



Bureau of Industry and Security  
**BIS 2020**

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**POLICY AND REGULATORY UPDATES**  
A DIGITAL EXPERIENCE

September 2, 2020





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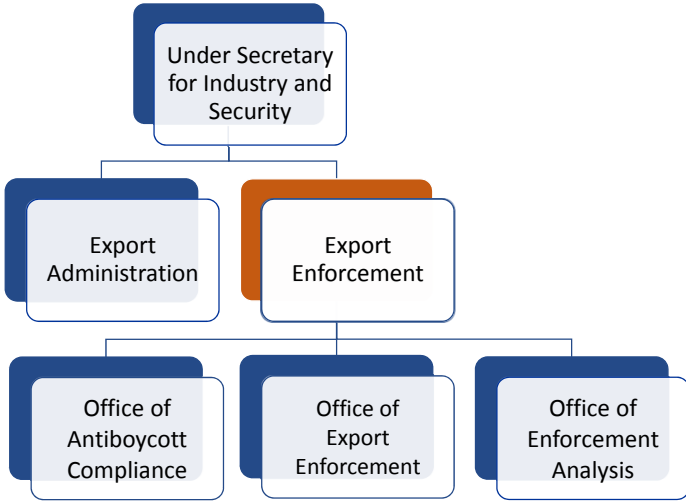
# Export Enforcement Panel

P. Lee Smith, Acting Assistant Secretary for Export Enforcement  
Douglas Hassebrock, Deputy Assistant Secretary for Export Enforcement, Moderator  
Kevin Kurland, Director, Office of Enforcement Analysis  
John Sonderman, Director, Office of Export Enforcement  
Cathleen Ryan, Director, Office of Antiboycott Compliance  
Opher Shweiki, Chief, Enforcement and Litigation Division, Office of Chief Counsel

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## EXPORT ENFORCEMENT ORGANIZATION



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graph TD
    US[Under Secretary for Industry and Security] --> EA[Export Administration]
    US --> EE[Export Enforcement]
    EE --> OAC[Office of Antiboycott Compliance]
    EE --> OEE[Office of Export Enforcement]
    EE --> OEA[Office of Enforcement Analysis]
  
```



- EE Headquarters in Washington, DC  
 OEE Field Offices - 23 domestic locations
- OEA assigned regional Export Control Officers: China (2), Germany (2) covering Russia area of responsibility and Western Europe, Hong Kong, India, Singapore, Turkey, and the UAE

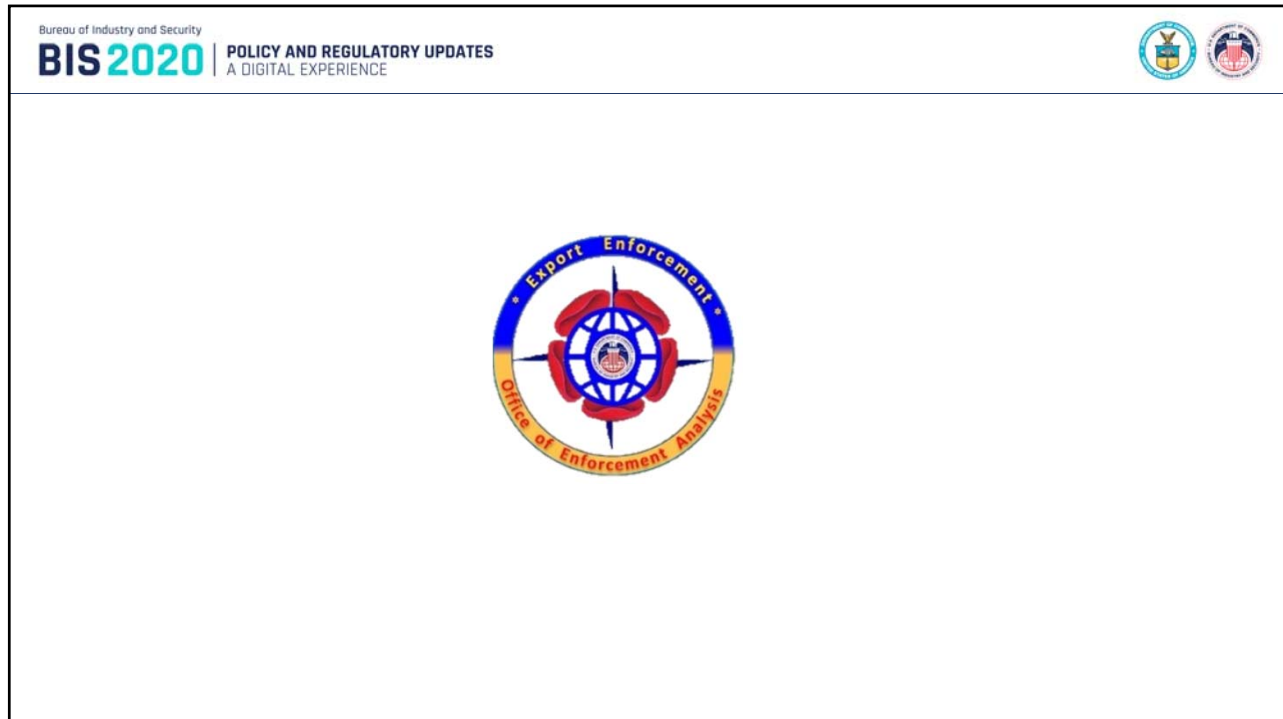
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## Recent Enforcement Highlights

- OEA
  - Identified Artificial Intelli parties whose technologies are being used for human rights abuses
  - Achieved successes with key transshipment countries in preventing diversion of U.S.-origin items to WMD programs
  - Published “Due Diligence Guidance Concerning Exports, Reexports, and Transfers (In-Country) to Pakistan”
- OEE
  - BIS issued a Temporary Denial Order against an International procurement network supporting Pakistan’s Nuclear Program, at the same time the Department of Justice announced indictment of five individuals involved.
