



Professional Association of Exporters and Importers

“Leaders and Partners in Worldwide Regulatory Compliance”

February 2009

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PAEI Election 2009

By Jo-Anne Daniels, PAEI President

The votes were cast, ballots counted and election results determined. At the first board meeting of the 2009, I introduced and congratulated the new Directors, Marcia Davis, Gieselle Perez and Laura Putnam and welcomed them to the board.

The new board members are full of ideas and plans to promote new seminars and foster the roles of the Export and Import professional. They are all experienced PAEI Officers and Directors who understand PAEI’s goals and visions, that is to provide international trade education and networking and enhance industry’s participation in the current and future import and export control issues and policies.

We want to enlist our members to become involved in the organization. PAEI always appreciates contributions from members, such as, writing educational articles, organizing events, and other ways to give back to the trade and further PAEI’s mission and goals.

Inside this issue:

PAEI Board of Director Election Results 2009 By Jo-Anne Daniels	Cover
PAEI Board of Directors and Officers Contact Information	2
21st Annual Membership Meeting By Lydia Bostillo	3- 4
Deemed Exports, Beyond the Confusion By Dan Minutillo	4 - 6
Court of International Trade to Decide Scope of Traffic Heading 8486 for Semiconductor Manufacturing Equipment By George R Tuttle	6 - 9
PAEI/AeA One Day ITAR Training Session at NASA-Ames Research Center Recap By Laura Putnam and Loree Stevens	9 - 11
10 + 2 Importer Security Filing Rule Now in Effect	12 - 13
Commerce/BIS Posts Export Compliance Audit Module Self-Assessment Tool	13 - 14
Upcoming BIS Seminars	15 - 16
Watch Us Grow!	17 - 18
Directory Information	18
P.A.E.I. Membership Application	19

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21st Annual Membership Meeting

By Lydia Bostillo

On Wednesday, December 3, 2008, PAEI held its 21st Annual Membership Meeting at the Biltmore Hotel and Suites.

Each attendee received a raffle ticket, and door prizes were given out. The food was great, the door prizes were fabulous, and everyone had a wonderful time!



PAEI would like to thank the following companies who donated prizes that were raffled off:

- NetApp
- Fatima Guadamuz-Cabral
- FedEx Services
- Magellan Navigation
- Trade Resources & Associates

Much thanks to Marcia Davis who coordinated PAEI's Second Annual Toy Drive to support



InnVision. InnVision is the Silicon Valley's largest provider of housing and services to homeless and at-risk families and individuals. More than 16,000 people are served annually at 20 sites throughout the region. More than 80 New unwrapped gifts were brought to the Annual Membership meeting, and Marcia delivered them to InnVision. Thank you to the PAEI membership for supporting this worthy cause.

Pictures taken at the Annual Meeting are continued on 4.



Pictures taken at the Annual Meeting on December 3, 2008



We hope to see all those who attended the 21st Annual Membership Meeting and more PAEI members at the 22nd Annual Membership Meeting in December 2009!



Thank you Lydia for another fabulous year of prizes and food. The PAEI membership appreciates all the hard work you put into making this annual event such a success!



Deemed Exports Beyond the Confusion

By Dan Minutillo, Attorney at Law

PAEI Member

For all companies in the United States that have foreign nationals as part of their work force, 22 March 1994 was a day which started a chaotic and confusing relationship with the Bureau of Industry and Security and the Office of Export Enforcement. On that day, the so called “deemed export rule” was codified at EAR §734.2(b)(2) and (9). Prior to that day, Government officials involved in export enforcement advised companies informally that the deemed export rule existed and could be enforced but on 22 March, it became official as codified. There is no statutory requirement for this rule yet it is still part of the EAR and violation of the rule carries similar penalties as for other export violations, that is, to \$250,000 for civil penalties per violation and to \$1,000,000 and possible prison time for criminal violations. Regarding crypto source and object code, to further confuse the issue, arguments have been made inside and outside of enforcement agencies that the deemed export rule should only be enforced if there is a plan to export the technology in question prior to or at the time of the deemed export violation. In our globalized world, that would include more technology than it would exclude; and the breath of possible interpretations of the phrase “plan to export” is a prosecutors dream.

What is the deemed export rule and why is such a simple rule so confusing and wide reaching on application? Simply put, an export license is required if a foreign national, as an employee or a visitor to a company in the United States, has visual access to technology while in the United States if a license is required to export this technology out of the United States to the home country of the foreign national with such access. In other words, upon access to

(Continued on page 5)

(Continued from page 4)

technology in the United States, it is as if that technology has been exported out of the United States to the foreign national's home. If an export license is required to export such technology out of the United States to the home country of the foreign national, then a license is required prior to such access by the foreign national even though the technology never left our shores. The disclosure of technical data in the United States to foreign nationals is an export. The deemed export rule holds true even if the foreign national holds an H-1, H-1B, L, or F-1 visa but not if the foreign national holds a so called "green card".

