Living With the ITAR & EAR

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Export Solutions
Phoenix General Assembly
Purpose of this presentation

• To engage General Assembly attendees in a dialogue around the topic of Export Control

• To give attendees:
  – an understanding of the risks involved for their companies if they do nothing
  – the basic understanding of Export Control concepts and the regulations
  – An understanding of why they should address this subject
  – A way forward to compliance
Five Questions

1. Why has export control become such a big issue?

2. What are your risks?

3. What are the basics you need to get started?

4. How will your company benefit by addressing this issue?

5. What are your next steps?
Why is Export Control such a big issue?

- The regulations have been around for more than 50 years. Why the sudden interest?

- Some reasons ...
  - The impact of September 11th
  - Government activity (fines and penalties)
  - Struggling economy
  - Flow down from OEMS
Why is Export Control such a big issue?

- More reasons ...
  - Companies regularly receive purchase orders with “ITAR and EAR Compliance” clauses
  - Customers are beginning to ask sources if they are registered with the U.S. Department of State and/or if they are compliant with the ITAR and EAR
  - Compliance is becoming a requirement to participate in certain industries
Understanding Your Risk:
*Where is your company?*

You are here.

Your RISK of violations.

No knowledge
No system
No compliance
Possible violations
Understanding Your Risk:
Where is your company?

Due Diligence

You are here.

Your RISK

Some understanding
Partial system
Basic compliance
Potential violations
Understanding Your Risk:
Where is your company?

Due Diligence

Full understanding
Implemented system
In compliance
Violations minimized

You are here.
Does a fool-proof system exist?

- Probably not practical
- People are involved, and they make mistakes.
- Your system will catch mistakes.
- Your system will make prompt and accurate disclosures to the government.
- As a result, your potential for fines/penalties will be greatly reduced.
- Due diligence is key!
Recent Enforcement Actions

2009  Oyster Bay Pump Works:  
      $25,000 for EAR violations

Atlantis Worldwide:  $2,000 and five  
      months probation for EAR violations

2008

Cirrus Electronics:  $60,000 and 35  
      months in prison for EAR violations

Qioptiq:  $25 million for ITAR  
      violations
Recent Enforcement Actions

2007

ITT Corporation: $28 million for ITAR violations; three-year statutory debarment; appointment of special licensing officer; mandatory on-site compliance audits
Case Study: Qioptiq

- A Luxembourg LLC
- 163 violations of the ITAR
- Voluntarily disclosed to the State Department

“Had the Department not taken into consideration as significant mitigating factors the Respondent’s Voluntary Disclosures, the fact that the violations were committed prior to the Qioptiq Group acquisition of the violating business units and the remedial measures implemented, the Department could have charged the Respondent with additional violations, and could have pursued more severe penalties.”
Case Study: Qioptiq

- In December 2005, Qioptiq purchased a number of companies from Thales High Technology Optic Group.
- One day before the purchase, Thales filed a voluntary disclosure with the State Department related to the illegal export of night vision goggle technology and data.
- This included unauthorized exports to France, Israel, Singapore and China.
Case Study: Qioptiq

- Thales utilized third country nationals without proper Technical Assistance Agreements (TAAs) from State, thereby creating illegal deemed re-exports.

- Thales treated items as if they were subject to Singapore Strategic Goods Act (and not the ITAR).

- Other unauthorized exports/re-exports to Iran, Cyprus, Russia, Germany and Hungary
Case Study: Qioptiq

- State charged that Thales lacked a proper Export Compliance System:

  “These internal records described business units involved in ITAR regulated activities with limited or no ITAR training and a longstanding lack of support for ITAR compliance.”

- This was further evidenced by a 2003 internal training presentation which advises Thales employees to essentially avoid making disclosures due to the risk of discovery by U.S. companies or authorities.
Case Study: Qioptiq

- In an August 2003 email from Thales S.A. to Thales Singapore, a corporate compliance officer questioned the need for seeking assistance:

  “By experience when you call for a U.S. advisor on export control, he will play by the book and drive you to implement a strict (and so a costly) procedure. If you hire a U.S. advisor you will not finish with the only voluntary disclosure we are having in mind today, but he will push you to clean up all the past!”

