

# Understanding Trade Controls and Sanctions in the 2012 Global Economy

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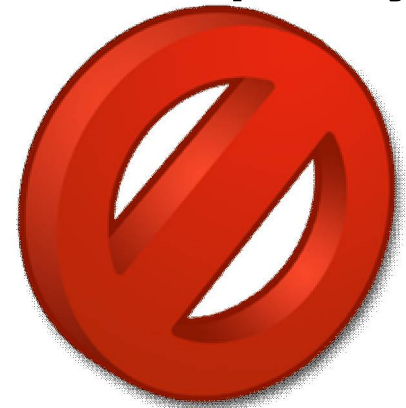
## **FedEx settles with BIS – Charges of Causing, Aiding and Abetting Unlicensed Exports**

- 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.



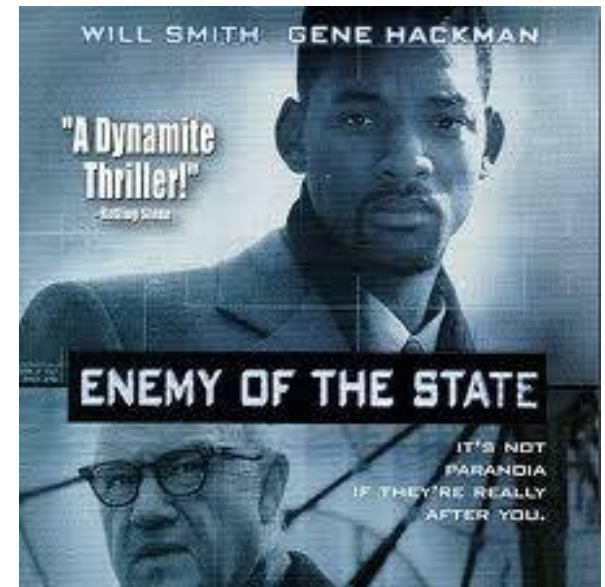
## Freight Forwarders – Aiding and Abetting Export Violations

- ROM 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

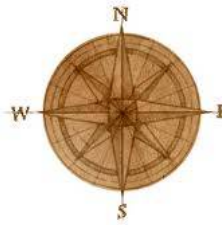
- **Broad Subpoena Power.** “Every person is required to furnish under oath... at any time as may be required... complete information relative to any transaction... subject to the provision of this chapter or relative to any property in which any foreign country or any national thereof has any interest 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
	(1) One-Half of Transaction Value (Capped at \$125,000 per violation/\$32,500 per TWEA Violation)	(3) One-Half of Applicable Statutory Maximum
Voluntary Self-Disclosure	(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

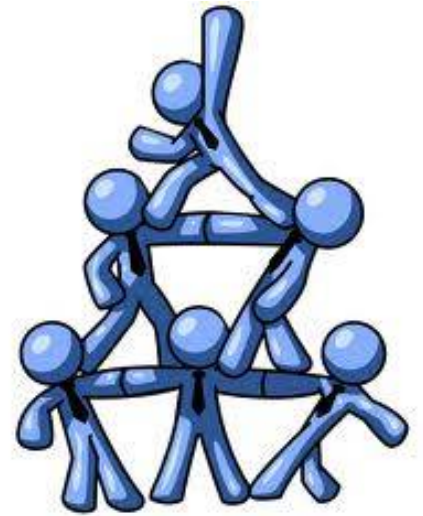
1. Voluntary Self-Disclosure
2. Effective export compliance program
3. Violation was isolated occurrence
4. License would have been issued
5. Cooperating with Agency





# 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.



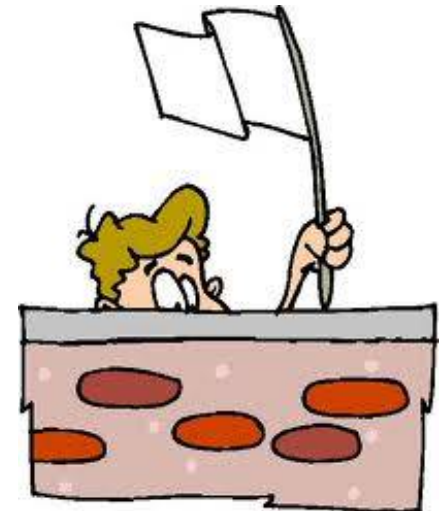
# BIS Penalty Procedure

- 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



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# 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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