  - Huawei charged in Racketeering Conspiracy.
  - Chinese researcher arrested for stealing 21 vials of biological research and attempting to smuggle them out of the United States hidden in socks inside his luggage.
- OAC
  - January 2020: Kuwait Airways (KA) agreed to settle a case in which OAC alleged that, on fourteen occasions during the years 2014 and 2015, KA refused to do business with a resident or national of a boycotted country (Israel), pursuant to a requirement of Kuwait’s Boycott Law. KA agreed to a penalty of \$700,000, the third largest penalty EVER assessed by OAC. Details....stay tuned.

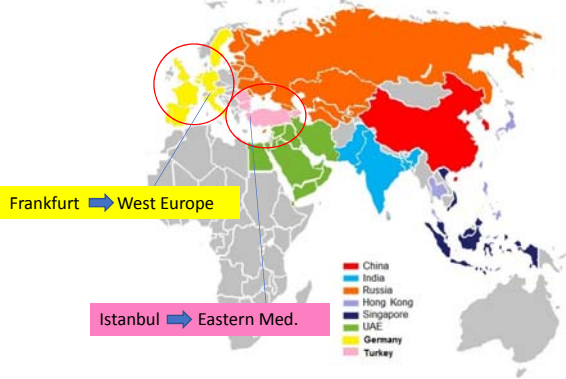


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## Office of Enforcement Analysis



- 1) Create opportunities for enforcement actions/operations
- 2) Inform adjudication of export control license applications;
- 3) Prevent diversion through end-use checks, outreach, and cooperation with foreign governments and industry;
- 4) Identify violators; and
- 5) Alert exporters about suspicious inquiries



**Goals:** *Bona fides assessment; prevention/detection/assessment of export control violations*

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## Mitigating Threats




- **Evolving Threat: increasingly sophisticated tactics of adversaries**
  - Utilization of lesser-controlled items for unauthorized end uses/users
  - Knowledge of U.S. regulations
  - Layering of transactions
  - Domestic shell companies
- **Threat Mitigation:**
  - Vet customers per screening tips
  - Review new “military end user/use” and other BIS guidance/FAQ documents
  - Implement an Internal Compliance Program


**Screening Tips:**

- Company/3<sup>rd</sup> party website
- Address/phone anomalies
- Business registration (see OEA ECO webpage)
- Consolidated screening list
- Geo-location
- Military affiliation
- Contact OEE/ECO

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## Best Practices



- **License Applications:**
  - Complete/accurate information
  - Fulsome consignee/end user information (websites, other research)
  - Timely response to further information requests
  - Review support documents for anomalies
  - China end-use certificates:
    - apply early; recognize red flags; do not ship prior to receipt
  - Share license conditions with customer
- **Exports:**
  - Ensure AES filings are accurate (esp. if using a freight forwarder)
  - Ensure ultimate consignees are not intermediaries, banks, or other unrelated end users (e.g., hospitals)
  - Know foreign export control rules



# End-Use Checks and Guardian Program



- Encourage your customers to cooperate with EUCs

### UNFAVORABLE

- Check is found to be unfavorable due to an EAR violation.
- BIS will take a proactive enforcement-related action.

