

Chapter 3: Enforcement

Mission

The mission of the Bureau of Industry and Security’s (BIS) Export Enforcement division is to protect U.S. national security and foreign policy interests by enforcing the export control and antiboycott provisions of the Export Administration Regulations (EAR).

Export Enforcement accomplishes this mission by identifying and apprehending violators and by pursuing criminal and administrative sanctions against them. Export Enforcement works with the Department of Justice to impose criminal sanctions for violations, including fines and incarceration, and with the Department of Commerce’s Office of Chief Counsel for Industry and Security to impose civil penalties for violations, including fines and denials of export privileges.

At the core of Export Enforcement’s mission is the prevention of violations before they occur. As part of its preventive enforcement program, Export Enforcement conducts outreach visits to train U.S. exporters to identify illegal export transactions and to avoid participation in unsanctioned foreign boycotts.

Office of Export Enforcement

BIS conducts investigations of potential violations through its Office of Export Enforcement (OEE). OEE investigators are located in eight field offices that serve the major metropolitan areas of Los Angeles, San Jose, New York, Washington, Boston, Miami, Dallas, and Chicago. At the end of Fiscal Year 2002, OEE planned to establish additional field offices in Seattle and Houston contingent on the availability of requested funding. OEE special agents

have traditional police powers, including the authority to make arrests and execute warrants. In addition, agents may issue administrative subpoenas and detain and seize goods about to be illegally exported.



Assistant Secretary for Export Enforcement Michael J. Garcia and Chief Counsel for Industry and Security Jon A. Dyck address the Bureau of Industry and Security’s 15th Annual Update Conference, October 10, 2002.

The OEE field offices are supported by the Intelligence and Field Support Division (IFSD), based in OEE’s Washington, D.C. headquarters. IFSD reviews information relating to potential export control violations and generates leads for investigations conducted in the field. Officers assigned to IFSD also coordinate resources among the field offices and provide administrative support to those offices. OEE’s headquarters operation also houses a national coordinator for agents trained in recovering evidence from seized computers. OEE has specially trained agents in each field office who support investigations by seizing and analyzing data that is stored electronically.

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Enforcement of U.S. export control laws necessarily involves communication and coordination with the international community. Through Export Enforcement's attaché program, OEE assigns special agents to posts abroad to provide an overseas export control resource for BIS as well as industry, foreign governments, and the U.S. Embassy in country. Export Enforcement attachés conduct end-use checks to uncover illegal export transactions, work with the host governments to develop effective enforcement systems, and educate the local business community about U.S. export control laws and regulations. During Fiscal Year 2002, Export Enforcement had attachés in Beijing, China and Moscow, Russia. At end of Fiscal Year 2002, Export Enforcement was in the process of posting attachés to Abu Dhabi, United Arab Emirates and Cairo, Egypt. Export Enforcement also plans to post attachés in Singapore; New Delhi, India; and Shanghai, China during Fiscal Year 2003.

Office of Enforcement Analysis

OEE's investigative work is supported by analysts in Export Enforcement's Office of Enforcement Analysis (OEA). OEA's analysts review export license data for enforcement concerns and communicate those concerns to OEE's investigators. OEA analyzes intelligence information to determine the need for pre-license checks and post-shipment verifications. OEA reviews Shipper's Export Declarations to detect violations of export control requirements and to uncover patterns of illegal procurement, particularly with respect to sensitive items of proliferation concern. OEA also reviews visa applications submitted by those seeking to travel to the United States to prevent illegal technology transfers to visiting foreign nationals in violation of the "deemed export" rule, and, where necessary, forwards the information to OEE field offices for investigation.

