Best Practices for Preventing Transshipment Diversion

The Office of Technology Evaluation, through extensive collaboration with U.S. industry (including exporters, freight forwarders, carriers, consolidators, express carriers, and others), established a list of best practices aimed at reducing unlawful diversion risks particularly to transshipment trade of Commerce Control List (CCL) items. These best practices are aimed at closing gaps industry encounters in export processing. OTE further analyzes the gaps to measure the effectiveness of and to recommend improvements to current business processes and government regulations. To build a strong industry-government partnership that assists in combating unlawful diversion risk, OTE presents the best practices and discusses the practical unlawful diversion risks at Bureau of Census Automated Export System (AES) seminars (see AES Compliance Training) and BIS seminars. The AES is a computer based system that collects electronic export information.

Following are the final best practices that reflect consideration of the public comments and other comments received from industry and other stakeholders through outreach and other activities.

2011 Best Practices for Preventing Unlawful Diversion of U.S. Dual-Use Items Subject to the Export Administration Regulations, Particularly through Transshipment Trade

Introduction

The best practices identified herein are intended to help industry guard against diversion risk. Both government and industry recognize that implementing effective export compliance programs is an important component of responsible corporate citizenship and good business practices.

The success of export control laws rests on well-managed and comprehensive export compliance programs. The diversion of dual-use U.S. origin items from authorized to unauthorized end-uses, end-users, or destinations, even inadvertently, undermines efforts to counter the proliferation of weapons of mass destruction, terrorism, and other threats to national and international security. Global ``transshipment hubs''--i.e., countries or areas that function as major hubs for the trading and shipment of cargo--pose special risks due to their large volumes of export, transit, transshipment, and import and re-export traffic. Such hubs make transshipment trade particularly vulnerable to the diversion of sensitive items to unlawful purposes.

To combat diversion risk, the Bureau of Industry and Security (BIS) has exchanged information with industry (including exporters, freight forwarders, carriers, consolidators, express couriers, and others) involved in the export of items subject to the Export Administration Regulations (EAR). BIS consolidated existing best practices and established new practices aimed at preventing diversion. BIS recognizes the importance of soliciting input from industry to define this new set of best practices to prevent diversion.

The publication of these best practices creates no legal obligation to comply with such practices on the part of any person, absent a legal requirement that is set forth elsewhere in the EAR. Compliance with these best practices creates no defense to liability for the violation of the EAR or other export control laws. However, demonstrated compliance with these best practices may be considered in assessing a person's conduct.

Although BIS issues this guidance on industry best practices as it applies to items and transactions that are subject to the EAR, the guidance clearly has broader potential application. BIS envisions this guidance as a step toward a strengthened dialogue with all members of the export logistics supply chain industry, other agencies that administer export controls, and foreign governments in a manner that may make the guidance pertinent beyond its application to the EAR.

Principles

These best practices are based on the following four principles:

- 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.

Practices

The following reflect new best practices that guard against diversion risk, particularly through transshipment trade.

Best Practice No. 1 – Companies should pay heightened attention to the Red Flag Indicators on the BIS Website and communicate any red flags to all divisions, branches, etc., particularly when an exporter denies a buyer's order or a freight forwarder declines to provide export services for dual-use items.

Best Practice No. 2 - Exporters/Re-exporters should seek to utilize only those Trade Facilitators/Freight Forwarders that administer sound export management and compliance programs which include best practices for transshipment.

Best Practice No. 3 -Companies should "Know" their foreign customers by obtaining detailed information on the bona fides (credentials) of their customer to measure the risk of diversion. Specifically, companies should obtain information about their customers that enables them to protect dual-use items from diversion, especially when the foreign customer is a broker, trading company or distribution center.

Best Practice No. 4 - Companies should avoid routed export transactions when exporting and facilitating the movement of dual-use items unless a long standing and trustworthy relationship has been built among the exporter, the foreign principal party in interest (FPPI), and the FPPI's U.S. agent.

Best Practice No. 5 - When the Destination Control Statement (DCS) is 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.

Best Practice No. 6 - An Exporter/Re-exporter should provide the ECCN or the EAR99 classification to freight forwarders, and should report in AES the ECCN or the EAR99 classifications for all export transactions, including "No License Required" designation certifying that no license is required.

Best Practice No. 7 - Companies should use information technology to the maximum extent feasible to augment "know your customer" and other due-diligence measures in combating the threats of diversion and increase confidence that shipments will reach authorized end-users for authorized end-uses.

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Publications:

2011 Best Practices for Preventing Unlawful Diversion of U.S. Dual-Use Items Subject to the Export Administration Regulations, Particularly through Transshipment Trade – July 2012

5 Written Public Comments to September 1, 2010 Notice of Inquiry (NOI)on BIS's draft Best Practices for Transit, Transshipment, and Re-export of items subject to the Export Administration Regulations (EAR) (75 FR 53639