# Role of Freight Forwarders

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U.S. DEPARTMENT OF COMMERCE
BUREAU OF INDUSTRY AND SECURITY

# Roles and Responsibilities of Freight Forwarders Under the Export Administration Regulations

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## Parties to an Export Transaction

- Exporter
- Forwarding Agent
- Intermediate Consignee
- Ultimate Consignee
- End-User
- Principal Party in Interest

## What is a Forwarding Agent?

"The person in the United States who is authorized by a principal party in interest to perform the services required to facilitate the export of the items from the United States. This may include air couriers or carriers"

(15 C.F.R. § 772.1)

# Routed Export Transactions

- There are two kinds of routed export transactions:
  - Those in which the freight forwarder or other agent is responsible for arranging transportation and other services, but the agent is not the exporter of the items.
  - Those in which the freight forwarder or other agent takes on the responsibility of the exporter of the items.

When does a routed export transaction result in the shift in export control responsibility?

- There must be two written documents transferring the export control responsibilities:
  - A writing from the foreign principal party in interest to the US principal party in interest expressly assuming export control responsibilities.
  - A power of attorney or other writing from the foreign principal party in interest to the freight forwarder or other agent authorizing the agent to work on the foreign principal party in interest's behalf on the transaction.

## Routed Export Transaction

- If both writings have been obtained, the freight forwarder, acting as agent for the foreign principal party in interest, becomes the exporter of the items and is responsible for determining licensing requirements and obtaining license authority.

## Routed Export Transactions

- If both of the writings are not in place, the US principal party in interest is the exporter and retains primary responsibility for determining licensing requirements and obtaining license authority.

## Routed Export Transactions

- In addition to the EAR, you must check the FTR to determine if your transaction is a routed export transaction for purposes of filing EEI.

## Routed Export Transactions

- If you are in a routed export transaction, the US principal party in interest must provide you with certain information.
  - ECCN or sufficient technical information to classify the item.
  - Any other information that is known that may affect the licensing determination.

## Routed Export Transaction

- Freight forwarder is responsible for:
  - Determining licensing authority,
  - Obtaining appropriate license or other authorization, and
  - Preparing and filing any export clearance documentation.

## All Export Transactions

- Whether you are involved in a routed export transaction or not, all parties that are involved in a transaction subject to the EAR must comply with the EAR.

## Freight Forwarder Responsibilities

- Destination Control Statement
- Filing of EEI through AES
- Screening of Parties to the Transaction
- Embargoed Destinations
- End-Use/End-User Controls (EPCI)
- Record Keeping

## Destination Control Statement

- Must be included on invoice and on bill of lading, air waybill or other export control document.
- Must include:
  - "These commodities, technology or software were exported from the United States in accordance with the Export Administration Regulations. Diversion contrary to U.S. law is prohibited."
- You may include more detail if so desired.

## Filing of EEI through AES

- Filing of EEI is a submission to the US Government and the filing of false or misleading information may subject you to civil or criminal penalties.

## Power of Attorney

- If the freight forwarder files EEI on behalf of the exporter, the freight forwarder needs a power of attorney from the exporter

## ECCN and License Authority

- In a non-routed transaction, determining the ECCN and license authority for an export is the responsibility of the exporter.
- If the freight forwarder makes the determination of ECCN and license authority on its own, the freight forwarder will be held liable if that information is false or misleading.

## Screening Parties to a Transaction

- You should screen all parties to a transaction against the various lists published by the US Government.
- Screening should be done as close to the time of export as possible as the lists change frequently.

## Lists to Check

- Denied Persons List
- Entity List
- Unverified List
- Specially Designated Nationals List
- Debarred List
- Nonproliferation Sanctions List

## Embargoed Destinations

- Freight forwarders must take special care not to assist in exports to embargoed destinations that do not have proper authorization.
  - Cuba, Iran, North Korea, Sudan, Syria

## Enhanced Proliferation Control Initiative (EPCI) (Part 744)

- A license is required to export any item when you know that the export will assist a foreign WMD or missile delivery system.
- Additional restrictions on other activities by US persons that directly assist a foreign WMD or missile delivery system.

