

January 2005

PROJECT SHIELD AMERICA

A Partnership Between U.S. ICE and Private Industry

A GUIDE TO EXPORT ENFORCEMENT



SHIELD
America



U.S. Immigration
and Customs
Enforcement

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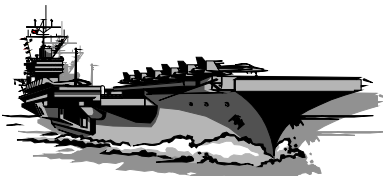
Introduction

As the nation's primary border enforcement agencies, U.S. Immigration and Customs Enforcement (ICE) and U.S. Customs and Border

Protection (CBP) are responsible for enforcing a multitude of laws. Within ICE, the Office of Investigations is mandated to enforce laws regarding the exportation of strategic technology and munitions from the United States, and economic embargoes against various countries, groups, and individuals. U.S. origin strategic technology and munitions continue to be highly sought after by hostile nations, terrorist groups, and narco-traffickers. As a result, illegal exports remain a serious threat to U.S. national security.

Project Shield America is an integral part of the strategy utilized by ICE Arms and Strategic Technology Investigations (ASTI) Unit. Its goal is to prevent illegal exporters, targeted foreign countries, terrorist groups, and international criminal organizations from trafficking in Weapons of Mass Destruction and related components. Additionally, Project Shield America seeks to disrupt the illegal procurement of licensable technologies and munitions, interdict stolen property being exported from the U.S., and restrict financial and other transactions that support these activities or violate U.S. sanctions and embargoes. Project Shield America is an industry outreach program, the intent of which is to obtain the assistance and cooperation of those companies involved in the manufacture, sale, and export of U.S. origin strategic technology and munitions items. This program targets technology and munitions used in nuclear, chemical, biological and missile delivery systems, which could be illegally exported to enemies of the United States. Project Shield America is not intended to hinder legitimate U.S. exports.

This guide will aid your company in complying with current U.S. export laws, and assist your company in detecting and dealing with an attempted illegal acquisition of your product by hostile foreign governments, companies, or individuals. Even the most seemingly insignificant product, routinely exported by your company, could be an essential component for a foreign military research program. Those employees within your company responsible for export control should take the time to read this guide. Only with the cooperation and diligence of the exporting community can we succeed in preventing the proliferation of advanced conventional weapons and weapons of mass destruction. If you have any specific export questions, or wish to report any suspicious inquiries, please contact your nearest ICE Office of Investigations.



The U.S. Customs Service and U.S. ICE Protectors of Independence

The history of the United States Customs Service dates back to the beginning of the United States itself. The American Revolutionary War, which ended in 1783, was costly both in human and monetary terms, and a free but fledgling nation found itself struggling on the brink of bankruptcy. Thus, when the First Congress of the United States of America met in New York City on Wednesday, March 4, 1789, of paramount importance was to devise a plan to collect national revenue. It was James Madison of Virginia who proposed a duty on all imports and the creation of a federal agency to insure collection of the duties. This idea was eventually signed into law by President Washington as the Tariff Act of July 4, 1789.



Following the Tariff Act of July 4, 1789, the First Congress created the U.S. Customs Service, established Customs districts and ports of entry, and prescribed the duties of Customs officers. The U.S. Customs Service became the first fully formed federal agency and was placed under the Treasury Department, headed by the Secretary of the Treasury.

The first U.S. Customs duty was collected at the port of New York on August 5, 1789 and amounted to \$774.71. During its first year of service, U.S. Customs collected over two million dollars in duties for a burgeoning United States. By 1835, Customs revenues had reduced the national debt to zero. Prior to the 1913 enactment of the first federal income tax law, U.S. Customs was virtually the only source of income for the United States government. This income funded a period of spectacular growth and acquisition that is unparalleled in our history, which included the settling of the West, the purchase of the Louisiana and Oregon Territories, the purchase of Florida and Alaska, and the construction of the Transcontinental Railroad.

In addition to the assessment and collection of import duties, the U.S. Customs Service, with its authority to regulate the border, became the first federal law enforcement agency in the U.S. Prior to the inception of the Immigration and Naturalization Service, Customs managed the influx of immigrants seeking refuge in the United States. Customs was also the first agency to combat the importation of child pornography and illicit drugs. During Prohibition in the 1920's, Customs apprehended "rumrunners" and their smuggled liquor. Also, for over a century, Customs has protected American manufacturers through the seizure of illegally imported counterfeit goods.

