

Chapter 5. Export Enforcement

BXA's Export Enforcement arm (EE) consists of the Office of Export Enforcement (OEE), the Office of Export Analysis (OEA), and the Office of Antiboycott Compliance (OAC) (See Chapter 6). In FY 2001, OEE and OEA continued programs to investigate and prevent dual-use export control violations, thereby protecting important national security and foreign policy interests safeguarded by the Export Administration Act (EAA) and Export Administration Regulations (EAR). Additionally, OAC continued to administer and implement the antiboycott policy and program articulated in Section 8 of the EAA and Part 760 of the EAR.

EE is composed of 152 trained professionals, including 95 special agents, who enforce the EAA and the EAR, the Fastener Quality Act, and the Chemical Weapons Convention Implementation Act. OEE educates exporters, interdicts illegal exports, and prosecutes violators. Working closely with BXA licensing officers and policy staff, BXA's law enforcement officers apply their special skills and understanding of the export control system to prevent exports of potentially damaging dual-use items to unauthorized distributors or unreliable users.

When there is reason to believe that violations of the EAA or EAR have occurred, OEE's special agents and compliance officers investigate and recommend appropriate charges. During FY 2001, \$2,392,000 in civil penalties (See Appendix A, Table 5-2 for a list of administrative cases closed in FY 2001) and \$1,125,400 in criminal fines were imposed for export control violations of the EAA and EAR. In addition, \$117,250 in civil penalties for antiboycott violations of the EAA and EAR also were imposed (See Chapter 6).

Office of Export Enforcement

The Office of Export Enforcement (OEE) is headquartered in Washington, D.C., with field offices located in eight U.S. cities – Los Angeles, California; San Jose, California; Chicago, Illinois; Dallas, Texas; Fort Lauderdale, Florida; Boston, Massachusetts; New York, New York; and Herndon, Virginia. Special agents of OEE are empowered to make arrests, carry firearms, execute search warrants, issue subpoenas, and detain items about to be illegally exported.

OEE's Intelligence and Field Support Division, located at BXA headquarters, is staffed by special agents and analysts. This staff serves as a conduit between the intelligence community and OEE field offices.

During FY 2001, OEE conducted numerous investigations, some of which led to criminal and administrative sanctions. It also issued 179 warning letters in cases of minor violations. Warning letters typically inform the recipient that OEE has reason to believe they had violated the EAR, and that increased compliance efforts on the part of the exporter were strongly recommended.

During FY 2001, BXA special agents worked with the Department of Justice to secure indictments and informations against 16 individuals and 12 companies (See Appendix A, Table 5-1 for a list of FY 2001 criminal cases for EAA and International Emergency Powers Act violations). OEA assists OEE field offices and BXA licensing officers by analyzing and disseminating export control-related information. OEA also makes recommendations based on intelligence and investigative information to BXA licensing officers concerning pending license applications.

During FY 2001, BXA enforcement personnel examined 6,662 export license applications to assess diversion risks, identify potential violations, and determine the reliability of proposed end users of controlled U.S.-origin commodities and technology. Based on these reviews, EE recommended that 114 license applications either be rejected or returned without action because of diversion risks or other enforcement concerns.

In addition, as part of its ongoing responsibility for preventing illegal exports before they occur, BXA's enforcement staff assessed the results of 373 pre-license checks (PLCs) in FY 2001, and recommended that 40 of the corresponding license applications be rejected or returned without action.

EE also performs post-shipment verifications (PSVs) to ensure that items exported under export licenses were received at the authorized location designated on the export license and that their end-use is authorized and complies with the license conditions. In FY 2001, EE conducted and assessed the results of 689 PSVs. OEE special agents conducted 516 of these verifications as part of the Safeguards Verification Program (see below), while the Foreign Commercial Service or other U.S. embassy officials conducted the other 173 PSVs. Information from 156 PSVs led to further enforcement action, such as the initiation of investigations.

Export Enforcement Initiatives

High Performance Computer Provisions of the National Defense Authorization Act of 1998

A provision of the National Defense Authorization Act for FY 1998 (NDAA) requires special scrutiny of exports of high performance computers (HPCs) to certain specified countries. Those who wish to export HPCs that operate above a certain performance level to these countries must obtain a license. These NDAA provisions also require exporters to submit post-shipment reports to the Department, and require that the Department conduct PSVs at the end-user's location to verify the end-use of each HPC exported to the specified countries.

EE maintains a high performance computer division in OEA to oversee all enforcement responsibilities under the NDAA's HPC provisions. EE conducted PSVs as required by the NDAA and submitted the third NDAA Annual Report to the designated congressional committees on December 20, 2000. The report examined exports of HPCs to countries of the greatest proliferation concern and provided the results of PSVs for the reporting period of November 18, 1999, through November 17, 2000.