## Record Keeping

- Records of all exports must be kept for a minimum of 5 years from the date of the export.
- General rule: keep all documents unless the documents are on the list of documents BIS does not require you to retain (762.2).

## Inspection

- Records are subject to inspection by agents in OEE, Customs, or other federal agencies.

## Know Your Customer

- BIS strongly urges freight forwarders to review the “Know Your Customer” guidance and list of red flags in the EAR (Supp. 3 to Part 732).

## Compliance Programs

- Freight forwarders, like exporters, should have a robust internal compliance program for ensuring compliance with the EAR.
- An effective compliance program is taken into account as a mitigating factor if a violation is discovered during an investigation.

## Enforcement

- Notable recent enforcement actions against freight forwarders:
  - $9,444,744 civil penalty against DHL for violations of EAR and OFAC regulations.
  - $156,000 civil penalty against Elite International Transportation, Inc., for EAR violations.
  - $250,000 criminal fine and 5 years criminal probation, and $399,000 civil penalty against DSV Samson Transport for violations of the EAR.

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## Role of Freight Forwarders

***Forwarder Perspective***

UPDATE 2012
CONFERENCE ON EXPORT CONTROLS AND POLICY

**Presented by:**
**National Customs Brokers and Forwarders Association of America, Inc.**
**Compliance Committee**

**Paulette Kolba – Panalpina, Inc.**
**Area Export Compliance Manager USA – Vice President**

**Pat Fosberry – John S. James Co.**
**Corporate Export & Transportation Manager**

## NCBFAA Export Compliance Committee

- Established new sub-committee in 2011 to bring in export compliance expertise to focus on export controls.
- Encouraging our membership to attend "Update "and other BIS sponsored outreach programs and trainings.
- Committee members represent small, medium and large forwarders.
- All of the members have national (and some global) responsibility for managing their export compliance programs.
  - Developing internal policies and controls
  - Monitoring, auditing
  - Staff support

## Forwarder Perspective

- Forwarder Role in Export Controls
- Approach - Incorporating Export Compliance into the Logistics Business Model
- Challenges in Implementing Compliance Programs
- The Routed Export Transaction Dilemma

**Forwarder Role in Export Controls**

**Last line of defense**

- Prohibitions, Red Flags
- Careful documentation review
- Stopping illegal or suspect shipments
- Government relies on the forwarder to stop and question.

**First source of information for new exporters**

- Providing guidance
- Training and resource tools
- Working with government agencies to identify and reach new exporters
- Working with government agencies to create tools to assist new exporters

*Directorate of Defense Trade Controls*

U.S. Census Bureau

# Main compliance focus – the same as exporters

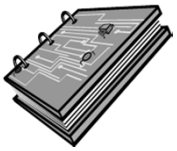
**FOCUSING ON CRITICAL RISKS**

- Not doing business with Restricted / Denied Parties
- Not shipping or diverting cargo to Embargoed / Sanctioned Countries
- Not complying with or not reporting Boycott language on documents and communications
- Red Flags
  - Especially diversion red flags
  - If something doesn't seem right, it probably isn't right.
- Not aiding, abetting, soliciting, attempting a prohibited act
- Not misrepresenting or concealing any material fact in preparation or submission of an export control document (e.g. AES)

## Compliance Program

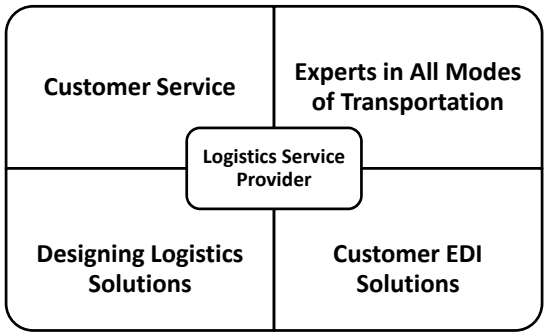
**Enhancing (or establishing) the compliance structure within the organization**
- **Large forwarder – more sophisticated compliance organization**
- **Smaller forwarder – most have a responsible person for export compliance**