The usual process of either self classification, if allowed, or classification by the United States Government through a classification request (SNAP-R or use of a 748-p form) in order to obtain or confirm an ECCN works for deemed exports in the same way that it works for exports from our shores or re-exports. Classify the technology; compare the classification to the appropriate charts to determine a reason for control, if any, and determine licensing requirements to the home of the foreign national. If no license is required on export to the home country of the foreign national, no license is required for a deemed export. Of course, go through the additional step of checking the name of the foreign national against various denied and unverified lists maintained by the United States Government to ensure that this employee or visitor is not a prohibited person.

Keep in mind that licenses will usually be required prior to access to technology for foreign nationals working in or visiting the United States from any embargoed country, presently, Iran, North Korea, Sudan, Syria and Cuba. Also, for embargoed or other countries which the United States considers hostile, it is important to look outside of the Export Administration Regulations (EAR) to determine if deemed export issues exist due to a treaty or other regulation embodied in statute like the Iranian Trans-

action Regulations or anti terrorist regulations applicable to countries like Syria which might further restrict a transaction involving a foreign national. Be aware that licenses may also be required for foreign nationals who are citizens of so called high risk countries which include the PRC, Russia, Iraq, Vietnam, Libya and a few of the old USSR split off countries. To be safe, do not stop your "deemed export" analysis at the EAR, check applicable treaties, statutory restrictions and other Government directives to ensure that the technology in question can be disclosed to the foreign national without a license considering this persons home country. Deemed export cases are easy to make for the United States Government so expect, as Government agents have recently indicated, more prosecution of such cases in the future. The evidence in such cases is easy to gather—a foreign national in the United States with access to technology requiring a license to the home of that national can trip an easy prosecution. Deemed export cases can result in multiple violations. Each illegal release can constitute a distinct and separate count in a complaint compounding possible criminal and civil liability and damages

The same exceptions which apply to the export of technology outside of the United States, generally apply to deemed exports. For example, if the criteria is met, license exception TSR can be used after the foreign national signs a special form of written assurance that they will not export (reexport) technology to D:1 or E:1 countries; or license exception ENC might be applicable for technology related to products which use or contain encryption, arguably even if there is a prior plan to export this technology. If it appears that you have a prima fascia deemed export problem, look to the license exceptions for an escape.

Considering all of this, and setting aside the theoretical application of the deemed export rule, what should a company do to protect itself? First,

(Continued on page 6)

(Continued from page 5)

determine if foreign nationals work at or visit the company. If so, have each sign a non disclosure or assurances agreement as mentioned above. Next, determine their home country. Look at the technology to which the foreign national will have visual access and ask if a license is required based on the ECCN of that technology to export to the home country of the foreign national. If so, does a license exception exist; and if the technology contains crypto source or object code, determine if the “plan to export” defense applies. Ideally, check applicable treaties or regulations outside of the EAR and various denied and unverified lists maintained by the United States Government. In most cases, a license will not be required and the analysis is complete. If a license is required, apply to the appropriate Government agency, and in most cases, if the foreign national is here legally, the license may be granted in about 60 days. As an aside, in the license application, describe the technology in question broadly to avoid the need for a broader re-application.

Though a bit outside the scope of this article, a company may want to include deemed export warnings in employment applications, employment manuals, all non disclosure agreements, visitor sign-in documents, and certain employment and consulting agreements, so long as not violative of a state or local law or regulation.

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Court of International Trade to Decide Scope of Traffic Heading 8486 for Semiconductor Manufacturing Equipment

By George R Tuttle, III, PAEI Member

The tariff classification of certain types of products can be particularly difficult to determine. Included in this group are components used with equipment for the manufacture and assembly of semiconductors, integrated circuits, and flat panel displays. Prior to the 2007 U.S. tariff schedule update, equipment used to manufacture and assemble semiconductors integrated circuits and flat panel displays was spread out over a number of different headings in the U.S. Tariff Schedules. As a result of the adoption of the 2006 updates to the WCO Harmonized Schedule Nomenclature by the United States, many headings of the HTSUS were added, eliminated, merged or separated into new tariff headings, with machinery and electronics (Chapters 84, 85 and 90) being particularly affected.

One of the beneficial changes included the creation of heading 8486, which is a duty free provision. An important purpose of heading 8486, HTSUS, was to provide for the consolidation of all subheadings and portions thereof scattered throughout chapters 84 and 85 of the HTSUS that cover machines and apparatus “of a kind used solely or principally for the manufacture of semiconductors, electronic integrated circuits and flat panel displays. Heading 8486 also includes “parts and accessories” for the equipment and apparatus of Heading 8486. But, this provision can be very tricky to apply.

