



News from the Hill

BY JASON DICKSTEIN
AEA GENERAL COUNSEL

Part 3: Exporting for the Avionics Industry Determining Regulations for Non-Defense-Related Articles

Scope of the Series

This is the third in a four-part series addressing export issues. The first two installments addressed some basic rules and policies AEA members need to understand before engaging in an export transaction. These articles outlined a step-by-step plan for export compliance, as well as outlined the rules for distinguishing defense-related articles and for exporting such articles in compliance with the law.

This installment examines the rules for exporting non-defense-related aviation components.

This article is not meant to reflect legal advice. If you have a specific issue or question, you should seek specific advice about your actual fact pattern.

In addition, this article focuses on the export laws of the United States. It is valuable to AEA members located outside the U.S. in that it provides them with useful information about U.S. laws applying to goods shipped to them from the U.S., but it does not address non-U.S. export nor import laws.

The U.S. export laws apply to all sorts of items. They apply to commodities, ranging from raw materials and components, such as circuit boards and fasteners, to finished products, such as aircraft parts and avionics. They also can apply to non-material

items like software and printed materials, including blueprints, design plans and technical information.

Exporting Commercial Items

After you have determined your export article is not subject to the regulations of the U.S. State Department (Traffic in Arms) — as discussed in last month's article — you still need to identify whether or not there are other regulations that may affect the export of your non-defense-related articles.

To distinguish them from the defense-related articles addressed in Part II of this series, these non-defense-related articles are referred to as “commercial” exports, partly because the core set of regulations applying to them are published and maintained by the U.S. Department of Commerce.

The scope of the commercial items export analysis includes dual-use items (used for both military and civilian purposes) intended primarily for installation on civilian articles (at the time of manufacture).

Check the Treasury Restrictions

Part II of this series addressed Treasury Department regulations applying to exports. These same regulations and restrictions apply to commercial exports. For your commercial exports, it is important to check the

Treasury Department's restricted lists to make sure none of them adversely affects your transaction.

Ask the Right Questions

As discussed in Part I of this series, you must ask the right questions to identify the appropriate restrictions. Those questions should lead you to the export regulations. The Bureau of Industry and Security (BIS), formerly known as the Bureau of Export Administration, publishes the commercial export regulations.

Once the export article has been identified as commercial in nature, you need to identify the article's Export Commodity Control Number (ECCN). The ECCN is a number to help identify the article in question relative to the existing restrictions on exporting commercial articles. The ECCN helps identify whether or not your particular export — based on the identity of the commodity and the location to which it will be exported — will be regulated.

There are a number of ways to identify an ECCN. First and foremost, check the Commerce Control Lists (CCLs). AEA members may find themselves exporting articles from several different CCLs, including:

- Material processing, such as bearings (Category 2): www.access.gpo.gov/bis/ear/pdf/ccl2.pdf

- Electronics (Category 3): www.access.gpo.gov/bis/ear/pdf/ccl3.pdf
- Avionics (Category 7): www.access.gpo.gov/bis/ear/pdf/ccl7.pdf
- Propulsion systems (Category 9): www.access.gpo.gov/bis/ear/pdf/ccl9.pdf

Most AEA members will want to pay particular attention to Category 7, which reflects navigation and avionics equipment.

If the thought of perusing the CCLs is daunting, or you simply can't find your export on the CCLs even though you know it has to be there, there are other ways to identify an ECCN. You can contact the manufacturer or you can ask BIS for help.

For more information on commodity classification requests, go to www.bis.doc.gov/Licensing/CCLRequestGuidance.html.

Additional information on these services can be found on the BIS website at www.bis.doc.gov, or by contacting the BIS Operations Support Division at 202-482-3290.

Do You Need a License?

Once you have determined your item is controlled by a specific ECCN, you must use information contained in the "License Requirements" section of that ECCN in combination with the "Country Chart" to decide whether or not a license is required.

For example, certain inertial navigation systems lead to an ECCN of 7A003. This ECCN does not include any INS certified for use in a civilian aircraft by an airworthiness authority from a "Group A" country (major U.S. trading partners), but these items may fall within ECCN 7A103, which is still a restricted category requiring licensing in many circumstances.

