

# BPE Global Hot Topic – July 2021

## You Don't Export...Or Do You?



When Alexander Graham Bell said “Before anything else, preparation is the key to success,” he probably wasn’t thinking how applicable it would be to export compliance practitioners in 2021, especially those being hired into smaller companies where awareness of export control laws and regulations is limited. Picture it. You’re presenting to company executives when someone asks: “Why are we doing all of this when we don’t export?” How do you respond? This is the moment where preparation is key and a few simple strategies can have a big impact. First,

**Don’t be afraid to go back to the basics.** Not everyone understands the nuance between an “export” (An actual shipment or transmission out of the United States, including the sending or taking of an item out of the United States, in any manner) and a “deemed export.” (Releasing or otherwise transferring technology or source code (but not object code) to a foreign person in the United States). Further, not everyone is aware that technology (the development and production information of an item or source code) can be exported, or “released,” through visual inspection by, or through oral exchanges with, a foreign person. Therefore, it will be important to make these distinctions clear. However,

**Don’t stop with the basics.** If citing definitions is all you do, your audience may leave knowing what an export is, but they still may not be able to connect it to company practices. To have the most impact, it will be important to highlight key company activities that they may never have realized involve exports. But beware! This means doing your homework to understand the company’s business practices so that you can pinpoint exactly where exports are happening. Knowing this will help you shift the discussion from what you “*don’t do*” to what you “*do do*.” Then,

**Go with the flow.** If you haven’t already done so, we recommend taking some time to map out the global flow of your company’s hardware, software, and technologies. Visual learners will appreciate seeing where the exports occur, and everyone will have the opportunity to consider whether anything is missing from the flow. Here are a few areas you can map where exports can easily occur:

### Engineering

- Does your company work with international third parties to design or develop its products?
- Does your company employ foreign nationals in the United States to design or develop its products?
- If you employ foreign nationals in non-technical roles, is your technology secured in a way that prevents them from having access?
- Does your company work with third parties in the U.S. who may employ foreign nationals that would need access to your technology?
- Does your company import products or technology from your company’s foreign subsidiaries? (Many countries outside of the United States also have export control laws and regulations that need to be considered.)

## **Marketing**

- If presenting information containing corporate technology (e.g., sales calls or trade shows), even within the U.S., do the presenters have access to the citizenship status of all attendees?
- Do company employees travel internationally with marketing samples or Work in Progress materials, also referred to as “hand carries”?
- Do you send product giveaways such as T-shirts, phone chargers, or tablets, to international trade shows?

## **Sales/Customer Support:**

- Do company employees have authorization to travel with their company-issued laptops and cell phones? Do these company assets contain any product technology that could be easily retrieved by a foreign government official if the asset were seized?
- Is your company required to provide a documented Failure Analysis Report whenever a Return Material Authorization is completed?
- Does your company make software available online for download by customers who could be located abroad?
- Do your products require specialized training to customers who could be foreign parties?
- Are all visitors screened for their country of citizenship or permanent residency before they are authorized access to your facilities and prior to any factory tours or technical discussions?

The good news is that mapping the flow and discussing all the areas where exports can occur will not only drive home the importance of export controls to company executives but will provide the added benefit of allowing you to identify the areas of highest risk and to prioritize the implementation of the policies and procedures needed to secure them. A word of caution, however: don't forget to review the map on a periodic basis to make sure it stays current and that you haven't overlooked any other potential hot spots. Perhaps this means we should modify Alexander Graham Bell's quote: Preparation is the key to success....but be prepared for the work that will follow!

Let BPE Global know if we can help you with any of your trade compliance needs. BPE Global is a global trade consulting and training firm. Evelyn Bernal is a Director of BPE Global. You can reach Evelyn by email at [ebernal@bpeglobal.com](mailto:ebernal@bpeglobal.com)