Office of Export Enforcement
Bureau of Industry and Security (BIS)
U.S. Department of Commerce

Sidney M. Simon
Special Agent in Charge
New York Field Office
Export Enforcement’s Mission

Protect National Security and Foreign Policy Goals

- Prevention and Detection
- Investigation and Prosecution
- Domestic and International Law Enforcement Cooperation
Who Are We?

• The enforcement arm of The Department of Commerce, Bureau of Industry and Security (BIS)
Education Component of OEE’s Mission

• The key to OEE’s mission is educating the exporting community about preventing violations and exporter responsibilities under the Export Administration Regulations through
  – Outreach
  – Seminars
  – Workshops
A Robust Compliance Program will Help you in…

1. avoiding illegal transactions.
2. avoiding negative publicity.
3. avoiding fines and/or imprisonment
4. avoiding a situation where your company has to pay enormous costs for legal representation resulting from a criminal or administrative proceeding.
DLHTTY

Don’t let this happen to you!
Preventive Export Activities

- Check exporters and customers prior to issuing validated license
- Check end-users and end-uses after shipment
- Use watch list to screen license applications
- Review Shipper’s Export Declarations in ATS
- Detentions/Seizures
- Issue Temporary Denial Orders
- Educate Exporters - Outreach & BEET
Enforcement Activities

- Confidential and Industry Sources
- Intelligence Sources
- Safeguards Verification Program
- Export Document Review (SEDs, Airway Bills, Bills of Lading)
- Public Sources - Newspapers, Trade Publications, Internet
Investigations and Sanctions

- **Investigations:**
  - Criminal
  - Administrative

- **Sanctions:**
  - Criminal fines and imprisonment
  - Civil fines and penalties
Biggest hammer in the game.

Denial of export privileges
CRIMINAL

CRIMINAL PENALTIES

- EAR currently enforced under 50 U.S.C., sec. 1705 (b), IEEPA
- Conspiracy, 18 U.S.C. sec. 371
- And more....FCPA?
Criminal Penalties

• “Willful Violations”

  – Up to $1,000,000 fine for individuals and/or
  – Up to Twenty years imprisonment
  – $1 Million or five times the value of the exports involved for firms
Administrative Penalties

- CIVIL AUTHORITIES
  - TITLE 15, C.F.R. Part 764
  - EAR Section 764

- CIVIL SANCTIONS
  - Fines: Up to 250,000/violation
  - Denial of Export Privileges / Revocation of Export Licenses
Temporary Denial Orders (TDOs)

- Commerce is the only agency authorized to issue TDOs
- Designed to halt imminent violations
- Warns exporters & consignees not to do business with these individuals & firms
Voluntary Self-Disclosures

EAR Section 764.5

- Initiated by a company when a company identifies export violations
- Violations still investigated by OEE
- “Great Weight” Mitigating Factor
How Do I Avoid Civil Actions?

Five Root Causes of Civil Enforcement Cases

1. Incomplete Transaction Information
2. Ignoring Red Flags
3. Human Error
4. Incorrect SED Filing
5. Non-Compliance with License Conditions
Incomplete Transaction Information

- Unknown end-user
- Unknown or inconsistent end-use
- Multiple parties to a transaction
- Incorrect product classification
- Identify all parties to a transaction, verify as legitimate intermediaries and ultimate consignees.
2. Ignoring Red Flags

- Person ordering the technology is unfamiliar with product or technical information regarding end-use.
- Inappropriate end user: banks, overseas freight forwarders, etc.
- Conflicting information on sales documentation and export routing correspondence.
3. Human Error

- Overwhelmed by end of quarter orders and processing
- New personnel using outdated go-by documentation
- Export manager on vacation (cross train back up personnel)
- Lack of communication with sales staff and foreign distributors.
4. Incorrect SED Filing

- Wrong ECCN
- Improper use of NLR (No License Required)
- Wrong Ultimate Consignee
- Non-conformance of documents
Other Enforcement Priorities
Do I need to apply for an export license for technology under the "deemed export" rule

Assuming that a license is required because the technology does not qualify for treatment under EAR99 and no license exception is available, U.S. entities must apply for an export license under the "deemed export" rule when both of the following conditions are met:

(1) they intend to transfer controlled technologies to foreign nationals in the United States; and

(2) transfer of the same technology to the foreign national's home country would require an export license.
Deemed Exports

A “deemed export" is an export of technology or source code (except encryption source code) that is "deemed" to take place when it is released to a foreign national within the United States. See §734.2(b)(2)(ii) of the Export Administration Regulations (EAR).
Deemed Exports

Technology is "released" for export when it is available to foreign nationals for visual inspection (such as reading technical specifications, plans, blueprints, etc.); when technology is exchanged orally; or when technology is made available by practice or application under the guidance of persons with knowledge of the technology.
Deemed Exports

• U.S. entities must apply for an export license under the "deemed export" rule when both of the following conditions are met:

1. they intend to transfer controlled technologies to foreign nationals in the United States; and

2. transfer of the same technology to the foreign national's home country would require an export license.
When manufacturing or development technology is transferred from the United States for use in another country.

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.
Recent Deemed Export Enforcement Cases

Mergers And Acquisitions
(HIDDEN COSTS OF MOVING U.S TECHNOLOGY OFF-SHORE)

VOLUNTARY DISCLOSURE
Recent Deemed Export Enforcement Cases

RECENT CIVIL PENALTY CASES

February 2012 - $230k fine: Transfer of technology, manufacturing equipment, and technical data to non-US employee related to crime control items (remote monitoring equipment).

July 2012 - $111k fine: Unauthorized release of 3E001(NS) controlled U.S. technology for design and manufacture of bellows used in semiconductor wafer processing equipment at manufacturing facility in Singapore to Chinese employees (Deemed Re-export). Also unauthorized export of the bellows to manufacturing partners in China.
When You Find a Violation

- Notify management
- Identify and contain immediate violation
- Conduct internal audit for scope of problem
- Disclose problem to BIS/OEE promptly and completely
Contact BIS

- If you have questions about product classification, call BIS Exporter Services
- If you have questions about Red Flags or other potential enforcement problems call BIS Office of Export Enforcement (OEE)
- Check the BIS Website for current information about regulations, denied parties and listed entities
ENFORCEMENT

Hotline 1-800-424-2980

NYFO Main

718 370 0070 24 hr

WWW.BIS.DOC.GOV
sidney.simon@bis.doc.gov