

items: (i) Will not be used for a prohibited end-use, (ii) will be in the possession of the person or organization contemplated as the end-user at the time of export, and (iii) will be utilized in the country contemplated as the country of end-use when the item is exported. The diversion of controlled goods or technologies—even inadvertently—from such contemplated end-use, end-user, or destination constitutes a serious threat to the efficacy of export control regimes. Such diversion undermines efforts to counter the proliferation of weapons of mass destruction, terrorism, and other threats to national and international security.

Global “transshipment hubs”—i.e., countries or areas that function as major hubs for the trading and shipment of cargo—pose special risks of diversion. The concentrated presence of commercial infrastructure (e.g., trading companies, brokerages, and free trade zones) that facilitates large volumes of transit, transshipment, import and re-export traffic through such points make transshipment hubs particularly vulnerable to the diversion of sensitive items to illicit purposes.

To combat this risk, the United States Government has implemented a number of initiatives to work with industry and foreign governments. DOC, for example, has launched the Transshipment Country Export Control Initiative (TECI). TECI seeks to channel existing and new export control practices toward countering the diversion of controlled items through global transshipment hubs. TECI has two principal prongs. Under the first prong, DOC seeks to improve cooperation and communication with relevant agencies in key transshipment hubs charged with administering export and trade control laws.¹ Such efforts are already underway with respect to a number of key transshipment countries and will be launched with respect to others in the near future.

Under TECI’s second prong, DOC seeks to work with the private sector businesses and individuals involved in the transshipment of goods to enhance their ability to prevent the diversion of controlled items. In the course of this dialogue, a number of organizations have noted the absence of a clearly stated set of export control “best practices” tailored to the particular activities and circumstances of entities

that facilitate the export or re-export of dual-use items to, from, or through transshipment hubs (such as “Trade Facilitators/Freight Forwarders”) include freight forwarders, brokers, air and marine cargo carriers, express shipment carriers, port operators, and port authorities) as well as entities that export dual-use items to transshipment hubs or that re-export such items from such hubs (“Exporters/Re-exporters”). The absence of a single organization or forum representing these many diverse businesses involved in transshipment makes it unlikely that such a set of best practices would be developed without DOC coordination.

Set forth below, for public comment, is a draft set of best practices for use by Trade Facilitators/Freight Forwarders and Exporters/Re-Exporters in guiding the export control compliance activities of companies involved in the transshipment, transit, and re-export of dual-use items. They are based on input provided at DOC-sponsored export control compliance seminars and other events, and on the observations of best practices by DOC staff and export control practitioners involved in both the administration and enforcement of export controls.

The publication of these best practices creates no legal obligation to comply with such practices on the part of any person. Compliance with these best practices creates no defense to liability for the violation of export control laws. However, demonstrated compliance with these best practices by a company will be considered an important mitigating factor in administrative prosecutions arising out of violations of the Export Administration Regulations by that company.

Best Practices for Exporters/Re-Exporters and Trade Facilitation/Freight Forwarding Companies Regarding the Transit, Transshipment, and Reexport of Dual-Use Items

Purpose

To help industry, and in particular Trade Facilitators/Freight Forwarders and Exporters/Re-Exporters, contribute to a reduction in the illicit transshipment, transit, or re-export of dual-use items subject to U.S. and foreign export controls, and to facilitate legitimate global commerce by improving the capacity to distinguish between licit and illicit transactions.

Principles

1. Industry and government should work together to foster secure trade that reduces the risk of diversion of items subject to export controls.

2. Secure trade will reduce the diversion of dual-use items to prohibited end-uses, end-users, and destinations.

3. Secure trade will encourage the more expeditious movement of legitimate trade through borders and ports.

4. Industry can achieve secure trade objectives through appropriate export management practices.

Scope

The best practices identified herein:

1. Are designed Trade Facilitators/Freight Forwarders and Exporters/Re-Exporters. The terms “Company” and “Companies”, when used herein, refer to all of these types of entities;

2. Are designed to apply to transactions subject to the jurisdiction of the Department of Commerce; and

3. Complement the set of Best Practices for Exporters/Shippers found in the U.S. Department of Commerce Export Management System. Additional information on the Export Management System resides on the BIS Web site at <http://www.bis.doc.gov/ExportManagementSystems/Default.htm>.

Company Policy and Company Management

1. Each Company should develop a written policy against allowing its exports or services to contribute to terrorism or programs of proliferation concern.

2. Each Company should identify one person, who reports to the Company’s Chief Executive Officer, General Counsel, or other senior management official (but not to a sales or marketing official), as the ultimate party responsible for oversight of the Company’s export control compliance program.

3. Each Company should create an export control compliance program. Companies should integrate this compliance program into its overall regulatory compliance, security, and ethics programs.

4. Each Company should ensure that relevant Company personnel receive regular training in export control compliance responsibilities, and should consider offering to its employees incentives for compliance (and disincentives for noncompliance) with their export control responsibilities.

5. Exporters/Re-Exporters should seek to utilize only those Trade Facilitators/Freight Forwarders that also observe these best practices.

Compliance Activities: General

6. An Exporter/Re-Exporter should classify each of its products according

¹ A number of U.S. Government agencies, including the DOC, also work with the governments of those hubs to strengthen their indigenous export control regimes, including conducting technical assistance activities as part of the Export Control and Related Border Security Assistance (EXBS) Program managed by the U.S. Department of State.