In March 2003, the U.S. Customs Service was transferred from the Department of the Treasury to the Department of Homeland Security. In addition to the move, the U.S. Customs Service was transformed into two new entities: U.S. Immigration and Customs Enforcement and U.S. Customs and Border Protection.

U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT

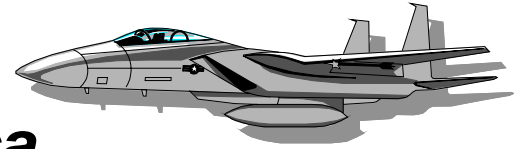
The Assistant Secretary, ICE has refocused the efforts of the Office of Investigations to address the current threat environment, secure our borders, facilitate industry participation and cooperation, and allow adaptation to an environment of continuous change. The Office of Investigations, Arms and Strategic Technology Investigations Unit has responded to these crucial changes by developing and concentrating on important programs such as Project Shield America.

ARMS AND STRATEGIC TECHNOLOGY INVESTIGATIONS

Special agents from ICE work to detect violations of export and related laws. All criminal investigations are conducted by special agents, who often develop cases through the use of confidential informants and sources of information in the private sector. In conducting criminal investigations, special agents are responsible for gathering evidence in accordance with U.S. laws. They use a myriad of resources to do this, including public records, law enforcement data bases, physical surveillance, electronic monitoring, subpoenaed records, interviews, and search warrants. Investigations are often worked jointly with the Department of Commerce, Department of Defense, Department of State, and others. Special agents work with Assistant U.S. Attorneys to prosecute criminal cases in federal court. In the area of exports, special agents primarily seek to identify and prosecute procurement networks that have been established to obtain and illegally export U.S. origin strategic technology and munitions items.

U.S. CUSTOMS AND BORDER PROTECTION

With few exceptions, anything or anyone crossing the United States border is subject to search by CBP officers. Uniformed CBP officers examine luggage and passengers at international airports; inbound and outbound cargo loaded on commercial trucks, vessels and aircraft; incoming mail parcels from foreign countries; vehicles and pedestrians crossing the Canadian and Mexican land borders. All of this is an important deterrent to the smuggling of narcotics, unreported currency, and other contraband. CBP employs a systematic risk-based management approach to target, identify, screen and when appropriate examine the highest risk shipments entering and exiting the U.S. To make the most of their resources, CBP utilizes advance information, specialized teams and non-intrusive inspection equipment to target narcotics smuggling, fraudulent importations, and the unlawful exportation of technology, unreported currency or regulated merchandise.



Project Shield America

Project Shield America officially began in December 2001 as the result of the events of 9/11. Project Shield America is a continuation of Project Gemini, a U.S. Customs industry outreach program which began in 1981, primarily as an effort to stem the flow of U.S. military and dual-use technology to the former Soviet Union. In response to terrorist attacks and threats against the United States, Project Shield America shifted its outreach focus to the prevention of Weapons of Mass Destruction (WMD) proliferation and WMD technology and components acquisition by countries and individuals who threaten the United States and its allies. The present focus of Project Shield America is to prevent the proliferation of controlled technology and components, the acquisition of nuclear, chemical and biological weapons, and the unlawful exportation of weapon systems and classified or controlled technical data¹.

Project Shield America is an outreach/liaison program between ICE Arms and Strategic Technology Investigations and industry. This program utilizes established relationships with the intelligence community to identify U.S. technology and munitions items most desired by our enemies, and the methods used by foreign and domestic individuals and groups to illegally obtain them. ICE Arms and Strategic Technology Investigations utilizes undercover investigations to identify, eliminate, and prosecute members of procurement networks that have been established for the sole purpose of obtaining and illegally diverting critical U.S. technology.

In seeking to both gather and provide information, Project Shield America was established to increase public awareness of the importance of export controls, and to seek the cooperation of the technology manufacturing and handling community. Project Shield America liaisons are established between ICE Arms and Strategic Technology Investigations special agents and manufacturers, exporters, and freight handlers. In this cooperative effort, private industry can improve its export control measures while avoiding issues that might effect legitimate business. Through established contacts, private industry is encouraged to report all suspicious export inquiries to ICE. Cooperation will protect U.S. national security, secure the reputation of private industry and protect research and development costs lost to illegal procurement.

