

PROFESSIONAL ASSOCIATION OF EXPORTERS & IMPORTERS

Summary of Article on “Encryption Controls”

By Dan Fisher-Owens

["Exporting Technology and Software, Particularly Encryption, by Benjamin H. Flowe, Jr.,"](#)* provides an overview of export controls on dual-use technology under the Export Administration Regulations, (“EAR”), and the Sanctions regulations administered by the Treasury Department’s Office of Foreign Assets Controls. The article first provides basic guidance on controls over technology and software, second provides a summary of the so-called “deemed export” rule and related issues, third analyzes current export controls on encryption software (as well as technology and other items), and fourth offers some insights into applying export controls in an e-commerce environment. The article incorporates and analyzes the December 9, 2004, amendments to the EAR's encryption regulations.

Ben Flowe leads the export/import compliance team at Berliner, Corcoran & Rowe, L.L.P. in Washington, DC. The team is comprised of Ben and five other attorneys, including partners John Ordway (specializing in ITAR issues), Wayne Rusch (specializing in Sanctions), and associates Karl Abendschein, Ray Gold, and Dan Fisher-Owens (who divides his time between Washington and San Francisco).

Mr. Flowe has advised clients on all aspects of export control for over twenty-three years. He authored the comprehensive Export Compliance Guide (1995), is a member of the Commerce Department’s Regulations and Procedures Technical

Advisory Committee (Vice Chair 2001), has been chair or vice chair of the ABA’s Export Controls and Economic Sanctions Committee for seven years, and was Co-Chair of AeA’s Export Controls Committee in 2003. He has advised the Administration and testified before Congress on export control reform.

*To access article click hyperlink above or go to [http://www.paei.org/ExportingTechnologyandSoftwareEspEncryption-BFlowe1-2005\[1\].pdf](http://www.paei.org/ExportingTechnologyandSoftwareEspEncryption-BFlowe1-2005[1].pdf)

Mr. Fisher-Owens works for BERLINER, CORCORAN & ROWE, L.L.P., Attorneys at Law in Washington, D. C. He can be reached at dfo@bcr-dc.com.

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P.A.E.I. NEWSLETTER

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“Don’t Let This Happen To You.”

By Jo-Anne Daniels, PAEI Director

The Bureau of Industry (BIS), U.S. Department of Commerce, as many exporters know, implements export controls for the Department of Commerce through the Export Administration Regulations (EAR). On May 6th BIS’s website posted a link to their publication of [“Don’t Let This Happen To You.”](#)* This contained an extensive list of major investigation cases of Export Control and Antiboycott violations. One might wonder how otherwise good corporate citizens could find themselves on this [“Don’t Let This Happen to You.”](#)* publication. The answer is in many cases that these companies were blindsided by what they did not know. Education may be the remedy to this painful experience. If the companies had known better, many of these penalties would not have occurred. In fact, in many cases, companies discovered the violations that were committed and they voluntarily disclosed the fact to BIS, thereby mitigating their penalties.

Some of these cases are about companies in our neighborhood in the Silicon Valley. Take the wisdom learned from their experiences to explain why training is essential to good export controls. In addition, companies must look at their own business and determine if they have risk and develop their Export Management System (EMS) to insure compliance. If a company should discover that they have unintentionally committed a violation, in most cases, their penalty will be mitigated if they can show they have an effective export control program, they voluntarily disclose the violation and cooperate with BIS investigations. On the other hand, BIS penalty guidance advises that companies that deliberately conceal violations, disregard export compliance responsibility, have a history of violations, have a violation with a high quantity or export value and significant reason for control BIS considers this an “aggravating factor.”

Take these lessons about the investigations and violations and educate senior management and those responsible for exports about the consequences for being blindsided, such as \$1 M penalties for criminal export violations. Read the publication and learn how your company can avoid violations regarding the following: Antiboycott provisions, Successor Liability which

requires companies to perform due diligence for export controls before Merger and Acquisitions occur, “Deemed Export” violation by releasing technology or source code to a foreign national without obtaining an export license that may be required under the EAR, performing a comprehensive Export Denial screening (Denied Persons, Unverified List, Entity List, Specially Designated Nationals and Terrorist Lists and the Debarred List), license conditions violations, exporting without an export license and making false statement and misrepresentations of fact in the export declarations.

