

**Export Compliance Bootcamp
“Complying with U.S. Exports Controls”
September 27th, 2012
Fort Lauderdale**

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Do you have questions about importing/exporting?

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TUESDAY, JUNE 12, 2012

New CBP Regulation for Suspected Counterfeit Merchandise



Peter Quinter

Finally, after years of debate, on April 24, 2012, CBP amended its regulations regarding the detention and seizure of suspected imported counterfeit merchandise. In my opinion, it provides a good balance between the rights of legitimate importers, and the need for CBP to examine, detain, and seize merchandise that violates the trademark rights of companies that have registered their trademarks with the U.S. Patent and Trademark Office and then recorded those trademarks with CBP. The interim rule is entitled "Disclosure of Information for Certain Intellectual Property Rights Enforced at the Border," and amends 19 CFR Parts 133 and 151.

In summary, here are the important changes:

1. Merchandise may be detained by CBP for up to 30 days from the date the merchandise is presented for examination to CBP.
2. The U.S. importer will receive written notification from CBP within 5 days of the detention of the merchandise by CBP.
3. The U.S. importer then has 7 days to establish to CBP's satisfaction that the detained merchandise is not counterfeit.
4. CBP may provide to the trademark owner, at any time, written notice of the date

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**September 11, 2001
Act of Terrorism
World Trade Center
New York City**

Export Enforcement Federal Agencies

1. OFAC
2. BIS
3. TSA
4. CBP
5. U.S. Census Bureau

Federal Agency Penalty Process

- Step 1- transportation of shipment
- Step 2- violation
- Step 3- penalty or voluntary disclosure
- Step 4- Federal agency administrative resolution

FedEx settles with BIS – Charges of Causing, Aiding and Abetting Unlicensed Exports

- FedEx paid \$370,000 in Civil Penalty to BIS to settle allegations it committed six (6) violations of EAR when it facilitated attempted transport of electronic components of companies on the Commerce Department's Entity List.



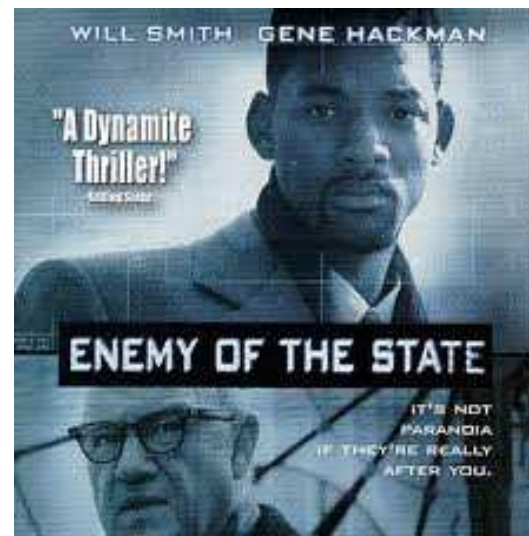
Freight Forwarders – Aiding and Abetting Export Violations

- RAM International, Inc. of St. Louis Missouri, paid \$40,000 to settle allegations it violated the EAR when it aided and abetted the unlicensed export of merchandise (scrap steel) to a company on the Entity List.



Federal Investigations – Legal Authority

1. Trading with the Enemy Act of 1917
2. International Emergency Economic Powers Act (IEEPA), 50 USC § 1702.





Federal Investigations

1. Visit by Special Agent to workplace
2. Summons by BIS or ICE
3. Administrative subpoena by OFAC
4. Federal Court subpoena
5. Federal court seizure, search or arrest warrant

Federal Investigations for Import and Export Activities

- BIS
- OFAC
- ICE
- Criminal
- Administrative



OFAC Sanctions Program

1. Specially Designated National List (SDN List)
2. Counter Terrorism Sanctions
3. Counter Narcotics Trafficking Sanctions
4. Non-proliferation sanctions
5. Country specific sanctions (Cuba, Iran, Syria, etc).



OFAC Subpoena Power 31 C.F.R. 501.602

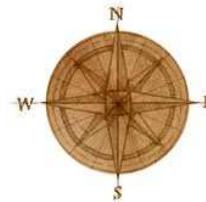


- **Broad Subpoena Power.** “Every person is required to furnish under oath... at any time as may be required... complete information relative to any transaction... subject to the provision of this chapter or relative to any property in which any foreign country or any national thereof has any interest of any nature whatsoever, direct or indirect.”

