

Export Control Reform Initiative #5:
Enhancing, Coordinating and Consolidating Export Control Enforcement

Who is responsible for Export Control Enforcement?

Several U.S. Government (USG) departments maintain authority to enforce the various export control laws resulting in jurisdictional overlap. There are also multiple USG departments and agencies with authority to conduct criminal investigations related to possible export control violations, and each licensing agency conducts its own administrative investigations without visibility into the other agencies' administrative actions.

- Based on two separate statutes, the three primary export licensing agencies, Commerce, State, and the Treasury, each process their own administrative enforcement cases.
- Three primary export enforcement agencies, the Departments of Homeland Security (DHS), Justice, and Commerce, each conduct criminal enforcement investigations of possible violations of one or more of the three primary export licensing agencies' regulations.
 - DHS/Immigration and Customs Enforcement (ICE) conducts criminal investigations for all items subject to the three primary licensing agencies' regulations.
 - Justice/Federal Bureau of Investigation (FBI) conducts criminal investigations for all items subject to the three primary licensing agencies' regulations.
 - Commerce conducts criminal and administrative investigations for all items subject to Commerce's regulations.
- DHS/Customs and Border Protection (CBP) is authorized to inspect all goods being exported for compliance with all three licensing agencies' regulations.
- The Department of Defense administers programs to prevent technology transfer, protect classified information, and protect defense systems and weapons from unauthorized accesses. It has five components actively engaged in these efforts.
- The Department of Justice's Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) enforces controls on permanent imports of defense articles on the U.S. Munitions Import List and conducts domestic firearms trafficking investigations that at times overlap with other agencies' criminal investigations involving the illegal export of firearms.

What was the problem?

First, multiple departments and agencies with full, partial, or tangential involvement with export enforcement could create confusion among the regulated community. Further, jurisdictional conflict within the USG resulted in some disjointed and inefficient USG-wide export enforcement efforts, including inadvertent "blue on blue" instances where one law enforcement agency negatively impacts the investigation of another law enforcement agency.

Second, prior to the 2010 passage of corrective legislation as part of the reform initiative, the criminal penalty for violations of export control statutes differed and in most statutes did not reflect the seriousness of the offense. Low sentences remain an issue due to the tendency of sentencing courts to grant significant downward departures from the ranges specified in the U.S.

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Sentencing Guidelines, particularly in prosecutions involving violations of sanctions imposed against designated State sponsors of international terrorism.

Increasing the efficiency of export enforcement activities through interagency coordination and bolstering the criminal penalties for convictions has been necessary to ensure that the U.S. export control system meets U.S. national security and foreign policy objectives.

How has reform resolved these problems?

The Administration has taken a number of steps to bolster the enforcement of U.S export controls.

- In July 2010, the Administration and Congress partnered to harmonize the various statutory criminal penalties for export control violations to a standardized maximum, through the Comprehensive Iran Sanctions, Accountability, and Divestment Act (CISADA). Criminal convictions per violation are all now standardized to up to \$1 million and/or 20 years in prison or both.
- Paradoxically, before Export Control Reform (ECR), the maximum prison sentence for criminal violations of the U.S. Munitions List controls was only half of the comparable prison sentence for violations of the Commerce Control List controls. They are now the same standardized maximum.
- CISADA permanently restored Commerce's export enforcement authorities. Commerce Special Agents had previously operated under deputization from the U.S. Marshals Service since 2001, when the Export Administration Act last lapsed.
- The Administration raised concerns about the low penalties in criminal convictions for export control violations, frequently below the U.S. Sentencing Guidelines. CISADA included a report requirement to Congress by the U.S. Sentencing Commission on the advisability of mandatory minimum sentences. While the report did not recommend mandatory minimums, the Administration's raising of this issue highlights its continued concerns about sentencing courts issuing decisions consistent with the seriousness of the offenses as provided in the Sentencing Guidelines.
- The Administration consolidated the multitude of screening lists maintained by the Departments of Commerce, State, and the Treasury into one electronic Consolidated Screening List (CSL) to help exporters, especially small businesses, to evaluate parties to transactions. The CSL has almost 8,000 entries, making it easier for exporters to comply and more difficult for illicit procurement networks to obtain controlled items. In 2013, the average number of monthly downloads of the consolidated list was 34,000. Upgrades made in November 2014, including a new "fuzzy logic" search tool deployed in mid-2015 that helps find listed entities without knowing the exact spelling, is resulting in hundreds of thousands of screens per day.

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- In November 2010, the President issued Executive Order 13558 which directed the creation of the Export Enforcement Coordination Center (the E2C2) which formally opened in March 2012. The E2C2 is responsible for the mandatory de-confliction and coordination of government-wide export enforcement activities. To date, it has a de-confliction rate of 52 percent, highlighting the key role that the E2C2 is already playing in ensuring that export enforcement actions are coordinated, which means more efficient, effective enforcement.
- Going forward, the E2C2 will also coordinate law enforcement public outreach activities related to enforcement of U.S. export controls.
- This implementation plan is designed to solve core problems first, before focusing on government reorganization. In the final phase of the initiative, the Administration intends to seek legislation that would consolidate some of the enforcement agencies and stand-up a new consolidated administrative enforcement unit comprising compliance and enforcement officials from Commerce and State in the Single Control Agency. The E2C2 would continue its separate coordination role.
- This reorganization is the logical conclusion to the reform initiative, is a common sense approach, and is good government, especially in this era of tightening budgets.

To follow developments on the reform initiative, visit www.export.gov/ecr/