

Legal Compliance for Imports and Exports

The Ohio Asian American Chamber of Commerce

March 30, 2006



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ASSOCIATES
CO., L.P.A.

Disclaimer



The information provided is believed to be accurate as of the date of the presentation, but is subject to change without notice.

This presentation is designed for informational purposes only and is not intended to be, nor should be, deemed specific legal advice. If such advice is required, please consult with an attorney.

Objectives

- Familiarize or refresh companies with import-export compliance issues
- Encourage compliance, including adopting and/or reviewing processes and procedures

THINK PROACTIVELY

- STOP! Deliberate before moving forward – seek help when needed



Privileges, Not Rights

Licenses and permits needed:

Firearms

Military Spare Parts

Meat

Technology; Technical Information

Government Agencies



- U.S. Bureau of Industry and Security (BIS)
- U.S. Census Bureau
- U.S. Customs and Border Protection (CBP)
- Office of Foreign Assets Control (OFAC)
- Bureau of Alcohol, Tobacco and Firearms (ATF)
- Animal and Plant Health Inspection Service (APHIS)
- Food and Drug Administration (FDA)
- U.S. Immigration and Customs Enforcement (ICE)



ICE News Release

News Release

March 23, 2006

25 charged in international human smuggling ring

Indictment alleges that hundreds of aliens were smuggled illegally

CLEVELAND - An indictment charging 25 defendants with 23 counts of human smuggling was unsealed here today, announced the U.S. Attorney for the Northern District of Ohio, Gregory A. White; U.S. Immigration and Customs Enforcement (ICE) Special Agent-in-Charge Brian M. Moskowitz; and U.S. Postal Inspection Service, Inspector in Charge Robin M. Dalgleish.

This morning arrest warrants were executed in: Phoenix, Ariz.; Painesville, Ohio; and Grand Rapids, Mich. A total of 21 individuals were arrested. Other items seized include: \$100,000 U.S. currency, two assault rifles with drum magazines, nine handguns, thousands of rounds of ammunition, numerous fraudulent documents along with the take down of two drop houses with 20 illegal aliens inside. The indictment also seeks forfeiture of \$1,109,305 in wired cash transfers and seven properties exceeding \$1 million in value.


The 23-count indictment charges that since 1997, Manuel Valdez-Gomez, 53, a native of Mexico and a permanent resident alien living in the Phoenix, Ariz. area, led an alien smuggling organization with members of his immediate family and others. For fees ranging from \$1,800 to \$2,000 each, aliens would be smuggled across the border from Mexico to the Nogales, Ariz. area. During the course of the conspiracy, hundreds of illegal aliens were smuggled into the United States. Once across the border, the conspirators then used motor vehicles and a network of safe houses to transport the smuggled aliens first to Phoenix, Ariz., and thereafter to various interior states, including Ohio.

Other ICE News Releases



- Joint Operation At Miami Int'l Airport Results In Arrest Of Five Illegal Aliens
- Man Charged In Plot To Export Sensitive Military Avionics Technology To China
- Californian Charged For Attempting To Ship Sensitive Technology To Iran
- Veteran Arms Dealer Guilty of Illegally Exporting Military Components to Middle East

Import and Export Compliance



- Part of Overall Compliance Program
- Upper Management “Buy-in”
- Risk Management Tool
- Cost Savings

Import Compliance



As duty rates are reduced and eliminated, Customs must find other revenue sources

The Legal Landscape: Customs Law 101



Customs Modernization Act – 1993 NAFTA implementing legislation

“The Mod Act”

Customs Law 101 (cont'd)



“Reasonable care” requirement –
19 U.S.C. §1484

“Informed compliance” standard

http://cbp.gov/xp/cgov/toolbox/legal/informed_compliance_pubs/informed_compliance_pubs.xml

"Informed compliance"



- "What Every Member of the Trade Community Should Know About: ..."
- Textiles, General Classification, Special Classification, Value, Int'l Agreements, Penalties, Entry, Duty and Refund Determination