According to General Rules of Interpretation (GRI) 1, goods are classified according to the language of the headings, and any relevant section and chapter notes.

(Continued on page 7)

(Continued from page 6)

Chapter 84, Note 9(D) provides that subject to Note 1 to Section XVI and Note 1 to Chapter 84, machines and apparatus answering to the description in heading 8486 are to be classified in that heading and in no other heading of the tariff schedule.

So, classifying goods under heading should be pretty simple right? Well, perhaps not. When is a machine or apparatus “of a kind used solely or principally” for the manufacture of the article enumerated in heading 8486?

The Case of ENI Technology and the Classification of RF Generators

Whether an article is “of a kind used solely or principally” for the manufacture of semiconductors or integrated circuits is one of the key issues that the Court of International Trade may decide in ENI Technology Inc. vs. United States, Consolidated Court No. 05-00170. The case is currently under consideration by the court on a motion for summary judgment, and a decision is expected later this year.

The merchandise in Consolidated Court No. 05-00170 are RF Generators. RF Generators are designed for use in plasma-based manufacturing applications, including semiconductors and integrated circuits. CBP, in ruling issued in 2003 (HQ 966466) said that the RF generators were classified in subheading 8504.40.95, HTSUS, as other static converters, which has a duty rate of 1.5%. ENI argued that the RF generators should be classified in subheading 8479.89.84, HTSUS, which provided for “Machines and mechanical appliances for the processing or production of semiconductor materials and integrated circuits.” Subheading 8479.89.84 is one of the predecessor provisions to heading 8486, which was created in 2007. CBP denied the protest and litigation ensued.

While ENI Technology involves the tariff classification of RF generators, the case could be about any number of articles that are used on or with equipment for the manufacture or production of semiconductor devices and integrated circuits.

An important provision of Chapter 85 is Note 1(c). Note 1(c) precludes the classification of machines and apparatus that are described in heading 8486 from classification in Chapter 85. Thus, if an article is “of a kind or class” of article described in heading 8486, it should be excluded from classification in other provisions found in Chapters 84 and 85.

Heading 8486, however, is a “use” provision. Classification in a use provision is determined by the principal use of the “class or kind” of products to which the imported merchandise belongs. See Additional U.S. Rule of Interpretation 1(a), HTSUS. To establish the class or kind of goods to which the imported merchandise belongs, the importer must present evidence which may include:

- (1) General physical characteristics of the merchandise and how these characteristics are similar to the goods of the heading for which classification is sought;
- (2) Expectations of the ultimate purchasers and whether the ultimate purchasers considered the goods to be of the class or kind of good which is described by the heading for which classification is sought;
- (3) Channels of trade in which the merchandise moves. Is the imported article sold in the same channels of trade as the class or kind of good which is described by the heading for which classification is sought?
- (4) Environment of sale (e.g., the manner in which the merchandise is advertised and displayed);

(Continued on page 8)

(Continued from page 7)

- (5) Usage of the merchandise;
- (6) Economic practicality of so using the import;
and
- (7) Recognition in the trade of this use.

Collection and presentation of this kind of evidence at the administrative level can be difficult and time consuming. The concept of reasonable care, however, would require importers to collect such information and evaluate their classification before using heading 8486.

Treatment of Parts and Accessories of Article of Heading 8486

In Ruling NY N034941, dated September 4, 2008, CBP held that an insulating sleeve, coupling ring, and base ring used in a tool for dielectric plasma etching of wafers were not classified as parts of machines of heading 8486. In the ruling, CBP said that Note 9(D) only refers to 'machines and apparatus' - not parts or accessories. The key terms to consider here are "machine" and "apparatus". Note 5 to Section XVI states that "For the purposes of these notes, the expression "machine" means any machine, machinery, plant, equipment, apparatus or appliance cited in the headings of chapter 84 or 85.

The term "apparatus" is intended to encompass a group of devices or a collection or set of materials, instruments or appliances to be used for a particular purpose or a given end. ITT Thompson Industries, Inc. v. United States, 3 CIT 36, 44, 537 F. Supp. 1272, 1277-78, aff'd 703 F. 2d 585 (Fed. Cir. 1982). See also The Deseret Co., v. United States, 10 CIT 609, 611 (1986), broad definition of apparatus encompass "an aggregate of materials intended for a specific use".

Thus, an important question to ask is whether the goods in question make up a machine or apparatus. If the goods in question are components of a machine but do not comprise a machine or an "apparatus" in and of themselves, note 9(D) cannot be claimed as a basis for classification in subheading 8486.90.0000, HTSUS, and the goods are classifiable as parts or accessories in accordance with note 2 to Section XVI.