¹“Technical data” refers to software or technology (specific information related to the development, production, or use of a product). Any shipment, release, or transmission of technical data from the U.S. to a foreign destination (including a foreign national visiting the U.S.), whether by mail, telephone, fax, modem, instructional conference, or otherwise is considered an export, and may be subject to export controls.



Licensing Requirements

Exports are controlled by several government agencies. The controlling agency is determined by the type of commodity being exported. The Department of State regulates the exportation of defense articles and defense services as well as classified and unclassified technical data. The Department of Commerce regulates the exportation of dual-use commodities and unclassified technical data. The Department of Treasury, Office of Foreign Assets Control (OFAC), controls exports to countries which have been sanctioned or embargoed by the United States. Other agencies involved in export licensing include the Drug Enforcement Administration, Department of Energy and the Nuclear Regulatory Commission. Although these agencies are responsible for issuing export licenses and maintaining export regulations, ICE is the primary agency which enforces these export regulations and investigates violations of export laws².

All exports from the U.S. must be made under a validated license, under a specific license exception, or under Export Administration Regulation 99 (EAR 99) No License Required (NLR). The need for a validated export license is determined by the type of item being exported, the country of final destination and the end-use/user of the product. License Exceptions and NLR require no prior authorization and no written license is issued. An individual validated license, on the other hand, requires written approval from the issuing agency prior to export, and a formal written license is issued. An individual validated license is valid only for that “individual” transaction (i.e. only for a specific quantity or value of product to be shipped from a certain manufacturer to a specific consignee within a specific time frame). Most applications for a validated license also require support documentation, which usually includes an end-use statement by the ultimate consignee. Besides stating the end-use of the controlled product, an end-use statement also declares that the product will not be re-exported or incorporated into an end product that would be sold to an unauthorized country.

Because of recent proliferation concerns, the export of even the most basic product requires a validated license if the end use is for nuclear, missile, chemical weapon or biological weapon research, development or production. The burden is on the exporter to determine the end use of a product before shipment. Also, it is a violation of federal law to sell any item domestically with the knowledge that the item will be illegally exported. A Shipper’s Export Declaration (SED) is a statement from the exporter or his duly authorized agent that is filed with CBP, and declares permission (from the exporter) to export the items listed on the SED to the consignee listed on the SED. Generally, an SED must be filed for exports made under a validated license, for exports to proscribed countries and defense articles regardless of license type or value of shipment, and for exports valued greater than \$2,500, with the exception of shipments destined for consumption in Canada.

² In the United States, the Department of Commerce has joint jurisdiction with ICE, Arms and Strategic Technology Investigations to investigate violations of the Export Administration Regulations (EAR). See the following sections on the Department of Commerce and the EAR for more details.

Department of Commerce



The U.S. Department of Commerce regulates the exportation of dual-use commodities (items or services that have both commercial and military applications) and related technical data. The Department of Commerce publishes its export regulations as the U.S. Export Administration Regulations (EAR).

A significant portion of the EAR is comprised of the Commerce Control List (CCL), which is a list of items controlled by the Department of Commerce. Within the CCL, each type of item is classified by a unique Export Control Classification Number (ECCN). To determine an item's ECCN, the item's technical specifications are compared against the same type of item in the CCL. If the item is not in the CCL, or the item's technical specifications do not fall within the parameters stated within the CCL, then the item is not controlled by the Department of Commerce (the item may be controlled by another agency, however).

The burden of classifying items is on the exporter, but the Department of Commerce will give official ECCN determinations in response to written requests. The written request must contain sufficient technical specifications to enable classification of the product, along with a recommended classification by the exporter or an explanation of the ambiguities in the EAR that preclude classification by the exporter.

Once an ECCN has been determined for an item, the ECCN, along with the destination of the item, will determine whether a general license is acceptable or if a validated license is required. Again, because of recent proliferation concerns, the export of even the most basic product to any country requires a validated license if the end use is for nuclear, missile, chemical weapon or biological weapon research, development or production.

Special agents for both ICE, Arms and Strategic Technology Investigations and the Department of Commerce conduct investigations involving criminal violations of the EAR. Additionally, the Department of Commerce can impose administrative sanctions and/or fines for violations of the EAR that do not meet criminal standards.

