The Office of Export Enforcement’s Mission

- OEE protects U.S. national security, homeland security, foreign policy, and economic interests through enforcement of the Export Administration Regulations and associated laws.

- OEE accomplishes its mission through:
  - Preventative and investigative enforcement activities
  - Pursuing criminal and administrative sanctions against export violators

- One of the most specialized US federal law enforcement organizations
OEE enforces the Export Administration Regulations (EAR) and shares overlapping jurisdiction with the Federal Bureau of Investigation (FBI) and Homeland Security Investigations (formerly ICE).

OEE routinely works with various U.S. intelligence and defense agencies for threat assessment and the enforcement of U.S Export Laws.
The key to OEE’s mission?
Educating the exporting community!

- Responsibilities under the Export Administration Regulations
- Preventing Violations
- Dealing with Diversion Attempts

OEE Conducts:
- Company Outreach Visits
- Seminars
- Workshops
Dual Use Commodities

- **NUCLEAR WEAPONS**
  - Centrifuge
  - High Speed Thermal Cameras
  - Mass Spectrometer
  - Vacuum Pumps

- **CHEMICAL WEAPONS**
  - Precursor chemicals
  - Coolers/Heat Exchangers
  - Mixing Vessels

- **BIOLOGICAL WEAPONS**
  - Bacterial Strains
  - Coated Valves and Pumps
  - Fermenters
  - Presses

- **WEAPONS OF TERRORISM**
  - IED components

- **MISSILES**
  - Composites
  - Machine Tools
  - Filament Winding Equip
  - Accelerometers
  - Vibration Test Equipment
## Destinations of Diversion Concern

- United Arab Emirates
- China
- Singapore
- Hong Kong
- Thailand
- Malaysia
- Cyprus
- Malta
- Panama
- Pakistan
- China
- Mexico
- Canada
- South Africa
- Hong Kong
- Turkey
- Yemen
- Sudan
New Trends - Higher Walls: Enhanced Compliance & Enforcement

- Clear/transparent regulations
- Targeted outreach
- Focused evaluation of STA
  - Desk audits
  - One-time reviews
  - Daily AES checks to interdict
  - Enhanced end-use checks
- Information Triage Unit (dedicated IC assets)
- BIS-DDTC coordination
- Export Enforcement Coordination Center
- Increased International Cooperation
Deemed Exports

The Export Administration Regulations (EAR) define a deemed export as the release of technology or source code subject to the EAR to a foreign national in the United States.

- Such release is “deemed” to be an export to the home country of the foreign national.
- Situations that can involve release of U.S technology or software include:
  - Tours of laboratories
  - Foreign national employees involved in research, development, and manufacturing activities
  - Foreign students or scholars conducting research
  - Hosting of foreign scientists

- Visual inspection, oral exchange, practice or application under guidance of persons with knowledge = release.
Deemed Exports

An export license may be required under the "deemed export" rule when both conditions are met:

1. Intend to transfer controlled technologies to foreign nationals while in the United States; and

2. Transfer of the same technology to the foreign national's home country would require an export license.
Does Not Apply When

- Deemed export rule does not apply if:
  - Green Card
  - U.S. Citizenship
  - Political Asylum
Technology Transfer

When manufacturing or development technology is transferred from the United States for use in another country.

- Can occur through physical export (laptop, disc, etc.) OR

- Email, e-commerce, release to 3rd party overseas.

- Make sure to classify U.S. technology developed or used by your company and identify export authorization requirements prior to exporting technology or sharing it with foreign partners.
Investigations and Sanctions

International Emergency Economic Powers Act (IEEPA)
Export Administration Regulations

- **Criminal Fines and Imprisonment “Willful Violations”**
  - 20 years imprisonment
  - $250,000 fine ($1,000,000 for corporations)

- **Civil Fines and Penalties**
  - $250,000 or twice the value of the transaction, Which ever is greater. Applies retroactively.
  - Denial of Export Privileges
  - Revocation of Export Licenses
  - Exclusion from practice
## Penalties for Export Control Violations

**Export Administration Regulations & International Traffic in Arms Regulations**

### Criminal Penalties

<table>
<thead>
<tr>
<th>Agency (Regulations)</th>
<th>Willful Corporation</th>
<th>Individual</th>
<th>Knowing (EAR) Corporation</th>
<th>Individual</th>
</tr>
</thead>
<tbody>
<tr>
<td>BIS (EAR)</td>
<td>A fine of up to the greater of $1,000,000 or five times the value of the exports for each violation.</td>
<td>A fine of up to $1,000,000 or imprisonment for up to 20 years, or bother, for each violation.</td>
<td>A fine of up to the greater of $50,000 or five times the value of the exports for each violation</td>
<td>A fine of up to the greater of $50,000 or five times the value of the exports or imprisonment for up to 5 years, or both, for each violation</td>
</tr>
<tr>
<td>DDTC (ITAR)</td>
<td>A fine of up to $1,000,000 or imprisonment for up to ten years, or both, for each violation.</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
</tr>
</tbody>
</table>

### Administrative Penalties

<table>
<thead>
<tr>
<th>Agency (Regulations)</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>BIS (EAR)</td>
<td>The imposition of a fine of up to the greater of $250,000 for each violation or two times the amount of the transaction that is the basis of the violation with respect to which the penalty is imposed.</td>
</tr>
<tr>
<td>DDTC (ITAR)</td>
<td>The imposition of a fine of up to $500,000 for each violation.</td>
</tr>
</tbody>
</table>
Referral for Criminal Prosecution

- Referral to DOJ is in addition to pursuing an administrative enforcement action
  - U.S. Attorneys Offices
  - National Security Division – Washington, D.C.