**Establishing and maintaining a robust export compliance program**
- **Tone from the top**
- **Documented processes**
- **Focusing on critical risks**
- **Training (ongoing, mandatory)**
- **Communications**
- **Controls (systems and process)**
- **Monitoring**
- **Auditing**
- **Meaningful corrective measures**



## Framing compliance within the core logistics business model

We are first and foremost logistics service providers.
It's not just moving freight from point A to point B anymore



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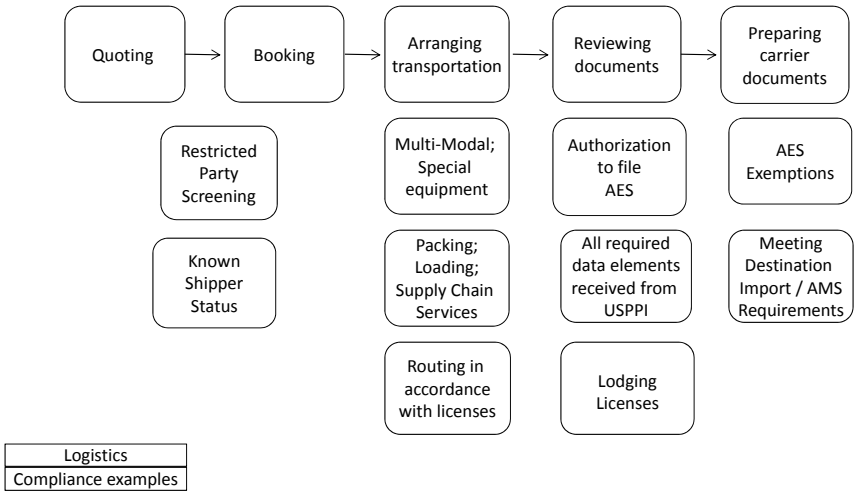


# Shipper Challenges and Concerns with Forwarders

## Shipper Challenges and Concerns with Forwarders

- Inconsistencies between branch offices, and even within offices.
- Risk (control of cargo, end users)
- Incorrect AES transmissions
- Failure to file AES
- Filing AES even though the USPPI filed and provided the ITN
- Not reporting ECCNs or licenses
- Not lodging licenses

## Forwarder Challenges

| Staff | |
|---|---|
| **Challenge** | **Solution** |
| **STAFF TURNOVER**<br>• Employee Pool<br>• Knowledge of Compliance Requirements (new hires) | Upgrading level of staff being hired |
| **CHANGE MANAGEMENT**<br>• Undoing long standing practices | Continuous Training and Education |
| **WORKLOAD**<br>• Layering a multitude of compliance requirements over standard forwarding and logistics shipping processes:<br>• Hazmat<br>• Export Controls<br>• TSA Security, Cargo Screening<br>• FMC (Federal Maritime Commission)<br>• Destination Country Import Requirements<br>• Destination Country 'AMS'-like requirements | Centralizing functions<br>Creating 'experts' / super users<br>Process Controls<br>Systems Controls<br>File reviews<br>Audits |
| **ISOLATING SHIPMENT / TRANSACTIONS THAT REQUIRE ADDITIONAL ATTENTION** | Recurring training, checklists, and continued reminders |

| Shipments |
|---|
| Shipping to high risk geographical areas |
| Shipping high risk products |
| Educating a global network to follow US Export Control requirements |




| Systems and Processes | |
|---|---|
| **Challenge** | **Solution** |
| **INCORPORATING EXPORT CONTROL REQUIREMENTS INTO THE STANDARD OPERATING PROCESS.** | **Updating SOPs and process flows**<br>**Training** |
| **STAFF RECOGNIZING CRITICAL 'EXPORT CONTROL' INFORMATION AND DATA ELEMENTS ON DOCUMENTS:**<br>• Boycott Statements<br>• Red Flags, especially regarding diversion<br>• ECCNs, License Exception Codes, anything unusual | **Training**<br>**Checklists**<br>**Familiarization with new customer's documentation** |
| **WORKING WITH A MULTITUDE OF SYSTEMS**<br>• Challenges in implementing systems controls<br>• Competing for IT resources | **We probably all deal with this issue…**<br>• Identify the most critical requirements.<br>• Get on the 'list'! |