"Reasonable Care"



- Statutory duty, but no precise definition
- Must exercise "reasonable care" in preparing and submitting entry information/documentation

Ruling Letters



Rulings Letters – binding decisions from
Customs regarding imports

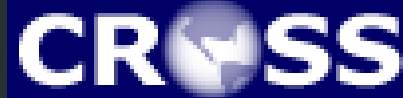
<http://cbp.gov/xp/cgov/toolbox/legal/Rulings/>

Classification, country of origin
marking, valuation

Ruling Letters (cont'd)

Researched on Customs website
(www.cbp.gov)

Click on "Legal"



CROSS – Customs Rulings Online Search

Ruling Letters (cont'd)



Rulings apply prospectively

Issued in days/weeks not months - 120
day rule

Rulings can be modified or revoked –
generally apply prospectively only

Ruling Letters (cont'd)



Rulings can be appealed

Include rulings in transaction/entry documents -

Certificate of Origin

Commercial Invoice

Product Marking



Goods must be marked with country of origin

Made in Japan

Produced in Indonesia

Marking (cont'd)

Conspicuous place

Legible

Indelible

Permanent

- As the article will permit
- To let ultimate purchaser know country of origin

Marking (cont'd)



“country of origin” definition

country of manufacture, production or growth of any article of foreign origin entering the U.S. Further work or material added to article in another country must effect a substantial transformation to render that other country as the “country of origin”

Import Penalties

Criminal, civil, and administrative penalties

Main Penalty Statutes

- 19 U.S.C. §1592

- 19 U.S.C. §1509



Penalties (cont'd)

- 19 U.S.C. §1592 – Penalties for fraud, gross negligence, and negligence
- cannot enter or attempt to enter any goods into U.S. commerce

by fraud, gross negligence
negligence



Penalties (cont'd)



- By any document or electronic transmission of data, written or oral statement, or act that is
 - **Material and false**, or
 - Any **omission** that is material, or
 - Aids or abets another to violate the law

Penalties (cont'd)

Pre-penalty notice

Describe goods

Entry

Laws violated

Facts

Fraud, gross negligence or negligence

Proposed penalty amount



Penalties (cont'd)



- Maximum penalties

Fraud → not to exceed **domestic value**

Gross negligence → *lesser of*

domestic value, or

4 times lawful duties, taxes and fees U.S. was deprived of

Penalties (cont'd)



- **Negligence**

Lesser of –

domestic value, or

2 times lawful duties, taxes and fees U.S.
was deprived of

Penalties (cont'd)



19 U.S.C. §1509 – Examination of books and witnesses

- Can be triggered by CBP-28 (“Request for Information”)
 - 30 days to respond

STOP → review, analyze, consult, respond

Penalties (cont'd)