The Department of Commerce, Bureau of Industry and Security (BIS) conducts introductory seminars to explain the licensing provisions of the EAR and how to use the EAR. More advanced seminars present guidelines for setting up an Export Management System, and explain the specialized export requirements for certain types of products. For information on attending the BIS seminars, or on ordering copies of the EAR, contact the Department of Commerce, Bureau of Industry and Security listed on page 17 of this brochure.



Department of State

The Department of State, Directorate of Defense Trade Controls (DDTC), regulates the exportation of defense articles, defense services, and related technical data. The DDTC publishes its regulations as the International Traffic in Arms Regulations (ITAR). The ITAR contains a list of all items controlled by the DDTC, entitled the U.S. Munitions List (USML). If an item or service is on the U.S. Munitions List, it is considered a defense item or service, and requires an individual validated license for export.

Any person or business in the U.S. that manufactures or exports defense articles, or furnishes defense services, is required to register with the DDTC. This is a one-time registration, and export licenses will not be granted from the Department of State unless the applicant is a registrant with the DDTC.

Unlike the Department of Commerce, the Department of State does not issue general licenses. A validated export license issued by the Department of State is valid for four years. The license expires when the total value or quantity authorized has been shipped or when the date of expiration has been reached, whichever occurs first. The exporter is required to file the license with the CBP port director at the anticipated port of exit before any product is shipped. Unused, expired, expended, suspended, or revoked licenses must be returned immediately to DDTC.

The ITAR states that licenses for exports of defense articles or related technical data to the following countries will be denied: (see 22CFR126.1 and notifications by Federal Register for a current listing of proscribed countries)

Afghanistan*	Cuba	N. Korea	Vietnam
Belarus	Haiti	Rwanda*	
Burma	Iran	Somalia	
China (PRC)	Liberia	Sudan	
Congo*	Libya*	Syria	

*Decision made on case by case basis

The ITAR contains a section of interpretations and explanations of the items on the USML. If after consulting this section, an exporter is still in doubt as to whether an item is covered by the USML, the exporter should request an official commodity jurisdiction statement from DDTC. The request should contain the manufacturer's technical specifications for the product and a history of the products' design, development and use. The commodity jurisdiction statement from the DDTC will state whether that item is on the USML or is subject to control by another agency.

As a general rule, if an item is specifically designed, modified or developed for military use, it is controlled by the Department of State and requires an individual validated license for export.

Export Management System

An Export Management System (EMS) is a mechanism within a company that provides safeguards at key points of the export process, and is designed to ensure compliance with U.S. export laws while still maximizing company sales.

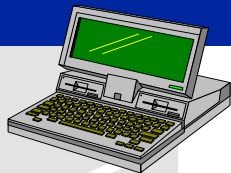
Elements of an Export Management System include the following:

- (1) A policy statement which shows senior management's commitment to export control;
- (2) Identification of positions within the company responsible for export control;
- (3) An up-to-date training program for employees with export responsibilities;
- (4) A program for maintaining records in compliance with export regulations (the EAR and ITAR require that an exporting company keep all export records for a minimum of five years);
- (5) Periodic internal review of the EMS; and
- (6) A procedure for dealing with violations and/or non-compliance of export regulations.

The best procedure to follow when questions arise concerning a suspicious transaction or lack of cooperation by a customer concerning export compliance is:

- (1) Do not alert the customer.
- (2) Get as much information as you can regarding the customer without arousing suspicions (such as a call-back number, name and address).
- (3) Immediately thereafter, contact an ICE special agent who will work with your company.

By turning away a suspicious customer, that customer may be able to obtain the same type of product from another company which does not maintain the same level of export compliance. Our strategic technology is an important asset to our national defense and could be an instrument of intimidation or destruction in the hands of our adversaries. Only through the combined effort of ICE, Arms and Strategic Technology Investigations and the private sector can we preempt the flow of our technology to hostile governments or individuals.



Export Enforcement and Automation

The Automated Export System (AES)

As part of its longstanding commitment to modernization and automation, the U.S. Customs Service teamed up with the Bureau of the Census in 1994 to revolutionize export reporting. The aim was to create a more efficient way for Customs to monitor, target, and examine high-risk export shipments, to improve the accuracy of export statistics, and to free all parties, government and industry alike from an outdated, cumbersome paper-based process.