OEE also included sessions on the NDAA and high performance computers in the continuing training for all special agents.

Project Outreach

As part of its public education efforts, OEE special agents participated in numerous seminars and trade shows across the country during FY 2001. The special agents developed contacts with private sector firms through Project Outreach, a program that provides firms with export control guidance, gives OEE a better understanding of the private sector's needs, and provides valuable investigative leads. OEE agents conducted 1,046 Project Outreach visits during FY 2001.

Safeguards Verification Program

The OEE Safeguards Verification Program conducts onsite pre-license and post-shipment checks using EE special agents. This program combats the misuse of U.S. exports that are subject to the EAR. The safeguards verification teams travel overseas to determine the disposition of selected U.S. exports, particularly those that raise proliferation concerns. These safeguards verification teams also assess the suitability of foreign firms to receive U.S.-origin items that are subject to U.S. export controls and conduct educational visits to foreign firms, often in cooperation with host government officials.

International Law Enforcement Cooperation

In FY 2001, EE expanded its international cooperative efforts.

Senior EE officials spent much of the year working with other countries on precedent-setting "best practices" for effective export enforcement, which were adopted by the Wassenaar Arrangement at its December 2000 plenary session.

EE also worked with a group of countries having extensive transshipment trade on a similar set of enforcement "best practices" for transshipment issues. Those best practices were subsequently adopted at the November 2000 International Transshipment Enforcement Conference. This marked the first time transshipment countries had agreed to such practices. EE joined with officials from the Department of State and the U.S. Customs Service to implement the practices. Enforcement teams also worked with officials in Singapore, Malaysia, the United Arab Emirates, Cyprus, and Malta on similar practices.

During FY 2001, EE assigned an export control attaché to the U.S. Embassy in Moscow, Russia, to work cooperatively with the Russian Federation to implement enforcement procedures designed to halt the proliferation of U.S. and Russian exports to countries or organizations of concern. The attaché also is responsible for evaluating the reliability of Russian entities as end-users of controlled U.S. exports.

EE's attaché at the U.S. Embassy in Beijing, China, continued to play a key role in ensuring that U.S. exports licensed to China comply with license conditions through end-use visits. In October 2000, EE

helped organize the first-ever U.S.-China export control seminar designed for businesses from those two countries.

Throughout the year, EE officials worked with Hong Kong officials to ensure that U.S. products destined for that Special Administrative Region were not sent elsewhere in China without appropriate authorization.

EE chaired U.S. interagency delegations that conducted a number of enforcement seminars and workshops with other countries, including the first export enforcement workshops held with enforcement officials in Kyrgyzstan and Moldova. These meetings advanced those countries' understanding of important export enforcement techniques.

EE also participated in international export control seminars and workshops with more than 50 countries in Europe, the former republics of the Soviet Union, Central and Eastern Europe, the Baltic States, the Central Asian republics, and Asia. In all of these discussions, EE provided in-depth information on methods to enforce export control laws and regulations.

EE participated in the international nonproliferation regimes, including enforcement seminars of the Wassenaar Arrangement, the Missile Technology Control Regime, and the Nuclear Suppliers Group. An EE official spoke at the February 2001 Asian Export Control Seminar involving 19 Pacific Rim countries and chaired the seminar's enforcement panel.

Shipper's Export Declaration Review Program

As the volume of export licenses has decreased, EE has increased the number of Shipper's Export Declarations (SEDs) that it reviews. Onsite reviews of selected SEDs are conducted by OEE Special Agents at U.S. ports, who review numerous transactions before selecting a smaller target group for closer scrutiny.

EE Headquarters conducts a systematic review of SEDs after shipments have occurred. These reviews focus primarily on licensed and license exception shipments, shipments bound for destinations of concern, and shipments of commodities that raise proliferation concerns. OEA identifies SEDs that merit closer review by OEE special agents.

Visa Application Review Program

OEA administers the Visa Application Review Program to prevent unauthorized access to controlled technology or technical data by foreign nationals visiting the United States. The EAR define an export to include the release of technology or source code to a foreign national in the United States (other than persons lawfully admitted for permanent residence). Any such release is deemed to be an export to the home country of that foreign national.

In FY 2001, OEA expanded its Visa Application Review Program to target not only visas involving

possible technology transfer or procurement in support of weapons of mass destruction programs, but also visas relating to possible terrorist activities identified after the September 11 terrorist attacks. OEA analysis of visa applications involves preventive enforcement efforts such as recommending denial of the issuance of a visa, maintaining the information for future use, and the referral of investigative leads to OEE's field offices for case development.

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