How New Export Controls Can Affect Your Business

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How to deal with export control regulations

The new Export Control Reform is a vital concern of many SMEs. See story beginning on page 6.

Publisher’s letter

Export control is a subject that strikes terror in some small to medium-sized exporters (SMEs). They do wonderful work with the finest of precision. Yet once it is ready to leave their dock, they just aren’t sure if they are violating some unknown federal procedure in terms of how it will be used and by whom.

Sure, they know who is buying the component, but find it difficult to determine if restrictions exist regarding its use in say the aerospace industry. Neither are they informed in what country the finished product will be used.

Last year, the US government revised its export control and enforcement framework. The new system is designed to enhance efficiencies and coordination within the US government, protect national security and critical technologies, and cut costs to US exporters.

This was done to make it easier to catch violators of the State Departments International Traffic in Arms Regulations (ITAR) and Commerce’s Export Administration Regulations (EAR), and the various Treasury regulations administered by the Office of Foreign Assets Control (OFAC).

Yet the complexities of converting SME procedures to comply with these nuanced regulations is daunting. It takes time and knowledge for SMEs to comply. However, compliance remains paramount because the US government is also consolidating its enforcement mechanisms.

This is the subject of this month’s edition, in which we profile a small manufacturer supplying the aerospace industry (Pg. 4), and offer a legal expert Tips column on export control (pg. 6).

For SMEs concerned about potential export control obligation, it is best to get in touch with your local US Commercial Service office, or your state’s EDC international trade office, your trade consultant or lawyer.
Automated Motion or AMI, as it is called, is a design engineering and contract manufacturing company located in Lee’s Summit, MO.

AMI produces more than 20 contract manufacturing products, including everything from Primer Firing, Test Systems to Robotic Controls, Printed Circuit Boards and Wiring Harnesses. But it’s AMI’s High Pressure Regulator Crew Mask Test Systems that comes under the somewhat broad parameters of what some might claim is export control.

“When we were first contacted about exporting one of our systems to an overseas maintenance, repair and overhaul company (MRO), we had no idea of what kind of regulations were required,”

These regulator testers automate the testing of airline crew oxygen masks and regulators. This computer-controlled test instrument eliminates the cumbersome, and sometimes inaccurate, manual adjustments for testing regulators and flow controls. They automatically adjust and monitor various controls and sensors.

IBNewsmag™
said Ralph Taylor, AMI Marketing & Engineering Manager. “Each system runs close to $200,000 and we just didn’t want to violate any US regulations that could hold up our export sales.”

AMI initially contacted the US Department of Defense (DOD) for guidance, but did not get definitive information. So, they turned to the US Commercial Service in Kansas City for assistance in determining what would be required. The then Director, Regina Heise, gave knowledgeable guidance to assure the company that their oxygen systems did not fall under either the Department of State’s International Traffic in Arms (ITAR) or the newly revised Department of Commerce’s Export Administration Regulation (EAR).

While that calmed any US export regulation concerns, the company did not know if, or what, import regulations existed for any given country. For this they turned to a number of freight forwarders, many of which could not answer AMI’s questions. “Thanks to the Missouri Department of Economic Development international trade office and DOC, we were given some information about exporting. One of the sites we found very interesting was www.export.gov. Working with MODED and DOC export control classification numbers (ECCN) and HS codes were determined,” Mr. Taylor explained. “Many of our clients use their own freight forwarders which complicates matters because many of them just don’t know. We talked to a few freight forwarders and settled on Held & Associates as the most helpful and knowledgeable.”

Ed Lawrence, AMI Sales & Marketing, pointed out that the company exports to Germany, Canada, Brazil, England and now Egypt. “While we sell some direct, most of our sales leads come from referrals – mainly from the MROs in various countries,” he said. “Now we know what needs to be done to export seamlessly, and our freight forwarding system certainly streamlines our efforts.”

For more information about AMI and its products, go to www.automatedmotion.com
Many small to medium-sized exporters (SMEs) have questions about export control and US government screening obligations.

Companies or individuals that ignore these obligations do so at their own risk. Fines and penalties for simple errors can be as much as $250,000 per shipment and criminal penalties lead to prison terms of 10 years: and they can also lose their right to export. The cost and disruption of an investigation can be even more.

It’s very important that SMEs have a screening process in place. They include:

1. **Restrictive Party Screening (RPS)**

   In order to identify whether a business relationship might violate US law, a “screening” effort consisting of lists maintained by US government organizations is necessary. RPS is vital to ensure compliance with US export control and other laws.

