



# U.S. Customs and Border Protection

**Legal Perspective - Export Controls**



# Department of Homeland Security

## Customs and Border Protection (CBP)

### Interdiction

- Uniformed Inspectors at the ports of entry
- Border Patrol between the ports of entry

## Immigration and Customs Enforcement (ICE)

### Investigations

- Criminal Investigators
- Attachés at U.S Embassies



# DHS Enforces all U.S. Export Control Laws

- Munitions List - State Department's Office of Defense Trade Controls
- Dual-Use List - Commerce Department's Bureau of Industry and Security
- Embargoes - Treasury Department's Office of Foreign Assets Control
- Nuclear Materials & Technology - Nuclear Regulatory Commission



# CBP's Legal Authority

CPB conducts border searches of persons, merchandise or conveyances that cross or are about to cross an international border - without a warrant or probable cause.



# CBP's Enforcement Tools

- CBP's border search authority includes inbound, in-transit and outbound searches.
- Searches need not take place at the physical border, but at its "functional equivalent", as well.



# CBP's Enforcement Tools

- CBP officers have so called  
“Warrantless Search Authority”
- without a warrant or probable cause



# CBP's Enforcement Tools

- CBP Officers are generally not held liable for breakage or damage - when conducting their jobs in a proper manner
- CBP officers may order the the return of a shipment that has already left the border of the United States



# CBP's Enforcement Tools

- CBP can conduct a search thousands of miles from the border normally after a person or property has cleared an initial checkpoint.
- This is referred to as “extended” border search authority.



# ICE's Enforcement Tools

- Same Authorities outlined for CBP
- Arrest and Seizure Authority
- Subpoena and Summons Authority



# ICE's Enforcement Tools

- General Forfeiture Authority
  - Forfeiture Procedures
    - May be civil or criminal
  - Forfeiture Fund
    - Forfeited currency or proceeds of forfeited property may be deposited in special fund
    - Funds can be used for storage costs, paying informants, purchase of evidence, and sharing assets with state, local and foreign governments



# ICE's Enforcement Tools

- Electronic Surveillance Authority
  - Must obtain prior approval from Justice Department, or
  - Apply for a court order to intercept wire, oral or electronic communications
- Undercover Authority
  - Act as buyer or seller
  - Lease or purchase property, open businesses, own bank accounts and use proceeds to offset expenses



# ICE's Enforcement Tools

- Exchange of Information
  - with Domestic Agencies
    - Memorandum of Understanding
    - By statute
  - With Foreign Governments
    - Mutual Legal Assistance Treaties
    - Customs Mutual Assistance Agreements