



How Does the Government Learn About Export Violations?

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One of the most enduring questions of business executives and export professionals is how does the government learn about export violations? If my company has a possible violation, what are the chances that the government will discover it and want to take further action?

Agencies learn about violations from a variety of sources, including disgruntled employees, competitor complaints, investigations of unrelated parties and compliance visits by government officials. Agencies can include enforcement officials from the Bureau of Industry and Security (BIS), Directorate of Defense Trade Controls (DDTC), Office of Foreign Assets Control (OFAC), Customs and Border Protection (CBP), Justice Department (for criminal investigations), individual U.S. Attorney's offices and the Federal Bureau of Investigation. Violations can include transferring controlled technical information to foreign parties without a license, entering transactions with a prohibited country or a party on the SDN List or Entity List, exporting without required authorization based on incorrect export classifications (or no classifications at all), performing defense services without a TAA, unlicensed brokering and failure to comply with reporting and recordkeeping requirements, among others. The stakes are high - penalties can include fines of up to \$1,000,000 and twenty years imprisonment for the company and its officers, directors and employees in their personal capacities.

The following are a number of examples of how enforcement officials discover export violations:

- Disgruntled Employees. Company terminates employee. Employee is angry and wants revenge. Employee is aware of activities within the company that might constitute export violations. Employee submits a confidential tip to BIS of the possible violation and BIS initiates an inquiry into the allegations. All of the export agencies accept tips from interested parties - some even have links on their webpages to accept leads/tips such as the Confidential Enforcement Lead/Tip Form on the BIS website.[1] This is a surprisingly common source of leads for officials on export investigations.
- Disputes With Customers, Sales Reps and Other Transaction Parties. You deliver your

product/service to your customer and a dispute arises. Or you have a disagreement with a sales rep, teaming partner or other transaction party. The other party is looking for leverage to prevail in the dispute and is aware of possible export violations by one of your employees in the transaction. The party calls the BIS Enforcement Hotline to report the violation and an official inquiry is launched.

- Competitor Complaints. Your competitor is aware that your company is beating them out for contracts with new customers. The competitor hears from industry sources that you are selling your product without obtaining export licenses and are able to deliver the product in record time. The competitor has been advised by its legal counsel that it is required to obtain a license for the export of this product. In order to achieve a "level playing field" the competitor makes an anonymous call to the DDTC Office of Defense Trade Controls Compliance (Compliance and Civil Enforcement), and an investigation comes to life.
- Investigations of Other Parties. A government agency is conducting an investigation of a company (other than your company) for export, procurement or other violations. Your employees have contacts with this company – perhaps as a vendor, subcontractor or working collaboratively on a project. In the course of reviewing documents and e-mails in the investigation, the agency sees e-mails from your company's employees to the company under investigation – a few of the e-mails suggest that your employees had dealings that overlapped in the transaction in question or may have had some involvement in the matter under investigation. The investigating agent now has been alerted to the presence of your company in the transaction and begins to take a closer look at your company's activities.
- Unauthorized Diversion. You sell your product to a customer overseas in a lawful transaction, and without your knowledge your customer resells your product to a prohibited country or to a party listed on the SDN List, Entity List or other prohibited party list without export authorization. Government officials have learned that your product has wound up in the prohibited country or in the custody of the prohibited party. Government investigators approach you to obtain additional information – they tell you that your company is not the target of their investigation (yet) but request copies of all of the documents from the transaction.
- Litigation. Commercial litigation is yet another regular source of export enforcement drama. Two parties are involved in commercial lawsuit. One party has information that the other party may have been involved in export violations and threatens to use it as leverage to settle the case. The second party refuses. The first party makes a visit to the "Confidential Enforcement Lead/Tip Form" on the BIS website.[2]
- Company Visits. You receive a call from a Special Agent of the BIS Office of Export Enforcement asking if he/she can visit your company to discuss export compliance issues. In many of these visits, officials are there merely to learn more about your company's export issues and confirm that you have proper procedures in place. In other cases, however, they may be looking more carefully at a particular transaction, or investigating an illegal export by another company where your

product was involved. The agent advises that your company is not the target of the investigation.