The third (middle) character in the ECCN reflects a short "summary" of the reason for which export of an item is restricted:

- "0" is for national security reasons.
- "1" is for missile technology reasons.
- "2" is for nuclear nonproliferation reasons.
- "3" is for chemical and biological weapons reasons.
- "9" is for other reasons such as anti-terrorism, crime control, regional stability, short supply or U.N. sanctions.

Where there are multiple reasons for restricting an item, the lowest number takes precedence. Full details on the restrictions are found within the CCL.

Once you have classified the item, the next step is to determine whether or not you need an export license based on the "reasons for control" of the item and the country of ultimate destination.

You begin this process by comparing the ECCN with the Commerce Country Chart (Supplement No. 1 to Part 738 of the Export Administration Regulations). The ECCNs and the Commerce Country Chart, taken together, define the items subject to export controls based solely on the technical parameters of the item and the country of ultimate destination.

You may be required to cross-reference against more than one country when exporting aircraft parts. In addition to the destination nation (which always will be relevant), you generally want to cross-reference against the country of registry for the target aircraft and the country that has issued the operating certificate for the target aircraft (assuming you know the target aircraft into which the article will be installed at the time of export).

Returning to the example of an inertial navigation system with an ECCN of 7A003, such an item would be forbidden (barring a license) from export to China, but would be permitted for export to Canada.

Can You Do Business With the Customer?

As with defense-related articles, you need to examine whether or not you can do business with the customer. BIS maintains a number of lists of parties with whom you may not transact business.

Generally, you can find information on all of the lists at www.bis.doc.gov/ComplianceAndEnforcement/ListsToCheck.htm.

Some of the more important lists include:

- Denied Entities: www.bis.doc.gov/Entities/Default.htm
- Denied Persons: www.bis.doc.gov/dpl/Default.shtm
- The Unverified List: www.bis.doc.gov/Enforcement/UnverifiedList/unverified_parties.html

Red Flags

If something strikes you as unusual about a transaction, you may have more than just a funny feeling — you may have a "red flag."

Under BIS standards and guidance, there are a series of so-called red flags — a list of unusual situations that should suggest a need for greater inquiry into the legality of a transaction before the exporter undertakes the transaction.

What types of situations give rise to a red flag? For any sort of unusual circumstance suggesting the transaction might be unlawful, BIS standards (as well as good business sense) require the exporter to investigate the situation and address potential problems before they can blossom into full-scale legal violations.

One example is a situation in which the customer or the customer's address is similar to one of the parties found on the Commerce Department's (BIS's) list of denied persons. If the name or address is similar, the exporter must

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investigate to ensure the importer is not, in fact, the denied person.

Another example is when a customer or purchasing agent is reluctant to offer information about the end-use of the item. A broker unwilling to disclose the end-user is something that can happen in the aviation industry. In an export situation, however, this refusal can raise a red flag requiring further investigation.

If a customer is willing to pay cash for a very expensive item when the terms of the sale normally would call for financing, this also raises a red flag. The key feature here is the transaction “normally” would call for financing.

If a buyer is evasive about whether the purchased product is for domestic use, for export or for re-export, this evasiveness also is a red flag.

If the U.S. government cannot locate the foreign buyer, the buyer will go into the “unverified list.” Doing business with someone on the unverified list raises an automatic red flag, but it is a red flag that can be addressed easily if the person’s address can be verified by the U.S. government.

Export Licenses

If the item you intend to export is not found in the CCLs, it may be exported under the code EAR99. If the item is on the CCL but there is no “X” in the box on the “Country Chart” under the “Appropriate Reason for Control” column on the row for the “Country of Destination,” the item generally is unrestricted for purposes of shipment to that particular target nation.

But if your item is restricted for purposes of the transaction in question, an export license may be the answer. If export is prima facie prohibited, the exporter may be able to obtain a license to engage in the transac-

tion after demonstrating to the U.S. government that the policies of the government are not being adversely affected by the transaction in question.

Finally, the Paperwork

Don’t forget to complete a Shipper’s Export Declaration (SED) for your transaction. There are some limited exceptions that apply. For example, generally an SED is not required when the value of the export is less than \$2,500; however, this exception does not apply if the export requires a license. An SED always must be completed if your export requires a license.

The SED can be completed online at www.aesdirect.gov. □