- May result in charges for EAR violations (knowing, willful) and other non-EAR violations (e.g. criminal conspiracy charges)
Criminal Sanctions

- 18 U.S.C. 371 – Conspiracy
- 18 U.S.C. 554 - Smuggling
- 18 U.S.C. 1001 – False Statements
- 18 U.S.C. 1341, 1343 & 1346 – Mail & Wire Fraud
- 50 U.S.C. 1705 – IEEPA Violations
Other Sanctions & Measures

- **Seizure & Forfeiture**
  
  Items that have been, are being, or are intended to be exported or shipped from or taken out of the United States in violation of the EAA, the EAR, or any other order, license or authorization issued thereunder, are subject to being detained and seized as are the vessels, vehicles, and aircraft carrying such items. Seized items are subject to forfeiture.

- **Debarment**
  
  The Department of State may deny licenses or approvals for the export or reexport of defense articles and defense services controlled under the Arms Export Control Act to persons indicted or convicted of specified criminal offenses, including violations of the EAA, or to person denied export privileges.
Mitigating Factors

- Voluntary Self Disclosure – great weight, especially would have been reasonably unlikely to discover without the self disclosure.
- Effective Export Compliance Program and its overall export compliance efforts have been of high quality.
- Whether the party has taken steps to address compliance concerns raised by the violations, including steps to prevent reoccurrence.
- An isolated occurrence or the result of a good faith misinterpretation
- Authorization for the export transaction in question would likely have been granted upon request.
- The party has never been convicted of an export-related criminal violation.
Aggravating Factors

- Deliberate effort to hide or conceal the violation.
- Party’s conduct demonstrated a serious disregard for export compliance.
- The violation was significant in view of the sensitivity of the items involved and/or the reason for controlling them to the destination in question (national security or essential U.S. interest). e.g. nuclear, biological and chemical weapon proliferation, missile technology proliferation and national security concerns.
- The violation was likely to involve harm of the nature that the export controls are principally intended to protect against.
- The quantity and/or value of the exports was high, such that a greater penalty may be necessary to serve as an adequate penalty for the violation or deterrence of future violations, or to make the penalty proportionate to those for otherwise comparable violations involving exports of lower quantity or value.
- The presence in the same transaction of concurrent violations of laws and regulations, other than those enforced by BIS.
Settlements

- Most administrative enforcement cases are resolved through settlement.
- Settlement offers depend on the facts and circumstances of the case and relevant precedent.
- Other requirement may be imposed.
  - Audit
  - Reporting
Export Compliance – Risk Management

- Know the Export Regulations
  - EAR, ITAR, OFAC

- Know the Investigating Agencies
  - IRS, FBI, HSI, OEE, CBP, OFAC, SEC
  - Documentation requests

- Know Your Customer
  - Insure they have an export compliance program

- Know the Lists
  - Not just SDN’s anymore
  - DOC - Denied Persons List, Unverified List, Entity List,
  - DOS - Nonproliferation Sanctions, AECA Debarred List
  - DOT – SDNs
Record Keeping

§762.6 PERIOD OF RETENTION

(a) Five year retention period

All records required to be kept by the EAR must be retained for five years from the latest of the following times:

(1) The export from the United States of the item involved in the transaction to which the records pertain or the provision of financing, transporting or other service for or on behalf of end-users of proliferation concern as described in §§736.2(b)(7) and 744.6 of the EAR;
The Big I. D. E. A.

- Item being exported (ECCN)
- Destination (License required to ship there?)
- End-User (Can you ship to him?)
- Activity (Nuclear, Biological, Chemical, Missile?)
- Know these facts before you ship!
HOW VIOLATIONS HAPPEN IN GOOD COMPANIES

New personnel using outdated go-by documentation

Overwhelmed by end of quarter orders and processing

Export manager on vacation (cross train back up personnel)

Lack of communication with sales staff and foreign distributors

Management commitment for Export Compliance Program need
Voluntary Self Disclosure

- Permitted under EAR Section 764.5
- Initiated by a company when a company identifies export violations
- Violations still investigated by OEE
- Great Weight Mitigation of 50% or more
- On average over 80% of VSD cases resulted in Warning Letter or no action
Voluntary Self Disclosure

Costs of Not Disclosing Violations

- Risk of criminal investigation and associated costs of litigation
- Damage to Brand/Corporate Reputation
- Substantial Penalties
- Be Aware of Successor Liability
Don’t Let This HAPPEN TO YOU!

Actual Investigations of Export Control and Antiboycott Violations

July 2008 Edition

U.S. DEPARTMENT OF COMMERCE
Bureau of Industry and Security
Export Enforcement
Contact BIS & OEE
WE ARE HERE TO HELP!

- The website is **www.bis.doc.gov**
- Check the BIS Website for current information about regulations, denied parties and listed entities.

- If you have questions about product classification, call BIS Exporter Services Export Counseling Division
  
  202-482-4811 Wash. D.C. / 949-660-0144 California

- If you have questions about **Red Flags** or other potential enforcement problems, call Office of Export Enforcement
  
  Hotline 1-800-424-2980
  Chicago Field Office 630-705-7010