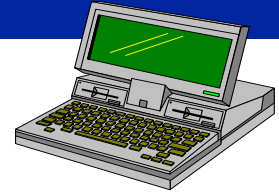
In the most basic sense, the Automated Export System (AES) is the electronic equivalent of the Shipper's Export Declaration (SED) or Commerce Form 7525-V. AES has come a long way since its initial implementation at five seaports. AES, which is now available nationwide to all modes of transportation, accounts for 81.5% of exports (excluding non-licensable shipments destined for Canada) reported as of May 2002. Trade participants include freight forwarders, service bureaus, carriers, couriers, port authorities, and non-vessel operating common carriers (NVOCC's). This represents steady progress toward universal automated reporting of exports.

How does automation support export enforcement?

Managing Information

The events of September 11th 2001 brought home the importance of having the right information, at the right time, and in the hands of the right people. As the only existing national database for the processing and the recording of export data, AES is uniquely positioned to support multi-agency export control efforts.

- AES provides the export community with a single gateway for submitting commodity information to multiple government agencies and eliminating costly and time-consuming reporting of the same information to different agencies.
- AES is the central repository for export information utilized by partnership agencies such as the Department of State/DDTC, the Department of Commerce/BIS, and the Department of Treasury/OFAC. Partnership agencies rely on AES data for statistics, trend analysis, enforcement decisions, and the existence of a single information source that supports the move toward greater inter-agency cooperation and coordination.

Monitoring Exports and Enforcing Export Controls

Uniformed CBP officers have the authority to act on behalf of government agencies such as the Department of State/DDTC, for example, which does not otherwise have a presence at U.S. borders. CBP officers must therefore navigate a myriad of other agency regulations, licensing procedures, and licensing exemptions in order to determine whether or not cargo staged for loading on a conveyance is a lawful export. Automation meets the challenges of screening large volumes of quickly moving cargo. The most obvious benefit of automation is the elimination of mounds of paper documents that CBP officers would otherwise have to sift through in their search for illicit exports.

Automation and the availability of pre-departure information allow CBP officers to interact with export data in ways not possible under the old paper-based reporting system where paper SED's and the information contained therein rarely went beyond Ports of Entry. CBP officers nationwide now have access to information that help them better understand both local patterns, and larger national and global trends.

AES and U.S. Businesses*Trends in Export Reporting*

Before September 11th, the value of AES to U.S. businesses centered on streamlining business processes, and reducing costs associated with generating paper documents and employing personnel dedicated to submitting them. Current trends in government are moving to more detailed reporting of export data, with stricter pre-departure timeframes, and electronic submission of data has many proponents. Once a voluntary alternative to paper reporting, AES may become a necessary part of the business practices for exporting.

Mandatory Filing

Exporters of USML and CCL commodities are directly effected by the "Proliferation Prevention Act of 1999," which was legislatively mandated on March 31, 2002. This law requires exporters or their authorized agents to file all USML and CCL exports via AES.

How can I get more information about AES?

If you are interested in becoming an AES participant, or would simply like more information about AES, please log on to the CBP web site at www.cbp.gov. Once on the web site, select "Export" then select Automated Export System (AES) for a selection of AES related topics. If you wish to become an AES participant, select "Easy Steps for AES participation" and follow the step-by-step guidance provided.



Export Control Laws

Following are the most commonly enforced U.S. export control statutes:

Export Administration Act (EAA) 50 USC App. 2401-2420

The EAA regulates the export of strategic dual-use goods and technologies from the United States. Although the EAA lapsed in August 2001, the President has continued the regulations in effect under the International Emergency Economic Powers Act (IEEPA). The EAA authorizes export controls for three reasons: national security, foreign policy, and short supply. As an example, for national security reasons, the EAA authorizes the executive branch to restrict exports “which would make a significant contribution to the military potential of any other country or combination of countries which would prove detrimental to the United States.” Under the EAA, the executive branch has delegated its power to authorize export controls to the Secretary of Commerce. The Department of Commerce publishes its regulations implementing the EAA as the EAR. As previously discussed, the EAR contains the CCL, which is a list of items controlled by the Department of Commerce under the EAA. The EAR states that no item on the CCL may be exported to any destination without a validated license issued by the Commerce Department, except where the export is specifically authorized under a general license or other authorization.

