

**Assistant Secretary Darryl W. Jackson**  
**Enforcement Keynote**  
**BIS Update Conference 2008**

It is my pleasure to welcome all of you, once again this year, to the Enforcement portion of our Update conference. Given that this will be my last Update speech to you, I would like to share some perspectives on what we have accomplished together, and why it is important. Perhaps more importantly, I would also like to share some thoughts about the challenges that Export Enforcement will confront in the future, and how to meet them.

**Acknowledgments**

At the outset, however, let me make a few important acknowledgments. The first is that in this position, I have had the honor and the pleasure of working with and leading the finest federal law enforcement agency there is – the Office of Export Enforcement (OEE). Having worked with just about every federal law enforcement agency there is during my days as a federal prosecutor, I can say that there is no more dedicated or skilled group of Special Agents in our nation. Nor is there another federal law enforcement agency that is more knowledgeable about this complex field. Our country is very fortunate to have such men and women in its service.

OEE is the only law enforcement agency that has as its sole mission enforcing the laws and regulations concerning dual use exports. OEE continues to concentrate the bulk of its active investigative efforts upon three priority areas – countering WMD proliferation, terrorism and terrorism-support, and also the unauthorized diversion of dual use goods to military end uses. Given the importance of OEE’s mission in today’s complex world, it is very fortunate that OEE can focus exclusively upon “keeping the most sensitive goods and technology out of the most dangerous hands.”

I want to take this opportunity to publicly thank our Special Agents for the wonderful job they have done during my time here. I know they will continue to do so in the future under the leadership of their new Director, Special Agent Tom Madigan, who was selected for that position earlier this year. This is his first Update conference in that role and you will hear from him on the Enforcement Panel that follows.

Let me also acknowledge the efforts of our Office of Enforcement Analysis (OEA). In addition to supporting our Special Agents, the analysts in OEA help target the end-use checks we conduct around the world. Our Export Control Officers (ECOs), who are stationed in five locations around the globe and conduct those end use checks, are now a part of OEA.

OEA’s efforts help ensure that U.S.-origin dual use goods that have been exported are where they should be and are being used appropriately. OEA Director Glenn Krizay will also be on the Enforcement Panel that follows.

The third dimension of our operations in Export Enforcement is our Office of Antiboycott Compliance (OAC), which helps remove impediments to free trade by helping U.S. businesses comply with the antiboycott provisions of the Export Administration Regulations (EAR or Regulations). OAC does so by promoting public understanding of the Regulations, analyzing data regarding international boycotts, and bringing enforcement actions. Through the effective use of these tools, OAC has been successful in diminishing the scope and impact that unsanctioned boycotts have on international trade. OAC's Director, Ned Weant, who is well-known to you, will also be on the enforcement panel that follows.

There is a fourth important prong to Export Enforcement that I need to acknowledge and thank. That fourth prong – is you. Without you, the other three prongs of EE could not function as well as they do. You have a broad variety of backgrounds. Some of you are in industry. Some of you work with industry in a variety of ways, including as lawyers and consultants, to foster compliance. Others of you are from various governments around the globe.

Your involvement and engagement, as well as your dedication to compliance with export controls, are essential to our joint success in promoting secure, legitimate global trade. Make no mistake about it – when success occurs, it results from the combined efforts of government and industry. So, let me thank those of you who are here and who have been our partners in compliance over the years.

### **Accomplishments**

What have we done this year? What have we accomplished? Let me begin by saying that our accomplishments truly are not measured in the numbers of cases brought, or fines collected or jail sentences handed down. In many ways, those events measure our non-compliance.

Indeed, our largest accomplishment is something that has *not* happened. We recently observed the seventh year since the heinous attacks of September 11. During that period we have had no further attacks of that kind on U.S. soil. *That* is our most important accomplishment and our most enduring achievement to date.

Even casual followers of the news well-know that this is not the result of sheer luck. Our enemies continue to threaten us, and terrorists have continued to strike targets elsewhere, sometimes with devastating success. The recent attack on the Marriott hotel in Islamabad, Pakistan, is an example. The attack killed over 50 people, injured hundreds of others, and left a 30 foot-deep crater next to the hotel. All of this resulted from a truck bombing – a relatively low-tech attack – as were the attacks of 9/11.

We know that our enemies seek U.S.-origin goods, and we know that they want to perpetrate a WMD attack against us. And that is not the only threat we face. We know that state-sponsors of terror, such as Iran, other countries of concern, as well as

proliferation networks, all seek our goods for illicit purposes. We must remain vigilant, so that does not happen.

### **Fiscal Year Case Examples**

The varied and numerous challenges Export Enforcement faces are reflected in this year's cases. Let me discuss just a few of them with you.

A federal grand jury in Miami recently handed down a criminal indictment in the Mayrow General Trading case. That case involves the efforts of a wide-ranging procurement network that was working to obtain U.S.-origin goods and export them into Iran, a state-sponsor of terror. The goods involved were, among other things, components of the type that are being used in improvised explosive devices (IEDs) against our Coalition troops in Iraq and Afghanistan.

