



The activities and blacklists of U.S. export control authorities are destroying businesses around the world. Many times investigations are not conducted properly. This guidebook helps to understand rules and regulations, introduce Export Control Authorities, different blacklists and consequences of listing and how to protect your business.

U.S. Export Control: Be Careful or Your Business Will Be Gone

by Esa Heikkinen

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Esa Heikkinen

U.S. EXPORT CONTROL

**BE CAREFUL OR
YOUR BUSINESS
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Chapter 4

The Bureau of Industry and Security (BIS)

The BIS is a government agency under the U.S. Department of Commerce that deals with issues related to national security and export controls of high technology. It was established in 2001 and its principal location is Washington, DC. It has ten regional offices in the U.S. and export control officers located in seven U.S. embassies, including those in China, Hong Kong, India, Russia, and the United Arab Emirates. These foreign offices usually deal with end-user checks.

The Bureau is financed by the Federal Government; its annual budget is approximately \$110 million.

The Office of Export Enforcement (OEE) of the BIS is authorized to conduct investigations and has rights similar to those of the FBI and NCIS to wiretap suspects and perform surveillance.

A Brief Look at Previous Years' Activities

Following is a synopsis of 2013 achievements of the BIS and OEE:

- Criminal fines totaling \$2.7 million
- Forfeitures worth \$18.3 million
- 48 arrests
- 881 months of imprisonment
- 351 detentions
- 84 seizures

On the administrative side:

- Completion of 71 administrative export and antiboycott actions
- Fines totaling \$6.5 million for the above-mentioned 71 cases
- 33 denial orders issued
- 240 warning letters issued
- 1033 end-user checks completed
- 187 individuals and companies added to the Entity List

Major cases during 2013 were:

1. **The Corezing International Case ...** Which involved the diversion of 6,000 radio frequency modules (dual-use items) to Iran via Singapore, part of which ended up in Iraq, used in explosives.
2. **The Arc Electronics Case ...** Which involved a Russian espionage and conspiracy network illegally exporting high-tech microelectronics (dual-use items) from the U.S. to Russian military and intelligence agencies.
3. **The Computerlinks FZCO Case ...** in which surveillance equipment (dual-use items) were supplied to the Syrian government.

4. **The Timothy Gormley Case ...** in which an export compliance officer of a private company altered invoices and shipping documents to avoid having to apply for necessary export licenses (for dual-use items). As a defense he said he had “too much work and too busy.” He was sentenced to 42 months in prison and fined \$1,000.

The year 2013 was also important to the Bureau because thousands of less-sensitive satellite and military electronics items were removed from the strictly controlled United States Munitions List (USML) and added to the Commerce Control List (CCL). To obtain a license for items in the CCL is much easier than for those listed in USML. In some cases, there is no need to obtain a license at all. The BIS saw this as positive signal to U.S. exports.

Year 2014 achievements included:

- Criminal convictions of 39 individuals and businesses for export violations
- Criminal fines totaling \$137,808,756
- Forfeitures worth \$1,318,832
- More than 568 months of imprisonment

The administrative side:

- Completion of 48 administrative export and antiboycott actions against individuals and businesses

U.S. Export Control

- Civil penalties totaling \$60,567,150
- 16 denial orders
- 272 warning letters issued
- 1044 end-user checks completed, resulting in 29 names added to the Unverified List
- 183 names added to the Entity List

Year 2015 achievements included:

- Criminal convictions of 31 persons and businesses
- Criminal fines worth \$156,416,030
- Forfeitures worth \$84,416,015
- More than 487 months of imprisonment

The administrative side:

- Completion of 51 administrative export and antiboycott actions against individuals and businesses
- Civil penalties totaling \$15,111,200
- 20 denial orders
- 365 warning letters sent
- 1031 end-user checks completed, resulting in 14 names added to Unverified List
- 65 names added to Entity List

Year 2016 achievements:

- Criminal convictions of 32 persons and businesses
- Criminal fines totaling \$274,500
- Forfeitures worth of \$79,077,400
- More than 883 months of imprisonment

The administrative side:

- Completion of 39 administrative export and antiboycott actions against individuals and businesses
- Civil penalties totaling \$23,323,000
- 14 denial orders
- 570 warning letters issued
- 985 end-user checks completed, resulting in 48 names added to the Unverified List
- 101 names added to Entity List
- 97 names added to the Entity List under the special Russian-sanctions program

The United States has a special “Antiboycott Program,” which works against The Arab League’s boycott of Israel. The idea of the program is to encourage or require U.S. persons to refuse to participate in foreign boycotts that the U.S. does not sanction. The BIS is also investigating antiboycott cases, and there are few cases annually that are settled by paying civil penalties.

In addition to the activities described above, the BIS organizes and hosts seminars and conferences to train and guide U.S. exporters regarding the EAR. Foreign participants are also allowed to take part to these events.

Being a budget-financed public organization, the BIS naturally is willing to increase its annual budget. One would think that, in order to get more funding, the BIS would increase exposures of export violations, and bring more harsh penalties and bigger fines.

The Bureau has, in fact, started to act more like traditional law enforcement agencies when conducting investigations. In some cases, BIS field agents have acted as sellers of goods on the Commerce Control List. As an example, this happened in a case where a Chinese national was trying to purchase high-grade carbon fiber in order to export it to China for the Chinese government, without the required export license. According to the BIS, this carbon fiber is a dual-use item and can be used for aerospace and defense applications and for military purposes. The Chinese national, after pleading guilty, was sentenced to three years in prison.

Mission Statement

According to the BIS, its main goal is to “Advance U.S. national security, foreign policy, and economic objectives by ensuring an effective export control and treaty compliance system and promoting continued U.S. strategic technology leadership.”

