Strategic Trade Management - Best Practices

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Export Controls and Trade Facilitation in Asia

- The role of industry in counterproliferation
- Best Practices for Preventing Unlawful Diversion / Transshipment
- Case Studies
- End-Use Verification
What is the threat?
What is the response?

- Industry and government should work together in a cooperative partnership on a domestic and global basis to foster secure trade.

- Secure trade will reduce the incidence of diversion of dual-use items to prohibited end-uses and end-users.

- Effective export management and compliance programs will encourage expeditious movement of legitimate trade.

- Industry can achieve secure trade objectives through quality-driven export management and compliance practices.
Best Practices for Preventing Unlawful Diversion

- **CHECK FOR RED FLAGS** –
  - Communicate any red flags noted to all divisions, branches, or staff
    - when an exporter denies a buyer’s order
    - freight forwarder declines to provide export services for dual-use items.

- **SEEK SOUND COMPLIANCE PROGRAMS** –
  - Seek to utilize only those Trade Facilitators/Freight Forwarders that administer sound export management and compliance programs
    - including best practices for transshipment.

- **AVOID “ROUTED EXPORT TRANSACTIONS”**-
  - A contractual agreement to act as the exporter of record on behalf of a foreign or third country party.
    - Requires a longstanding and trustworthy relationship among the exporter, the foreign principal party in interest (FPPI), and the FPPI’s U.S. agent.
Best Practices for Preventing Unlawful Diversion

- **USE DESTINATION CONTROL STATEMENTS** –
  - When required, the Exporter should provide the appropriate Export Control Classification Number (ECCN) and the final destination where the item(s) are intended to be used, for each export to the end-user and, where relevant, to the ultimate consignee.
  - For exports that do not require the DCS, other classification information (EAR99) and the final destination should be communicated on bills of lading, air waybills, buyer/seller contracts and other commercial documentation.
  - For re-exports of controlled and uncontrolled items, the same classification and destination specific information should be communicated on export documentation as well.

- **PROVIDE CLASSIFICATION INFORMATION TO FORWARDERS** –
  - Provide the ECCN or the EAR99 classification of the items
  - Include the applicable license exception or the “No License Required” designation certifying that no license is required.
Best Practices for Preventing Unlawful Diversion

▪ KNOW YOUR CUSTOMER –
  – Companies should “Know” their foreign customers
    • Obtain detailed information on the bona fides (credentials)
    • Measure the risk of diversion – history/geography/biography
  – Especially important when the foreign customer is a broker, trading company or distribution center.

▪ USE DIGITAL RESOURCES –
  – Utilize information technology systems to the maximum extent feasible
  – Augments your "know your customer" and other due-diligence measures

Consolidated Screening List -
http://export.gov/ecr/eg_main_023148.asp

- A downloadable file that consolidates export screening lists of the Departments of Commerce, State and the Treasury into one spreadsheet
- Designed as an aide to industry in conducting electronic screens of potential parties to regulated transactions
Case Study: PPG Industries/PPG Paints Trading (Shanghai) Co. Ltd.

- PPG Paints Trading (Shanghai) is a wholly-owned subsidiary of U.S. based PPG Industries
- Conspired to export high-performance coatings to a PAEC controlled Nuclear Power Plant without the license authorization required for shipment to an Entity List designee
- Applied for a license, which was denied
- Sold and shipped the paint through a distributor in China to evade export controls
- Concealed the actual end-user of the goods by claiming the paint was for projects in China
Corporate Global Settlements

- **Penalties: PPG Paint Trading**
  - Paid a $2 million criminal fine
  - $1 million civil fine
  - forfeited $32,319 in proceeds

- **Penalties: PPG Industries**
  - Paid a $750,000 civil fine.

