

TVPX Inc.  
2352 Main Street, Suite 201  
Concord, MA 01742  
+1 978.610.1234 (phone)



## UNITED STATES IMPORTS AND EXPORTS OF AIRCRAFT

*Jeffrey S. Towers, General Counsel*

### Introduction:

Like most other developed countries, the United States (U.S.) regulates the entry and removal of goods, including aircraft, across its borders. The primary reasons for regulating commerce in and out of the country are to measure the balance of trade and to prevent cross-border transfers involving prohibited merchandise or prohibited parties. The rules for U.S. imports and exports require the party or parties involved to timely and accurately report certain information to the government and under some circumstances to obtain licenses or other authority for exports.<sup>1</sup> Unlike other jurisdictions, the United States does not charge significant taxes, fees or duties on most aircraft imports or exports.<sup>2</sup> However, the governmental agencies that are primarily involved in imports and exports, namely U.S. Customs and Border Protection (CBP), Census Bureau, and Bureau of Industry and Security (BIS), can assess significant penalties and seize aircraft for violations of the reporting or licensing requirements.

### Import Process:

An aircraft does not need to be imported when it is merely functioning as a carrier of passengers or cargo into the U.S.<sup>3</sup> However, an import entry is required in other circumstances, such as when

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<sup>1</sup> The Federal Trade Regulations and other information about imports and exports are available at <https://www.census.gov/foreign-trade/regulations/index.html>. The Export Administration Regulations (EAR) restrict exports of other items, including equipment and technology that could have a commercial and military “dual-use”, as well as exports to any denied parties on the Office of Foreign Assets Control (OFAC) list and exports to countries and areas identified in the EAR. The International Traffic in Arms Regulations (ITAR) restrict U.S. exports of the defense related equipment (including certain aircraft, parts and equipment), services and technology. Information about the EAR, OFAC and ITAR is available at <https://www.bis.doc.gov/>, <https://home.treasury.gov/policy-issues/office-of-foreign-assets-control-sanctions-programs-and-information>, [https://www.pmddtc.state.gov/ddtc\\_public](https://www.pmddtc.state.gov/ddtc_public) and <https://www.trade.gov/consolidated-screening-list>

<sup>2</sup> Most U.S. states charge a tax on the sale, use or registration of aircraft. For more information about state taxes and exemptions, consult a U.S. tax adviser.

<sup>3</sup> The passengers, crew and cargo would, however, need to enter through U.S. customs.

a foreign-based aircraft is brought into the United States for a pre-buy inspection and a closing or is brought into the United States for the purpose of basing the aircraft in the U.S. long term. In addition, aircraft typically must be imported when moved to the U.S. for repairs and alterations. In these situations, the aircraft is considered the merchandise that is being imported. The import entry needs to be completed prior to bringing the aircraft into the U.S. It is critical, therefore, that the party bringing in the aircraft hires a U.S. customs broker, supplies them with the necessary information to process the entry and takes the other required steps in advance.

The party responsible for the import entry, referred to as the “importer of record”, is usually the seller, buyer, lessor or lessee, but the U.S. customs broker or any party with a financial interest in the transaction may also serve as the importer of record. The actual entry is made electronically by the customs broker and will include such information as the name of the importer of record, the aircraft value, country of origin, empty weight in kilograms, harmonized tariff number, and the party in the U.S. that will receive the aircraft. The customs broker will also need to upload copies of several documents, including CBP forms CF7501 and CF3461, the aircraft registration, the certificate of airworthiness and a pro forma invoice. In order to make the entry, the importer of record must obtain a customs bond and pay any duties, taxes and fees that relate to the import. The importer must also pay a user fee and obtain a decal from CBP through the Decal and Transponder Online Procurement System (DTOPS) website.<sup>4</sup> CBP officers at the port of entry (i.e. – the location where the aircraft will first arrive in the U.S.) may ask the pilot to provide hard copies of the documents that were uploaded by the customs broker, as well as the DTOPS payment confirmation, decal number or a photo of the decal sticker. The importer of record should confirm in advance that CBP officers are available at the intended port of entry, since not all airports have CBP officers based onsite. Finally, the pilot is responsible for filing the Electronic Advance Passenger Information System (eAPIS) manifest with CBP prior to arrival in the U.S. The eAPIS provides information about the pilot, crew, and passengers on the inbound flight.

