

Export Compliance: Don't Forget to ask "To Whom?"

After you have made a proper jurisdictional determination and classification analysis so that you know "what" you are exporting, and after you have determined "where" you are exporting, you must then determine "to Whom."

WHO IS THE END USER? PROHIBITED PERSONS AND ENTITIES. Even if a license is not required for an item that is being exported, there are still certain parties to whom any export transaction is prohibited. Certain individuals and organizations are prohibited from receiving U.S. exports either due to previous export violations or because of involvement in the proliferation of weapons of mass destruction. You must check several government lists, including the denied persons list and the denied entity list. Salespersons dealing directly with brokers and dealers need to be especially careful because the ultimate end user may be prohibited. Accordingly, where it is not immediately obvious who is the end user then you must take steps to ascertain the end user.

HOW IS IT BEING USED? THE END USE. Even if your customer is not a prohibited person or entity, the ultimate end use of your item cannot be an inappropriate or prohibited end use. Some end uses are prohibited while others may require a license.

ARE THERE RED FLAGS? In dealing with customers in foreign countries, you must always be aware of certain "red flags" that may indicate either a prohibited person or prohibited end use. The following is a list of potential red flags that have been suggested by the Commerce Department. You can use this as a checklist to discover those parties that might be guilty of possible violations of export laws.

- The customer or its address is similar to one of the parties found on the Commerce Department's list of denied person.
- The customer or purchasing agent is reluctant to offer information about the end use of the item.
- The product's capabilities do not fit the buyer's line of business, such as an order for sophisticated computers for a small bakery.
- The item ordered is incompatible with the technical level of the country to which it is being shipped, such as semiconductor manufacturing equipment being shipped to a country that has no electronics industry.
- The customer is willing to pay cash for a very expensive item when the terms of sale would normally call for financing.
- The customer has little or no business background.
- The customer is unfamiliar with the product's performance characteristics but still wants the product.
- Routine installation, training, or maintenance services are declined by the customer.
- Delivery dates are vague, or deliveries are planned for out of the way destinations.
- A freight forwarding firm is listed as the product's final destination.
- The shipping route is abnormal for the product and destination.
- Packaging is inconsistent with the stated method of shipment or destination.
- When questioned, the buyer is evasive and especially unclear about whether the purchased product is for domestic use, for export, or for re-export.

In summary, make sure you know the "what" and the "where" and the "to whom" for every export transaction. Without this information, you cannot make an accurate determination of export compliance.

*Certain information for this document was taken directly from the publications of BIS.

This informational column is provided to you by Exportfolio, Inc. as general export compliance guidelines and is not intended to be specific legal advice. Exportfolio offers export compliance services, including item classification expertise. Exportfolio has classified thousands of items—call us today to find out if we have classified your items. We will let you know if your items are Munitions List items or supply you with the actual ECCN for your items if they are Commerce items. Also, if you have general questions regarding export compliance, please contact us today. info@exportfolio.com.