

Drop Shipments/ Routed Transactions

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Definitions

- AES: Automated Export System
- EAR: Export Administration Regulations
- EEI: Electronic Export Information
- Export: To send or transport goods out of the country (Census)
- FPPI (Foreign Principle Party in Interest): The party shown on the transportation document to whom final delivery or end-use of the goods will be made
- ITAR: International Traffic in Arms Regulations
- POA: Power of Attorney
- USPPI (U.S. Principle Party in Interest): The person or legal entity in the United States that receives the primary benefit, monetary or otherwise from the export transaction

What Is A Drop Shipment

- Shipment from a supplier to its customer's customer or other End-user or designated destination
 - Example: Company A sells to Company B but ships to Company C
 - For our discussion purposes:
 - Company A = Supplier
 - Company B = Customer (of Company A)
 - Company C = End-user (customer of Company B)
- Requires special attention to detail
 - May not be able to use existing systems
 - Some documents may have to be supplied by other parties
 - Some documents may have to be prepared off-line

What Is A Drop Shipment (cont.)

- Documentation requires special care
 - Correct documents to correct parties
 - Correct information on correct documents
- Two basic variations
 - Customer in same country as Supplier, End-user in different country
 - Customer and End-user in different country than Supplier
(Customer and End-user may not be in same country)

Typical Drop Shipment Problems

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- Wrong invoice, other documents to 'importing' party
- Incorrect values, other data on invoices
- Incorrect values, other data on AES
- Determination of which party is to supply which documents
- Confidentiality of data

What Is A Routed Export Transaction

- “A routed export transaction is a transaction in which the FPPI authorizes a U.S. agent to facilitate the export of items from the United States and to prepare and file the EEI.” (15 CFR 30.3(e))
- Has nothing to do with Incoterms
 - Many think can occur only with Ex-works (EXW)
 - 15 CFR 30 makes **no** mention of Incoterms
- The U.S. Agent can be any designated agent
 - Usually a freight forwarder
 - Can be the Supplier
- Agent must be authorized in writing (POA or other writing)

Typical Routed Export Transaction Problems

- Assumption that routed export transactions can occur only with EXW Incoterms
- Not specifically identifying the authorized agent
- Not assuring written authorization exists
- Not defining responsibilities with other parties to transaction (including legal requirements)
- Others beyond scope of this presentation, e.g., AES access, data entry, etc.

Sound Complicated?

- Could be, but probably not as bad as it first looks
- Must make sure we truly understand the transaction

- Best advice:

- Draw a picture

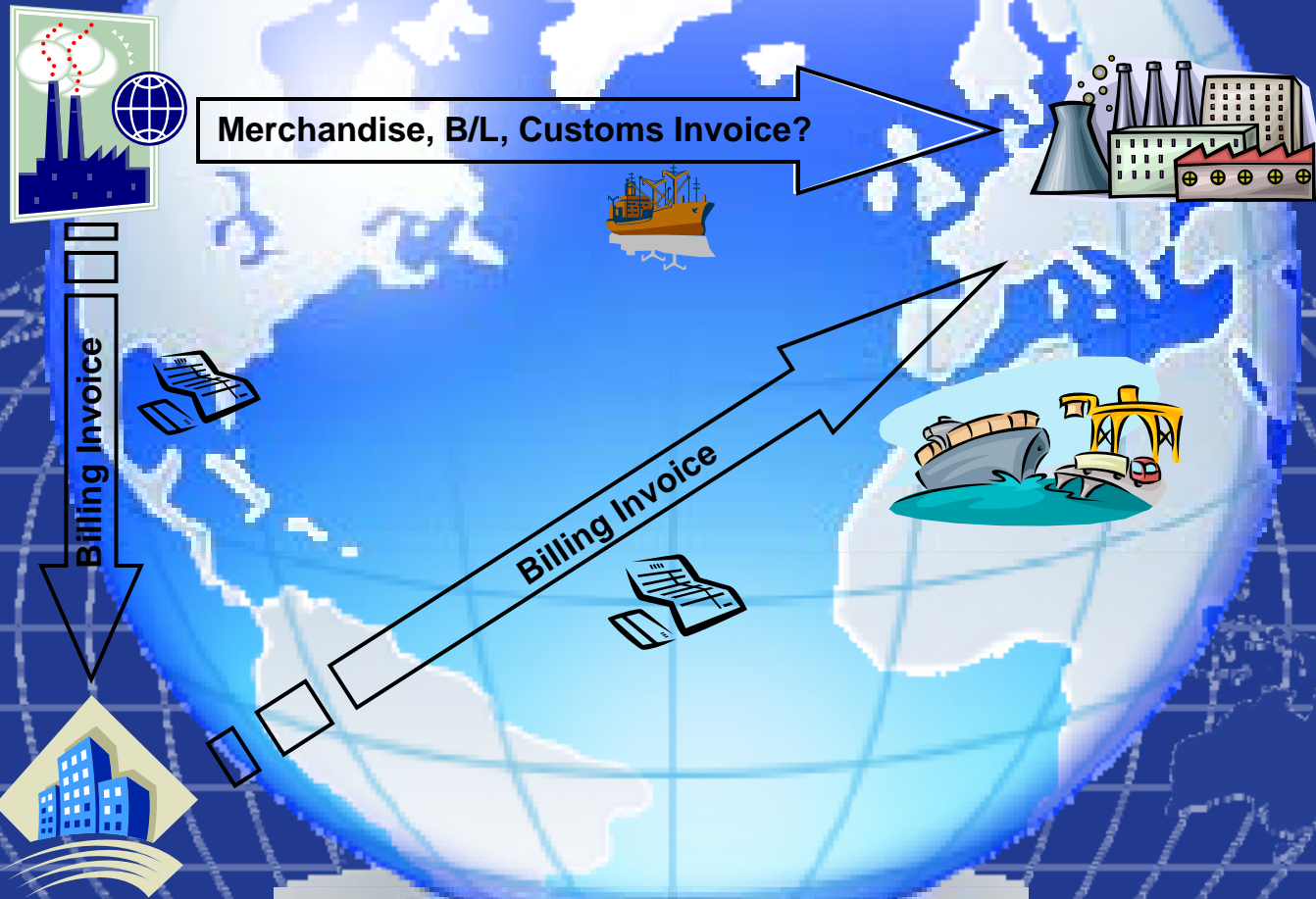
- Define the transactions
 - Define legal parties to transactions