#### Export Process:

Similarly, there is no need to formally export an aircraft when it is merely carrying passengers or cargo to locations outside the U.S. There is, however, a requirement to export if an aircraft is being sold and permanently moved to a new base in a foreign jurisdiction or if an owner otherwise removes an aircraft to a location outside of the U.S. with the intention of basing it there for a period of one year or more. Also, aircraft that were imported for repairs or alterations must usually be exported. The export filing, known as the Electronic Export Information (EEI), must be made through the Automated Export System (AES) prior to the removal of the aircraft from the U.S.

More than one party may need to be involved in an export. The party in the U.S. that is getting the “primary benefit” from the export, referred to as a United States Principal Party in Interest or USPPPI will always have certain responsibilities relating to the export. The USPPPI is usually a U.S. seller or lessor or a foreign buyer or lessee that has an authorized foreign representative

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<sup>4</sup> <https://www.cbp.gov/trade/basic-import-export/uftd-info>

temporarily in the U.S. to accept delivery and arrange for the export. In limited cases the USPPI might also be an aircraft sales broker or similar party who negotiated the sale and arranged for the export or a customs broker that handled an import of the aircraft. In situations where the USPPI is a party to an owner trust, it is usually the beneficial owner or the lessee and not the trustee. The responsibilities of the USPPI will include hiring and/or providing information to the customs broker or freight forwarder. The USPPI will usually also be responsible for determining if a license or other authorization to export the item is required due to the nature of the equipment, the destination or the identity of the foreign party who will ultimately own or control the aircraft.

When the USPPI is controlling the export of the aircraft, the USPPI is responsible for making the export filing with U.S. Customs. However, many aircraft exports are structured as “routed export transactions”. In a routed export, the party responsible for making the export filing is usually the foreign buyer or lessee. In any case the actual EEI filing will be made by the customs broker or freight forwarder and will include such information as the name of the USPPI, the U.S. location that the aircraft is departing from and the foreign destination, the name of the party who will be receiving the aircraft at its destination, the applicable Export Control Classification Number (ECCN) and the license or license exemption information. Finally, the pilot will also be responsible for filing an eAPIS manifest before the aircraft leaves the U.S.

#### Common Misconceptions:

It is important to note that U.S. customs requirements are entirely separate from U.S. aircraft registration requirements. Aircraft must be properly imported and exported regardless of whether an aircraft is registered in the U.S. or in a foreign jurisdiction. Similarly, an Export Certificate of Airworthiness issued by the Federal Aviation Administration (FAA) relates solely to aircraft registration and has no relevance to an export for U.S. customs purposes.

#### Impact of Current Events on Imports and Exports:

The U.S. government has increased enforcement activity in the last 1-2 years, with a particular focus on aircraft that have not been properly exported. Fortunately, the National Business Aviation Association (NBAA) has worked constructively with the Census Bureau and BIS to prepare information on the best practices for aircraft exports. Helpful information is already available on the NBAA website and more will be posted shortly.

Especially in the current environment it is critical that parties exercise great care to assure compliance with all applicable U.S. and international restrictions and sanctions relating to imports and exports of aircraft, including, but not limited to those arising out of the Russian invasion of Ukraine. The Russian related restrictions and sanctions continue to evolve, and parties

engaged in cross-border transactions should consult qualified trade compliance attorneys and advisers for assistance.<sup>5</sup>

#### Conclusion:

If done properly, most aircraft imports and exports are neither expensive nor difficult. Generally, problems only arise when filings are not made as required. Parties involved in bringing an aircraft into the U.S. or removing it from the U.S. can avoid adverse consequences by always retaining a U.S. customs broker with experience in aircraft imports and exports to assist with the filings at least several business days before moving the aircraft.

#### About TVPX:

The TVPX group of companies has been focused on providing quality services to the aviation sector for 20 years. The TVPX team includes some of the most experienced professionals in the industry.

TVPX Inc. is a U.S. customs broker specializing in imports and exports of aircraft and aircraft equipment. For assistance with an import or export please contact Tobias Kleitman at +1.978.610.1150 and [tobias@tvpix.com](mailto:tobias@tvpix.com).

TVPX Aircraft Solutions Inc. provides aircraft owner trust services. For assistance with an owner trust please contact Scott Nielsen at +1.801.877.0509 and [scott@tvpix.com](mailto:scott@tvpix.com).

Jeff Towers can be reached at +1.978.610.1156 and [jtowers@tvpix.com](mailto:jtowers@tvpix.com)

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<sup>5</sup> Information about U.S. sanctions involving Russia and Ukraine is available at <https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information/ukraine-russia-related-sanctions> and <https://www.bis.doc.gov/index.php/policy-guidance/country-guidance/russia-belarus>. See also footnote 1.