U.S. DEPARTMENT OF HOMELAND SECURITY Bureau of Customs and Border Protection		OMB No. 1571-0023	
REQUEST FOR INFORMATION			
19 CFR 151.11			
3. Manufacturer/Seller/Shipper		4. Carrier	
5a. Invoice Description of Merchandise		5b. Invoice No.	5c. HTSUS Item No.
7. Country of Origin/Exportation		8. CBP Broker and Reference or File No.	
9. TO:		10. FROM:	
Production of Documents and/or Information Required by Law: If you have provided the information requested on this form to Bureau of Customs and Border Protection at other ports, please indicate the port of entry to which it was supplied, and furnish a copy of your reply to this office, if possible.		11a. Port	11b. Date Information Furnished
General Information and Instructions on Reverse			
12. Please Answer Indicated Question(s)		13. Please Furnish Indicated Item(s)	
<input type="checkbox"/> A. Are you related (see reverse) in any way to the seller of this merchandise? If you are related, please describe the relationship, and explain how this relationship affects the price paid or payable for the merchandise. <input type="checkbox"/> B. Identify and give details of any additional correspondence incurred in this transaction, such as: <input type="checkbox"/> (1) packing <input type="checkbox"/> (2) commissions <input type="checkbox"/> (3) proceeds that accrue to the seller <input type="checkbox"/> (4) assists <input type="checkbox"/> (5) royalties and/or license fees		<input type="checkbox"/> A. Copy of contract (or purchase order and seller's confirmation thereof) covering this transaction, and any revisions thereto. <input type="checkbox"/> B. Descriptive or illustrative literature or information explaining what the merchandise is, where and how it is used, and exactly how it operates. <input type="checkbox"/> C. Breakdown of components, materials, or ingredients by weight and the actual cost of the components at the time of assembly into the finished article. <input type="checkbox"/> D. Submit samples: Article number and description _____ from container _____ mark(s) and number _____ Samples contained in analysis, and other samples whose return is not specifically requested, will not normally be returned. <input type="checkbox"/> E. See item 14 below.	
14. CBP Officer Message			
15. Reply Message (Use additional sheets if more space is needed.)			
16. CERTIFICATION It is required that an appropriate corporate/company official execute this certificate and/or endorse all correspondence in response to the information requested. (NOTE: NOT REQUIRED IF FOREIGN FIRM COMPLETES THIS FORM.)			
I hereby certify that the information furnished herewith or upon this form in response to this inquiry is true and correct, and that any samples provided were taken from the shipment covered by this entry.		16a. Name and Title/Position of Signer (Owner, Importer, or Corporate/Company Official)	16b. Signature
		16c. Telephone No.	16d. Date
17. CBP Officer		18. Team Designation	19. Telephone No.

CBP Form 28 (02/02)

Penalties (cont'd)




- Failure to produce entry records
 - **Willful** failure to produce, maintain → up to \$100,000 for each release of merchandise;
 - Negligence → generally up to \$10,000

Prior Disclosure

- Not subject to penalties **IF**
- **Voluntarily** and **promptly** make corrected declaration **AND**
- **Pay ALL** duties owing

Prior Disclosure (cont'd)



- "Voluntarily"
 - Before a formal investigation
 - Within 30 days of having reason to believe error was made
 - Accompanied by written statement

19 C.F.R. 181.82(b)

2005 Penalty Case



U.S. v. Jean Roberts of California, Inc.

Slip Op. 05-41, March 30, 2005

U.S. Court of International Trade

19 U.S.C. 1952 civil penalty collection

Negligence case

2005 Penalty Case (cont'd)



- Imported blankets from MX
- Alleged 34 entries contained material false statements and/or omissions
 - Described blankets as “woven” instead of “knit” on entry documentation
 - This allowed for claim of NAFTA treatment

2005 Penalty Case (cont'd)



- Alleged revenue loss of

\$121,187.73

- Difference between general duty rate and NAFTA rate
- Gov't claimed 2 times alleged revenue loss

\$242,375.46

2005 Penalty Case (cont'd)



- Gov't applied for default judgment
- Court granted "one final opportunity" to retain counsel and defend case
- Show cause by May 31, 2005 why default judgment should not be entered



Export Compliance



Post-Sept. 11 world impacts:

More scrutiny of exports, including documentation

Exporters – MUST know Ultimate End Use and End Users

Export Compliance



MUST Do Due Diligence!

and be able to show it

DOCUMENTATION

Export Compliance



Exporter's Cardinal Rule

**WHEN IN DOUBT -
CHECK IT OUT!**

Credit to Pete Mento, Foreign
Policy and Trade Expert,
Tradewin



Export Compliance



Export Administration Regulations (EAR)

Govern “**dual-use**” commodities, software, and technology

Developed and enforced by Dept. of Commerce

U.S. Bureau of Industry and Security (BIS)

www.bxa.doc.gov

Export Controls

“Dual-Use” – commodities, software and technology having

both commercial and military or proliferation applications

Export Controls (cont'd)



Control exports for:

Anti-Terrorism

Foreign Policy

National Security

Non-Proliferation of Weapons

Export Controls (cont'd)



May export "dual-use" items with a license

Determine ECCN – Export Control
Classification Number

Commerce Control List (CCL) –
15 C.F.R. Part 774 Supplement 1

http://www.access.gpo.gov/bis/ear/ear_data.html

Need an Export License?



