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Aircraft Parts Across Borders

US Export Regulations and PMA Parts

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Export Compliance Basics
<http://www.pmaparts.org>

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MARPA is Focused on Safety

- Who is MARPA?
 - A non-profit trade association
 - We represent manufacturers of aftermarket aircraft parts (PMA parts)
- The MARPA Continued Operational Safety (COS) Program encourages risk analysis and remediation to achieve the highest levels of safety

MARPA is Focused on Compliance

- MARPA works with governments to eliminate unnecessary impediments and potential safety issues facing the aircraft parts industry
 - Lobbying efforts
 - Educational Efforts
 - Industry outreach
- MARPA works with government agencies to promote high levels of regulatory compliance

Why Should I Care About Export Law?

- Any U.S. companies hoping to do business with foreign companies should be informed of the obligations imposed by the U.S. export laws
- The laws can carry heavy penalties
 - Up to \$1,000,000
 - up to 2x the amount of the transaction
 - Up to \$1,000,000 in fines and 20 years in prison
 - Removal of license, denial of export privileges
- Companies must be aware of the laws in order to avoid such penalties

What Transactions are Subject to US Export Laws?

- Shipping regulated parts, software, production equipment or technology outside the US
- Re-Exports of US-sourced products from one foreign country to another foreign country
 - Even an export from one EC members state to another
- Exports of larger products with some US content
 - Includes non-US produced articles with significant US content, like significant use of PMAs or other US-supplied parts

Some Export Regulators

- **BIS – Bureau of Industry and Security**
 - Commerce Department office responsible for the regulation of most exports
- **DDTC – Directorate of Defense Trade Controls**
 - State Department office responsible for the regulation of exports of defense-related articles
- **OFAC - Office of Foreign Asset Control**
 - Treasury Department office responsible for certain additional export controls meant to advance particular interests of the United States

First Step: Treasury Restrictions

- Is this article subject to general restrictions for export?
 - Check the Treasury Department Office of Foreign Asset Control (OFAC) Regulations

OFAC Lists

- **Embargoed Destinations List:**
 - <http://www.treas.gov/offices/enforcement/ofac/programs/index.shtml>
- **Specially Designated Nationals List:**
 - <http://www.treas.gov/offices/enforcement/ofac/sdn/index.shtml>

Second Step: Is it a Defense Related Article?

- Distinguish the U.S. Department with jurisdiction
 - Is it a US Munitions List Item?
 - Articles made or modified for military use
 - Check ITARs
 - State has export jurisdiction
 - Otherwise subject to BIS restrictions
 - Check the ECCN and the BIS regulations
 - Commerce has export jurisdiction

Some USML Items

- Aircraft and Engines specifically designed or modified for military purposes
 - But not reciprocating engines
- Parts for such products
- Key questions:
 - Did you design your PMA part for a civilian product?
 - Did you design your part for a military product and then subsequently obtain PMA?
 - Was your part changed to make it meet defense requirements?

Dual Use Parts

- State and Commerce Department wrangle over who has jurisdiction over dual-use aircraft parts
 - Items originally designed as defense related articles are clearly subject to State Department control
 - Standard equipment, integral to a FAA certificated aircraft is supposed to be subject to Commerce Department control

A New Wrinkle

- In August 2008, The State Department defined “standard equipment” to be limited to standard parts, and excluded PMA parts
- In December 2008, the Commerce Department issued its own interpretation that expanded the definition and included anything subject to a proprietary standard to be “standard equipment”
 - PMA manufacturers must be especially wary of compliance issues for dual use parts because they may not be “standard equipment” on the aircraft unless they are described in an STC!

Third Step: Analyze Commerce or State Restrictions

Identify Restrictions that Might Apply Based on the Department with Jurisdiction

- For Commerce items, the analysis will be based on the Export Control Classification Numbers (ECCN)
- For defense related items, you ALWAYS need a license when it crosses a border

Commercial Jurisdiction

Are There Restrictions that Require a License?

- Check the destination
 - Is there a general exclusion or limit associated with the country?
- Check the persons involved in the transaction
 - Are the persons or entities excluded from US export transactions?
- Check end-use restrictions
 - Missiles, rockets, UAVs, nuclear, biological or chemical weapons

ECCN Notes

- Many avionics are subject to missile technology (MT) restrictions which means they must be licensed to be exported anywhere other than Canada
- Many non-avionics articles are shipped under ECCN 9A991, which does not usually require a license to most countries

Forbidden Parties

- Department of Commerce's Bureau of Industry and Security (BIS) lists:
 - Denied Persons List
 - <http://www.bis.doc.gov/dpl/default.shtm>
 - Denied Entities List
 - <http://www.access.gpo.gov/bis/ear/pdf/744spir.pdf>

Defense Related Articles

- When a defense related item is exported, the State Department requires
 - Registration of the broker, manufacturer and exporter
 - Licensure for the export
 - There are special concerns for re-export, as well (it cannot be done without registration and licensing)

Obtain Licenses ... Or Find Exceptions

*Is the transaction prima facie
prohibited?*

- Examine whether a license may be available
 - License requirements
 - License exceptions

BIS License Exceptions: Replacement of Parts (RPL)

- One-for one replacement of parts or servicing and replacement of equipment, e.g. exchange agreements.
 - Aircraft or part must have been legally exported in the first place - you must confirm the appropriate authority for the original transaction if you were not the aircraft exporter
 - Check the original license to make sure that there are no restrictions on replacement parts exports!
 - SAME part number – no improvements/upgrades
 - Obtain the core or confirm its destruction
- This is useful for replenishment of stock

BIS License Exceptions: Servicing (RPL)

- If an item is returned to the US for inspection, testing, calibration or repair (including overhaul and reconditioning)
 - No improvements or changes to basic characteristics
 - Only applies to group D:1 nations if you were the original licensed exporter and end-use has not change
 - Does not apply to group E:1 nations
 - See country group listings at:
<http://www.access.gpo.gov/bis/ear/pdf/740spir.pdf>

BIS License Exceptions: Civil Aircraft (AVS)

No License Required!

- Exports of equipment and spare parts for
 - Permanent use on an aircraft of any registry
 - Except an aircraft registered in a forbidden country, or owned or controlled by, or under charter or lease to, a forbidden country or a national of a forbidden country
 - The specific aircraft must be identified so you can verify its eligibility
 - Forbidden countries are Cuba and those in group D:1

BIS License Exceptions (AVS)

No License Required!

- Exports of equipment and spare parts to U.S. or Canadian airlines' installations or agents
 - Intended for maintenance, repair, or operation of US/Canadian-registered aircraft (but the specific aircraft need not be identified at the time of order)
 - Must not be located in (category D1) forbidden country
 - Ordered by the airline and sent to its own installation or agent

BIS License Exceptions (AVS)

No License Required!

- Exports to a specific U.S. or Canadian registered aircraft for AOG
 - Intended for maintenance, repair, or operation of US/Canadian-registered aircraft *in extreme need*
 - Aircraft must be at an airport NOT in Cuba nor a category D:1 forbidden country (except China)
 - AES record must be filed **unless** article exported by a *US air carrier* for their own use
- Includes foreign air carrier aircraft of US or Canadian registry

Strategies for Success

- *Know the Rules*
- *Establish Compliance Procedures*
- *Screen your Business Partners*
- *Use your Contracts and other Commercial Documents to Protect your Company*
 - *Include export restrictions*
 - *Obtain written verification of compliance from your business partners*

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I hope to see you all at the MARPA Conference
on September 29 – October 1, 2009 in Las Vegas