- Make a check list

- Define responsibilities



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Supplier/Customer In Same Country: Supplier Responsibility

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- To Customer
 - Billing Invoice: Supplier to Customer price
 - Packing List
 - Copies of bills of lading (B/L), certificate(s) of origin (C/O), packing list (P/L), etc.
 - Copy of invoice to End-user for customs clearance if contract requires (see next bullet)

Supplier/Customer In Same Country: Supplier Resp. (cont.)

- To End-user
 - B/L (if required)
 - P/L (if required)
 - Copy of invoice to End-user for customs clearance? (various options available)
 - Customer supplies invoice to End-user directly (no Supplier involvement)
 - Customer supplies invoice to Supplier to send to End-user
 - Supplier prepares pro forma based on Customer supplied data (if contract calls for Supplier supplied pro forma)
- Note:** Must assure correct pricing – Customer to End-user

Supplier/Customer In Same Country: Supplier Resp. (cont.)

- Export Documentation
 - Technically no responsibility (get written authorization if handling)
 - Need to assure Customer is assuming export responsibility (preferably in writing)
 - Supplier may need to be named on any license required

Supplier/Customer In Same Country: Customer Responsibility

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- To Supplier
 - Provide necessary shipping instructions
 - Provide necessary data so Supplier can prepare pro forma to End-user if contractually required (Customer to End-user price)



Supplier/Customer In Same Country: Customer Responsibility

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- To End-user
 - Invoice to End-user for customs clearance (various options available)
 - Customer supplies invoice to End-user directly (no Supplier involvement)
 - Customer supplies invoice to Supplier to send to End-user
 - Supplier prepares pro forma based on Customer supplied data (if contract calls for Supplier supplied pro forma)
 - Note:** Must assure correct pricing – Customer to End-user
 - B/L (if required)
 - Packing list (if required)

Supplier/Customer In Same Country: Customer Resp. (cont.)

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- Export Documentation
 - Export license if required
 - Must name Supplier (as shipper) on any license required
 - AES input: Customer to End-user selling price for EEI

Note: Customer is USPPI

Is This A Routed Transaction

- Who designated the freight forwarder or other agent
 - Supplier: not a routed transaction
 - Customer: not a routed transaction (customer is in U.S.)
 - End-user: a routed transaction
- U.S. based Customer is USPPI (not Supplier)

Is This A Routed Transaction (cont.) compLight LLC.

- Who is responsible for AES filing
 - End-user if routed transaction, must authorize U.S. based agent in writing
 - If Supplier is to handle, must have POA or other written authorization to act as agent
- Who is responsible for licensing
 - Customer (USPPI/exporter) unless responsibility assumed by Supplier or FPPI (in writing)
 - If FPPI assumes responsibility, the FPPI's U.S. agent becomes the exporter (EAR purposes)
 - If a licensable transaction, do you really want to go here?