BIS enforcement officers frequently make visits of this nature. DDTTC makes similar visits under its Company Visit Program (but typically with compliance personnel rather than enforcement personnel). When in your office, the agents ask general questions such as the nature of your products, countries of export and end users/end uses and ask to see your export compliance program. Frequently they will have a list in advance of recent export licenses that your company has received.

It is critical to recognize that even if the agents' initial purpose is solely to collect background information, if they discover information regarding potential violations they can use this to initiate an enforcement action.

- Pre-License and End Use Checks. If a party exports under an export license, BIS officials will frequently perform license checks. The purpose is to verify the *bona fides* of the foreign parties involved and confirm that the product exported eventually is delivered to the party, country and used for the end use specified in the license. Other U.S. agencies provide support, including intelligence agencies and overseas staff at U.S. embassies. DDTTC performs similar functions under its Red Lantern Program to follow up on licensed exports. In conducting these reviews, if officials see that a product was eventually shipped to a country or end user, or used for an end use, not specified in the license they will likely initiate an enforcement inquiry to determine if a violation has occurred.

These are just a few examples and many more exist. However, if a company has a possible violation there are ways of dealing with this. The most important step is to stop the ongoing potentially wrongful activity to limit the damage and legal exposure. Other options may include considering filing a voluntary disclosure (these often result in no enforcement action or penalties), aggressively defending the alleged violation, amending your export procedures to prevent future violations, and/or cooperating with enforcement officials (especially if it is a broader investigation involving multiple parties). In a few instances mandatory disclosures are required.^[3] There are many ways to clean up past violations and wipe the slate clean, especially if the violations were the result of an innocent mistake or oversight rather than intentional wrongdoing. However each case is different and must be looked at carefully to determine the best course of action for your particular case. For additional discussion of dealing with export violations see our Client Alerts: [Dealing With Violations In Export and Import Transactions](#) and [Seven Steps To Protect Your Company From Export Violations](#).

Export violations can be discovered from many different sources. However the best strategy for dealing with this risk is to avoid compliance problems in the first place. As our readers have learned here before, steps companies can take to strengthen their export compliance practices include: determining the export classifications of products, technologies, software and services, obtaining licenses, TAAs and other authorizations if required, avoiding transactions with prohibited countries, parties and end uses, adopting written export compliance programs and conducting employee compliance training. Even if mistakes are made there is still a chance to set things right and continue to move forward.

Related Articles:

- OFAC Sanctions Laws: Requirements for U.S. Companies
- Export Control Laws For The General Counsel
- Dealing With Violations In Export and Import Transactions
- ITAR For Government Contractors
- ITAR Compliance Checklist

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[1] The BIS website has a [?Confidential Enforcement Lead/Tip Form?](#) that provides: This form should only be used for the purpose of submitting a lead or a tip on a possible export control, Fastener Quality Act (FQA), Chemical Weapons Convention Regulation (CWCR), or boycott-related violation. Because we want to protect you and any information you may wish to provide us, no email response will be sent to you as a result of submitting this form. In most cases you will be contacted by telephone by one of our special agents. Export Enforcement relies heavily on the partnership it has with the business community. Many times it is the information you provide that helps us in our investigations. By prosecuting those who violate our regulations we are helping the vast majority of exporters who follow the rules and are diligent in their efforts to conduct their affairs in an honest and appropriate manner. We appreciate your willingness to work with us. Should you prefer to communicate with BIS enforcement personnel via telephone or to leave a voicemail, please use the Enforcement Hotline 800-424-2980.

[2]

This is not a recommended action as it may create legal and/or ethical problems in the litigation.

[3] See, eg., the requirement for mandatory disclosure of certain ITAR violations to DDTC under 22 CFR §126.1(e)(2).

Related People

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