

## Basic US Exporting Rules for Aircraft Professionals

Jeffrey S. Towers, General Counsel

If an aircraft closing occurs while the aircraft is in the US and it is then relocated to a home base outside the US, a proper export filing must be made by the appropriate party, and the related export tasks must be accomplished. The best practice is for the parties to a cross-border transaction to include US export and import filings as part of their pre-closing checklists. Handling an export properly is neither expensive nor difficult, but the failure to file could result in closing delays, significant penalties, and seizure of the aircraft. Knowledge of a few rules and access to a good aviation lawyer or US Customs broker can help avoid these bad results.

- 1) What types of aircraft exports require a US Customs filing? A filing is required when:
  - a. An aircraft that has been based in the US or was imported into the US leaves to be primarily based outside the US for 1 year or more, or
  - b. A foreign-based aircraft leaves the US after receiving improvements costing more than \$2500. In this situation, the value of the export equals the value of the improvements.However, an export filing for the aircraft is not required when an aircraft is merely being flown out of the country for routine purposes such as carrying passengers or freight.
- 2) Who are the responsible parties in an aircraft export? All parties to a US transaction in which the aircraft will be moved to and based outside the US would be wise to understand the rules and make sure the appropriate party or parties have processed the export through US Customs. Failure to do so could lead to last minute closing delays and possible penalties if you happen to be one of the parties with a specific responsibility under the Customs regulations and you fail to comply. The primary responsibilities and roles of parties under the regulations are:
  - a. Filing Party – Generally whoever is controlling the removal of the aircraft from the US has the export filing responsibilities. Therefore, usually the USPPI (defined below) is the Filing Party if it controls the removal of the aircraft from the US and the person or entity acquiring the aircraft is the Filing Party if it is responsible for moving the aircraft. However, in a routed export transaction, a non-US party acquiring the aircraft may authorize or agree to allow the USPPI to make the filing. The Filing Party will hire the Authorized Agent to make the filing and must confirm the filing is done correctly. The party designated as the Filing Party in the regulations may not avoid their responsibilities by contract or otherwise.
  - b. United States Principal Party in Interest (USPPI) – The USPPI is generally the party in the US who receives the “primary benefit, monetary or otherwise” from the transaction that precedes the export. For example, the USPPI could be a US-based manufacturer, seller, lessor, or refurbishment facility, and in that case the filing would be made under that entity’s US tax identification number. The USPPI could also be a foreign entity having a representative temporarily in the US with authority to accept the aircraft, in which case the representative would be reflected as the USPPI in the export filing using his or her foreign passport number. If there is a delay between the acquisition of the aircraft and the time the aircraft departs the US, the party in the US who receives the

primary benefit from the relocation of the aircraft would be the USPPI. The USPPI is responsible for supplying certain information for the export filing and must retain records regarding the export in case the government has questions later. The party who qualifies as the USPPI may not ignore their responsibilities regardless of any contractual provision that purports to pass those responsibilities to another party.

- c. Exporter – The USPPI is almost always the Exporter, with the limited exception that in a routed export transaction, the non-US party acquiring the aircraft may elect to be the Exporter. The Exporter is responsible for determining whether any licenses or other US government authorizations are required for the export and to obtain such licenses and authorizations prior to the export, if needed.
  - d. Authorized Agent – The US licensed customs broker or freight forwarder hired by the Filing Party is the Authorized Agent for the export.
- 3) What needs to be filed with US Customs, when and by whom? The export filing, called the Electronic Export Information (EEI), is filed electronically through the Automated Export System (AES). It must be filed before the aircraft is flown out of the US. The filing is made by the Authorized Agent on behalf of the Filing Party and contains such information as the name and address of the USPPI, the description and value of the aircraft and the name of the person or entity who will receive the exported aircraft at its destination. The successful filing will be evidenced by the issuance of a Customs Internal Transaction Number (ITN). The crew will meet US Customs at the last point of departure in the US and will provide the officer with the AES document packet containing the ITN number and other information and confirm with the officer that they have permission to leave.
- 4) Need more information? This article is intended to provide general information about aircraft exports. NBAA members can access additional guidance free on the NBAA website at <https://nbaa.org/flight-department-administration/aircraft-registration-transactions/exporting-aircraft-from-the-united-states/>. For information about the particular export requirements applicable to an upcoming transaction, please contact an aviation attorney or US Customs broker who is familiar with aircraft exports.

**TVPX Inc. is a licensed US Customs broker specializing in aircraft imports and exports. Please contact Tobias Kleitman for assistance at +1.978.610.1150 or tobias@tvpix.com.**