Scenario 1

- American Widget Company (AWC), Junction, OH, manufactures Gizmos that are used around the world. However, AWC has not yet established an international marketing network.
- Distribution in Europe for AWC is handled by Total Gizmos, LLC, (TG) located in Hypoluxo, FL.
- TG places an order with AWC for 1000 Mark I Gizmos for drop shipment to their European distributor, USA Gizmos (USAG), in Seville, Spain.
 - AWC selling price to TG is US\$100 each
 - TG selling price to USAG is US\$150 each

Scenario 1 (cont.)

Supplier to
Customer

Customer to
End-user

- Parties on the Invoice

- Shipper: AWG AWG
- Ship To: USAG USAG
- Seller: AWG TG
- Sold To: TG USAG

- Value on Invoice:

- AWC to TG: US\$ 100,000
- TG to USAG US\$ 150,000

Scenario 1 (cont.)

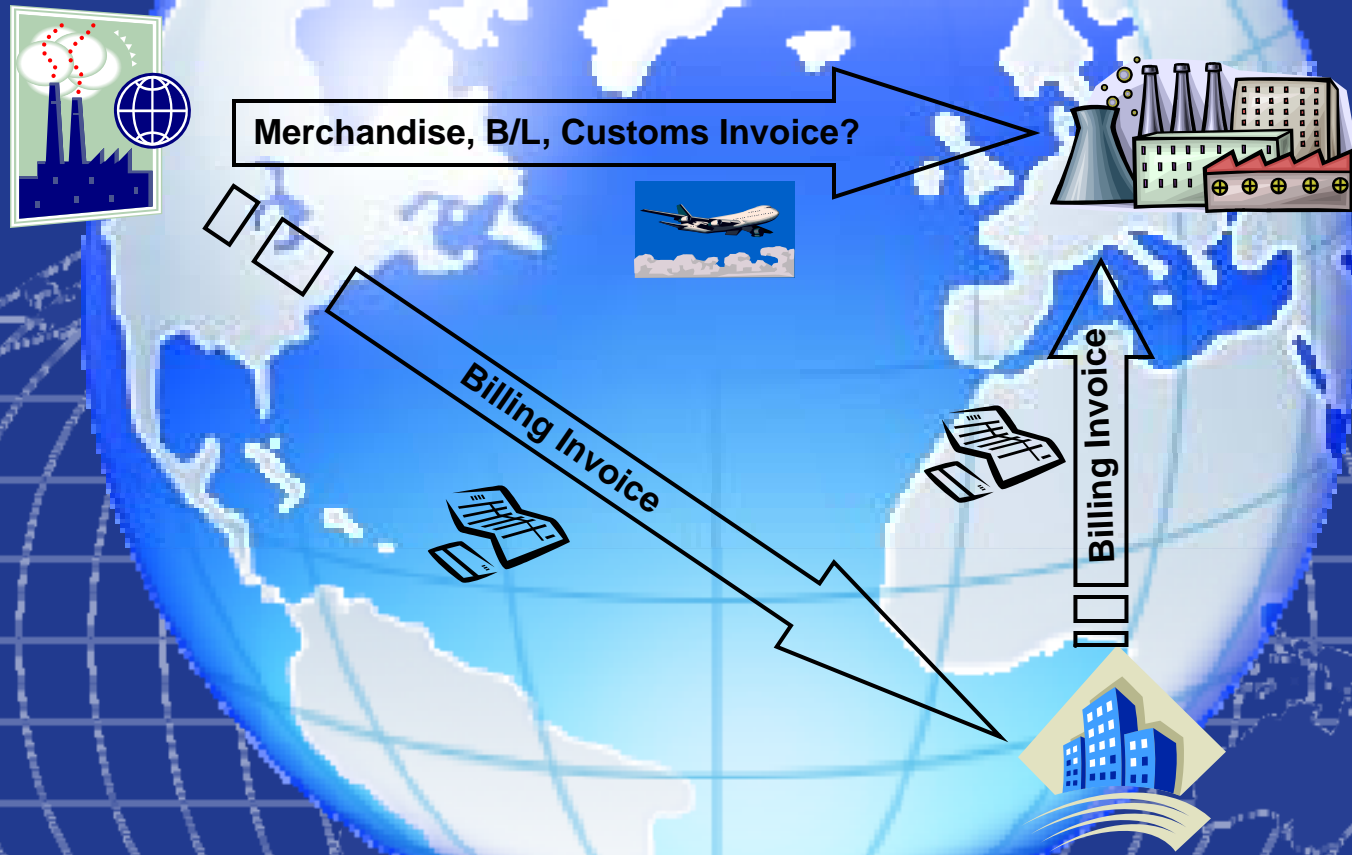
- EEI data for AES: (Filed by Total Gizmos or authorized agent)
 - USPPI: Total Gizmos
 - FPPI: USAG
 - Ultimate consignee: USAG
 - Value: US\$ 150,000 (value of international transaction)
 - Country of Ultimate Destination: Spain
 - Routed Transaction: Don't know – did USAG designate agent?