The MTS Systems Corp. case involved one of our largest administrative penalties this fiscal year. MTS was working illegally to export U.S.-origin goods that have end uses in nuclear power plants to India. MTS, which is based in Minnesota, also pled guilty to criminal charges there, and received a significant criminal fine and a period of corporate probation.

The Cirrus case was a criminal prosecution brought here in the District of Columbia, and involved efforts to illegally export controlled electronic components and other goods to entities in India that participate in the development of ballistic missiles, space launch vehicles and fighter jets. It resulted in a term of imprisonment and a criminal fine.

Among our other interesting cases were the criminal prosecution of Fawzi Mustapha Assi, which involved an effort to export night vision illegally to the terrorist organization, Hezbollah, in Lebanon, and a guilty plea by WaveLab, Inc., which was sentenced to a criminal fine, a period of probation and also ordered to forfeit \$85,000, for unlawfully exporting power amplifiers to the People's Republic of China.

Once again this year, our Office of Antiboycott Compliance has done important work with U.S. industry on a number of matters. Among them are several matters that involved the removal of objectionable boycott language from contracts worth significant dollar amounts.

### **Department of Justice Initiative**

As you can see, all of the OEE cases I just discussed are significant criminal cases. I think you can expect to see that trend continue in the future.

Last year at this time, the Department of Justice (DoJ) announced its Export Enforcement Initiative. DoJ is delivering on its promise to devote greater attention, training and resources to these cases. DoJ has since convened several training sessions for its

prosecutors on these cases. I had the pleasure of speaking to the prosecutors who were in the first nationwide session that DoJ held.

In addition, DoJ has appointed a national Export Control Coordinator, Steve Pelak, with whom I had the pleasure of serving in the U.S. Attorney's Office here in Washington, D.C. Steve has deep experience in prosecuting export cases and is a tremendous resource.

DoJ has also established over 15 counter-proliferation task forces around the country, involving prosecutors and various other law enforcement agencies, including our Office of Export Enforcement. Indictments for International Economic Emergency Powers Act (IEEPA) and Arms Export Control Act (AECA) offenses have significantly risen under the DoJ Initiative.

### **Benefits of Compliance Are Greater Than Ever**

The DoJ Initiative, as well as the higher penalties provided last year at this time by the IEEPA Enhancement Act, clearly indicate that the need to comply with export controls is moving to the forefront. As a national security issue, that is precisely where it should be.

These trends also indicate that benefits to industry of complying with the export control laws are greater than ever. Earlier this year, I announced the Nine Principles of an Effective Export Compliance Program, pursuant to which BIS may grant great weight mitigation from our administrative penalties. As I indicated then, being and remaining in compliance requires vigilance and rigor. It requires that companies have well-designed compliance programs, that are also well-implemented, which includes ensuring that they are regularly updated to reflect ever-changing developments and circumstances.

### **Meeting the Challenges Ahead**

We know where we have been over the course of the past three years, and we know where we now stand. What about the future? What challenges will we face, and how will we meet them? Let me share with you my thoughts in that regard.

I believe that the trends show that meaningful enforcement of the export control laws *is* the future. As we have discussed, we can see that is happening domestically. It is also happening internationally – and it makes common sense.

The best export control policies are merely aspirations unless they are under girded by enforcement. Meaningful enforcement requires that the consequences for disobeying the export control laws be clear and significant. Absent that, there is little reason to have such laws. Meaningful enforcement makes clear distinctions between those who violate the law and those who abide by it. It actively pursues violators, imposes consequences that deter future violations, addresses the nature of the harm, and the like.

Enforcement is the toughest part of the equation. It is the most difficult component to come to grips with – and that is understandable. But it cannot be avoided, deflected or minimized. When we attempt to do so, we do not fool the bad guys, and we hurt only ourselves. Accordingly, enforcement must be embraced because we must counter existing and emerging threats. By doing so, we also ensure that legitimate trade does not face unfair competition from illegitimate trade.

### **Future Challenges for Export Enforcement at BIS**

Let us first assess what Export Enforcement must do domestically to meet future challenges. Then, we will turn our attention to the international front.

The Department of Commerce encourages innovation, entrepreneurship, and that the U.S. continue its efforts to become an export powerhouse. As a result, new products are being developed and brought to market, new industries are emerging and technology corridors are being established, which is wonderful. To ensure that these developments remain a positive force for the advancement of mankind, rather than being exploited by those who seek to do harm, Export Enforcement must also adapt and respond. Export Enforcement needs to do so in several ways.