Office of Antiboycott Compliance

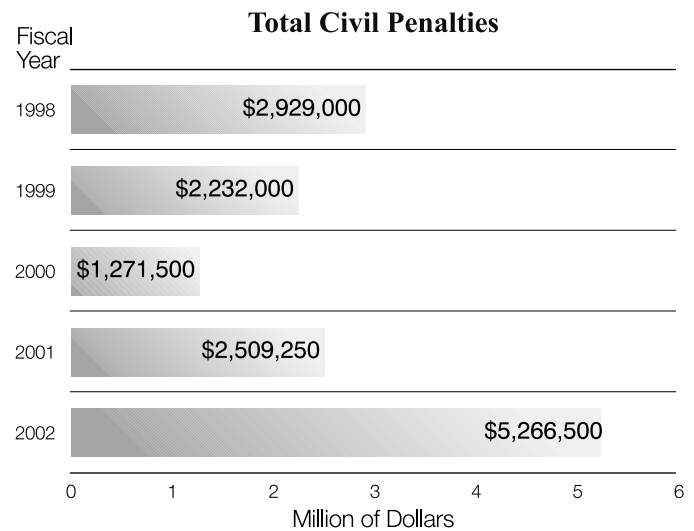
The Office of Antiboycott Compliance (OAC) investigates violations of the antiboycott provisions of the EAR, such as furnishing boycott-related information, refusing to deal with blacklisted businesses, and religious discrimination. OAC also pursues administrative and criminal sanctions for violations of U.S. antiboycott laws. OAC provides

support to the State Department in connection with the U.S. Government's efforts to persuade Arab governments to end their boycott of Israel. OAC also educates the public on the antiboycott regulations and the importance of compliance with such laws and regulations.

Accomplishments in Fiscal Year 2002

Significant Cases

A summary of significant export control cases closed in Fiscal Year 2002 is included in this report (see Appendix D for details). Of particular significance: BIS concluded a complex six-year investigation involving false statements made by McDonnell Douglas Corporation on a license application for the export of machine tools to China. A \$2.12 million penalty was imposed.



In a noteworthy application of the antiboycott laws, a \$10,000 civil penalty was imposed on Johns Hopkins Health System Corporation to settle allegations that the company discriminated against a U.S. person because she was Jewish.

In addition to traditional areas of concern, Fiscal Year 2002 saw Export Enforcement expand its partnership with the FBI's Joint Terrorism Task Forces (JTTF) located throughout the country. The goal of the JTTFs is to bring all areas of law enforcement expertise to bear on the challenge of preventing international terrorism. Export

Enforcement made significant contributions to the JTTFs. In one case, a special agent from the New York Field Office contributed to the investigation of the kidnaping and murder of Wall Street Journal reporter, Daniel Pearl, by developing a time-line and link analysis and working with the task force in Karachi, Pakistan.

Unverified List

In an effort to share information with industry to assist it in evaluating export transactions, BIS published the “Unverified List” in June 2002. This list contains names of selected entities for which BIS was unable to perform either a pre-license check or post-shipment verification. The inability to verify the end-use of a sensitive commodity or the suitability of an end-user or consignee involved in an export transaction raises concerns about the suitability of these firms to participate in future transactions subject to the EAR.

BIS considers the involvement of any firm identified on the Unverified List in a transaction as a “red flag” for purposes of the “Know Your Customer” guidance set forth in Supplement No. 3 to Part 732 of the EAR. Such a “red flag” imposes an affirmative duty on an exporter to inquire further into facts surrounding the proposed transaction. By sharing the identity of these unverified firms, BIS assists in keeping industry informed of export control information for the benefit of both legitimate trade and U.S. national security interests.

Antiboycott Activity

During Fiscal Year 2002, BIS continued its commitment to oppose unsanctioned foreign boycotts of friendly countries. During Fiscal Year 2002, six companies agreed to pay civil penalties totaling \$68,000 to settle allegations that the companies violated U.S. antiboycott regulations contained in the EAR. In these cases, BIS alleged that the companies made boycott-based agreements to refuse to do business, furnished business information for boycott reasons, engaged in discrimination based on religion, or failed to report receipt of boycott requests as required by U.S. antiboycott regulations. The six companies sanctioned included three foreign subsidiaries of U.S. companies. These cases demonstrate that U.S. companies, wherever located, must comply with the antiboycott provisions of the EAR.