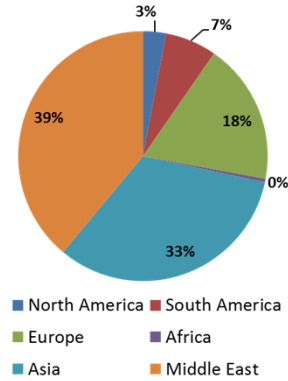
### UNVERIFIED

- Bona fides of the foreign party(ies) could not be verified.
- Parties are added to OEA watchlist and potentially added to the UVL, dependent on circumstances.

### FAVORABLE

- Not Unfavorable or Unverified.
- Subject is considered to be a reliable recipient.

FY2019 – 1,171 EUCs in 58 Countries



- Guardian Program
  - Approx. 150 companies identified for outreach in FY19





# RETURN ON TAXPAYER INVESTMENT

2010-Present



## Deterrence through Active Enforcement

- 559 Years of total Prison Time
- \$623.5 Million in Criminal Fines
- \$989.4 Million in Criminal Forfeitures
- Nearly \$2 Billion in Unique BIS-only Regulatory Penalties

**BIS investigations resulted in over  
 \$3.5 Billion in sanctions**

\*Through July 14, 2020



# OFFICE OF EXPORT ENFORCEMENT (OEE)



## ***Mission:***

The mission of the Bureau of Industry and Security (BIS) Export Enforcement is to protect U.S. national security, homeland security, foreign policy, and economic interests through a law enforcement program focused on: sensitive exports to hostile entities or those that engage in onward proliferation; prohibited foreign boycotts; and related public safety laws. BIS's Export Enforcement (EE) is an elite law enforcement organization recognized for its expertise, professionalism, integrity, and accomplishments. EE accomplishes its mission through preventative and investigative enforcement activities and then, pursuing appropriate criminal and administrative sanctions against export violators.



## ENFORCEMENT STATISTICS – CRIMINAL



Criminal Action	FY2020*	FY2019	FY2018	FY2017	FY2016
Convictions – Individuals	28	35	29	28	29
Convictions – Companies	0	1	1	3	3
Criminal Fines	\$106,850	\$1,238,470	\$618,500	\$287.1 million	\$274,500
Forfeitures	\$1,203,071	\$1,064,015	\$9,642,496	\$166.2 million	\$79.1 million
Imprisonment – Months	502	1,038	506	576	883

\*Through June 30, 2020. These numbers are estimates. The final numbers will appear in the BIS Annual Report.




## ENFORCEMENT STATISTICS – ADMINISTRATIVE



Administrative Action	FY2020*	FY2019	FY2018	FY2017	FY2016
Matters Resolved/ Orders Issued	11	35	43	52	35
Civil Penalties	\$602,000	\$17,998,500	\$1.1 billion	\$692.3 million	\$23 million
11(h)/1760(e) Denial Orders	9	25	25	36	14
Warning Letters Issued	351	485	486	536	570


\*Through June 30, 2020. These numbers are estimates. The final numbers will appear in the BIS Annual Report.

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## VOLUNTARY SELF-DISCLOSURES


Self-disclosure of violations are a great weight mitigating factor




REASON VSD CLOSED	FY2020 <sup>1</sup>	FY2019	FY2018	FY2017	FY2016
Warning Letter	68%	79%	81%	80%	81%
No Action/No Violation	24%	17%	14%	18%	13%
Other <sup>2</sup>	8%	4%	4%	2%	5%
Administrative Penalty	<1%	0	<1%	<1%	1%

<sup>1</sup>As of June 30, 2020  
<sup>2</sup>"Other" most commonly indicates referred to another agency

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## FY2019 ENFORCEMENT HIGHLIGHTS



- The highest amount of prison time ever – double the prison time from last Fiscal Year
- The highest number of arrests ever
- The most criminal convictions since FY2014
- Double the amount of criminal fines from last Fiscal Year

### FY2019 ENFORCEMENT TRENDS

- Around one-third of criminal convictions involved fraud of some kind (bank fraud, false statements on shipping records, false theft claim, and fraudulently obtaining items intended for export)
- With criminal convictions involving Iran, OEE is continuing to see more transshipment points expand beyond the UAE – this fiscal year, Turkey and Hong Kong were used almost as frequently as the UAE as a transshipment point to Iran. Other transshipment points for FY2019 convictions include China, Australia, Thailand, Germany, and Malaysia
- Criminal convictions involving E:1 countries is the highest it has been since FY2015
- Commodities continue to vary greatly; with the exception of categories 2 and 4, commodities falling under each of the 1- 9 categories are seen in FY2019 criminal convictions (as well as many EAR99 commodities)
- FY2019 has seen more convictions involving firearms and/or firearms accessories than in previous years





## FY2020 ECRA VIOLATIONS/CHARGES



Below is just an example of the many recent investigative actions involving ECRA violations:

- In 2019, guilty plea entered related to rifle scopes and gun parts exported to Russia and Ukraine.