### **Meeting Future Domestic Challenges**

First, our Office of Export Enforcement needs more Special Agents and in more locations to conduct investigations, detect diversions, conduct outreach, and the like. Our enforcement operations cannot remain solely in the same nine field locations – some of which cover as many as ten states – while new technology corridors are sprouting up elsewhere throughout the nation. Nor can our operations remain at the same staffing-levels. If Export Enforcement stagnates in a dynamic and ever-changing international trade environment, a national security risk that is all-too apparent will result.

Second, the Congress must equip our Special Agents with the modern investigative tools and permanent law enforcement authorities that they need to counter effectively the national security threats facing our country.

We need a permanent statute that contains our law enforcement authorities because enforcement does not sunset with the Export Administration Act – it continues under the EAR and IEEPA. Congress can also periodically amend a permanent statute to give us new tools to combat the ever-emerging challenges that law enforcement faces. Having a permanent statute will also eliminate the need for us to cobble together our law enforcement authorities when the other provisions of the EAA sunset in the future.

Because the EAA has been in lapse for so long, Congress has not been able to update our investigative tools. It must do so now. Among other things, our Special Agents need foreign investigative authority, wiretap authority for EAA and IEEPA offenses, undercover authority that is consistent with that of other law enforcement agencies that share in our mission, and asset forfeiture. These tools will help us penetrate export

control conspiracies to the fullest extent, gather the evidence needed to meet our burden of proof in court, and remove the profit motive from these violations.

The time for Congress to act is now. If, heaven forbid, we export goods that our enemies then weaponize and send back in a WMD attack on U.S. soil, it will be very difficult to explain why – so many years after 9/11 – our Special Agents lacked the tools that might have helped prevent that attack.

The permanency and modernization we need are reflected in S. 2000, the Export Enforcement Act of 2007, which was introduced last year by Senator Dodd. We continue to urge this Congress to move forward and provide our Special Agents with the authorities and the tools they need to effectively meet these national security threats.

### **Meeting Future International Challenges**

As the U.S. continues to foster trade with other nations, we will need greater international cooperation on enforcement matters. Greater cooperation between nations of good will helps foster secure legitimate global trade. It helps us remain one step ahead of the violators and illicit trans-shippers who work constantly to evade detection.

The first step in this process is for each country to implement laws and effective export enforcement mechanisms through which they stop violators in their own countries. The U.S. dual use regulations have extraterritorial reach, but nevertheless, enforcement actions undertaken by our foreign counterparts against violators within their own borders are extremely important. After countries establish effective regulatory and enforcement mechanisms, the next step is for them to work with other nations in a variety of ways, including through information-sharing, cooperating in enforcement actions, and the like.

A number of countries are in the process of implementing and further refining their export control laws, which is excellent. I am heartened by the fact that some are also showing an interest in further developing their enforcement components. We need to continue to foster relationships with other nations that are undertaking this important work. I had the pleasure of leading the first and second BIS - Singapore Customs Bilateral Export Controls Discussions, and have also led the U.S. - Hong Kong Bilateral Export Controls Discussions. It is very rewarding to continue building relations with our global partners who are interested in fostering secure trade.

As you know, we have worked to regionalize several of our ECOs, so that they cover a number of countries in addition to those in which they are located. As U.S. trade expands and our international engagement continues, however, our Office of Enforcement Analysis will need more ECOs to conduct end use checks. Some of the additional ECOs will need to be posted to existing stations, to give us greater depth of coverage; others will need to be posted to new locations around the globe.

In the future, our Office of Antiboycott Compliance will expand its efforts. OAC will engage in further collaboration with our governmental partners in the International Trade

Administration, the Departments of State and Treasury, and the U.S. Trade Representative, in order to engage governments that initiate unsanctioned boycotts. By “going to the source” in this manner, OAC will improve its ability to finally end these impediments to international trade, and further the economies of the U.S. and our allies.

### **The Future of Compliance**

Compliance is the first and best line of defense in protecting our national security. It is better, in every respect than criminal and administrative enforcement actions. I see even greater compliance in our future, and I find that very heartening.

I believe that compliance will grow as our outreach continues and we inform and involve others who need to know about export controls. Compliance will also grow as we continue to make its benefits even clearer to those who are already informed. They will then implement effective compliance programs that embrace the Nine Principles that I announced earlier this year, make voluntary disclosures, and take other necessary actions.

For those who resist these efforts, I foresee greater consequences. There is greater potential for criminal prosecution as a result of the DoJ Initiative; there are greater administrative penalties as a result of the IEEPA Enhancement Act, and so forth. I have every confidence that BIS’s new Chief Enforcement and Litigation Counsel, Joe Jest, who has a wealth of litigation experience, will continue to help John Masterson, BIS’s Chief Counsel, in bringing high-impact administrative cases. Moreover, because of increasing enforcement cooperation, there will be fewer places around the world where violators will be able to seek refuge.

### **Conclusion**

In closing, let me thank you sincerely for your partnership in the work we have done and for the success that we have enjoyed. We have more to do. I look forward to continuing our efforts together over the coming months, as we work to promote secure global trade and prosperity.