- **Subject to multiple third-party audits over the next five years to ensure the efficacy of its compliance with U.S. export control laws.**
Corporate Global Settlements

- Penalties: China Nuclear Industry Huaxing Construction Co., Ltd
  - Agreed to the maximum criminal fine of $2 million
    - $1 million stayed pending successful completion of five years corporate probation
  - Administrative fine of $1 million
  - Required to implement an export compliance and training program
Adjudication of Responsible Parties

- Criminal Prosecution:
  - Xun Wang
    - Plead guilty
    - Sentenced to 1 year and one day in prison
    - $100,000 Criminal Fine
    - Required to perform 500 hours of community service.
Adjudication of Responsible Parties

- Administrative Sanctions
  - Several PPG employees were administratively fined or denied export privileges

- The case’s combined $5.75 million in criminal and civil fines represent one of the largest monetary penalties for export violations in the history of BIS
Case Study: Mayrow Case and Related Actions

- The Mayrow network spread across several countries, including the United States.

- The network sought to illegally acquire U.S.-origin dual-use and military components for the Iranian Government.

- U.S.-origin goods diverted to Iran via this network included EAR99 commodities, as well as goods controlled for missile technology, national security and anti-terrorism reasons as well as those controlled under the International Traffic in Arms Regulations.

- For Mayrow General Trading Company, the Entity List sets forth a license requirement for all items subject to the EAR and a license review policy that is a presumption of denial.
The criminal indictment alleges that the defendants caused the export of
- 120 field-programmable gate arrays,
- more than 5000 integrated circuits of varying types
- approximately 345 Global Positioning System (“GPS”) devices
- 12,000 Microchip brand micro-controllers
- Near Field Communicator

All of these items have potential military applications, including as components in the construction of improvised explosive devices (IEDs).
Case Study: Corezing Case and related actions

- Participated in a complex and layered network that engaged in complicated and long-term schemes to divert U.S.-origin items through deceptive actions, including shifting/circuitous routes and false or omitted information on shipping documentation in an attempt to conceal their activities.
  - Arranged for the transshipment of EAR-controlled radio frequency modules from the United States through Singapore to Iran for use in Improvised Explosive Devices (IED) found in Iraq.
  - Obtained ITAR-controlled antennas designed for use in military radars and aircraft, and exported them to Singapore and Hong Kong without the required licenses.
  - Illegally transshipped a range of U.S.-origin goods, including acrylic polymers and fiberglass tape, through Hong Kong to Iran.
- Many of the individuals knowingly engaged in these activities in violation of U.S. export control laws.
Case Study: Corezing Case and related actions

- Five individuals and four of their companies have been indicted as part of a conspiracy to defraud the United States
  - Two were extradited from Singapore to face charges in the United States, where they plead guilty and have been sentenced to 34 – 37 months in prison.
- Fifteen parties located in China, Hong Kong, Iran and Singapore were added to the Entity List.
End-use Verification

- End-use checks play a valuable preventive enforcement role
  - Verifying the bona fides of end-users,
  - Confirming that items will be or have been properly used as authorized
  - Ensuring that license conditions are adhered to.

- Types of Verifications
  - Pre-License
  - Post Shipment
    - Dual-Use items subject to the EAR
      - Licensed
      - License Exception
      - EAR99
  - Approximately 65% EUCs conducted by BIS ECOs
    - ECOs are at six posts, and cover 43 countries.
BIS End-Use Verifications

- In FY 2012, BIS completed 994 end-use checks in more than 50 countries.

  - **Pre-License Check (PLC):** validates information on export license applications
    - Short turn-around (14 days)
    - Establishes the bona fides of the parties to a transaction
    - Reviews the security of the supply chain and intended destination
    - Ensures the end-use is appropriate, and end-users are known.

  - **Post-Shipment Verification (PSV):** strengthens assurances that all parties comply with an export license and licensing conditions to deter diversions
    - Longer deadline (60 days)
    - Ensures the proper delivery and disposition of the goods
    - Verifies the security procedures in place to prevent theft or diversion
    - Ensures the end-use is appropriate, and end-users are known.
Preparation for an efficient end-use check

- Designate a point of contact for export control related inquiries

- Keep copies of the shipping documents and any records that indicate disposition of the goods
  - Soft copy email is encouraged – it’s ECO-friendly on two counts!

- Let us know if there are special requirements for entry and inspection of the commodity being checked
  - Safety clothing?
  - Special hours or days?
  - Upcoming maintenance or offline periods?
Thank you!

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