

Statement of

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before the

**Subcommittee on Oversight and Investigations
Committee on Energy and Commerce
United States House of Representatives**

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Chairman Stupak, Ranking Member Walden, and Distinguished Members of the Subcommittee:

We appreciate the opportunity to appear before the Subcommittee today to discuss the Bureau of Industry and Security's (BIS) role in administering and enforcing the U.S. dual-use export control system, a system focused on the shipment or transmission of items subject to the Export Administration Regulations (EAR) out of the United States and the reexport of such items from abroad.

Overview

The U.S. export control system has several different components. The dual-use system governs the export of items that have both civilian and military (weapons of mass destruction, conventional arms, terrorist) applications. BIS administers dual-use export controls by working closely with a number of other agencies, including the Departments of Defense, Energy, Homeland Security, Justice, State, and the Treasury, as well as the intelligence community. Other agencies are responsible for administering other parts of the U.S. export control system. The Department of State, for example, implements U.S. export controls on defense articles and services.

In administering dual-use export controls, BIS and other agencies develop control policies, based on technologies, countries, end-uses, and end-users. These policies are set forth in the EAR.

The regulations specify what types of items (commodities, software, technology) are subject to control. The EAR controls two types of items – those enumerated on the Commerce Control List and most other items, which are designated by a basket category (EAR99).

Although the EAR's coverage is broad, only a small percentage of U.S. exports, by dollar value, are exported under a Commerce license. In 2008, for example, of the \$1.3 trillion worth of exports from the United States, only \$3.1 billion was exported under a Commerce license.

The EAR's authorizing statute, the Export Administration Act (EAA), has been in lapse since 2001. However, the EAA and EAR are maintained, to the extent permitted by law, through an executive order issued pursuant to the International Emergency Economic Powers Act (IEEPA). Pursuant to the EAA, IEEPA, and the EAR, BIS administers controls over exports, reexports, and domestic transfers of technology and source code ("deemed exports") subject to the EAR. Accordingly, BIS's outreach, compliance, and enforcement efforts address exports, reexports, and certain domestic transactions where parties involved have knowledge that the item will be or has been subsequently exported.

Outreach

Given the volume of trade from the United States, informing U.S. and foreign businesses of the requirements of the EAR is a critical component of our dual-use export control system. BIS, through counseling offices in Washington, DC and California, provides extensive export control assistance to the business community. These educational outreach activities help facilitate industry compliance through individualized counseling sessions and outreach training programs.

In 2008, BIS provided one-on-one counseling to over 55,000 individuals and conducted 36 seminars in 16 states. The seminars covered basic export control principles, controls on technology and encryption, and developing and enhancing industry compliance programs. Further, BIS provided export control information in 38 trade events sponsored by other organizations.

In addition, BIS's export enforcement arm conducts even more specialized outreach. These "preventive enforcement" efforts involve direct outreach to manufacturers, exporters, shippers, freight forwarders and other members of the exporting community to educate them on export control requirements, encourage voluntary compliance, and detect potential violations. This is performed in order to ensure that due diligence is applied when determining the end-use, end-user, and destination of proposed exports. In addition to educating industry, our intention is to elicit its cooperation in protecting U.S. national security and foreign policy objectives.

Outreach allows for better communication between government and industry, and directly assists enforcement investigations and operations.

Compliance

BIS does not, however, rely solely on outreach to help ensure exports are undertaken in accordance with the requirements of the EAR. BIS also has a broad compliance and enforcement program.

BIS conducts comprehensive reviews of all licenses with reporting requirements. License reports are analyzed by our compliance specialists for completeness and timeliness, and licensees are contacted if additional information is required. Any circumstances related to the license condition reports that indicate potential violations or non-compliance are referred for further enforcement follow-up.

BIS also carefully reviews data on exports in the Automated Export System (AES). Comparing license and shipment data on a monthly basis, BIS evaluates whether items subject to a license requirement are exported in accordance with the EAR. BIS has instituted electronic validations in AES to preemptively identify problematic transactions and bolster exporter compliance.

Over the past year, we have increased exporter compliance with the AES filing requirements in the EAR by 11%, and currently 96% of exports subject to the EAR are compliant. For those non-compliant transactions, BIS uses targeted outreach and enforcement authorities to remedy deficiencies. We are also continuing to work with the Census Bureau and Customs and Border Protection to further enhance the capabilities of AES to flag additional transactions that may trigger compliance concerns.

BIS recognizes that U.S. manufacturers, exporters and shippers are in an excellent position to spot potential illegal export activity. They may well be the first parties contacted by potential violators of the EAR, such as weapons of mass destruction proliferators, terrorist support organizations, and illicit procurement networks/front companies trying to acquire U.S.-origin dual-use items. BIS has published guidelines to help U.S. manufacturers, exporters and shippers avoid becoming involved in potential export violations. These guidelines are known as the Know Your Customer guidance and Red Flag Indicators.