The EAA contains several penalty provisions and a criminal forfeiture provision. The EAA criminalizes knowing and willful violations of the act (most typically unlicensed exports), as well as attempts, conspiracies, possession of goods or technology with the intent to illegally export them, and any actions taken with the intent to evade the provisions of the EAA. *The penalty for a single violation of the EAA, upon conviction, is up to \$1,000,000 in corporate fines (or five times the value of the export, whichever is greater), up to \$250,000 in individual fines, and/or up to ten years imprisonment.*

Arms Export Control Act (AECA) 22 USC 2778

The AECA regulates the export and import of defense articles and services and related technical data from and into the United States. The AECA authorizes the President to designate the items which are to be considered defense articles and services, to require licenses for the export of these articles and services and to promulgate regulations for the import and export of these articles and services. This power has been delegated to the Department of State/DDTC. As previously discussed, the DDTC publishes its regulations as the ITAR. The ITAR contains a list of all items controlled by the DDTC, entitled the USML. If an item or service is on the USML, it is considered a defense item or service, and requires an individual license from the DDTC for export to all destinations.

Under the ITAR, the following five activities are considered an export:

- (1) Sending or taking defense articles out of the U.S. in any manner,
- (2) Transferring registration or control of any defense article to a foreign person, whether in the U.S. or abroad;
- (3) Sending or taking technical data outside of the U.S.;
- (4) Disclosing or transferring technical data to a foreign person, whether in the U.S. or abroad;
- (5) The performance of a defense service on behalf of, or for the benefit of, a foreign person, whether in the U.S. or abroad.

The AECA criminalizes knowing and willful violations of the act (most typically unlicensed exports), false statements or omissions of required facts in a registration or license application, attempted illegal exports, and failure of defense exporters to register with the DDTC. *The penalty for a single violation of the AECA, upon conviction, is up to \$1,000,000 in fines and/or up to ten years imprisonment.*

International Emergency Economic Powers Act (IEEPA) **50 USC 1701-1706**

Trading With the Enemy ACT (TWEA), 50 USC App. 5

The IEEPA and TWEA, with certain exceptions, give the President broad authority to regulate exports and other international transactions in times of national emergency. Controls under these acts originate as an executive order declaring a national emergency based on an unusual and extraordinary foreign threat to the national security, foreign policy, or economy of the United States. After the executive order is issued, the U.S. Treasury Department/OFAC is responsible for regulating the controls/sanctions under IEEPA and TWEA. OFAC publishes new regulations in the Federal Register, eventually to be codified at 31 CFR 500-599. The OFAC regulations require exporters, importers and others under U.S. jurisdiction to obtain OFAC licenses prior to engaging in any type of commercial transaction with the targeted country or it's nationals.

Presently, the following countries have OFAC export sanctions under IEEPA and/or TWEA*: **Angola**, the Balkans, Burma, Cuba, Iran***, North Korea, Sudan, Syria, Zimbabwe, and specially designated entities (terrorists, narcotics traffickers, and WMD proliferators)**

No U.S. products, technology, or services (including brokering) may be exported to these countries or their nationals, either directly or through third countries.

These sanctions affect all U.S. citizens and permanent residents wherever they are located, all people and organizations physically in the U.S., and all branches and subsidiaries of U.S. organizations throughout the world. *The penalty for a single violation of these sanctions, upon conviction, is up to \$1,000,000 in corporate fines, up to \$250,000 in individual fines, and/or up to ten years imprisonment.*

*OFAC should be consulted for a current listing of embargoed countries and travel restrictions

** UNITA arms embargo only

***Iran sanctions effective May 1995



Export-Related Offenses

Two additional offenses commonly charged in export cases are money laundering and false statement.

Money Laundering, 18 USC 1956-1957

Congress enacted the federal money laundering statutes to impose severe penalties upon persons who knowingly engage in transactions which involve the proceeds of certain specified unlawful activities. These statutes make conduct (such as engaging in a financial transaction affecting interstate or foreign commerce), which is otherwise lawful, criminal if done with illicit money or for an illicit purpose. The money laundering statutes enumerate specific offenses, or specified unlawful activities, which are the only offenses that can give rise to a money laundering charge. Because of the national security concerns of strategic export violations, Congress included the four major export control laws previously discussed (EAA, AECA, IEEPA and TWEA) in the list of specified unlawful activities for money laundering.

