

BPE Global Hot Topic – August 2024

How Did I Get Here?



It's a call you didn't expect and the number that is calling you is not a U.S. phone number. It could be a call from Hong Kong or from Turkey, but the caller is American and works for the Office of Enforcement Analysis (OEA). OEA is on the front-line gathering information for the Bureau of Industry and Security (BIS) and the broader interagency export control community. And they want to know about your exports, reexports and in country transfers. They've always been around, but we are seeing an uptick in Post Shipment Verifications (PSV). BIS is dedicated to finding violators of the Export Administration Regulations (EAR) and the people on the other end of the phone are well informed, well connected, and on a mission.

A PSV is where BIS Export Control Officers (ECOs) do a physical verification on location with a party to a U.S. export transaction to confirm that the party had the authorization to receive the goods and that the goods will be used in accordance with the EAR. And, as with all export transactions, Exporters should have already conducted a restricted party screening on each of the parties to the export. Exporters should have also conducted an export license determination to confirm that the item was authorized to that specific end user, for an approved end use in the country of destination.

What we often see is a very cordial exchange between the Exporter and the ECOs (aka BIS Special Agents). Unfortunately, the Exporter is usually caught off guard and it is not obvious why they are receiving a call. It is critical to slow the exchange down and ask the ECO to clarify the intent of the call and clearly explain what they are asking from the Exporter. The Exporter should not jump into shipment specifics without a thorough understanding of why BIS is calling and what the ECO needs to get from the call. The Exporter should remember that the ECO has a lot more information about the shipment when they make that first call to the Exporter. The Exporter should try to find out why the shipment and the Exporter were targeted, who is involved in investigation (BIS alone, other U.S. agencies and/or local authorities) and whether this is part of a broader investigation. Exporters need to know if their service providers or agents are being targeted. And Exporters should take the approach that nothing is random – BIS has limited resources and there was likely some informant, broader national security threat or other targeted reason why the Exporter is being contacted. Exporters should treat the entire exchange as an official investigation, advise their internal counsel and try to determine the broader implications of the investigation. At the very least, the Exporter should understand whether the PSV is related to diversion to Russia, an end user or an end user concern or something entirely different.

The Exporter should endeavor to provide BIS with a thorough, accurate, and timely overview of the transaction and proof that it is authorized under the EAR. The quicker the concern can be eliminated, the better. This is also a great time to show off your export controls program. This would include sharing any End User declarations that you have obtained for the entity or Terms and Conditions that you are operating under.



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The bigger issue is that if BIS does not indicate that they have gotten enough information to close their PSV. If BIS does not get the information that they need for their PSV, they can refer the case for further investigation. If BIS cannot verify the end user, BIS can put them on the Unverified List (UVL). It is relatively straightforward to get off the UVL if a company is listed, but the best approach is to get enough information so BIS can verify the entity. If entities on the UVL cannot be verified, they can be moved to the Entity List, which is much more difficult to get removed from. Being an Entity List entity means that an export license would likely be required for exports to that entity.

Exports of U.S. items don't end when the shipment is received by the consignee. Exporters of U.S. items must remember that they should have a robust reexport and in country transfer process to ensure that screening and license determination occurs on any shipments that occur after the initial export. This includes service and repair transactions.

It's a great idea to look across all of an Exporter's supply chains, not just their export sales to ensure that they have implemented a robust global export control program.

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