Section XVI, Note 2(a), HTSUS, provides that parts which are goods included in any of the headings of chapter 84 or 85 (other than Heading 8409, 8431, 8448, 8466, 8473, 8487, 8503, 8522, 8529, 8538 and 8548) are in all cases to be classified in their respective headings. Absent a specific heading, parts, if suitable for use solely or principally with a particular kind of machine, or with a number of machines of the same heading are to be classified with the machines of that kind, or in Heading 8409, 8431, 8448, 8466, 8473, 8503, 8522, 8529 or 8538, as appropriate.

The definition of "part" was first articulated by the United States Court of Customs and Patent Appeals (CCPA) and later adopted by the Court of International Trade (CIT). The Court stated that "... a 'part' of an article is something necessary to the completion of that article. It is an integral, constituent, or component part, without which the article to which it is to be joined could not function as such article." Thus, merely because an article can be used with something else, it does not necessarily mean that it is always a "part" of that article for tariff classification purposes. To be an "accessory" to a machine classifiable in Heading 8486, the article must contribute to the effectiveness of the principal article. To be considered an accessory, the article must widen the range of uses of the machine or improves the operation of the machine. NY N019125, dated November 21, 2007.

(Continued on page 9)

(Continued from page 8)

In HQ H009854, dated June 15, 2007, concluded that a fan filter unit (FFU) used in semiconductor wafer processing equipment was excluded from classification in heading 8486, even though it was a component of a factory interface (FI), which was said to be used to move wafers between wafer process modules. CBP concluded that while the FFU was used with semiconductor wafer processing equipment, it was a part or accessory of such, but that Section XVI, Note 2(a), HTSUS, required the FFU to be classified as a fan, rather than a part or accessory of a machine or apparatus heading 8486.

While heading 8486 can provide significant savings in duties for articles used with equipment for the manufacture or production of semiconductors and integrated circuits, importers need to exercise reasonable care and carefully consider the basis for classification of the article under heading 8486.

Critical to the classification of the article to determine: (a) whether the article is a "machine" and "apparatus," and (b) whether it is principally used with the class or kind of article described in heading 8486. If the article under consideration is not a "machine" or "apparatus," it may still fall within the scope of heading 8486 as a part or accessory; however, importers must consider whether the article is provided for by a more specific provision, pursuant to Section XVI, Note 2(a), HTSUS, and whether such provision will prevail over heading 8486.

For more information regarding these issues, contact George Tuttle, III at (415) 986-8780 or geo@tuttlelaw.com. George R. Tuttle, III is an attorney with the Law Offices of George R. Tuttle in San Francisco.

PAEI/AeA One Day ITAR Training Session at NASA-Ames Research Center

By Laura Putnam and Loree Stevens

PAEI and AeA had their first ITAR Training Session given at NASA-Ames Research Center in Mountain View January 20, 2009. We have had positive feedback from those that attended. There were seven speakers and fifty-eight attendees. PAEI and AeA were extremely fortunate to have the following speakers:

Mr. Robert Warren – Senior Licensing Officer with the State Department

Mr. Dan Fisher-Owens – Attorney with Berliner, Corcoran & Rowe L.L.P

Mr. Jim Crossen – V.P. and General Counsel with Endwave Corporation

Ms. Carol Truhe - Trade Compliance Manager with Actel Corporation

Ms. Nancy Boughton, Director of World wide Trade Compliance with Varian Medical

Mr. Steve Brotherton, Partner, at Fragomen, Del Rey, Bernsen & Loewy, LLP

Mr. Raj Shea, Export Administrator with NASA-Ames Research Center

Mr. Kerry Scarlott, Attorney with Posternak, Blankstein and Lund LLP

Ms. Jo-Anne Daniels, President of PAEI, started off the Training Session by welcoming all Speakers and Attendees then giving a brief description of PAEI and AeA. She also gave a brief description of future PAEI seminars for 2009.

Ms. Daniels then introduced Mr. Robert Warren who is a Senior Licensing Officer with the State Department.

It was a great pleasure and privilege to have Mr. Robert Warren at our first ITAR Training Session. **Mr. Warren** shared with us a **Trade Defense Over-**

(Continued on page 10)

(Continued from page 9)

view and opened up with the State Departments mission which is “Advance U.S. National and foreign policy through licensing of direct commercial sales in defense articles and the development and the enforcement of defense trade export control laws, regulations and policies.” **Mr. Warren went onto discuss *Agreements – Issues and Guidance***, which was very enlightening to all. Unfortunately, Mr. Warren ran out of time and couldn’t complete his presentation. All attendee’s did receive hand-outs for review. PAEI realizes that they will need to make additional time for State Department Speakers in the future to ensure that all presentations have been delivered as stated in the program.