BIS advises that companies can best create a partnership by employing best compliance practices to avoid violations, negative publicity, fines and imprisonment and costs for legal representatives. Many companies are currently investing in with Sarbanes Oxley (SOX) and Customs- Trade Partnership Against Terrorism (C-TPAT) compliance programs and it is a must to invest in a solid Export Compliance program and create export compliance awareness if the corporation does global business.

*To access article click hyperlink above or go to http://www.paei.org/BIS_Dont_Let_This_Happen_To_You_2005.pdf

This article was prepared by Jo-Anne Daniels, President at Trade Resources & Associates, in El Granada, CA, <http://www.traderesourcesandassociates.com/>. She can be reached at tra3332003@yahoo.com or at 650-726-6764

PAEI Members Get Involved!

The P.A.E.I. Newsletter is a publication that is written by its many members. If you have an article you have written that you would like to be included in the next newsletter, please contact Dan Kromat at dan.kromat@ksicorp.com.

The PAEI Board of Directors is always interested in offering the education our members need. If you want to suggest a topic for a future course, please contact one of the PAEI Board members.

The PAEI Board looks forward to hearing from its valued members!

Reconciliation -- Update

By Dan Kromat, PAEI Director

Many of us already know that we have new time-period requirements for most Reconciliation entries. The Miscellaneous Trade and Technical Corrections Act of 2004 changed the time requirements for Reconciliation entry filing dates from 15 months maximum (from the date of entry) to 21 months maximum (from the date of entry) for Reconciliations covering value, classification, or 9802. This change is effective on February 9, 2005 and does not cover NAFTA or the Chile FTA claims, which stay at 15-month level, as do other types of Reconciliations covering entries dated prior to February 9, 2005.

The most recent Reconciliation Administrative Message (#05-0508) was issued to advise the importing community that (SILs) Supplemental Information Letters, involving issues "already flagged for Reconciliation" will not be accepted by CBP, unless they are clerical errors. Clerical errors would occur when prices were incorrectly typed on the invoice or the person preparing the Customs entry input a different number than what was identified on the invoice, etc. When a SIL is for a clerical error like those above and covers an entry under Reconciliation, Customs should be advised on the SIL document that the SIL is for a clerical error and covers a flagged Reconciliation entry, which must be amended in the CBP entry records. Obviously, value changes having to do with areas unknown at the time of entry such as assists or year-end accounting changes could not be corrected as clerical errors on Reconciliation flagged entries.

Customs advises that a "Flagged Entry Report" may be available with other (ACE) Automated Commercial Environment changes, by January – 2007. Currently CBP Recommends the National Finance Center reports of all liquidated and un-liquidated entries for the purpose verifying the entries filed which may be flagged for Reconciliation.

If you have any questions, please advise the author at dan.kromat@ksicorp.com

This article was prepared by Dan Kromat, Manager Customs Compliance, a Licensed Broker working for KSI Corporation in South San Francisco, CA. He can be reached at dan.kromat@ksicorp.com or 650-228-7155.

"Maximizing Profitability Through Duty Drawback"

By Tony Nogueras, PAEI Member

On March 29th National Semiconductor Corporation hosted a PAEI brown bag event entitled "Maximizing Profitability through Duty Drawback". Guest speaker Tony Nogueras provided a thorough overview of the drawback process from initial step of estimating potential recovery all the way through payment of the first drawback claim.

According to Mr. Nogueras, the primary proposal will dramatically change the way we construct claims by eliminating the need to present Customs with part number level detail. Instead, we will be able to group merchandise at the Tariff Number level when preparing drawback claims. The new rules would substantially liberalize the parameters for matching exports to commercially interchangeable imports when preparing a drawback entry in addition to moving drawback processing into ACE (Automated Commercial Environment). For many claimants, this change will result in substantially more potential drawback recovery. The new drawback proposal, however, faces the daunting challenge of actually becoming law.

Also of importance to the participants in attendance was the relatively new availability of drawback on both Merchandise Processing Fees (MPF) as well as Harbor Maintenance Fees (HMF). Specifically, companies that import high value merchandise in substantial volume can now claim drawback even in those instances when the majority of import activity is free of duty. Many high tech companies fall into this category, and thus could be sitting on substantial potential recoveries, especially when considering that the drawback regulations allow a claimant to recover drawback against the past three years of export activity.