| Customers | |
|---|---|
| **Challenge** | **Solution** |
| **WORKING WITH EXPORTERS WHO HAVE VARYING DEGRESS OF KNOWLEDGE:**<br>• Very sophisticated with high functioning compliance departments<br>• No knowledge at all<br>"Yes, this is an export sale because you sold something to someone in another country." | **Well educated staff .**<br>**Educate the 'less educated' exporter**<br>• Drain on resources, but necessary to reduce our risk<br>• Forwarders working with various government agencies to reach those who do not respond to government outreach |
| **WORKING FROM EVERY IMAGINABLE TYPE OF CUSTOMER DOCUMENT:**<br>• Various systems' capabilities<br>• Multiple Schedule B – HTS / ECCN / Domestic / Foreign combinations received in .PDF, not Excel.<br>• Missing or conflicting information<br>  | **Good account on-boarding/implementation**<br>• Are products controlled? Licenses?<br>• What does the USPPI document / commercial invoice look like?<br>• How will the required data elements be provided? |

## Creating tools to assist less educated exporters

NCBFAA

**USPPI Responsibility Information Sheet**

2012

**What is an export?**
Any item that is sent from the United States to a foreign destination is an export. "Items" include commodities, software or technology, such as clothing, building materials, circuit boards, automotive parts, blue prints, design plans, retail software packages, and technical information.

**Am I the U.S. Principal Party in Interest (USPPI)?**
The USPPI, as defined in the Foreign Trade Regulations (FTR), is the person in the United States that receives the primary benefit, monetary or otherwise, of the export transaction. *In other words, if you are the recipient of the purchase order from the overseas party for cargo that is exported and you are invoicing them for the product, you are the USPPI no matter what the terms of sale are.*

**What are my responsibilities as the USPPI?**

- **Determine Commodity Jurisdiction:** Which U.S. Government Agency controls my product? Are my products subject to the Export Administration Regulations (EAR), the U.S. Department of State' Directorate of Defense Controls (DDTC) International Traffic and Arms Regulations (ITAR) and/or other government agency such as the Nuclear Regulatory Commission (NRC), Drug Enforcement Administration (DEA), or Bureau of Alcohol and Tobacco & Firearms (ATF)?
- **"Know Your Customer":** Do due diligence on the end user(s), know their intended end use, ensure that no party to the export transaction is on any of the U.S. Government's lists of restricted parties with whom U.S. companies and U.S. Per-

**Where Should I Go for Assistance?**

Bureau of Industry
www.bis.doc.gov

State Dept – Direct
Controls (DDTC)
http://www.pmddtc.

Foreign Trade Divis
http://www.census.

**Useful Links**

Introduction to Exp
http://www.bis.doc.
exportingbasics.htm

Commodity Jurisdic
http://www.bis.doc.

FAQs on Export Lic

**USPPI CHECKLIST**

See Index for the Export Administration Regulations (EAR)
http://www.access.gpo.gov/bis/ear/ear_data.html

See International Traffic in Arms Regulations (ITAR)
http://pmddtc.state.gov/regulations_laws/itar_consolidated.html

- ☐ **Are my products on the U.S. Munitions List (USML)?** (See ITAR Part 121) Products specifically designed, modified or adapted for military application are subject to ITAR 22 CFR, Parts 120 – 130
  http://pmddtc.state.gov/regulations_laws/itar_consolidated.html
- ☐ **Are my products subject to the EAR?** (See EAR Part 734.2-5)
  http://www.access.gpo.gov/bis/ear/pdf/734.pdf
- ☐ **Are my products on the Commerce Control List (CCL)?** (See Part 732) If yes, they will have an Export Control Classification Number (ECCN).
  - Alphabetical Index to the Commerce Control List
    http://www.access.gpo.gov/bis/ear/txt/indexccl.txt
- ☐ **Do General Prohibitions 4-10 Apply?** (See 736.2(b)(4-10))
  http://www.access.gpo.gov/bis/ear/pdf/736.pdf
- ☐ **Do I know the End User and End Use of the Product?**
  http://www.access.gpo.gov/bis/ear/pdf/744.pdf
  - Know Your Customer Guidance
    http://www.bis.doc.gov/complianceandenforcement/knowyourcustomerguidance.htm
  - Lists to Check
    http://www.bis.doc.gov/complianceandenforcement/liststocheck.htm
- ☐ **Am I shipping to a destination of concern?** (See Supplement No. 1 to part 738 and Supplement no. 1 to Part 774)
  - Embargoed Countries - Office of Foreign Assets Controls (OFAC)
    http://www.treas.gov/offices/enforcement/ofac/index.shtml