Following Mr. Warren was **Mr. Dan Fisher-Owens with *Berliner, Corcoran & Rowe, LLP* who spoke on *Commodity Jurisdiction***. Mr. Fisher-Owens gave an overview of:

- The Scope of the USML
- DJ Legal Standards and Application
- CJ request Procedures and Practicalities
- Issues for Software/Technical Data.

We then broke for lunch where **Jim Crossen, V.P. and General Counsel with *Endwave Corporation*** gave a twenty minute presentation on ***ITAR Export Control***.

The afternoon program was extremely helpful. We were fortunate to have **Ms. Carol Truhe, Trade Compliance Manager with *Actel Corporation***. Ms. Truhe who has set-up ITAR Compliance programs for several companies within Silicon Valley and gave us all the ***Key Success Factors of an ITAR Compliance Program***, which were:

- Policies and procedures – written
- Knowledge and understanding of company and product

- Creation of product teams
- Commodity Jurisdiction – nearly impossible to have compliance without
- Communication
- Training
- Accessibility for questions and concerns
- Audits

The rest of the afternoon consisted of two panel sessions each having a moderator and with Mr. Robert Warren on hand for comment.

The first panel session discussions were: ***ITAR License Applications – Hurdles/Common Mistakes/Pitfalls***. The panel consisted of Mr. Steve Brotherton, Parnter at Fragomen, Del Rey, Bernsen & Loewy, LLP and Kerry Scarlott, Attorney with Posternak, Blankstein and Lund LLP. Both presenters gave separate presentations. The moderator was Mr. Dan Fisher-Owens:

Mr. Kerry Scarlott Presentation Included:

- Defense Articles enumerated on the U.S. Munitions List
- Technical Data – what is and isn’t ITAR Licenseable
- Defense Services Provided by a Foreign National
- Arms Embargoes
- Various Types of ITAR Agreement Authorizations and Tips
- DTC Response Times

Mr. Steve Brotherton Presentation Included:

- License Applications Requirements and Tips
- Application Planning
- The Various License Application Forms
- DDTC Case Review Breakdown

(Continued on page 11)

(Continued from page 10)

The second panel session discussed the *ITAR Compliance Program – Best Practices*. The panel participants were Dr. Raj Shea, Export Administrator with NASA-Ames Research Center and Ms. Nancy Boughton, Director of Worldwide Trade Compliance at Varian Medical. Mr. Steve Brotherton was the moderator. The twelve best practices discussed were:

- Senior Management Commitment
- Establish an Export Compliance Counsel
- Quality of Staff
- Instruction Manuals
- Export Compliance Intranet Site
- Training and Education
- Design a License Application Process
- Proper Implementation of Licenses and Proviso's
- Control Plans/Safeguards for Foreign National's
- Record Keeping
- Audits and Assessments
- Violation Process

This one-day training session proved extremely helpful to the Trade Community. PAEI is looking to continue the ITAR Training Session either at the end of 2009 or beginning 2010.

PAEI and AeA would like to thank NASA-Ames Research Center, Pamela Pancoast, the Speakers and the Volunteers for making our first ITAR Training Session a success.



Upcoming PAEI/BIS Events

Mark Your Calendars!

- **May 19 - 20, 2009**
BIS “Complying with U.S. Export Controls”
- **May 21, 2009**
BIS “Technology Controls”
- **September 23 - 24 , 2009**
BIS “Complying with U.S. Export Controls”

Upcoming PAEI Events

Details coming soon!

- **April 10, 2009**
Technology Transfers and Deemed Exports Seminar
- **April 21, 2009**
Vendor Fair

Watch the PAEI Web site for these and other events,

<http://www.paei.org>



10+2 Importer Security Filing Rule Now in Effect

As reported in *The Daily Bugle online newsletter publication by James Bartlett on
Wednesday, January 28, 2009

The “10+2” importer security filing rule took effect as scheduled Jan. 26 after U.S. Customs and Border Protection confirmed that this rule would not be affected by a White House request for a 60-day delay of all pending regulations. As a result, importers and maritime cargo carriers must now submit additional cargo data to CBP before vessels are permitted entry into the country.

In a Jan. 20 memo White House Chief of Staff Rahm Emanuel asked all federal agencies to consider a 60-day extension of the effective date of any regulations that had been published but had not yet taken effect and to reopen for 30 days the comment period on any such rules. CBP states that it decided not to comply with that request with respect to the 10+2 rule based in large part on the fact that its rulemaking process was procedurally adequate, that a 75-day public comment period had already been provided on the proposed rule and that the interim final rule is now subject to an additional six-month comment period. CBP added that the Jan. 26 effective date will allow it to work with industry on testing and improving the systems of this initiative during the structured review and delayed enforcement period that runs through Jan. 26, 2010.