- “Self blinding.” Willful violations.
Case Study: Qioptiq

- As a result, Thales/Qioptiq agreed to the following:
  - $25 million in fines and remedial compliance measures
  - Hiring a special internal compliance officer to oversee export compliance
  - Yearly reports to State Department outlining compliance costs
  - Direct oversight of its compliance program
  - Legal department oversight
  - On-site reviews of compliance efforts by State Department officials
Violations are Public Record

U.S. Department of State (DDTC)

Consent Agreements

Pursuant to 22 CFR §127.10, the Assistant Secretary for Political-Military Affairs is authorized to impose civil penalties for violations of the Arms Export Control Act (AEGC) and the International Traffic in Arms Regulations (ITAR). Imposition of civil penalties generally includes the payment of fines to the U.S. Treasury and a Consent Agreement, under which the company is required to institute enhanced compliance measures. The Consent Agreement outlines the measures required to enhance compliance programs. These may include appointment of a Special Compliance Officer (SCO), institution of a policy of denial, debarment, conduct of comprehensive audits, or institution of a “cradle-to-grave” export tracking system. Each Consent Agreement is tailored to the export violations that occurred, the cooperativeness of the company in coming to resolution, and the level of compliance measures already in place at the company at the time when the Consent Agreement enters into force.

Upon signing of the Consent Agreement and accompanying Implementing Order, the documents are made available to the public. Click below to view current and past Consent Agreements.

2008:
- The Boeing Company
- Northrop Grumman Corporation
- Lockheed Martin Corporation
- Qioptiq

2007:
- ITT Corporation

2006:
- Northrop Grumman Corporation

2005:
- None

2004:
- None

2003:
- None

2002:
- None

2001:
- None

2000:
- None

1999:
- None

1998:
- None

1997:
- None

1995:
- None

1993:
- None

1992:
- None

1983:
- None

1982:
- None

1979:
- None

1978:
- None

Updated 1.21.09

Printer Friendly Version
Violations are Public Record
U.S. Department of Commerce (BIS)

Export Enforcement

Assistant Secretary for Export Enforcement
Deputy Assistant Secretary for Export Enforcement

Office of Export Enforcement (OEE)
Office of Enforcement Analysis (OEA)
Office of Antidumping Compliance (OAC)

Mission
The mission of the Bureau of Industry and Security (BIS) Export Enforcement is to protect U.S. national security, homeland security, foreign policy, and economic interests through a law enforcement program focused on: sensitive exports to hostile entities or those that engage in onward proliferation; prohibited foreign boycotts; and related public safety laws. BIS's Export Enforcement (EE) is an elite law enforcement organization recognized for its expertise, professionalism, integrity, and accomplishments. EE accomplishes its mission through preventative and investigative enforcement activities and then, pursuing appropriate criminal and administrative sanctions against export violators.
Maximum Penalties

**EAR**
- Civil penalties may be the greater of $250,000 or twice the value of the transactions
- Criminal violations may be up to $1,000,000 and/or 20 years imprisonment

**ITAR**
- Civil fines up to $500,000 per violation
- Criminal fines up to $1,000,000 per violation and/or 10 years imprisonment
Your Reputation is at Risk

1. Wreck your business

2. Ruin your reputation

3. Shake the confidence of your customers

4. Threaten U.S. national security
QUESTIONS?
Export Control Basics

- What is an export?
- ITAR Registration Requirement
- The EAR
- Product Classification
What is an export?

- Any item sent from the United States to a foreign destination (company or person) is an export. All items and articles leaving the United States are exports and, therefore, may be subject to controls and restrictions.

- Items include **hardware** (parts, materials, sub assemblies), **information** (drawings, specifications, test data, calculations) and **technologies** (e.g., composites)
What is an export?