Scenario 1 (cont.)

- Other documents are negotiable
 - If AWC sends invoice with shipment, must show TG to USAG sales at US\$150 each, total US\$ 150,000
 - AWC may need to include packing list, bills of lading, certifications, etc., to expedite USAG customs entry
 - If a licensable transaction, TG is responsible for the license unless responsibility assumed in writing by AWG or USAG (USAG will have to designate an agent in writing)

Supplier/Customer In Different Countries

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Supplier/Customer In Different Country: Supplier Responsibility

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- To Customer
 - Billing Invoice: Supplier to Customer price
 - Packing List
 - B/L, C/O's, etc.
 - Copy of End-user Pro Forma if provided to End-user

Supplier/Customer In Different Country: Supplier Responsibility

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- To End-user
 - B/L (if required)
 - P/L (if required)
 - Copy of invoice to End-user for customs clearance? (various options available)
 - Customer supplies invoice to End-user directly (no Supplier involvement)
 - Customer supplies invoice to Supplier to send to End-user
 - Supplier prepares pro forma based on Customer supplied data (if contract calls for Supplier supplied pro forma)
- Note:** Must assure correct pricing – Customer to End-user

Supplier/Customer In Different Country: Supplier Resp. (cont.)

- Export Documentation
 - Supplier is USPPI
 - Export License if necessary (name Customer and End-user, etc.)
 - Unless licensing responsibility assumed in writing by FPPI
 - AES filing: Supplier selling price to Customer for EEI

Supplier/Customer In Different Country: Customer Responsibility

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- To Supplier
 - Supply necessary shipping instructions
 - Supply necessary pro forma data if contract calls for Supplier to send pro forma to End-user (Customer to End-user price)
- To End-user
 - Billing Invoice: Customer to End-user price
 - Any other required documents

Is This A Routed Transaction

- Who designated the U.S. agent or freight forwarder
 - Supplier: not a routed transaction
 - Customer: a routed transaction (customer not in U.S.)
 - End-user: a routed transaction
- U.S. based Supplier is USPPI

Is This A Routed Transaction (cont.)

- Who is responsible for AES
 - Supplier as USPPI even if a routed transaction
 - FPPI if a routed transaction, must authorize USPPI or other agent in writing
- Who is responsible for licensing
 - Supplier
 - If a routed transaction, the FPPI (End-user) can assume the licensing responsibility, must be done in writing (EAR only)
 - If a licensable transaction, do you really want to go here?

Scenario 2

- American Widget Company (AWC), Junction, OH, manufactures Gizmos that are used around the world. AWC markets in Europe through a distributor, Total Gizmos, GmbH, (TGG) Hamburg, Germany.
- TGG places an order with AWC for 1000 Mark I Gizmos for drop shipment to their customer, España Tools (ET), in Seville, Spain.
 - AWC selling price to TGG is US\$100 each
 - TGG selling price to ET is US\$150 each
 - TGG advises AWC that ET purchase order requires freight to be picked up from AWC by Amalgamated Forwarding, Parsippany, NJ

Scenario 2 (cont.)

Supplier to
Customer

Customer to
End-user

- Parties on the Invoice

- Shipper: AWG AWG
- Ship To: ET ET
- Seller: AWG TGG
- Sold To: TGG ET

- Value on Invoice:

- AWC to TGG: US\$ 100,000
- TGG to ET US\$ 150,000

Scenario 2 (cont.)

- EEI data for AES:
 - USPPI: American Widget Company
 - FPPI: ET
 - Ultimate consignee: ET
 - Value: US\$ 100,000 (value of international transaction)
 - Country of Ultimate Destination: Spain
 - Routed Transaction: Yes, ET designated forwarder

Scenario 2 (cont.)

- Other documents are negotiable
 - If AWC sends pro forma with shipment, must show TGG to ET sales at US\$150 each, total US\$ 150,000
 - If TGG and ET in same country or customs territory (e.g., EU), TGG may need to handle customs clearance or risk ET overvaluing for duties purposes
 - If TGG and ET not in same country or customs territory, ET will need customs invoice showing TGG selling price for customs clearance
 - AWC to supply packing list, bills of lading, certifications, etc., to party handling customs entry (TGG or ET)
 - If a licensable transaction, AWC is responsible for the license unless a routed transaction and ET (FPPI) assumes responsibility in writing (EAR only)

Summary: How To Handle

- Understand the transaction
 - Clear, specific contractual arrangements
 - Define who is responsible for what
 - Legal parties
 - Supplier, Customer, End-user
 - Internal transaction staff in your operation
 - Draw a picture if necessary – label and assign responsibilities
- Review at each step of the transaction
- Final review of documents for accuracy, correct party(ies)

Questions?

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For questions

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Shining light on compliance

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