## Confusing or incomplete information

| | |
|---|---|
| **27.** LICENSE NO./LICENSE EXCEPTION SYMBOL/AUTHORIZATION | **28.** ECCN *(When required)* |
| **29.** Duly authorized officer or employee | The USPPI authorizes the forwarder named above to act as forwarding agent for export control and customs purposes. |
| **30.** I certify that all statements made and all information contained herein are true and correct and that I have read and understand the instructions for preparation of this document, set forth in the **"Correct Way to Fill Out the Shipper's Export Declaration."** I understand that civil and criminal penalties, including forfeiture and sale, may be imposed for making false or fraudulent statements herein, failing to provide the requested information or for violation of U.S. laws on exportation (13 U.S.C. Sec. 305; 22 U.S.C. Sec. 401; 18 U.S.C. Sec. 1001; 50 U.S.C. App. 2410). | |
| Signature | **Confidential** – Shipper's Export Declarations (or any successor document) wherever located, shall be exempt from public disclosure unless the Secretary determines that such exemption would be contrary to the national interest (Title 13, Chapter 9, Section 301 (g)). |
| Title | Export shipments are subject to inspection by U.S. Customs Service and/or Office of Export Enforcement. |
| Date | **31.** AUTHENTICATION |

| | |
|---|---|
| **27.** LICENSE NO./LICENSE EXCEPTION SYMBOL/AUTHORIZATION<br>NLR / GBS | **28.** ECCN *(When required)*<br>5B001 |
| **29.** Duly authorized officer or employee | The USPPI authorizes the forwarder named above to act as forwarding agent for export control and customs purposes. |
| **30.** I certify that all statements made and all information contained herein are true and correct and that I have read and understand the instructions for preparation of this document, set forth in the **"Correct Way to Fill Out the Shipper's Export Declaration."** I understand that civil and criminal penalties, including forfeiture and sale, may be imposed for making false or fraudulent statements herein, failing to provide the requested information or for violation of U.S. laws on exportation (13 U.S.C. Sec. 305; 22 U.S.C. Sec. 401; 18 U.S.C. Sec. 1001; 50 U.S.C. App. 2410). | |
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| Date | **31.** AUTHENTICATION *(When required)* |
| Telephone No. (Include Area Code) | E-mail address |

| Customers (continued) | |
|---|---|
| **Challenge** | **Solution** |
| Explaining to your buyers why they have to provide authorization to file AES on Routed Export Transactions | Develop processes and train global networks. |
| Requests to determine commodity jurisdiction and / or to classify products<br>• Schedule B / HTS<br>• ECCN<br>(Not part of normal forwarder processes.) | • Forwarder may have a consulting arm with the expertise.<br>• Forwarders now, by and large, will no longer classify products. |
| Staff not wanting to 'disturb' a customer<br>• Asking questions<br>• Finding the right person to talk to<br>• Challenging data received<br>• Holding cargo<br>• Saying no | • Establishing rules of engagement at the beginning of the relationship<br>• Communicating with the correct people<br>   |

***Forwarders are not experts in the technical aspects of their customers' products. Commodity Jurisdiction and EAR or ITAR classification can be very complex.***

## Routed Export Transaction

- **Is it possible to structure Routed Export Transaction rules that satisfy the concerns of all of the stake holders?**
- **What are the real world scenarios that present themselves to the forwarder?**
- **What can the USPPI expect from the forwarder when their buyer signs a writing accepting license responsibilities?**

## *Role of the Freight Forwarders:*

## *Partners in Compliance*

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