Informed, voluntary compliance with U.S. export controls by the export trade community is a key component of BIS's export administration and enforcement programs. All parties to U.S. export transactions must ensure that their exports fully comply with all statutory and regulatory requirements. Compliance not only involves controlled goods and technologies, but also restrictions on shipping to certain countries, companies, organizations, and/or individuals.

While there is no explicit requirement in the EAR for domestic sellers to screen their customers, many companies do as a matter of due diligence because of potential liability. Companies are aware of this potential liability, as BIS works closely with the export trade community to raise awareness of compliance best practices and "red flags" of potential illicit export activities, and to identify and act on export violations. BIS's "red flag" guidance focuses on how individuals and firms should take into account any abnormal circumstances in a transaction that indicate that the transaction may be destined for an inappropriate end-use, end-user, or destination.

In fact, one “red flag” indicator specifically points to domestic transactions involving potential exports. That indicator states: “When questioned, the buyer is evasive and especially unclear about whether the purchased product is for domestic use, for export, or for reexport.” These indicators are published in the EAR, posted on the BIS website, included in BIS training material and publications, and routinely discussed at BIS’s export control seminars, in one-on-one counseling and during targeted outreach with industry.

BIS is also part of the Commerce team that supports the interagency Committee on Foreign Investment in the United States (CFIUS), which reviews transactions that could result in control of a U.S. business by a foreign person in order to determine the effect of such transactions on the national security of the United States. BIS evaluates CFIUS transactions to identify issues with regard to dual-use export controls and the defense industrial base. The reviews also provide an avenue for identifying producers of controlled products who may not export, and thus be less aware of EAR requirements.

Enforcement

BIS’s mission is designed to keep sensitive U.S. dual-use goods and technology from being diverted to proscribed end-users, end-uses, and destinations. Enforcement priorities include conducting investigations that target: weapons of mass destruction proliferation; terrorism and state sponsors of terror; and the unauthorized military end-use of items consistent with BIS’s mandate to regulate exports of items with both civilian and military applications. To identify and investigate potential and actual violations of dual-use items under the EAR, BIS’s export enforcement arm has approximately 80 assigned special agents in many regions of the United States and stationed abroad, and another 43 supporting analysts and other staff.

BIS Special Agents use the Automated Targeting System (ATS) portion of the AES database to identify violators in the United States and overseas. On a daily basis, Special Agents check the ATS database for shipments destined to embargoed or sanctioned countries, such as Iran or Syria. Quite often, these shipments are detained before reaching their destination, preventing an unauthorized shipment from reaching those countries. In addition, Special Agents conduct reviews in ATS and compare the results against sanctioned parties on the BIS Entity List and Denied Persons List.

There are numerous examples of how this process has caught shipments destined to prohibited parties and destinations. It can lead to identification of other overseas diverters as well. If BIS or another government agency identifies a diverter overseas, ATS searches can be completed to identify unwitting suppliers to these diverters. Violations can be prevented by advising these exporters that their products may ultimately be diverted in violation of the EAR. Similarly, this also sometimes leads Special Agents to complicit U.S. diverters that are prosecuted.

BIS also investigates procurement networks that employ various types of diversions in order to acquire sensitive U.S. dual-use goods and technology for end-users and end-uses contrary to the national interests of the United States. In addressing the threat of dual-use diversion, BIS encounters circumstances in which foreign parties have attempted to secure what appears to be a ‘domestic order’ but which in fact is intended for export to either end-users or end-uses in a

transaction that would not otherwise receive a license from BIS. Due to its targeted outreach, BIS identifies such attempts and is able to investigate, interdict, and prosecute with partner agencies.

A recent example involved the disruption of an illicit procurement network acquiring controlled thermal imaging (i.e., night vision) cameras for delivery to the People's Republic of China (PRC). After receiving an industry tip and conducting a thorough investigation and "controlled delivery", the suspects were arrested while boarding a flight to the PRC. Ten thermal imaging cameras found concealed in their luggage were interdicted prior to being illegally exported from the United States. Interdiction of the cameras prevented their potential use by unauthorized end-users to operate under low-light conditions. Due to BIS's industry outreach program, Special Agents were able to disrupt this unlawful procurement attempt through surveillance, searches, interviews, document review, and evidence and witness preparation. One defendant pled guilty to the charges against him and cooperated in the trial convicting his co-conspirator. Information gathered during this investigation is being used by federal law enforcement agencies targeting illicit procurement efforts.

The Administration is reviewing the existing law enforcement authorities of BIS Special Agents to determine if additional authorities are needed to enable BIS to better address the current security and commercial environment.

Conclusion

We appreciate the opportunity to testify in front of the subcommittee regarding our important national security mission. In addition to the timely and rigorous review of license applications, an effective export control system requires a combination of domestic and international activities to educate parties on their export control responsibilities, proactive compliance efforts, and the conduct of enforcement investigations. Our dedicated staff, with support from many other agencies, is committed to protecting U.S. national security, foreign policy, and economic interests by ensuring secure trade in high technology items.

We would be pleased to answer any questions you have.