Exports can be ...

- **physical** *(sending a part to a foreign country or person)*

- **aural or verbal** *(telling someone information about a controlled part)*

- **visual** *(a foreign person sees controlled information – even if they see it on your laptop in a public place)*
What is an export?

With this definition, **who** and **what** do you need to think about (even if you don’t send hardware out of the country)?

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<th>Non-U.S. Employees</th>
<th>Visitors or Potential Customers (Denied Parties Lists)</th>
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<td>Information on your company’s website</td>
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<td>Phone Conversations</td>
<td>Data on computers, networks, hard drives, etc.</td>
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<td>Letters, documents or “snail mail”</td>
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E-Mail Information on your company’s website

Phone Conversations

Internet downloads

Data on computers, networks, hard drives, etc.
The shipment or transmission of restricted items subject to the ITAR or EAR from one U.S. to another U.S. person is not an export. (As long as the “receiving person” is not employed by a foreign company.)
What is a U.S. person?

- Anyone who is a U.S. citizen or permanent resident alien (green card holder).
- The term “person” also applies to companies (entities)

What is a foreign person?

- Anyone who is not a U.S. citizen or permanent resident alien (green card holder).
- A foreign destination is any country outside the United States.
Deemed Export

The shipment or transmission of restricted items subject to the ITAR or EAR from the United States to a non-U.S. citizen.
Re-Export

The shipment or transmission of items subject to the ITAR or EAR from one foreign country to another.
Deemed Re-Export

The shipment or transmission of items subject to the ITAR or EAR from one foreign person to another.
Re-Transfer

The shipment or transmission of items subject to the ITAR or EAR from one entity to another entity in the same country.
Deemed Re-Export

The shipment or transmission of items subject to the ITAR or EAR from one foreign person to another.

DEEMED EXPORT

U.S. Citizen → German Citizen

DEEMED RE-EXPORT

German Citizen → Japanese Citizen
The United States controls exports with the following major regulations:

- International Traffic In Arms Regulations (ITAR)
- Export Administration Regulations (EAR)
- The Office of Foreign Assets Control (OFAC)
Which agency is responsible?

- If the product was originally developed for a military application it is controlled under the International Traffic in Arms Regulations (ITAR) and enforced by the U.S. Department of State, Directorate of Defense Trade Controls (DDTC).

- If the product has dual-use or commercial application it is controlled under the Export Administration Regulations (EAR) and enforced by the U.S. Department of Commerce, Bureau of Industry and Security (BIS).

- If the product is going to a sanctioned country, it is controlled through a variety of federal laws and enforced by the U.S. Department of the Treasury, Office of Foreign Assets Control (OFAC).
The ITAR

- Administered by U.S. Department of State (Directorate of Defense Trade Controls)

- Broadly defined and tightly controlled (includes all items on U.S. Munitions List)

- Classification of Product: if an item was originally designed or modified for a military application; is on the U.S. Munitions List; and is going to be exported, then it’s controlled and requires a license (unless there is an exception).
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<td><strong>Toxicological Agents, Including Chemical Agents, Biological Agents, and Associated Equipment</strong></td>
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ITAR Registration Requirement

• Does your company work on defense items or perform defense services (as described in the United States Munitions List)?

• If so you must be registered with the State Department Directorate of Defense Trade Controls (DDTC)

• Refer to Section 122 of the ITAR.
MYTH:

“We are not manufacturers. We are only sub-tier processors. The ITAR doesn’t apply to us!”

FACT:

An e-mail I sent to the DDTC ...
I have many discussions with aerospace suppliers. When we are discussing the requirement for registration with the State Department, the question comes up whether that means both manufacturers (which is the word in the ITAR) and processors.

In aerospace we refer to two types of suppliers - manufacturers (who normally have complete responsibility for producing a component or a subassembly) and processors (who are normally special process houses ... like shot peen, coatings, heat treat, etc.) and who do not make parts complete. They only perform specific processes on the parts for the manufacturers.

