

PUBLICATION

Enforcement of Export Control Violations on the Rise

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Recently, there has been an increase in the number of companies that are accused of violating U.S. export laws. Assistant Attorney General Wainstein called the criminal prosecution of export control violations the Justice Department's "leading counterintelligence priority." Many of these cases are unnecessarily brought to trial for several reasons: 1) Justice lawyers are not experts in the export and sanctions laws and regulations, and may be prosecuting cases that have no business in the criminal system based on the evidence and the standard of proof required under the law and 2) DOJ prosecutors have been increasingly overzealous and may be working these cases with a political agenda.

For example, a major U.S. defense contractor was recently fined \$100 million for criminal violations of International Traffic in Arms Regulations, and the firm's major business units were barred from exporting munitions items for three years. Another defense firm was convicted for exporting unlicensed ballistic helmets, and yet another firm was indicted for exporting technical drawings related to military helicopters. In addition, a large U.S. food company was fined \$25 million for providing monetary support to a designated terrorist group in South America.

A minimum of three federal departments have regulations that govern exports: the State Department, through its Directorate of Defense Trade Controls (DDTC); the Commerce Department, through its Bureau of Industry and Security (BIS); and the Treasury Department, through its Office of Foreign Asset Control (OFAC). These agencies have compiled numerous lists with attendant regulations and procedures. Some lists identify a wide range of people, countries, and organizations with which trade and other business is prohibited, others list munitions that cannot be exported, and still others identify federal requirements for government sales and list commodity classification numbers for dual-use items.

Most companies do not pay attention to the many intricacies of these requirements until Immigration and Customs Enforcement (ICE) agents arrive at their businesses with guns and badges and begin removing the company's hard drives for review. Such raids are followed by several years of investigations of possible criminal and civil violations in order to determine whether the business has broken the law. Even if no violation is found, lack of attention to detail will force the raided business to lose copious amounts of time and to incur substantial legal fees for their defense. The best defense, however, is a strong compliance plan.