

THE BUSINESS OF PUMPS

Keys To Export Compliance For The Pump Industry

Disclaimer: This article is a brief overview of a few key export control issues for educational purposes only. The article doesn't provide legal advice or a comprehensive guide to export compliance.

From a legal perspective, end users may not be aware of how difficult it can be for American suppliers to compete in a global marketplace.

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In the aftermath of recent terror attacks, warnings of new attacks, and with countries working to develop weapons of mass destruction, U.S. export enforcement agencies have increased efforts to prevent illegal exports of pumps and related products that can be used to make chemical and biological weapons. Violations of export control laws can be expensive, time consuming and generate terrible publicity, yet they are easily avoidable. Companies can no longer afford to bury their heads in the sand on export control issues. This article describes four basic strategies the pumps and systems industry can use to comply with U.S. export laws that directly affect business operations.

INCREASED ENFORCEMENT

Put yourself in the place of the managers of Entegris, Inc., of Chaska, Minnesota. On October 22, 2001, the Commerce Department imposed a \$496,000 civil penalty on the company in connection with exports of processing equipment (mostly valves) to China, Israel, and Taiwan without required export licenses. This penalty was imposed shortly after the U.S. Customs Service launched Operation Shield America on October 10, 2001. Operation Shield America is a heightened effort to prevent illegal exports of sensitive technologies, including certain pumps and pump parts. Customs and Department of Commerce enforcement personnel are actively calling and visiting companies to check on export compliance. Analysts are spot-checking Shipper's Export Declarations and related documents filed with the government for signs of export violations. Finding yourself on the wrong end of one of these investigations can ruin your whole day, if not an entire year.

PENALTIES

During 2002, most export control violations were punished with fines of \$12,000 per shipment and press releases naming offending companies. Legislation is under consideration that would raise the level of fines substantially. Companies are responsible even if they did not know they were committing a violation. Strict liability for violations is the rule, although some negotiation of penalties does occur. If the government finds that someone intentionally violated the law, the penalty may include jail time, bigger fines and the company can lose its export privileges. What would it mean to your company if the government ordered an end to exports for a period of time? With this in mind, it is imperative that manufacturers understand a few key facts about export controls on pumps, pump parts and related products.

THE BASICS

Four basic aspects of export controls should be of immediate concern to pump and pump systems exporters. These are:

- (1) Embargoes (countries not allowed to receive exports),
 - (2) Controlled pumps and pump parts (products that need a license for exports to 37 countries);
- Red Flags (customer requests that raise suspicions of an illegal export); and
- Denied Party Screening (lists of "bad guys" that need to be checked when exporting).

EMBARGOES

An embargo means that you can't export products to certain countries and you can't conduct any financial transaction with those countries. Under U.S. law, for international sales, near-total embargoes exist for *Cuba, Iran, Iraq, Libya and Sudan*. A limited embargo exists for sales to the group *UNITA in Angola*. For *Cuba, Iran, Iraq, Libya and Sudan*, you can't even export a pencil or bicycle pump to those countries from the U.S. It is also illegal to "re-export" a product exported from the U.S. to an embargoed country¹. A product traveling from the U.S. to England to Libya violates the embargo. The stopover in England doesn't end U.S. export controls. Furthermore, U.S. laws apply to U.S. citizens anywhere in the world and it is illegal for any U.S. person to try to get around an embargo.

TYPES OF PUMPS CONTROLLED FOR EXPORT

While most people in the industry don't think about it, some pumps used for legitimate purposes can also be used to manufacture chemical weapons. The Department of Commerce's Bureau of Industry and Security (BIS) strictly prohibits exports of certain pumps and pump parts to listed countries without an export license. (Pumps designed or modified for military use require licenses for export issued the U.S. State Department, and certain pumps for nuclear plants are controlled for export by the Nuclear Regulatory Commission.)

The Department of Commerce classifies certain pumps as controlled for export under category 2B350(i) of its regulations. Pumps that fall into the 2B350(i) category require export licenses when shipped to 37 countries, including China, India, Israel, Taiwan and the other prime export destinations. In the past, pumps that fit in this category were considered exotic, but increased domestic demand has made them more common.

