



How's your Export Compliance . . . Better than the Feds?

12.23.2014

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A recent criminal case in the Norfolk federal court may have many defense-sector executives questioning whether their export compliance policies are up to par. On December 3, 2014, in a case reminiscent of cold war espionage, the federal government indicted Mostafa Ahmed Awwad for alleged violations of US export control laws. The two count indictment alleges that Awwad, a naturalized US citizen born in Saudi Arabia, attempted to steal secrets pertaining to the USS Gerald R. Ford-class nuclear-powered aircraft carrier for delivery to Egypt. It also alleges that he sought to place homing beacons on US submarines. Awwad faces up to twenty years in prison and a \$1,000,000 fine on each count if convicted. The kicker? Awwad was a civilian engineer working for the government at the Norfolk Naval Shipyard with a "secret" security clearance. Not only that, but just months ago he received a job offer in the private sector with a leading defense contracting firm. See Scott Daugherty, *Prosecutors: Egyptian Took Navy Job to Steal Secrets*, The Virginian-Pilot, Dec. 11, 2014. When it comes to ensuring compliance with export control laws, even the federal government is vulnerable.

Awwad was charged under US laws and regulations that prohibit the exportation of defense articles, services, and technical data without a license. 22 U.S.C. § 2778; 22 C.F.R. §§ 121.1, 123.1 and 127.1. While this particular case has garnered media attention due to its cloak and dagger-like sub-plot, the reality is that export violations similar to this occur far more frequently than businesses would care to recognize. In addition to the significant criminal penalties that individual officers, directors, and employees can face, companies are subject to fines and administrative ramifications as well. These include debarment from government contracts and the negative publicity associated with a Department of Justice press release. With that in mind, how can companies avoid excessive penalties and what should they do if they discover a potential violation?

Two recommendations are to, (i) prevent violations through a thorough and robust compliance program, and (ii) mitigate violations in the event an internal audit detects an irregularity. An appropriate compliance program should be scaled to the business's size and market, and include: (a) a method to classify the company's products and services; (b) an application process, as required, with the State or

Commerce Department; and (c) implementation of internal compliance policies and procedures with oversight by a company executive. In the unfortunate event of a violation, the company will need to determine, based on the facts, if voluntary disclosure to the government is wise, or remediation and preservation of evidence should be pursued.

While most business are aware if they deal in items patently on the US Munitions List (USML) (say a military aircraft part) or provide services referred to in the USML (like military training/advising to a foreign national), there are many categories of the USML that have tangential military application that require export compliance. Moreover, the Commerce Control List, regulating non-USML equipment, data, and services that have a "dual use" (meaning military and civilian application like lasers, machine tools, and computers) is an equally foreboding regulation under the Export Administration Regulations.

Infiltration cases like Awwad's are not too common, yet violations of export control laws are. Unlike Awwad's case, most result not from false allegiance and corporate/international espionage, but from negligence or recklessness. Still, the degree of disregard only makes a difference when it comes to the extent of the potential penalty. To guard against negative publicity, fines, and debarment, a rigorous compliance program should be implemented and reviewed. Fortunately for many, Mostafa Awwad can serve as a "canary in the coal mine," reminding us to tread carefully in a business environment fraught with challenges in a more globalized world.

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