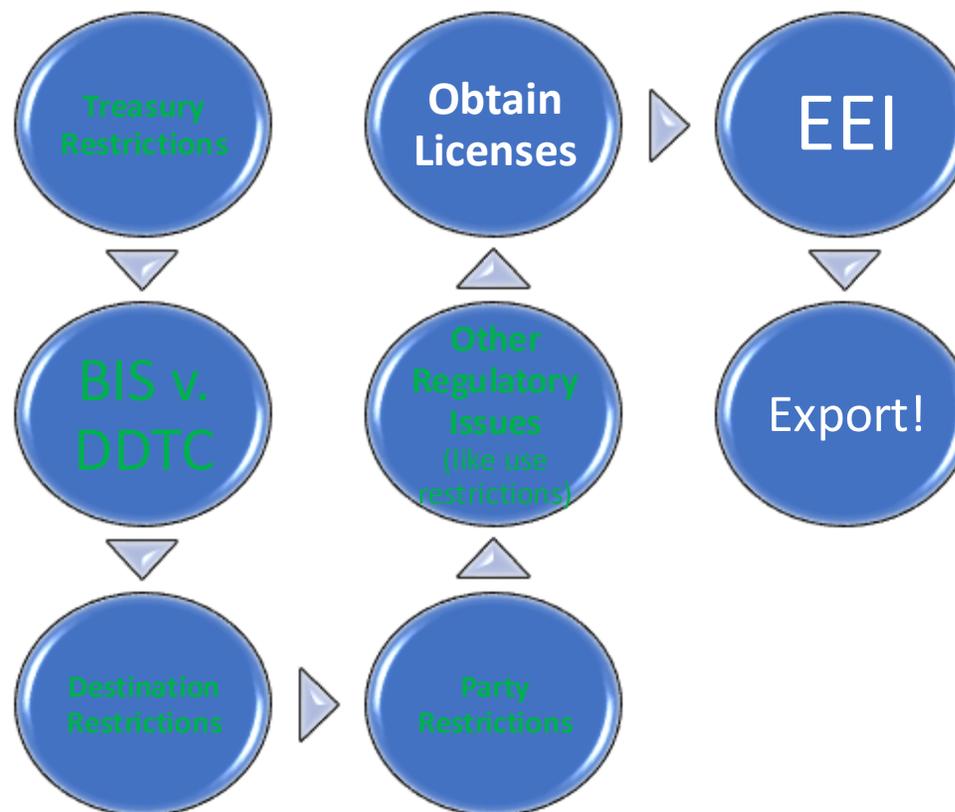


Anti-Boycott Reporting

- If you are approached about an embargo or boycott, then you may need to report it to the US government!
 - Pratt & Whitney Component Solutions (“PWCS”) found this out the hard way, with a BIS enforcement action that resulted in PWCS paying a settlement of \$48,750
 - Qatar Airways Purchase Order stated
“Please note that parts made in Israel is prohibited to be imported into State of Qatar and such shipments will be held up in customs.”
- US Government interpreted this as a boycott request and fined PWCS for failure to promptly report it (reporting is necessary even if you refuse the request)

Steps to Compliance

- So far: Look at Treasury restrictions, distinguish BIS from DDTC, assess destinations, assess parties, assess other restrictions (like use), comply with all embargos and sanctions
- **Tomorrow's topic: Licensing and License Exceptions**





Thank You!



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