

Responsibilities Of Parties In "Routed" Export Transactions Under The EAR And FTSR

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Do you know the difference between a "routed" export transaction and a "non-routed" export transaction? Not knowing can be a violation of the Census and BIS regulations and can cost you money commented Jerome Greenwell, Branch Chief, Regulations, Outreach and Education Branch, U.S. Census Bureau's Foreign Trade Division at the August 16, 2006, CBFANC educational workshop on U.S. Export Regulations.

What Are Routed Export Transactions?

For routed export transactions, there is often a lack of understanding with respect to the legal responsibilities of parties to an export transaction. In a joint Federal Register publication, the Bureau of Census and the former Bureau of Export Administration (now "BIS") clarified these roles and responsibilities. In its final rule ([July 10, 2000, 65 F.R. 42556 and 65 F.R. 42565](#)), BIS defines a "routed export transaction", as well as "principal parties in interest".

In a routed export transaction, the foreign-principal-party-in-interest (the "FPPI") authorizes a U.S. forwarding agent to facilitate the export of items from the United States on their behalf. In its July 10, 2000, *Federal Register* notice, BIS and Census explain that:

In a "routed export transaction," the foreign principal party in interest agrees to terms of sale [typically an *ex works* transaction] that may include assuming responsibility for export licensing. This rule provides that when the foreign principal party expressly assumes responsibility in writing for determining license requirements and obtaining necessary authorization, that foreign party must have a U.S. agent who becomes the "exporter" for export control purposes. Without such a written undertaking by the foreign principal, the U.S. principal is the exporter, with all attendant responsibilities.

According to Section 758.3 of the Export Administration Regulations ("EAR"):

The U.S. principal party in interest is the exporter, except in certain routed transactions. The exporter must determine licensing authority (License, License Exception, or NLR), and obtain the appropriate license or other authorization.

With respect to "routed transactions", however, the rules states:

(b) Routed export transactions. All provisions of the EAR, including the end-use and end-user controls found in part 744 of the EAR, and the General Prohibitions found in part 736 of the EAR, apply to routed export transactions. The U.S. principal party in interest is the exporter and must determine licensing authority (License, License Exception, or NLR), and obtain the appropriate license or other authorization, unless the U.S. principal party in interest obtains from the foreign principal party in interest a writing wherein the foreign principal party in interest expressly assumes responsibility for determining licensing requirements and obtaining license authority, making the U.S. agent of the foreign principal party in interest the exporter for EAR purposes.

BIS adopted a requirement of obtaining a separate writing to confirm that the foreign buyer has, in fact, accepted responsibility for the export clearance of the goods in a routed transaction, stating:

This [writing] is similar to the language that describes the buyer's responsibility for export licenses in the Incoterms 2000 publication. BIS's sample writing would be signed by the foreign principal party in interest, and reads, "I undertake to determine any export license requirements, to obtain any export license or other official authorization, and to carry out any customs formalities for the export of the goods."

Therefore, if by contractual agreement, a foreign customer has agreed to an *Ex Works* transaction, and agrees to accept responsibility to obtain any export license or other official authorization to carry out the export of the goods, the U.S.-principal-party-in-interest ("USPPI") is relieved of its responsibility for the legal requirements of the shipment.

Responsibilities of Parties in a Routed Export Transaction

Assuming the foreign customer follows through with its obligation to accept responsibility to export the goods, and issues to the USPPI the appropriate writing, what must be done next? According to both the EAR and the FTSR, in a routed export transaction:

. . . where the foreign principal party in interest assumes responsibility for determining and obtaining licensing authority, the U.S. principal party in interest must, upon request, provide the foreign principal party in interest and its forwarding or other agent with the correct Export Control Classification Number (ECCN), or with sufficient technical information to determine classification.

At this point, a distinction is drawn between the EAR and the Bureau of Census, Foreign Trade Statistical Regulations (FTSR). For purposes of preparing the SED or AES filing, the "exporter" will always be the USPPI, whether it is a routed transaction or not. This does not mean, however, that the USPPI is responsible for the SED or AES filing. According to Section 30.4 of the FTSR, the responsibilities of the parties in a routed export transaction are:

In a routed export transaction where the foreign principal party in interest authorizes a U.S. forwarding or other agent to prepare and file the SED or AES record, the exporter (U.S. principal party in interest) must . . . provide such forwarding or other agent with the following information to assist in preparing the SED or AES record:

- i. Name and address of the U.S. principal party in interest;
- ii. U.S. principal party in interests, IRS, EIN;
- iii. Point of origin (State or FTZ);
- iv. Schedule B description of commodities;
- v. Domestic (D), foreign (F), or FMS (M) code;
- vi. Schedule B Number;
- vii. Quantity/unit of measure;
- viii. Value;
- ix. Upon request from the foreign principal party in interest or its agent, the Export Control Classification Number (ECCN) or sufficient technical information to determine the ECCN.

In a routed export transaction, the forwarding agent is responsible under §30.4(c)(2) for:

1. Obtaining a power of attorney or written authorization from the foreign principal party in interest to prepare and file the SED or AES record on its behalf;
2. Preparing, signing, and filing the SED or AES record based on information obtained from the exporter (U.S. principal party in interest) or other parties involved in the transaction;
3. Maintaining documentation to support the information reported on the SED or AES record, and
4. Upon request by the exporter (USPPI), provide appropriate documentation to the exporter (USPPI) verifying that the information provided by the exporter (USPPI) was accurately reported on the SED or AES record .

It is important to understand that while in a routed export transaction, the U.S. seller must always be listed as the USPPI on the SED or AES record, it is not authorizing the forwarder to act on its behalf for the shipment. Rather, the forwarder's authority to prepare, sign, and file the SED or AES record is derived from the power of attorney or written authorization from the FPPI to the forwarder.

Summary

A routed export occurs when the FPPI (*i.e.*, the foreign buyer or purchaser) agrees in writing to accept responsibility for the export transaction. In order to do so, the transaction must be ex works, and the foreign buyer must provide the:

1. U.S. Freight Forwarder with a power of attorney or similar authorization to act in its behalf;
2. U.S. seller with a written letter or other writing expressly accepting responsibility for the export of the goods, including determining any export license requirements and obtaining that authorization, if required.

If the above three conditions are met, the USPPI is relieved from its responsibility over the filing of the SED/AES record. However, the USPPI is still responsible for providing certain information to the forwarder (as specified above).

The forwarder is responsible for preparing and filing the SED/AES record. The SED/AES record will still show the name of the USPPI, but indicate the transaction is a routed export transaction. The forwarder is also responsible for providing the USPPI, when requested, with a copy of appropriate documentation verifying that the information provided by the USPPI was accurately reported on the SED or AES record. This is typically a copy of the SED (as printed from AES) with any confidential consignee information blanked out.

Please contact George R. Tuttle, III at (415) 288-0428 or geo@tuttlelaw.com if you would like more information on routed export transactions or compliance with the U.S. Export Administration Regulations.

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