- Late 2019, several search warrants executed related to the illegal export of space-related technology to China.
- Late 2019, criminal complaint issued and arrest warrant executed and April 2020, criminal information issued and related to the attempted to export rifling buttons, to Russia and Ukraine.
- January 2020, several court orders, including pen register and trap and trace device orders in connection with investigation involving procurement of U.S.-origin items controlled under CCL and USML including handguns, rifles, ammunition and body armor.
- February 2020, search warrant executed in connection with the procurement of U.S.-origin microcircuits on behalf of military end-users and for military end-use in Russia.
- February 2020, multiple email search warrants executed related to a case involving the illegal export of telecommunications items to Syria and a separate case involving electronics components illegally exported to China.
- February 2020, search warrant executed in connection with the illegal export of semiconductor equipment to China.
- February 2020, guilty plea entered, June 2020, sentencing (28 months prison), and July 2020, additional criminal indictments in connection with the illegal export of a power turbine to Russia.



## IMPORTANCE OF INDUSTRY-OEE PARTNERSHIP



Effective export controls can only be achieved with your support and partnership

In connection with ongoing investigations, the following significant actions recently occurred based on information provided by industry:

- February 2020, sentencing (four years in prison, \$640k restitution) related to a scheme to fraudulently obtain and export millions of dollars worth of merchandise, including sensitive communications equipment controlled under the USML the CCL. To date, nine defendants have been charged in connection with this investigation, and six have pled guilty.
- Guilty plea, sentencing and additional indictments related to a power turbine exported to Russia referred to in previous slide.
- Criminal Information, arrest and criminal complaint related to the illegal export of specialized machine parts/rifling buttons to Russia referred to in previous slide.
- In late 2019, four individuals were indicted in connection with the illegal export of military-grade watercraft to China.
- December 2019, guilty plea and June 2020, sentencing (time served -16 months, 3 years supervised release, and \$227,334 forfeiture) related to the illegal export of a medical filter to Iran through Romania.
- January 2020, two plea agreements and six indictments related to the illegal export of oilfield equipment to Iran.
- Two individuals and one company indicted in connection with the illegal export of electronics items to Hong Kong.
- July 2020, guilty plea related to the illegal export of technical data and drawings to Turkey.



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Office of Antiboycott Compliance (OAC)

❖ **Mission:** Compliance with antiboycott provisions of EAR

- Provides guidance to the export community on the substance and application of the Regulations to particular transactions
- Monitors trends in boycott activity
- Coordinates antiboycott policy with governmental partners (State, Treasury, USTR)
- Assists boycotting countries to eliminate at source boycott-related terms in commercial documentation sent to U.S. businesses
- Pursues administrative and criminal enforcement as appropriate

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John S. McCain  
National Defense Authorization Act (NDAA)

**August 2018:**


**Export Control Reform Act (ECRA)**

\* Permanent authority for the Regulations

**Anti-Boycott Act of 2018**

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OAC

❖ **Objective: Antiboycott Provisions of EAR**

**TO REQUIRE U.S. COMPANIES AND PERSONS TO REFUSE TO PARTICIPATE IN UNSANCTIONED FOREIGN BOYCOTTS, FOSTERED OR IMPOSED BY A FOREIGN COUNTRY, AGAINST A COUNTRY FRIENDLY TO THE UNITED STATES**

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## Emerging “Boycotts”

- **UAE, Saudi Arabia, Bahrain v Qatar**  
 2017 : Banned entry of Qatari nationals/vessels
- **“It’s A Long Way To Tipperary”**  
 2018 : Occupied Territories Bill - Banned imports of Settlement goods.  
 Shelved.
