



Export Controls: Be Nice When ICE Comes Calling

Originally Published in "Shipping Digest", January 16, 2006

By Peter A. Quinter
 pquinter@becker-poliakoff.com
 TEL 954.985.4101
 FAX 954.985.4176

Most articles discussing the topic of "Export Controls" focus upon the two traditional agencies—the U.S. Department of State's Directorate of Defense Trade Controls (DDTC), and the U.S. Department of Commerce's Bureau of Industry and Security (BIS). Yet, a lesser known Federal agency, the U.S. Immigration and Customs Enforcement (ICE), is arguably now the lead investigation agency for export controls.

ICE is the largest investigative bureau within the U.S. Department of Homeland Security, created on March 1, 2003, with 15,000 employees, including 6,000 Special Agents, located throughout the United States and as ICE Attaches at U.S. Embassies around the world. The stated Mission of ICE is "To prevent acts of terrorism by targeting the people, money, and materials that support terrorist and criminal activities." ICE Special Agents are Criminal Investigators from the legacy U.S. Customs Service and U.S. Immigration and Naturalization Service, both of which were eliminated with the creation of the U.S. Department of Homeland Security in 2003. ICE Special Agents often work closely with BIS, DDTC, Federal Bureau of Investigation (FBI) and U.S. Customs and Border Protection (CBP) personnel in investigations.

The Office of Investigations of ICE is responsible for investigating export enforcement. The Office of Investigations has its own Arms and Strategic Technology Investigations (ASTI) Unit to prevent illegal exports, target foreign countries, terrorist groups, and other international criminal organizations from trafficking in Weapons of Mass Destruction (WMD) and their components. According to Steven Arruda, Chief of ASTI: "In the post 9/11 world,

keeping U.S. arms and sensitive technology out of the hands of terrorists and rogue regimes has never been more important. Investigations into the illegal export of arms/strategic technology are one of the highest priorities of ICE and the Department of Homeland Security." Mr. Arruda added that "ICE has initiated more than 5,600 investigations into illegal exports of U.S. arms and strategic technology... These investigations have resulted in more than 400 arrests, 300 indictments, and 280 convictions."

ASTI is probably best known for its "Project Shield America" which is an industry outreach program. ICE Special Agents in ASTI contact and often visit U.S. companies involved in the manufacture, sale, and export of U.S. origin strategic technology and munitions items. ICE Agents recommend that each such company create and implement an Export Management System (EMS) which would hopefully deter and detect potentially illegal exports. An EMS will include policy statement committing the company to export controls, an education program for employees involved in exports, and a procedure dealing with non-compliance with export regulations. ASTI Agents often cooperate with private companies in conducting investigations, and sometimes conduct such operations "undercover".

One such successful, undercover operation result in the arrest, prosecution, and conviction of an individual who attempted to illegally obtain and export F-4 and F-14 fighter jet components to Iran. Another, undercover ICE operation resulted in the arrest, prosecution, and conviction of an individual who attempted to illegally obtain and export special night vision equipment for export to China. A third,

typical investigation resulted in the arrest, prosecution, and conviction of an individual who attempted to illegally obtain and export 66 nuclear detonator devices to Pakistan via third countries. Based in large part upon a long-term ICE investigation, on December 23, 2005, Frans Van Anraat was convicted and sentenced to 15 years in prison in the Netherlands. Mr. Anraat had purchased (from a company in the United States) and exported to Iraq more than 1,000 tons of thiodyglycol (a mustard gas precursor chemical), which was used by Saddam Hussein to gas and kill roughly 5,000 Iraqi Kurds in the town of Halabja in 1988.

This prosecution by Dutch authorities was based in part on a long-term ICE investigation which began in 1984 in Baltimore. A Baltimore-based company called Alcolac International, Inc. was supplying Van Anraat with these poison gas precursors, which can also be used as an industrial dye. The ICE investigation resulted in the prosecution of Alcolac International and ultimately resulted in charges against Van Anraat in U.S., although he remained a fugitive.

Among the Federal agencies involved in export controls, ICE has unique authority to issue a Customs Export Enforcement Subpoena requiring the recipient to appear and/or produce records. Legal authority to issue the subpoena is from the Export Administration Act, the Arms Export Control Act, and the International Emergency Economic Powers Act. The Subpoena must be signed by the Special Agent in Charge of the local ICE office, and may be served upon an individual or company by any ICE agent. A typical subpoena would state the date, time, and place for a person to appear and produce the records described in the subpoena. An appearance before the requesting ICE officer will always be in the presence of at least two ICE Special Agents, and the subpoenaed person will be providing sworn testimony (i.e.

under oath) to ICE. An attorney is allowed to accompany the person testifying. Failure to comply with the subpoena will result in the ICE Special Agent contacting the nearby U.S. Attorney's Office to prepare and obtain an Order from a Federal judge requiring such appearance.

Anyone served with such an Export Enforcement Subpoena should promptly advise legal counsel and top management. Receiving such a subpoena does not necessarily mean that the person or company is under investigation, but may mean that the ICE Agent needs to obtain information or documentation from the individual or company about a third party which is under investigation. Moreover, the subpoena may be for a criminal or civil investigation. Such subpoenas are not only served upon the exporting company, but often upon freight forwarders or air and ocean companies involved in the international transportation of cargo.

As stated in the August 22, 2005 article, anyone who follows the changes in the export control laws since the tragic events of 9/11 knows that one of the highest law enforcement priorities is now preventing WMD from entering the United States, and preventing enemies of the United States from obtaining and exporting sensitive, regulated technologies and equipment. To that end, ICE was created and organized. There are no more export controls laws and regulations than ever before, more Federal agencies conducting investigations to assure compliance with the myriad of laws and regulations, and more Special Agents assigned to conduct such investigations. As expected, a record number of arrests, civil penalties, and criminal prosecutions for export violations occurred in 2005 than any prior year. The result on the negative side is higher compliance costs for companies, but on the positive side, the actions of ICE in its export enforcement efforts will hopefully limit the spread of WMD. ■

Peter Quinter is the Shareholder in charge of the Customs & Trade Law Department at the law firm of Becker & Poliakoff, P.A., located in Ft. Lauderdale, Florida. Mr. Quinter may be contacted for any questions or comments at (954) 985-4101, or by email at pquinter@becker-poliakoff.com.