This article was prepared by Tony Nogueras, the President of Alliance International CHB, Inc, a drawback specialty firm, <http://alliancechb.com/> (415) 460-6500.

Professional Association of Exporters and Importers Members ONLY Event



Members are invited to a FREE networking
and volunteer opportunity event!

Wednesday, July 20th, 2005
5:30 PM to 7:30 PM

Hotel De Anza, La Pastaia Restaurant
233 W Santa Clara, San Jose, California
(408) 286-8686

<http://www.lapastaia.com/about/geninfo.html>

Feast on Italian food, wine, & hors de oeuvres with your colleagues!
Learn more about PAEI Board Members and Volunteer Positions!

RSVP by Friday, July 8th, 2005 - PAEI MEMBERS ONLY

To: Tansie Iwafuchi fax- (408) 721-1233 email – tansie.iwafuchi@nsc.com
No “walk-in” or non-RSVP guests will be admitted.

Name(s): _____

* Name of 2nd corporate member (no charge)

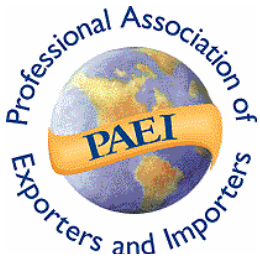
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Ron Parham Logitech, Inc

Renew

Sam Wong American Pacific Cargo, Inc
John Ramirez Communications & Power
Aaron Hardy Expeditors Int'l
Ken Hashimoto Expeditors Int'l
Laura Lane
Rodney Castro Adaptec, Inc
Ted Sorensen Adaptec, Inc
William Carter Varian
Eva Nash Varian
Jennifer Eldefonso UPS
P. Jean Yap Applied Materials, Inc
Brian Cochran Logitech, Inc
Maureen Flanders The Original Footwear Co.
Shannon Fox The Original Footwear Co.
Joseph Smith SDV (USA)
Laura Lyons palmOne, Inc

April 2005

New

Susan Sloan Rheodyne, LLC

Charlene Moeller Rheodyne, LLC
Renee Roe
June H. Lanning Novellus Systems, Inc

Renew

Kory Miners Dionex

May 2005

New

Diana W. Rowles Symmetricom, Inc
Donna A. Chappas Thermo Electron Corp.

Renew

Martina de la Torre Symantec Corp.
Johanna Avery KLA Tencor
Manny Litonjua KLA Tencor
Eric Mogi Sony Electronics
Hans Leumers Sun Microsystems, Inc
Trudi I. West Sun Microsystems, Inc
Loree Stevens Symmetricom, Inc

Upcoming P.A.E.I. Events

Mark Your Calendars!

- **Members ONLY Networking Social**
July 20th, 2005 5:30pm - 7:30pm
[http://www.paei.org/JulyPAEIMembersMtg1\[1\].pdf](http://www.paei.org/JulyPAEIMembersMtg1[1].pdf)
- **September 20 - 21, 2005**
“Complying with U.S. Export Controls”

PAEI is always interested in offering the education that our members need. If you want to suggest a topic for a future course, please call one of the PAEI Board Members.

Watch the PAEI Web site for these and other events, <http://www.paei.org/>.



P.A.E.I. Membership Information

The Professional Association of Exporters and Importers is an organization of professionals involved in import/export activities. Objectives of the association include promoting and fostering the role of the import/export professional, providing on-going education relative to regulatory issues, exchanging information and enhancing industry's participation in import/export control issues and policies.

P.A.E. I. sponsors quarterly luncheon meetings with featured guest speakers, a bimonthly newsletter, networking and job placement opportunities.

P.A.E.I. membership represents both large and small companies in the high-technology community. Membership is open to all persons interested in personal and professional growth in the international arena. Two types of memberships are available and are valid for one year from date of payment. For more information call the PAEI Message Center at telephone (800) 930-PAEI.

Complete this application and return it along with your check. **Make checks payable to: Professional Association of Exporters & Importers**, P.O. Box 612743, San Jose, CA 95161-2743. **PAEI's TAX ID NO: 680117035.** You may also pay online for your membership at the PAEI web site <http://www.paei.org/>.

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