- Factors:
 - Technical characteristics – WHAT?
 - Destination – WHERE?
 - End-user – WHO?
 - End-use – WHAT/HOW?

Source: BIS Website – FREE!!

Export Controls (cont'd)



CCL Categories

- 0 Nuclear Materials, Facilities and Equipment
- 1 Materials, Chemicals, Microorganisms and Toxins
- 2 Materials Processing
- 3 Electronics
- 4 Computers
- 5 Telecommunications Equipment
- 6 Lasers and Sensors
- 7 Navigation and Avionics
- 8 Marine
- 9 Propulsion Systems, Space Vehicles and Related Equipment

Export Controls (cont'd)



If item not on CCL –

Classified as EAR 99 – generally, can export without license to most destinations

Exception: Embargoed countries
(Iran, N. Korea)

Export Controls (cont'd)



Not ready to ship yet ...

To WHO is shipment going?

Office of Foreign Asset Control (OFAC)

Embargoes and Sanctions

<http://www.ustreas.gov/offices/enforcement/ofac/>

Export Controls (cont'd)



SDN List – Specially Designated Nationals
and Blocked Person List

“Blacklist” – CANNOT transact ANY
business with these parties

SDN List Update



Office of Foreign Assets Control Recent OFAC Actions

03/23/2006

The following entities have been added to OFAC's SDN list:

AL MANAR TV, Al Manar TV, Abed al Nour Street, Haret Hriek, Beirut, Lebanon; PO Box 354/25, Beirut, Lebanon; info@manartv.com; www.manartv.com; www.almanar.com.lb [SDGT]

AL NOUR RADIO (a.k.a. AL NOUR BROADCASTING STATION; a.k.a. AL NUR RADIO; a.k.a. RADIO ANNOUR), Abed Al Nour Street, PO Box 197/25, Alghobeiri , Haret Hriek, Beirut, Lebanon; info@al-nour.net, www.al-nour.net [SDGT]

LEBANESE MEDIA GROUP (a.k.a. LEBANESE COMMUNICATION GROUP), Al Manar Building, Ahmad Kassir Street, Haret Hriek, Baabda, Lebanon; Abed Al Nour Street, Haret Hriek, PO Box 354/25, Beirut, Lebanon; Company ID: No. 59 531 at Commercial Registry of the Civil Court of First Instance at Baabda, Lebanon [SDGT]