2B350(i) COVERAGE:

1. Multiple seal, canned drive, magnetic drive, bellows or diaphragm pumps with a maximum flow-rate greater than 0.6 m³/hour, *and*
2. Vacuum pumps with maximum flow-rate greater than 5 m³/hour (under standard temperature (273 K, 0 °C) and pressure (101.3 kPa) conditions), *and*
3. Casings (pump bodies), pre-formed casing liners, impellers, rotors or jet pump nozzles designed for such pumps (Note: these parts were recently added to the classification and do not appear in some regulations.)
4. Where all surfaces that come into direct contact with the chemicals being processed (the "wetted surfaces") are made from any of the following materials: Alloys with more than 25% nickel and 20% chromium by weight; Ceramics; Ferrosilicon; Fluoropolymers (Note: think PVDF, Kynar®, Teflon® and related materials); Glass (including vitrified or enameled coatings or glass lining); Graphite or carbon-graphite; Nickel or alloys with more than 40% nickel by weight; Tantalum or tantalum alloys; Titanium or titanium alloys; Zirconium or zirconium alloys.

To be controlled, a pump would have to fit into either heading 1 or 2 and all wetted parts would have to be made from materials listed in item 4. Parts listed in item 3 are controlled if made from materials in item 4.

Related export controls exist for reaction vessels, agitators, heat exchangers, distillation and absorption columns, remotely operated filling equipment, valves, and multi-walled piping with leak detection ports.

If you make a pump or pump parts that fit into the 2B350(i) category, you need to figure out if your company is applying for export licenses. If not, or if you need to audit your compliance, consult qualified export counsel before taking further steps.

RED FLAGS AND PROHIBITED END USES

When an exporter knows or has reason to believe that a foreign customer wants to use their *product for a prohibited chemical or biological weapons, missile, or nuclear weapons purpose*, an export license is required, no matter what product is involved. The law requires you to know your customer for such sales. If a company sees something that looks like a "red flag" because something fishy is going on with the order, the company is required to stop, investigate any potential prohibited end use or diversion, and perhaps obtain an export license. The law prohibits you from burying your head in sand and ignoring "red flags" in order to make a sale.

For example, if a new customer, say, GiGi's Bakery in Paris, France orders 50 pumps capable of handling highly corrosive chemicals and won't explain why, that should raise a red flag. This situation may involve a diversion for a prohibited end use.

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DENIED PARTY SCREENING

The U.S. government publishes five different lists that exporters should check before exporting. These lists of "bad guys" identify terrorists, front organizations, companies found to have violated export laws and others. The onus is on the exporter to check each party to an export transaction against these lists. Failure to do so may lead to a violation and seizure of property or funds. If exporters get a "hit," the transaction must be halted immediately and export counsel should be consulted.

THE LISTS:

1. The *Specially Designated Nationals (SDN) list* published by the Department of Treasury's Office of Foreign Assets Control – <http://www.treas.gov/offices/enforcement/ofac/sdn/index.html>.

2. The *Entities List, Denied Party list, and Unverified List* published by the Department of Commerce's Bureau of Industry and Security – <http://www.bis.doc.gov/>.

3. The *Debarred Parties list* published by the Department of State – <http://www.pmdtc.org/debar059intro.htm>.

ACTION ITEMS:

Companies should have the following four cost-effective elements of a basic compliance system:

1. Set up an embargo and denied party screening process. These lists change quite often (e.g. North Korea was taken off the list not long ago), so monitor changes.

2. Determine if your products are controlled for export. (If they are, set up a system to apply for licenses when required.)

3. Set up a system to screen for "red flags" in export transactions.

4. Conduct an objective audit of your existing compliance procedures.

The bottom line? It's not that time consuming or expensive to implement a reliable, up-to-date, export compliance system that will keep your employees and your company in line with the law and potentially lessen the proliferation of weapons of mass destruction. **P&S**

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