The specific money laundering charge most commonly invoked in export cases is section 1956(2)(a). That section states:

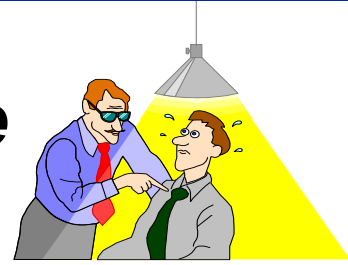
Whoever transports, transmits, or transfers, or attempts to transport, transmit, or transfer a monetary instrument or funds from a place in the United States to or through a place outside the United States or to a place in the United States from or through a place outside the United States with the intent to promote the carrying on of specified unlawful activity shall be sentenced to a fine of \$500,000 or twice the value of the monetary instrument or funds involved in the transportation, whichever is greater, or imprisonment for not more than twenty years, or both.

Other federal statutes also allow for the seizure and forfeiture of any real or personal property involved in, or traceable to, any actual or attempted transaction in violation of the money laundering statutes

False Statement, 18 USC 1001

The EAA and AECA contain their own false statement provisions with more severe penalties than this general false statement statute. However, 18 USC 1001 is often charged in export cases involving false statements on a Shipper's Export Declaration (SED) or on an export license application. On both of these documents, the exporter is required to specifically describe the items to be exported, the country of ultimate destination, and the value of the shipment. Section 1001 states that, "*Whoever, in any matter within the jurisdiction of any agency of the United States knowingly and willfully falsifies, conceals or covers up a material fact, or makes any false, fictitious or fraudulent statements or representations...shall be fined not more than \$10,000 or imprisoned not more than five years, or both.*" The specific intent requirement of this statute requires that the defendant act "knowingly and willfully." However, the courts have held that "deliberate ignorance" or "willful blindness" is enough to satisfy this requirement.

Economic Espionage



Economic Espionage Act of 1996, 18 USC 1831-1839

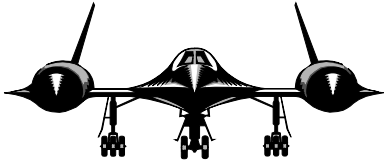
In 1996, in an effort to further protect U.S. businesses from the loss and theft of trade secrets and intellectual property rights (e.g. patents, trademarks, and copyrights), Congress enacted The Economic Espionage Act of 1996.

The Act, which was signed by the President on October 11, 1996, is intended to protect “trade secrets.” The Act defines a trade secret as financial, business, economic, scientific, technical, and engineering information which its owner has taken reasonable measures to keep secret, and which derives actual or potential independent economic value from not being readily known or available to the public.

The Act provides criminal penalties for:

- A. The theft, unauthorized duplication, transfer, or receipt of a trade secret, with the intent or knowledge that the offense will benefit a foreign government, foreign instrumentality (including both governmental agencies and private corporations), or foreign agent. See 18 USC 1831; and
- B. The theft, unauthorized duplication, transfer or receipt of a trade secret which is related to or included in a product produced for or placed in interstate or foreign commerce, with the intent to convert that trade secret to the economic benefit of anyone other than its owner and with the intent or knowledge that the offense will injure the owner of the trade secret. See 18 USC 1832.

ICE special agents (in coordination with Federal Bureau of Investigation which has principal investigative responsibility for domestic violations of the Act) investigate violations of this Act involving the theft, unauthorized duplication, transfer or receipt of trade secrets for the benefit of a foreign government, foreign instrumentality, or foreign agent.



Example of a Past Export Case

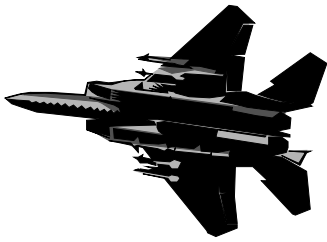
In November 2003, Zhan Gao, a human rights activist whom the U.S. Government helped free from a Chinese prison in 2001, pleaded guilty to violating the Export Administration Regulations for exporting sensitive U.S. technology with potential military applications to the People's Republic of China. The ICE investigation that precipitated this plea was initiated based on an industry contact who provided information regarding individuals who were requesting to purchase licensable devices to ultimately send to China.