Under the 10+2 rule importers will have to include ten data elements on each importer security filing,

including information that identifies the manufacturer, supplier, seller, buyer and consignee; the country of origin and tariff classification number; where and by whom the goods were stuffed into the container; and the party responsible for compliance with applicable import requirements. Five data elements will be required for shipments consisting entirely of freight remaining on board cargo or goods intended to be transported in-bond as an immediate entry or transportation and exportation entry, including who is paying for the transportation of the goods and where the goods are headed. CBP’s goal is to have all data elements filed 24 hours prior to lading; however, it has allowed for some flexibility either in timing or interpretation for six of the data elements.

It is important to note that importers are legally responsible for the accuracy and timeliness of the ISF, regardless of whether a broker or other intermediary actually files it. To help importers meet their obligations under this new rule, Sandler, Travis & Rosenberg, P.A., and its affiliated company Sandler & Travis Trade Advisory Services Inc. have developed a suite of tools that will promote better coordination with supply chain members and the collection and filing of the required information. These tools are also helpful for brokers filing the ISF on behalf of importers. The tools include:

(Continued on page 13)

(Continued from page 12)

- 10+2 preparedness survey and business profile for evaluating your readiness to comply with the regulations
- 10+2 compliance checklist detailing the steps you will need to take with your supply chain partners to implement a sound 10+2 system
- frequently asked questions about 10+2
- ready-to-send instructions to your supply chain partners

For more information, please contact Drew Warner at (248) 474-7200, Laura Siegel Rabinowitz at (212) 883-1300 or Melissa Miller Proctor at (305) 267-9200.

Source Document:

www.strtrade.com/wti/register.asp



The Northrop Grumman Corporation Law Department sends the NGC Export/Import Daily Update ("The Daily Bugle") every business day to nearly 2,000 subscribers to help NGC employees, customers, and others comply with U.S. defense and high-tech trade restrictions and Federal business ethics regulations.

<http://www.strtrade.com/wti/wti.asp?pub=0&story=30124&date=1%2F28%2F2009&company=>

Commerce/BIS Posts Export Compliance Audit Module Self-Assessment

As reported in *The Daily Bugle online newsletter publication by James Bartlett on

Tuesday, February 24, 2009

U.S. DEPARTMENT OF COMMERCE; BUREAU OF INDUSTRY & SECURITY; OFFICE OF EXPORTER SERVICES EXPORT MANAGEMENT & COMPLIANCE DIVISION,
www.bis.doc.gov EXPORT MANAGEMENT & COMPLIANCE PROGRAM

Audit Module: Self-Assessment Tool February, 2009

Introduction

This is a tool created for exporters to aid in the development of an Export Management and Compliance Program. It may be used to create a new program or to assess whether internal controls have been implemented within an existing program with the purpose of eliminating common vulnerabilities found in export compliance programs. Each company has unique export activities and export programs; therefore, this is an example to build upon and does not include ALL Export Administration Regulations restrictions and prohibitions. This tool is a combination of best compliance practices implemented by U.S. companies, auditing practices, and Export Administration Regulations requirements.

Methodology

An effective EMCP consists of many processes that connect and intersect. The connections and intersections must be planned, and then, clear directions must be given to those who are to follow the rules of the program. Without maps (instructions), chances are that personnel will all go in their own directions, leaving them vulnerable to getting lost on the way and chancing that key connections are missed, resulting in violations of the intended rules of the program. To use this self-assessment,

first look to see if your program includes written instructions that create the connections and intersections needed to maintain compliance. Within the self-assessment columns, "Y/N/U" stands for Yes/No/Uncertain or Indeterminate.

PRE-AUDIT CHECKLIST:

- Identify business units and personnel to be audited.
- Send e-mail notification to affected parties.
- Develop a tracking log for document requests.
- Prepare audit templates such as interview questions, transactional review checklist, audit report format, etc.
- Each business unit should provide their written procedures related to export compliance before the audit.
- Personnel at all levels of the organization, management and staff, should be interviewed to compare written procedures with actual business practices.
- Identify gaps and inconsistencies.

POST-AUDIT CHECKLIST:

- Write audit report.
- Executive Summary [Purpose, Methodology, Key Findings]
- Findings and Recommendations [Organize in Priority Order]
- Appendices [Interview List, Document List, Process Charts]

- Conduct post-audit briefing for affected business units to discuss audit findings and recommendations.
- Provide draft report. This is an opportunity for business units to address inaccuracies in report.
- Obtain commitment from business units for corrective action. Include in audit report.
- Brief executive management on audit findings and recommendations.
- Track corrective actions. Within the year, audit corrective actions.

(Source:

http://www.bis.doc.gov/complianceandenforcement/emcp_audit.pdf)

[Notice courtesy of Clif Burns, cburns@pogolaw.com. See related counsel comment below.²⁰Excerpts of 31-page document.]