The paramount concern of the BIS is the security of the United States. This includes national security,

economic security, cyber security, and homeland security. The credibility of the BIS depends upon its fidelity to this principle.

As an example, the Bureau mentions export control of dual-use items. The BIS administers and enforces controls that prevent proliferation of weapons of mass destruction and the means of delivering them, to halt the spread of weapons to terrorists or countries of concern and to further important U.S. foreign policy objectives. Where there is credible evidence suggesting that the export of dual-use item threatens U.S. security, the Bureau must act to combat the threat.

The BIS says that protecting U.S. security includes not only supporting U.S. national defense, but also ensuring the health of the U.S. economy and the competitiveness of U.S. industry.

- The Bureau seeks to promote a strong and vibrant defense/industrial base that can develop and provide technologies that will enable the United States to maintain its military superiority.
- The Bureau must take great care to ensure that its regulations do not impose unreasonable restrictions on legitimate international commercial activity that is necessary for the health of U.S. industry. In protecting U.S. security, the Bureau must avoid actions that compromise the international competitiveness of U.S. industry without any appreciable national security benefits.

The Bureau is looking for partnership with the private sector. Two key points:

- U.S. security cannot be achieved without the active cooperation of the private sector, which today controls a greater share of critical U.S. resources than in the past. At the same time, the health of U.S. industry is dependent on U.S. security—of our borders, critical infrastructure, and computer networks.
- The symbiotic relationship between industry and security should be reflected in the formulation, application, and enforcement of Bureau rules and policies.

The Bureau's activities and regulations need to be able to adapt to changing global conditions and challenges.

- The political, economic, technological, and security environment that exists today is substantially different from that of only a decade ago. Bureau activities and regulations can only be justified, and should only be maintained, to the extent they reflect current global realities. Laws, regulations, or practices that do not take into account these realities—and that do not have sufficient flexibility to allow for adaption in response to future changes—ultimately harm national security by imposing costs and burdens

on U.S. industry without any corresponding benefit to U.S. security.

- In the area of exports, these significant geopolitical changes suggest that the U.S. control regime that in the past was primarily list-based must shift to a mix of list-based controls and controls that target specific end-uses and end-users of concern.
- The Bureau should also be creative in thinking about how new technologies can be utilized in designing better export controls and enforcing controls more effectively.

The Bureau's rules, policies, and decisions should be stated clearly, applied consistently, and followed faithfully.

- Uncertainty, and the delay it engenders, constitutes a needless transaction cost on U.S. companies and citizens, hampering their ability to compete effectively.
- These precepts are particularly important with respect to the application and enforcement of export controls. An effective export control regime necessarily depends upon the private sector clearly understanding and seeking to implement Bureau rules and policies voluntarily.

Decision-making should be fact-based, analytically sound, and consistent with governing laws and regulations.

- A “reasonable person” standard should be applied to all decisions. How would a “reasonable person” decide this issue? The Bureau’s mission does not lend itself to “ideological” decision making—especially when it comes to its licensing and enforcement functions.
- It is inappropriate to try to find a second opinion from another government bureau or agency. It violates the public’s trust and undermines the Bureau’s credibility.

The Bureau works in close cooperation with other parts of the U.S. government and with state and local governments.

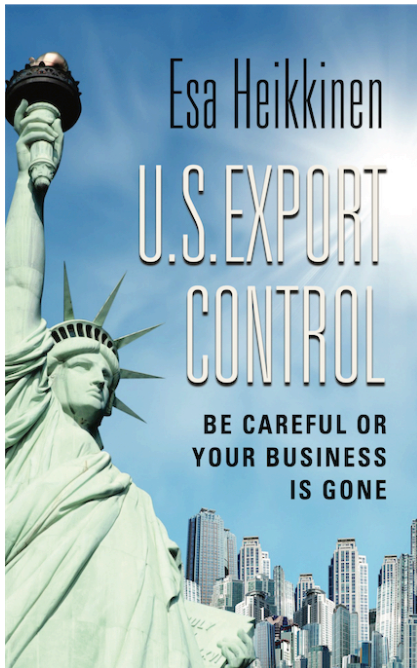
The Bureau shall seek to collaborate in a collegial and effective manner with other agencies and departments of the U.S. government, including the National Security Council, the Office of Homeland Security, the State Department, the Defense Department, the Energy Department, and the Intelligence Community.

- The Bureau shall consult with its oversight committees and other appropriate members of Congress and Congressional staff on matters of mutual interest.

- The Bureau shall seek to enhance its relationships with state and local government officials. International cooperation is critical to the Bureau's activities.
- Fulfilling the Bureau's mission of promoting security depends heavily upon international cooperation with our principal trading partners and other countries of strategic importance, such as major transshipment hubs. Whether seeking to control the spread of dangerous goods and technologies, protecting critical infrastructures, or ensuring the existence of a strong defense/industrial base, international cooperation is critical.
- With regard to export control laws in particular, effective enforcement is greatly enhanced by both international cooperation and an effort to harmonize the substance of U.S. laws with those of our principal trading partners.
- International cooperation, however, does not mean settling for the lowest common denominator. Where consensus cannot be broadly obtained, the Bureau will not abandon its principles, but should seek to achieve its goals through other means, including cooperation with smaller groups or like-minded partners.

NOTE: The text above is based on abbreviated quotes from the original Mission Statement of the BIS, which is available on the BIS website. There are no added remarks or interpretations of the original statement by the author.

The Bureau works closely with U.S. Customs Border Protection (CBP), the largest federal law enforcement agency of the United States Department of Homeland Security. The BIS controls sophisticated exports from the U.S., and conducts inspections of exporters in the U.S. and end-use checks in foreign countries. In addition, it grants export licenses. Investigations are, in many cases, conducted in close cooperation with the FBI and NCIS.



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