In 2001, Gao, a permanent U.S. resident alien, had been arrested by Chinese authorities and convicted of spying for Taiwan. Gao allegedly spent five months in a Chinese jail. After intense pressure from the U.S. government, Gao was released as a "good will" gesture shortly before a visit to China by U.S. Secretary of State Colin Powell. Media outlets have suggested that her detainment was a ruse to throw off any U.S. investigation into her export activities.

The ICE investigation disclosed that from 1998 through 2001, Gao ran Technology Business Services, a business specializing in exports of technology to China. The exports were made to Chinese companies with ties to "Institutes" which perform research and development for the Chinese government, including the Chinese military. Among the items sent to China were microprocessors that can be used in navigation, digital flight control and weapon fire control systems, radar data processing, airborne battle management systems, as well as target identification and missile guidance systems.

In addition to pleading guilty to EAR violations, Gao pleaded guilty to one count of tax evasion for not reporting most of the nearly \$1.5 million she received from China for exporting the microprocessors and other licensable items.

In July 2004, Zhan Gao received a sentence of 7 months imprisonment followed by 8 months community confinement.



Indications of Potential Illegal Exports

ICE Arms and Strategic Technology Investigations solicits the assistance of private industry to provide information relating to suspicious acquisitions of strategic technology and munitions items, or related services. Listed below are some possible indicators of an illegal export or diversion.

- The customer is willing to pay cash for a high value order rather than use a standard method of payment, which usually involves a letter of credit.
- The customer is willing to pay well in excess of market value for the commodities.
- The purchaser is reluctant to provide information on the end-use, or end-user, of the product.
- The end-use information provided is incompatible with the customary purpose for which the product is designed.
- The final consignee is a trading company, freight forwarder, export company, or other entity with no apparent connection to the purchaser.
- The customer appears unfamiliar with the product, its application, support equipment, or performance.
- The packaging requirements are inconsistent with the shipping mode or destination.
- The customer orders products or options that do not correspond with their line of business.
- The customer has little or no business background.
- The order is placed by firms or individuals from foreign countries other than the country of the stated end-user.
- The order is being shipped via circuitous or economically illogical routing, such as through Canada to a non-Canadian end-user.
- The customer declines the normal service, training, or installation contracts.
- The product is inappropriately or unprofessionally packaged (e.g. odd sized/re-taped boxes, hand lettering in lieu of printing, altered labels, or labels that cover old ones).
- The size or weight of the package does not fit the product described
- “Fragile” or other special markings on the package are inconsistent with the commodity described.



Who to Call?

If you wish to report any suspicious export inquiries, or desire a Project Shield America presentation on export controls for your company, please locate and contact the nearest Immigration and Customs Enforcement, Office of Special Agent in Charge via www.ice.gov



U.S. Immigration
and Customs
Enforcement



Or Call
1-866 DHS 2ICE

If you have questions regarding licensing requirements or procedures, please contact:

U. S. Department of State
Directorate of Defense Trade Controls
Washington, DC 20520
(703) 663-2700 (www.pmdtc.org)

U. S. Department of Commerce
Bureau of Industry and Security
Washington, DC 20230
(202) 482-4811 (www.bis.doc.gov)

U. S. Department of Treasury
Office of Foreign Assets Control
Washington, DC 20220
(202) 622-2520 Fax: (202) 622-0077 (www.treas.gov/ofac)

One of the intended purposes of this booklet is to provide exporters with a single, easy to understand document that summarizes current U.S. export controls and the role of ICE, Arms and Strategic Technology Investigations in enforcing these controls. In light of this purpose, efforts have been made to ensure the accuracy and completeness of the information contained herein. This introductory guide, however, is not a substitute for the actual laws and regulations, which are more detailed and impose additional requirements.

Further, the country-specific export sanctions cited in this booklet are current only up to the date on the cover. These type of sanctions are frequently enacted, repealed, or amended as the relationship of the United States to these countries changes. New sanctions or changes to existing sanctions are published in the Federal Register.

Information in this booklet does not constitute legal advice or ICE determinations for specific exports. Specific legal questions should be directed to private counsel. Since laws and regulations change often and may vary from jurisdiction to jurisdiction, it is important to check the timeliness and applicability of the laws and regulations cited in this guide. No express or implied guarantees or warranties are made herein.

Basic Export Flowchart