- **Saudi Arabia v Canada -- huh??**  
 2018 : Banned Trade, Flights, Academic Exchanges
- **UNHRC Database**  
 2020 : No legal impediment for a U.S. company to engage with a listed entity
- **Boycott, Divestment, Sanctions Movement (BDS)**
- **State Anti-BDS Laws**



## Prohibited Actions: §760.2



- **REFUSING TO DO BUSINESS WITH A BOYCOTTED COUNTRY OR BLACKLISTED BUSINESS/PERSON**  
 PASSIVE AGREEMENT (FAIL TO OBJECT)  
 ACTIVE AGREEMENT (REFUSE TO DEAL)
- **TAKING DISCRIMINATORY ACTIONS BASED ON RELIGION OR NATIONAL ORIGIN**  
 REFUSAL TO EMPLOY
- **FURNISHING INFORMATION ABOUT BUSINESS RELATIONSHIPS WITH A BOYCOTTED COUNTRY OR A BLACKLISTED PERSON**  
 NEGATIVE CERTIFICATES of ORIGIN  
 BLACKLIST STATUS  
 VESSEL CERTIFICATES

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OAC

Denial Order  
 Charging Letter



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REPORTING REQUIREMENT  
 §760.5

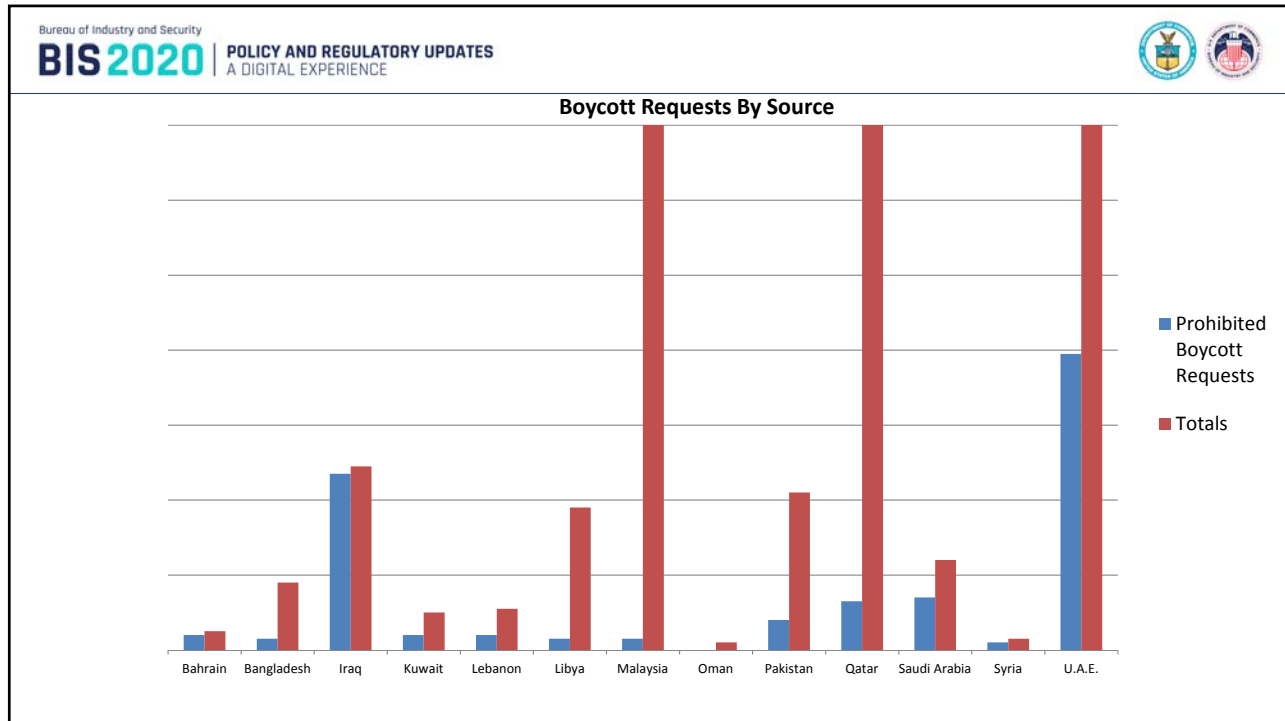
**WHAT:** U.S. PERSONS MUST REPORT QUARTERLY RECEIPTS OF BOYCOTT-RELATED REQUESTS TO TAKE ANY ACTION TO COMPLY WITH AN UNSANCTIONED FOREIGN BOYCOTT

**HOW:** BIS 621-P (SINGLE) OR 6051-P (MULTIPLE)

**WHEN:** QUARTER + 30 DAYS

**NEWish:** ELECTRONIC REPORTING

**NOT:** RECORDKEEPING  
 (5 Years: Documents relating to a reportable boycott request)



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**EVASION**  
**\$ 760.4**

**“We Get By With A Little Help From  
 Our Friends..... “**

**NOT!!**



# OAC

## How to Avoid a Violation

Don't do business in boycotting countries

**NO!**

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# OAC ADVICE LINE

# 202.482.2381

**YES!**

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*Questions?*