   The Bureau of Industry and Security of the US Department of Commerce (BIS), The Office of Foreign Assets Control of the US Department of the Treasury (OFAC), and the Directorate of Defense Trade Controls of the US State Department (DDTC) maintain lists of literally thousands of persons, entities, and countries to which the export, re-export, sale, or supply of merchandise of US-origin or by US persons is strictly limited. Indeed, in many such cases, any dealing or transaction of any kind by a US person is prohibited.

   Other countries including Canada, the United Kingdom, the European Union, Australia, Japan, etc., also have their own restricted parties’ lists. The US lists include:

   - **Specially Designated Nationals and Blocked Persons (SDNs)**: This is a list of blocked parties administered by the Department of Treasury’s OFAC.
   - **Denied Parties**: This is a BIS list of persons whose export privileges have been denied.
   - **Entity List**: These are entities suspected of involvement in proliferation activities.
   - **Unverified List**: This is a list of persons/entities that BIS has been unable to conduct pre-license checks.
   - **Debarred Parties**: These are persons who may not engage in trade involving USML-regulated merchandise and most US government contracts.
   - **Nonproliferation Sanctions State Department Lists**: This is a list of parties who have been sanctioned under various statutes.
   - **Foreign Sanctions Evaders List**: This is an OFAC list of entities who have attempted to evade US export control laws.

How to deal with export control regulations

By Chuck Ballard, Miller & Company P.C.
sanctions on Iran or Syria.

- **US Consolidated List**: This is a list that consolidates all of the US lists.

RPS is extremely important, and we strongly recommend that exporters and importers establish a system and implement procedures for carefully screening all parties and destinations involved in export and import transactions.

The parties on these lists may change daily. Implementing a screening schedule to include customer acquisition/setup, order entry, and prior to shipment. Several suppliers offer RPS computer software programs, which vary in price and effectiveness depending upon the specific needs of particular exporters that can be integrated in to existing software.

Alternately, in a non-routed export when you select the forwarder(s), your forwarder can undertake this service for a fee and send you a confirmation email for your records before the merchandise exports from the US.

**2. End Use/User Screening**

The Export Administration Regulations (EAR) also identify several end-uses for which exports are restricted. These include end-uses related to nuclear end-uses, chemical and biological end-uses, missile technology or development end-uses, and in the case of many countries, end-uses related to the military.

Both the EAR and OFAC regulations strictly limit exports to, or transactions involving, certain countries and/or their nationals. Comprehensive US economic sanctions/embargoes currently apply to Cuba, Iran, North Korea, and Syria. More limited, yet strict economic sanctions apply to the Congo, Sudan, Somalia, Russia, Belarus, Yemen, Venezuela, Zimbabwe, and other countries.

Re-exports or transfers to sanctioned entities are also generally regulated by the US government. Thus, you have an obligation to make sure your exports do not end up in the hands of any sanctioned entity or embargoed country.

For example, if your non-US distributor ships the product you exported to a customer in an embargoed country, you as the exporter from the US could be held accountable if you had “reason
to know” it was going to be diverted. If your non-US customer included your part in a foreign built product, that could also be an issue depending on the circumstances. If your customer ordered your product knowing it was for an embargoed or blocked customer, that would probably be a violation.

On the other hand, if your product is incorporated into another product, in most instances it will lose its identity and thus would not require a license to re-export to a non-embargoed country even if your product would typically require a license to ship to that country. The regulations are very nuanced, and unfortunately, the regulations are different depending on the destinations, what is being shipped, and which US agency has jurisdiction over control of the export.

If there are ever red flags in a transaction, it is important that the exporter investigate and resolve those suspicions as failure to investigate can be a violation of prohibition #10 in the EAR which prohibits proceeding with a transaction when there is reason to know a violation may occur. Even in instances where someone else makes the export, an investigation can involve multiple parties in the supply chain. These can be very intrusive and potentially expensive.

3. License Determination

Although most exports can be made from the United States without the requirement to obtain an export license, there are still many commodities where an export license is required. It is important to understand that many mundane products have classifications and may require a license. These include many high technology products, electronics, pumps, valves, machinery, items containing encryption, chemicals, parts for aircraft and marine vessels, telecommunications, sensors, guidance equipment, etc.

