

## How to Survive an Export End-Use Check

Finding out that the government wants to do an end-use check on your export is a lot like finding out that you're being audited by the IRS. Anxiety begins to take over. You may ask yourself, what did I do wrong?

The reality of the situation is that you may have been selected at random, so don't panic. Through the U.S. Bureau of Industry and Security—the agency that performs these checks—the government is attempting to verify that your exported goods are not being used by the wrong people or for the wrong reasons. Ultimately, end use checks are a proactive way to protect national security. They help the government inhibit the proliferation of weapons of mass destruction, limit support of terrorism, and identify unauthorized end users.

### Behind the scenes

Although the government performs two types of end-use checks, one pre-license and one post-shipment, the majority of checks are post-shipment. Fifty percent of post-shipment checks are conducted by Export Control Officers in U.S. embassies and consulates in Moscow, Beijing, Hong Kong, New Delhi, Singapore, and Abu Dhabi [1]. The other fifty percent are conducted by U.S. investigative officials.

During each check, the exporter will be asked for all documentation related to a particular shipment. The Export Control Officer will then take steps to verify that the item is being used as intended by the end-user, at the stated location, as noted in the shipment's documents. This may involve physically visiting the foreign consignee's operations to verify location and correct use. If the officer discovers that the item is not in the location stated on the documents or is being used improperly, the check's results will be considered "unfavorable" and the exporter's future shipping activities will be monitored more closely by government officials or, in some instances, completely prohibited.

## Avoiding unfavorable results

Loss of export privileges is a death sentence for U.S. companies that sell their products overseas. So how do you avoid “unfavorable” end-use check results? The answer lies in how well you complete your screening, know your customer, keep your records, and review your documentation.

**Complete your screening.** This one is simple. Don't attempt to ship your exports without knowing your screening requirements and completing them in full. If you export EAR99 goods, you are not exempt from these requirements.

**Know your customer.** Let's assume you've completed all of your screening requirements. Your foreign consignee didn't appear on any of the prohibited end-user lists. However, this doesn't mean that you truly know your customer and your customer's operations. The best way to do this is to actually visit your customer. So, plan a visit to the customer's facility. See with your own eyes what kind of operation your foreign customer is running.

**Keep your records.** Federal regulations require exporters to keep all transaction records for five years [2]. Some of the documents that may be requested during a government end-use check include:

- commercial invoice
- purchase order
- international bill of lading
- copy of the EEI (Electronic Export Information) filing
- screening documentation, if available
- Shipper's Letter of Instruction (SLI) and other supporting documentation
- technical specifications

**Review your documentation.** It is important to review any export documentation prepared by you and on your behalf. Your freight forwarder can help you with this process but make sure that you take time to carefully inspect the documents yourself. As you review each one, look for incomplete and inaccurate information. If the same information appears on multiple documents (such as a serial number), make sure the data matches on each one. If your goods require a destination control statement, make sure it appears on all the required documents [3].

Does the commercial invoice...

- identify all parties to the transaction (ship to, sold to, price payable to, etc.)?
- include a commodity description sufficient enough to correspond to the Schedule B number used?

If a forwarder filed your EEI, did you...

- receive a copy? If not, did you request a copy from the forwarder? Does your compliance program include a procedure for obtaining a copy of every EEI from your forwarder?

- provide the forwarder with a Shipper's Letter of Instruction (SLI) to help prevent AES filing errors?
- independently review the EEI for accuracy?

The Bureau of Industry and Security expects every exporter to know their compliance responsibilities and abide by them. It is up to you, the exporter, to determine how that will happen. Protect your company from an unfavorable end-use check by completing your screening, knowing your customer, keeping your records, and reviewing your documentation.

### Footnotes

[1] Statistic taken from an online transcript of a presentation given by Jose Rodriguez on July 20, 2011 in Washington D.C. during the 2011 Update Conference on Export Controls and Policy.

[2] See 15 CFR 762.2.

[3] See 15 CFR 732.5, 758.1, 758.6, and 762.

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