Failure to Furnish Requested Information to OFAC Pursuant to 31 CFR 501.602

1. \$20,000 Penalty
2. \$50,000 Penalty if value involves more than \$500,000





Persons Subject to the Jurisdiction of the United States – 31 CFR 515.329

- The term person subject to the jurisdiction of the United States includes:
 - (a) Any individual, wherever located, who is a citizen or resident of the United States;
 - (b) Any person within the United States as defined in ? 515.330;
 - (c) Any corporation, partnership, association, or other organization organized under the laws of the United States or of any State, territory, possession, or district of the United States; and
 - (d) Any corporation, partnership, association, or other organization, wherever organized or doing business, that is owned or controlled by persons specified in paragraphs (a) or (c) of this section.]

OFAC Responses to Apparent Violations

An OFAC Investigation May Lead to:

- No Action
- Request for Further Information
- Cautionary Letter
- Finding of Violation (Non-Monetary)
- Civil Monetary Penalty
- Criminal Referral
- Other
 - License Suspension
 - Cease and Desist Order




Enforcement Guidelines OFAC Economic Sanctions

- Final Rule issued November 9, 2009
- Appendix “A” to 31 CFR Part 501



Base Penalty Matrix

Egregious Case

	No	Yes
Voluntary Self-Disclosure	(1) One-Half of Transaction Value (Capped at \$125,000 per violation/\$32,500 per TWEA Violation)	(3) One-Half of Applicable Statutory Maximum
	(2) Applicable Schedule Amount (Capped at \$250,000 per violation/\$65,000 per TWEA violation)	(4) Applicable Statutory Maximum

OFAC Civil Penalty Process

1. Pre-Penalty Notice
2. Response to Pre-Penalty Notice
3. Penalty Notice
4. Referral to DOJ for Collection.



General Factors

1. Willful or Reckless Violation of Law.
2. Awareness of Conduct at Issue.
3. Harm of Sanctions Program.
4. Individual Characteristics of Violator.
5. Remedial Response.
6. Cooperation with OFAC.



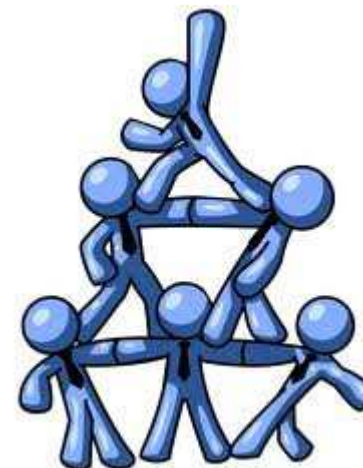
Special Mitigating Factors

1. Voluntary Self-Disclosure
2. Effective export compliance program
3. Violation was isolated occurrence
4. License would have been issued
5. Cooperating with Agency



Elements of an Effective Export Management and Compliance Program

1. Management Commitment
2. Continuous Risk Assessment
3. Formal written export management and compliance program
4. Ongoing training and awareness
5. Follow recordkeeping requirements
6. Periodic internal and external audits
7. Reporting procedure to export compliance problems.



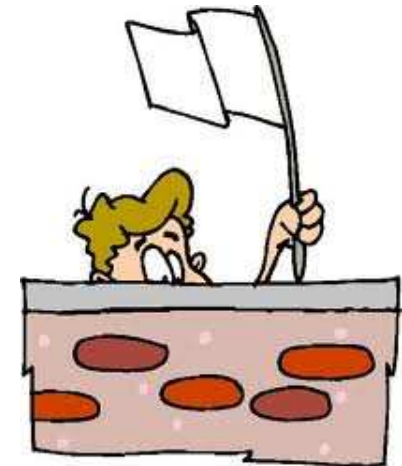
BIS Penalty Procedure

- Supplement No. 1 to Part 766 – Guidance on Charging and Penalty Determinations in settlement of Administrative Enforcement Cases.
- Factors
 - Degree of willfulness
 - Destination involved
 - Related violations
 - Timing of Settlement



Voluntary Self-Disclosure

- Turning yourself in: Bureau of Industry and Security
- Outline: Violations, The Process, Sanctions, & Disclosure v. Non-Disclosure



Voluntary Self-Disclosure: What is a violation?

- (a) Engaging in prohibited conduct
- (b) Causing, aiding, or abetting a violation
- (c) Solicitation
- (d) Conspiracy
- (e) Acting with knowledge of a violation
- (f) Possession with intent to export illegally
- (g) Misrepresentation and concealment of facts
- (h) Evasion
- (j) License alteration
- (k) Acting contrary to the terms of a denial order



VSD: The Process

- ALL Voluntary Self-Disclosures should be made to the BIS Office of Export Enforcement
- OEE: Procedures
- VSD: Only a Mitigating Factor
- Other Mitigating and Aggravating Factors



VSD: Procedural Requirements

Initial Disclosure:

- Initial notification

After the initial notification:

- Narrative account
 - The kind of violation involved
 - Explanation of violation
 - Identities
 - Description of Items involved
 - Supporting documents, shipping documents & mitigating circumstances





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