

APEC Economics Conference Effective Elements of Export Controls

Criminal and Administrative Enforcement

Melissa B. Mannino
Chief, Enforcement and Litigation
Division
Office of Chief Counsel
for Industry and Security
U.S. Department of Commerce

Legal Authority to Enforce Dual-Use Export Controls

Statute (Export Administration Act of 1979):

- ❑ Provides broad legal authority for export controls
- ❑ Broadly defines violations and procedure, and provides authority to commence investigations

Regulation (Export Administration Regulations):

- ❑ Implements legal authority
- ❑ Provides detailed description of export control requirements, violations, penalties, preventative measures, and administrative enforcement procedure

Special Agent\Investigator

- ❑ BIS has special agents that are located in 8 field offices and 1 resident office throughout the United States
- ❑ Initiates cases
- ❑ Investigates potential violations
- ❑ Assists attorneys in administrative cases
- ❑ Performs outreach

Key Role of the Special Agent\Investigator

Conducts investigations:

- Inspects books, records, premises and property
- Obtain and serves court approved search and arrest orders
- Conducts interviews of witnesses
- Issues order to require any person to appear and testify or to produce books and records when suspect does not cooperate
- Searches, detains, and seizes goods and technology
- Conducts pre-license checks and post-shipment verifications

Administrative and Criminal Enforcement Cases FY 2005 Summary

- In FY2005, OCC closed 69 cases and civil penalties totaling \$6,831,300 have been imposed.
 - In 14 cases, both a civil penalty and a denial of export privileges were imposed.
 - In eight other cases resulted, a respondent's export privileges being denied without imposing a civil fine.
- In FY2005, OEE investigations resulted in 22 arrests, 31 criminal convictions and criminal fines totaling \$7.7 million.

Criminal And Administrative Procedure

- ❑ Set out in statute or regulations
- ❑ Include certain protections for those being charged with committing a violation
 - Formal charges filed by enforcement agency
 - Right to contest the charges in a hearing
 - Right to court review of proceeding



Criminal Penalties

- ❑ Very high standard – Guilt beyond a reasonable doubt
- ❑ Monetary penalties –
 - Substantially higher than administrative fines
 - ❑ Up to \$1 million per violation for a company
 - ❑ Up to \$250,000 per violation for an individual
- ❑ Imprisonment for up to 10 years
- ❑ Prosecuted by the Department of Justice, which has authority for federal criminal violations

Administrative Enforcement Case Process

- Proving administrative cases is easier than proving criminal cases for two primary reasons
 - Strict Liability. Knowledge is not a prerequisite for imposition of an administrative penalty. *Iran Air.v. Kugelman*, 996 F.2d 1253 (D.C. Cir. 1993)
 - Violations must be proven by a preponderance of the evidence
- 5 year statute of limitations administrative enforcement cases. 28 U.S.C. §2462.
- Opportunity to settle formal charges are filed.

Violations of the Export Administration Regulations

15 C.F.R. Section 764.2

- Engaging in prohibited conduct
 - Causing, aiding or abetting a violation
 - Solicitation or attempt
 - Conspiracy
 - Acting with knowledge of a violation
 - Misrepresentation and concealment of facts
 - Evasion
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Administrative Penalties

- \$11,000 per violation
 - \$120,000 for violations involving national security controlled items

- Denial of Export Privileges
 - Standard denial Order covers all items (commodities, technology, and software) subject to the EAR - not just items on CCL.
 - As an administrative penalty, there is no limit on how long we can deny export privileges.

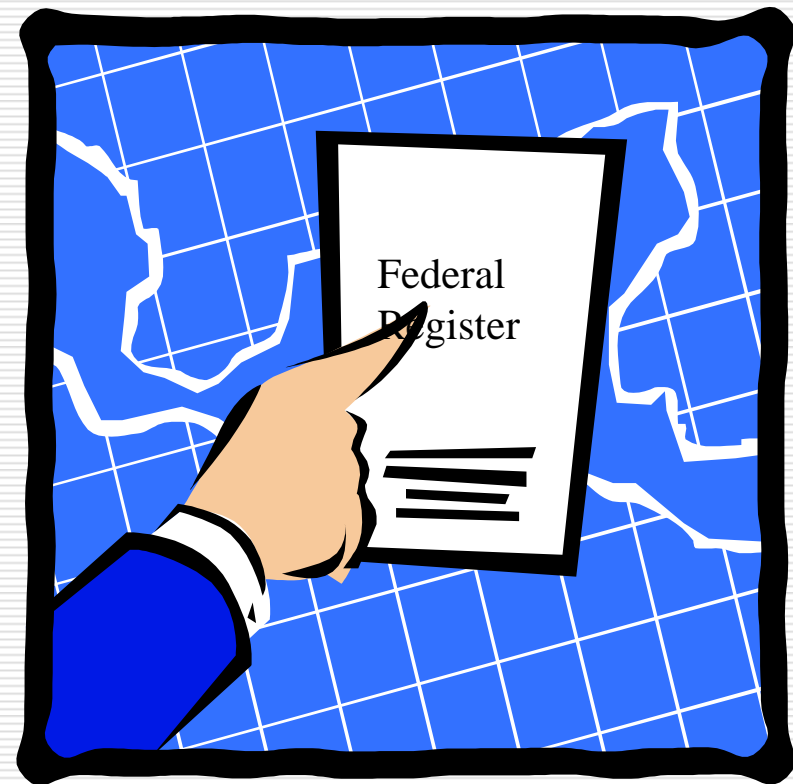
- ~~Exclusion from Practice before BIS~~

Denial Of Export Privileges

- ❑ Denied person
- ❑ Related persons
- ❑ Third parties dealing with denied person in export trade transaction

Notice Of Denial Orders

- ❑ Publication of denial orders giving constructive notice to the world of the contents of the order
- ❑ Maintain a list of those who have been denied export privileges for exporter's convenience



Preventative Enforcement Measures

- ❑ Suspension or revocation of an export license
- ❑ Temporary denial order where the violation is imminent
- ❑ Denial of export privileges based upon a criminal conviction of certain criminal offenses, including export controls or espionage
- ❑ Outreach and Education

Industry Outreach

Promoting knowledge of and support for export controls in the business community

- ❑ Prevents illegal exports, reexports, and transshipments
- ❑ Educates the public on the export controls and enforcement
- ❑ Promotes compliance with the export control system
- ❑ Encourages industry to assist the government's enforcement efforts

Outreach Efforts

- Visits
- Disseminating basic information on export control laws
- Holding training programs or seminars

Confidentiality Of Investigative Records

- ❑ Maintain confidentiality of information obtained during investigations
- ❑ Determine a procedure for disclosure of such information (i.e., national interest)



Is the enforcement system effective?

It is difficult to measure effectiveness of an administrative enforcement system

- How many cases were closed?
- How many companies were outreached?
- How many violations occurred?

Thank You

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