I believe that the intent of 122.1 would cover both our terminology for manufacturers and processors. Do you agree with my understanding?

DonB

Export Solutions
The term manufacturers encompasses all those who take part in the manufacturing process to produce the finished article.

DDTC Response Team

NOTE: Information in this message generally discusses controls and information contained in the Arms Export Control Act and International Traffic in Arms Regulations (ITAR), both of which are authoritative on this matter. The Response Team fields basic process and status questions, and assists exporters in identifying how to get answers to more complex questions handled by the Directorate of Defense Trade Control’s licensing and compliance offices. The Response Team’s services are not a substitute or replacement for the advisory opinion, general correspondence, and commodity jurisdiction processes delineated in the ITAR, which should be used to obtain authoritative guidance on export control issues, and do not in any way relieve exporters from their responsibilities to comply fully with the law and regulations.
ITAR Registration Requirement

- ITAR § 122.1(a): “Any person who engages in the United States in the business of either manufacturing or exporting defense articles or furnishing defense services is required to register with the Directorate of Defense Trade Controls ... Manufacturers who do not engage in exporting must nevertheless register.”
QUESTIONS?
The EAR


- If the item is for commercial or dual use (commercial and military), it is controlled by the EAR and administered by BIS.

- Many items are “subject to the EAR,” but do not necessarily require a license for export.
• Includes five product groups

• Extensive system for classification of products – Export Control Classification Numbers (ECCNs)

• Complex rules about what requires a license (depends on product, technology and end use)
The purpose of the ECCN is to clearly identify the component, material, or technology so that proper licenses, restrictions and exemptions may be applied.

If you are going to export items under the EAR, knowing the ECCN is critical.
Examples of ECCNs

9A991
Aircraft and gas turbine engines not controlled by 9A001 or 9A101

9A992
Complete canopies, harnesses and electronic release mechanisms
Office of Foreign Asset Controls (OFAC)

- U.S. Department of Treasury agency which administers sanctions against targeted foreign governments, individuals, entities and practices.

- U.S. economic force used to enact foreign policy goals.

- Includes blocked assets, trade restrictions and financial transactions.

- Jurisdiction applies to all U.S. persons and citizens.
OFAC currently enforces sanctions and programs against the following:

- Balkans
- Belarus
- Burma
- Coite d’Ivorie
- Cuba**
- Diamond Trading
- Iran**
- Iraq
- Liberia

** Indicates comprehensive program
OFAC Sanctions

• Sanction lists are designed to keep you away from these countries, companies, individuals and/or practices.

• It is important to pay attention to these lists with respect to employees, customers, suppliers, etc.

• This is why you need a “denied parties” program.
QUESTIONS?
The Value of an Export Compliance System

- Risk Reduction: Most companies today have little or no understanding of how they are affected by the ITAR and EAR.
- They do not properly control restricted items within their facility or when exported.
- These companies are at risk for violations, fines, debarment and/or imprisonment.
The Value of an Export Compliance System

- Competitive Advantage: Companies with effective compliance systems will have a competitive advantage over those who cannot make this claim.

- They will market their system as another benefit in their overall value proposition

- Many in the industry today are making ITAR/EAR compliance a requirement to do business
Questions to Consider

- Do you believe the aerospace industry will be more or less regulated in the years ahead?

- Will U.S. national security and non-proliferation efforts increase or decrease going forward?

- Do you believe export fines and penalties will grow or shrink in the coming years?

- Do you think your customers are going to be more or less concerned with ITAR & EAR in the future?
Next Steps

• Learn More
  – Discover how your business is affected
  – Find out your vulnerability to violations

• Register with the DDTC
  – If you work with defense products or services

• Evaluate Past and Current Exports
  – Voluntarily disclose if applicable

• Develop and Implement a Compliance System

• Train Your Employees

• Market Your System
For Help

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