The Northrop Grumman Corporation Law Department sends the NGC Export/Import Daily Update ("The Daily Bugle") every business day to nearly 2,000 subscribers to help NGC employees, customers, and others comply with U.S. defense and high-tech trade restrictions and Federal business ethics regulations.

** SUBSCRIPTIONS: Send request to James.Bartlett@NGC.com. Requests must come from the email address to be subscribed. Please include your full professional contact information (name, title, company, address, and telephone), and tell us how you heard about the Ex/Im Daily Update.*



The Bureau of Industry and Security
In Collaboration With The
Professional Association of Exporters and Importers



Are proud to offer:

“Complying with U.S. Export Controls”

Tuesday, May 19 – Wednesday, May 20, 2009

Santa Clara, California

This two-day program is led by BIS's professional counseling staff and provides an in-depth examination of the Export Administration Regulations (EAR). The program will cover the information exporters need to know to comply with U.S. export control requirements on commercial goods. We will focus on what items and activities are subject to the EAR; steps to take to determine the export licensing requirements for your item; how to determine your export control classification number (ECCN); when you can export or reexport without applying for a license; export clearance procedures and record keeping requirements; Export Management Compliance Program (EMCP) concepts; and real life examples in applying this information. Presenters will conduct a number of "hands-on" exercises that will prepare you to apply the regulations to your own company's export activities. This program is well suited for those who need a comprehensive understanding of their obligations under the EAR.

Instructors: The instructors are experienced export policy specialists, and enforcement personnel from BIS's field offices, as well as representatives from other U.S. government agencies, as appropriate. The instructors will be available throughout the seminar to answer your questions.

Location/time: Hilton Santa Clara, 4949 Great America Parkway, CA 95054. Registration and a continental breakfast begin at 7:30. The program begins at 8:30 and end at 4:30 pm.

Accommodations: Please make your room reservations directly with the Hilton Santa Clara by calling (408) 330-0001. **Reserve your room by Monday, April 20, 2009** to receive the “PAEI” discounted rate of \$189. www.hiltonsantaclara.com.

Registration: Cost of this two day seminar is \$350, which includes breakfast, lunch, breaks and training materials. No telephone, fax, nor checks will be accepted for registration. **All registrations for this event must be paid in advance and processed using a credit card online, at** <http://www.acteva.com/booking.cfm?bevaid=175874> (VISA, AMX, or MasterCard)

Last day to register is Tuesday, May 12, 2009. **REGISTER NOW!**

NO REFUND FOR CANCELLATIONS MADE AFTER Friday, May 8, 2009. PAEI Tax ID#:680117035. For registration questions, please contact Karen Hebert: (408) 532-7234, khebertdms@aol.com

Questions regarding topics covered should be addressed to BIS's Western Regional Office at (949) 660-0144.



**The Bureau of Industry and Security
In Collaboration With The
Professional Association of Exporters and Importers**



Are proud to offer:

“Technology Controls”

Thursday, May 21, 2009

Santa Clara, California

This intermediate level full-day program will offer a comprehensive look at how to comply with the U.S. export and reexport controls relating to technology, software and encryption. The morning portion will focus on the regulatory requirements relating to technology and software, including what is considered an export or reexport of technology or software; what technology and software is subject to the EAR; how to determine the Export Control Classification Number; what license exceptions are available; and the unique application requirements of technology and software. BIS technical and policy specialists will also discuss important export control issues that may arise in the employment of foreign nationals and for foreign items incorporating, or produced from, controlled U.S.-origin software and technology. The afternoon portion will also include a discussion of the unique provisions related to encryption under the EAR.

Recommended prerequisite: Essentials of Export Controls or Complying with U.S. Export Controls or equivalent experience.

Location/time: Hilton Santa Clara, 4949 Great America Parkway, CA 95054. Registration and a continental breakfast will begin at 7:30. The program will begin at 8:30 and end at 4:30 pm.

Accommodations: Please make your room reservations directly with the Hilton Santa Clara by calling (408) 330-0001. **Reserve your room by Monday, April 20, 2009** to receive the “PAEI” discounted rate of \$189. www.hiltonsantaclara.com.

Registration: The cost of this full day seminar is \$250. Breakfast, lunch, breaks and training materials will be provided.

No telephone, fax, nor checks will be accepted for registration. **All registrations for this event must be paid in advance and processed using a credit card online, at**

<http://www.acteva.com/booking.cfm?bevoid=175875> (VISA, AMX, or MasterCard)

Last day to register is Tuesday, May 12, 2009. **REGISTER NOW!**

NO REFUND FOR CANCELLATIONS MADE AFTER Friday, May 8, 2009. PAEI Tax ID#:680117035. For registration questions, please contact Karen Hebert: (408) 532-7234, khebertdms@aol.com

For more information or questions on the topics to be covered, please call BIS's Western Regional Office at (949) 660-0144.