Some commodities may require a license to export to China, but might not require a license if being exported to Japan or the United Kingdom. Other items might require a license to export to both. The first step in being able to determine whether an item requires a license or not is to determine its Export Control Classification Number (ECCN). These are listed in Supplement No. 2 to Part 774 of the EAR, often called the Commerce Control List (CCL).

Commercial items that are not found in the CCL are classified as EAR99. Once the ECCN has been determined, it is relatively easy to determine whether the good requires a license by identifying the reason for control(s) shown in the CCL and checking that against the country chart found in Supplement 1 to Part 738 of the EAR.

4. Conclusion

Penalties and investigations have the potential to destroy a business and even ruin lives. They can be expensive and even the appearance of wrong doing can lead to a government inquiry. Exporters must ensure they understand how their products are going to be used and ultimately by whom. Failure to screen can be extremely costly.

Charles W Ballard, Miller & Co Export Compliance Director
Responsibilities include all aspects of export compliance; firm training, including effective export and import compliance programs – ECCN and USML classifications; export control jurisdictional determination; incoterms; commodity jurisdictions; technical assistance; agreements and manufacturing license agreements; technology control plans; the Foreign Trade Regulations; supply chain security programs; Global Trade Software and integration; logistics and other aspects of international trade. He worked in the high tech and defense industries managing various aspects of the supply chain, and the export-import management systems for Texas Industries, AMD and Emerson. cballard@millerco.com
A Few Practical Tips for doing business in Germany

- Be punctual.
- Use title and surnames in business settings.
- Shake hands before and after meetings with everyone. Handshake should be firm and brief. Refusing to shake hands is equivalent to an insult.
- CEOs dress conservatively – elegant (suits, ties and suits for women especially in banks and insurance companies. In creative branches or in jobs with no client contact, more casual attire is not uncommon).
- When conducting business, small talk should be minimal. No subjects that could cause disagreement e.g. politics and religion.
- Never discuss your or someone else’s income.
- Knock on closed door and wait for an invitation before entering.
- Germans provide many detailed explanations and expect the same.
- Schedule meetings well in advance.
- Be direct and frank in talking business. They will do the same.
- Keep your distance. Germans do not want to be “touchy feely.” (Including a certain distance during handshakes).

Germany Overview

- Slightly smaller than Montana
- Population Distribution: Fairly even population distribution
- Population: 80.5 M (July, 2017 est.)
- Population Growth: - 0.16% (2017 est.)

National Holidays:
- New Year’s Day - January 1
- Good Friday
- Easter Sunday
- Easter Monday
- Labor Day - May 1
- Ascension Day - 40 days after Easter
- Pentecost Monday - in 2017, on June 5
- Christmas (celebrated on Dec. 24, and includes Dec 25, 26)
- (The fifth season in many areas – Mardi Gras)

Economy

- Government: Federal parliamentary republic
- Capital City: Berlin
- Literacy Rate: 99% (figure does not include recent immigrants)

- Germany is known for the quality of its workmanship. The country’s economy is dominated by large conglomerates - many of
them have been existence for many years. But, in 2006 KMUs (small and medium-sized companies) employed 70.4% of gainfully employed persons (30.9 mil) and trained 9 of 10 apprentices/trainees. Approximately 700,000 (above all processing industry) were internationally active (547 billion Euros in foreign sales), equivalent to approx. 45% of all German exports, above all to European markets.

• GDP: 3.479 Trillion (2016 est.)
• GDP Growth Rate: 1.9%
• Unemployment Rate: 4.2% (2016 est.) [figure does not include recent immigrants]
• Exchange Rate: 1 US Dollar = 0.85 Euros
• Labor Force Makeup: Agriculture: 1.4%; Manufacturing: 24.2%; Services: 74.3% (2016)
• Major Industries: Iron & Steel, Coal, Cement, Chemicals, Machinery, Vehicles, Machine Tools, Electronics, Food and Beverage, Shipbuilding, Textiles

International Trade
Fourth largest exporter in the world

Total Exports: $1.322 Trillion (2016 est.)
• Major Exports: Motor vehicles, machinery, chemicals, computer and electronic products, electrical equipment, pharmaceuticals, metals, transport equipment, foodstuffs, textiles, rubber and plastic products.
• Major Export Partners: US - 8.9%, France - 8.4%, UK - 7.1%, Netherlands - 6.55, China - 6.4%, Italy -5.1%, Austria - 5%, Poland - 4.5%, Switzerland - 4.2%