SDN List Excerpt – March 23, 2006



- OFFICE OF FOREIGN ASSETS CONTROL SPECIALLY DESIGNATED NATIONALS & BLOCKED PERSONS
- March 23, 2006 - 131 -
- 3 Jul 1968; POB Malaysia; nationality Malaysia (individual) [SDGT]
- MASPIO CEMENT CORPORATION, P.O. Box 96, Atbara, Sudan [SUDAN]
- MASUKU, Angeline; DOB 14 Oct 1936;
- Matebeleland South Provincial Governor & Politburo Secretary for Gender and Culture (individual) [ZIMBABWE]
- MAT TOP, Noordin (a.k.a. THOB, Noordin Mohammad; a.k.a. TOP, Noor Din bin Mohamed; a.k.a. TOP, Noordin Mohamed; a.k.a. TOP, Nordin Mohd); DOB 11 Aug 1968; POB Malaysia; nationality Malaysia (individual) [SDGT]
- MATA MATA, Noel (a.k.a. MATTA MATTA, Noel; a.k.a. "EFRAIN GUZMAN"; a.k.a. "EL CHUCHO"); DOB 31 Jan 1935; alt. DOB 30 Jan 1935; POB Chaparral, Tolima, Colombia; Cedula No. 4870352 (Colombia) (individual) [SDNTK]
- MATA, Alcides (a.k.a. ALCIDES MAGANA, Ramon; a.k.a. ALCIDES MAGANE, Ramon; a.k.a. ALCIDES MAYENA, Ramon; a.k.a. ALCIDEZ MAGANA, Ramon; a.k.a. GONZALEZ QUIONES, Jorge; a.k.a. MAGANA ALCIDES, Ramon; a.k.a. MAGANA, Jorge; a.k.a. MAGANA ALCIDEDES, Ramon; a.k.a. RAMON MAGANA, Alcedis; a.k.a. RAMON MAGANA, Alcides; a.k.a. ROMERO, Antonio); DOB 4 Sep 57 (individual) [SDNTK]
- MATADERO METROPOLITANO LTDA., Km. 3 Via Marsella Parque Industrial, Pereira, Colombia; Carrera 10 No. 34-21 Dosq., Pereira, Colombia; Apartado Aereo 3786, Pereira, Colombia; NIT # 891412986-8 (Colombia) [SDNT]
- MATANGA, Godwin; DOB 5 Feb 1962; Passport ZL042663 (Zimbabwe); Deputy Police Commissioner (individual) [ZIMBABWE]
- MATERIAS PRIMAS Y SUMINISTROS LTDA. (a.k.a. MATERIAS PRIMAS Y SUMINISTROS S.A.; a.k.a. MATSUM S.A.), Calle 12B No. 28-58, Bogota, Colombia; Calle 39 Bis A No. 27-20, Bogota, Colombia; Calle 39 Bis A No. 27-16, Bogota, Colombia; NIT # 830031863-3 (Colombia) [SDNT]
- MATERIAS PRIMAS Y SUMINISTROS S.A. (a.k.a. MATERIAS PRIMAS Y SUMINISTROS LTDA.; a.k.a. MATSUM S.A.), Calle 12B No. 28-58, Bogota, Colombia; Calle 39 Bis A No. 27-20, Bogota, Colombia; Calle 39 Bis A No. 27-16, Bogota, Colombia; NIT # 830031863-3 (Colombia) [SDNT]
- MATHEMA, Cain; DOB 28 Jan 1948; Bulawayo Provincial Governor (individual) [ZIMBABWE]
- MATHEW, Glenroy (a.k.a. MATTHEW, Glenroy Wingrove; a.k.a. MATTHEWS, Glen Roy; a.k.a. MATTHEWS, Glenroy Vingrove), Frigate Bay, Saint Kitts and Nevis; DOB 26 JUL 58; POB St Kitts and Nevis; Passport 047815 (Saint Kitts and Nevis) (individual) [SDNTK]
- MATHUTHU, Sithokozile; Matabeleland North Provincial Governor & Deputy Secretary for Transport and Social Welfare (individual) [ZIMBABWE]
- MATIBIRI, Innocent Tonderai; DOB 9 Oct 1968; Deputy Police Commissioner (individual) [ZIMBABWE]
- MATIZA, Biggie Joel; DOB 17 Aug 1960; Passport ZA557399 (Zimbabwe); Deputy Minister of Rural Housing and Social Amenities (individual) [ZIMBABWE]
- MATONGA, Bright; DOB circa 1969; Deputy Minister of Information and Publicity (individual) [ZIMBABWE]
- MATRIX CHURCHILL CORPORATION, 5903 Harper Road, Cleveland, OH 44139 [IRAQ2]

OFAC Enforcement Actions



OFAC has reached settlement with the following company:

The Coca-Cola Company Settles Sudan Sanctions Allegations:

The Coca-Cola Company, Atlanta, GA 30301 ("Coca-Cola"), has remitted \$136,500 to settle allegations of violations of the Sudan sanctions occurring between June 2002 and April 2004. OFAC alleged that Coca-Cola exported to its bottler in Sudan services not authorized by its OFAC license and disregarded or evaded certain OFAC license restrictions. The services included financial and market support. Coca-Cola has represented to OFAC that it has taken remedial measures and made upgrades to its OFAC compliance program.

Coca-Cola voluntarily disclosed this matter to OFAC.