WATCH US GROW!

November 2008

New

Geoff Harbell Alliance International

Renew

James A. Koroma Bartell Drugs Company
 Kelly Raia American River International
 Neil Lenok American River International

December 2008

New

Adela Springer Hitachi Global Storage Tech.
 Jane Iacono New Focus A Division of
 Bookham
 Alan A. Todi Acer America Corp.
 Linda Stolt Radar Systems Technology, Inc.

Renew

Michael Truong Hitachi Global Storage Tech.
 Fatima Guadamuz-Cabral
 Cynthia Hall
 E. Patricia Barney NVIDIA Corporation
 Henry Pizarro NVIDIA Corporation
 Gieselle Perez NVIDIA Corporation
 John Nieberding Varian, Inc.
 Elia Quiros Varian, Inc.
 Hardip Phangureh New Focus A Division of
 Bookham
 Joseph T. Chou Acer America Corp.
 Surya Dhamija Air 7 Seas Transport Logistics
 Maxine Curry Apple, Inc.
 Gendy Allbrook Apple, Inc.

Loren R. Sorensen Sorensen Associates
 Tansie Iwafuchi NetApp
 Wanda Gilmore BAE Systems
 Jessica Hill EntryPoint Consulting
 Myra Ramos Traffic International Corp.
 Peggy Jean Yap Applied Materials, Inc.

January 2009

New

Jassana M. Barrera KLA-Tencor Corp.
 Sheila Jean Neri Mattson Technology, Inc.
 Chris Menicou Mattson Technology, Inc.

Renew

Kathy Belick SGI
 Brian Clark Eudyna Deices USA
 David Castro Eudyna Deices USA
 Michelle Scott-Horwitz Seagate Technologies, LLC
 Mar O'Brien Seagate Technologies, LLC
 Edward J. Radlo Sonnenschein Nath &
 Rosenthal LLP
 Beverly Gonzales
 Maria Contrestano Qualcomm, Inc.
 Bill Volner Allergen, Inc.
 Jim Stuhlbarg Synopsys, Inc.
 Daniel Swineheart Palo Alto Research Center

February 2009

Renew

Jo-Anne Daniels Trade Resources & Assoc.
 Johanne Dictor Trade Resources & Assoc.
 Jill Chen KLA-Tencor Corp.
 Jeff Hopkins Altera Corp.
 Angela Colvin Altera Corp.

(Continued on page 18)



Continued from page 16

WATCH US GROW!

John Ramirez	Communications & Power Industries, Inc.
Deborah Ferry	Adaptec, Inc.
Anne van de Heetkamp	TradeBeam, Inc
Wendy Thompson	TradeBeam, Inc.
Rocco Gattuso	International Trade Solutions
Terri Bury	McAfee, Inc.
Tammie Rostant	McAfee, Inc.
Mark Yee	Applied Biosystems/Life Technologies
Katya Winder	Applied Biosystems/Life Technologies
Dan Kromat	Varian Medical
Carla Ventura	

PAEI Members Share Your Insights!

The P.A.E.I. Newsletter is a publication that is written by its many members. If you have an article you have written, or have any web site that you would like to share with your fellow PAEI members in the next newsletter, please contact:

Karen Hebert at Karen.Hebert@paei.org

2009 Membership Directory**FINAL CALL FOR
INFORMATION CHANGES!**

It is that time of year again when we start to prepare for the new PAEI Membership Directory. We want to make sure that we have all current PAEI members information listed with correct contact information for your membership. If your membership is more than **30 days past expiration**, and you wish to be included, please make sure to send in your membership dues. You can renew online, using a credit card,

<http://www.acteva.com//booking.cfm?bevaaid=1699>

Information that is included in the PAEI Membership Directory is as follows:

Members Name, Title, and Company Name

Telephone Number, Fax Number

And E-mail Address.

It is very important that we have your current e-mail address, because most PAEI announcements and PAEI newsletters are sent via e-mail only.

Only current PAID members will be included in the 2009 PAEI Membership Directory.

**All information must be received by
Wednesday, March 11, 2009.**



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/>.

Check Membership Choice:

\$25 Student (must be full time student) \$50.00 Individual \$150.00 Corporate**

Name: _____

Title: _____

Phone: _____ Fax: _____

E-mail: _____

Company/Corporate Name: _____

Mailing Address: _____

City, State and Zip: _____

****Corporate members please indicate second name:**

2nd Name: _____

Title: _____

Phone: _____ Fax: _____

E-mail: _____

How did you hear about P.A.E.I.? _____