Total Imports: $1.022 Trillion (2016 est.)
• Major Imports: Machinery, data processing equipment, vehicles, chemicals, oil and gas, metals, electric equipment, pharmaceuticals, foodstuffs, agricultural products.
• Major Import Partners: Netherlands - 13.3%, China -7.3%, France -7.3%, Belgium - 6.1%, Italy - 5.5%, Czech Republic, US - 4.6%, Switzerland - 4.4%, Austria - 4.4%, UK - 4.1%

German Business and News Websites
• Deutsche Welle (DW) - www.dw.com (English)
• Die Welt - www.welt.de (only in German)
• Frankfurter Algemeine Zeitung - www.faz.net (only in German)
• Handelsblatt - www.handelsblatt.com (only in German) - Number 1 business publication
• Handelsblatt Morning Briefing - free but must signup - morningbriefing.handelsblatt.com/global

Sampling of German Companies
• Adidas - www.adidas.com - clothing and footwear
• Arburg.com - www.arburg.com - injection molding equipment etc.
• BASF - www.basf.com - specialty chemicals
• Bayer - www.bayer.com - pharmaceuticals, pesticides, seeds, biotech
• Boehringer Ingelheim - www.boehringeringelheim.com - pharmaceutical
• Blohm & Voss - www.blohmvoss.com - ships, offshore oil and gas installations, aircraft
• Carl Walther - www.carl-walther.de - firearms and accessories
• Zeiss Gruppe - www.zeiss.de - semiconductors, medical equipment, optical equipment
• Deutz - www.deutz.com - diesel engines etc.
• Diehl - www2.diehl.com - aerospace, defense, industrial machinery
• Dräger - www.draeger.com - diving equipment, medical equipment
• Heraeus - www.heraeus.com - wide range of industrial machinery
• Leica Camera - www.leica-camera.com - cameras, lenses and optical equipment
• Phoenix Contact - www.phoenixcontact.com - electronic components and machinery
• Salzgitter - www.salzgitter-ag.de - steel products, packaging and filing equipment
• Schott AG - www.schott.com - glass and specialty chemicals
• Siemens – www.seimens.com – largest Europe-based electronics and electrical engineering company: integrated technology company with activities in the fields of industry, energy and healthcare
• ThyssenKrup - www.thyssenkrupp.com – one of the world’s largest steel producers plus high-speed trains, ships, elevators
• Voith - www.voith.com - power transmission and paper processing equipment
• Würth - www.wuerth.com - wide range of fasteners, tools, chemical-technical products and personal products
• Ziehl-Abegg - www.ziehl-abegg.com - wide range of fans and drive controls

By Paul Mastilak
InterMark3, Inc.
Suppliers of Foreign-Sourced Products/Components to OEMs Should Consolidate Shipments in Kansas City Foreign Trade Zones.

Purchase your foreign-sourced goods FOB Kansas City “duties unpaid”. Ship them “in-bond” to your shipper’s Foreign Trade Zone warehouse. If there is sorting, cleaning, repackaging or assembly to be done, do it there! Pay the duty when it leaves the warehouse and “Entered” into U.S. commerce…. perhaps a lower duty rate!

Your Entries can be consolidated on a weekly basis and filed as one entry. If your merchandise is being exported, you pay no US Customs duties at all! Save some money & be competitive!

The logistics of this global value chain combined with “duty-free” & “reduced MPF fee” benefits of the centrally located Greater Kansas City Free Trade Zone (GKCFTZ), will save you money on the real cost of your foreign-sourced products, and the final components that are Entered (if assembly or kitting changes its duty classification), as well as supply chain costs (value-base costs for bonding, insurance, and fees) and the expenses you incur to drawback duties on exported goods.

• Import parts for assembly to an FTZ and only pay duty when moving from the FTZ.

• Duties for assembled or finished products combining domestic and foreign parts are much lower when work is done in the FTZ.

• Pay no duties of foreign parts that are damaged or scrapped.

• Consolidate Entries into one per week and reduce Customs MPF fees.

• Eliminate duty drawback on exports by not paying duty upon Entry.

Talk to your shippers and logistics service providers and let them know you want to save money and expedite your shipments. Find out how the GKCFTZ can help your company speed product movement and save you money.

Call Al Figuly at 816.474.2227 or email alfiguly@gkcftz.com