(February 3, 2006, OFAC Enforcement Actions)

Entity List – Supp. No. 4 to Part 744



- Entities BIS identified as involved in activities relating proliferating WMD
- Depending on item, may need a license to export

even if not otherwise required

Denied Persons List



List of parties denied export privileges
by Dept. of Commerce order

CANNOT deal with parties for export and
reexport transactions →

**Includes domestic sales that you
believe denied person wants to export**

Deemed Exports



- Release of “technology” to a foreign national in the U.S.

Technology is “released” for export to a foreign national when it is available for visual inspection (such as reading technical specifications, plans, blueprints, etc.); when technology is exchanged orally; or when technology is made available by practice or application under the guidance of persons with knowledge of the technology

Deemed Exports (cont'd)



“Technology” –

specific information necessary for the development, production, or use of a product

Deemed Export License



If item is not subject to EAR99 and no license exception is available, U.S. entities must apply for an export license under the "deemed export" rule when:

- (1) the controlled technology is intended to transfer to foreign nationals in the U.S.; and
- (2) transfer of the same technology to the foreign national's home country would require an export license

“Red Flags” – Know Your Customer



Red Flag Indicators:

- The customer or its address is similar to one of the parties found DPL
- 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

"Red Flags" – Know Your Customer (cont'd)



- 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

"Red Flags" – Know Your Customer (cont'd)



- 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

“Red Flags” – Know Your Customer (cont’d)



- 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 reexport

Consequences of Not Complying



For Immediate Release: November 17, 2005

Contact - BIS Public Affairs 202-482-2721

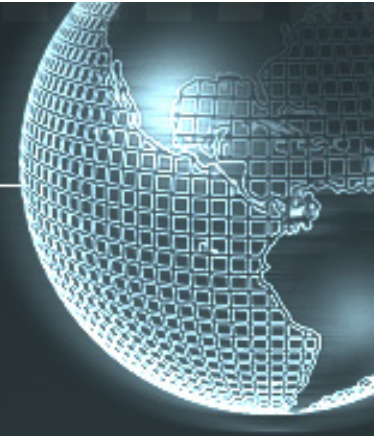
Parker Hannifin Corp. Settles Charges Pertaining To Illegal Exports To Taiwan And China

The U.S. Department of Commerce today announced that Parker Hannifin Corporation of Cleveland, Ohio, has agreed to pay **\$185,000 in civil penalties** to settle charges pertaining to unlicensed exports of fluid control valves to Taiwan and China in violation of the Export Administration Regulations (EAR).

The Commerce Department's Bureau of Industry and Security (BIS) charged that, between September 2000 and June 2002, Parker Hannifin committed 53 violations of the EAR. Specifically, BIS charged that Parker Hannifin committed 17 violations by exporting check valves to Taiwan **without the required licenses**, 17 violations by transferring the check valves to Taiwan **with knowledge that violations of the EAR were occurring**, one violation by exporting manual stop cock valves to China **without the required licenses**, and 18 violations by **making false statements on Shipper's Export Declarations** filed with the U.S. Government.

Parker Hannifin **voluntarily self-disclosed** the violations, and **cooperated fully** in the investigation. Parties who may have been involved in violations of the EAR are encouraged to submit a **Voluntary Self Disclosure (VSD)** to BIS' Office of Export Enforcement, as provided for in Part 764.5 of the EAR. VSDs are an **important indicator of parties' intent to bring themselves into compliance with the EAR**, and may provide important BIS important information on illicit proliferation networks. A **VSD is considered a 'great weight' mitigating factor in the settlement of BIS administrative cases.**

Yormick's Book Club Pick: Collection of Short Horror Stories



DON'T LET THIS HAPPEN TO YOU!

An Introduction to U.S. Export Control Law
Real Life Investigations of Export Control and Antiboycott Violations



EXPORT ENFORCEMENT
BUREAU OF INDUSTRY AND SECURITY
U.S. DEPARTMENT OF COMMERCE

APRIL 2005

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