A key component of the OAC mission is to educate the public on the antiboycott regulations. During Fiscal Year 2002, OAC compliance officers provided guidance on antiboycott compliance issues to 1,138 callers on the OAC telephone advice line. During the same period, OAC officials made 15 public presentations on the antiboycott regulations. These presentations were attended by exporters, manufacturers, financial services institutions, freight forwarders, and attorneys with expertise in international trade matters. In addition, OAC provided extensive counseling to several companies with specific boycott-related problems.

OAC supports other Federal agencies in antiboycott efforts. OAC provided information to the State Department regarding boycott requests imposed on U.S. companies during Fiscal Year 2002. The State Department uses this information in its discussions with boycotting countries about the boycott of Israel. OAC also continues to share information with the International Trade Administration’s Office of the Middle East for use in advising industry on how to participate in trade opportunities in that region without violating U.S. antiboycott laws.

Law Enforcement Training

Training in export control laws and in modern investigatory techniques is crucial to the development of Export Enforcement’s special agents. To meet the demands of a changing legal framework and advances in investigatory techniques, Export Enforcement held training sessions for its special agents. While the focus of the training was investigative techniques and case prosecution for export control cases, special attention was placed on Export Enforcement’s role in terrorism investigations. The training sessions not only provided agents with the opportunity to learn from a variety of visiting instructors, but also provided a forum to share their own experiences and raise questions concerning specific investigations or legal issues. The training included one three-day basic course for new agents and a week-long advanced course attended by all Export Enforcement agents. Both courses featured instructors from Export Enforcement management and OEE’s own senior special agents, as well as experienced attorneys from the Department’s Office of

Chief Counsel for Industry and Security, prosecutors from the Department of Justice, and investigators from other law enforcement agencies.

Goals for Fiscal Year 2003

In coordination with other agencies and with BIS licensing officers, Export Enforcement will develop a targeted approach to the enforcement of export license conditions. This approach will promote the imposition of conditions that can be enforced effectively and will provide for the monitoring of compliance with conditions after they are imposed.

Export Enforcement is working with the Office of Chief Counsel for Industry and Security to facilitate the processing of administrative enforcement cases by developing a protocol for accelerated case processing. Early in 2003, the Office of Export Enforcement expects to implement a case management system that will enable OEE to track information related to commodities, persons, and organizations in its enforcement cases. The system will also enable special agents to uncover links among investigations being conducted by the various field offices that might not otherwise appear. Due to the increase in storage capacity of the new system, special agents will be able to maintain an electronic case file that will contain all the principal investigative material in addition to the report itself. Under proper controls, the information will be available to OEE agents in each field office. The availability of this information will improve investiga-

tions, prevent duplication of efforts, and provide a tool for managing the caseloads of the field agents.

OEE will improve coordination with the Office of Chief Counsel to accelerate the administrative case process. OEE will seek new ways to target the most sensitive commodities and the most risky end users in an effort to maximize enforcement resources. A primary goal is to ensure consistency among the field offices in their approaches to cases, whether they be administrative or criminal.

OEA will work with both the Immigration and Naturalization Service and the State Department to enhance OEA's ability to detect violations of the deemed export provisions of the EAR, and to identify situations that might lead to unauthorized access to technology by foreign nationals working in the United States. OEA will arrange its resources along geographic lines to improve its ability to identify patterns of illegal procurement and to provide regional expertise to investigators in the field.

OAC will work with industry to further increase awareness of the impact of the boycott of Israel on U.S. companies. OAC will provide increased counseling to companies that do business in the Middle East. To accomplish this goal, OAC will develop a program for educating employees of other government agencies on the antiboycott regulatory scheme so that they, in turn, can guide companies seeking business opportunities in regions of the world where antiboycott issues traditionally arise.