



Government Outreach to Industry and Internal Compliance Programs

Julia A. Khersonsky
October 2008

Presentation Overview



- **What Is the Purpose of Government Outreach to Industry on Strategic Trade Control?**
- **What Are the Ideal Elements of a Government-Industry Outreach Strategy?**
- **What Are the Components of an Effective Internal Compliance Program?**
- **Examples of Government-Industry Cooperation**
- **Closing Remarks and Questions**

Why Government Outreach to Industry is Important



- Industry's ignorance of national strategic trade control laws and policy may lead to inadvertent violations
- Industry "buy-in" is critical to the effectiveness of a national strategic trade control system
- Industry is the "first line of defense"
 - Daily interaction with trading partners
 - Better understanding of technologies
 - Key source of intelligence on acquisition efforts
- International Trends:
 - Many governments intensifying outreach
 - Some governments encouraging/requiring industry to adopt internal compliance programs (ICPs)

What Is the Purpose of Government Outreach to Industry?



- To Improve Industry Awareness of Strategic Trade Control Requirements
- To Educate Industry on Changes in Strategic Trade Controls
- To Enable Industry to Offer Input into Strategic Trade Control System
- To Assist Companies in Detecting Suspicious Orders and Customers
- To Facilitate and Encourage Industry Compliance and Voluntary Self-restraint in Export Matters
- To Improve Effectiveness of Strategic Trade Control System

Ideal Elements of a Government-Industry Outreach Strategy



- **Ideal Elements:**
 - **Legal Basis**
 - **Readily Available and Accurate Information**
 - **Training/Education**
 - **Industry Input to System**
 - **Transparency**
 - **Customized Information and Assistance**
 - **Tools to Assist Companies in Detecting Suspicious Orders and Customers**
 - **Mechanisms to Encourage Industry Compliance and Voluntary Self-Restraint**
- **Outreach Should be Tailored and Localized – “One Size Does Not Fit All”**

Government-Industry Outreach: Legal Basis



- Provides for government assistance to industry on compliance with national export controls
- Provides for industry input into executive branch decision-making on export controls
- Provides for internal compliance programs
- Requires exporters to maintain export records
- Creates “Carrots and Sticks” for Industry Compliance and Non-compliance

Elements: Available and Accurate Information



- Information should:
 - Be readily available to industry
 - Require minimal effort to access
 - Be up-to-date and accurate
- Examples of information to make available:
 - Applicable laws, regulations, rules, and ordinances
 - Up-to-date product control lists
 - Guidance to all relevant actors on trade control issues
- Tools governments can use:
 - Licensing and customs agency websites
 - Written publications
 - Software – educational CD-Roms
 - Seminars
 - Personal meetings
 - Non-governmental or affiliated organizations
- Examples:
 - <http://www.customs.gov.sg/leftNav/info/ExportOrder.htm>
 - <http://www.dti.gov.uk/europeandtrade/strategic-export-control/>
 - <http://www.bis.doc.gov/>
 - <http://gtk.gov.by/ru/law>

Elements: Training and Education



- Training and education:
 - Should include introductory components for new strategic traders
 - Should include refresher material for existing strategic traders
 - Should include information from knowledgeable professionals and subject-matter-experts
 - Should be updated regularly and in accordance with legal, regulatory, and control list changes
- Examples of topics to cover:
 - Overview of strategic trade controls
 - Applicable laws and regulations
 - Licensing requirements
 - Technology transfer controls
 - Industry compliance with trade controls
- Tools governments can use:
 - Web-based resources
 - Publicly available software
 - Seminars
 - Educational brochures/printed materials
 - Personal training and discussions
 - Industry Association-sponsored training seminars and distribution of materials

Elements: Industry Input to System



- **Benefits of industry input:**
 - Encourages greater cooperation and fosters government understanding of industry concerns
 - Offers insight into necessity of controlling or de-controlling items based on technical parameters
 - Offers insight into foreign availability of potentially controlled items
 - Provides government with intelligence on suspicious inquiries not requiring a license
- **Ways government can facilitate industry input:**
 - Personal meetings
 - Seminar feedback
 - Formal advisory committees
 - Periods for open comment on regulatory/rule/control list changes
 - Communication with trade associations

Elements: Transparency



- Benefits of transparency:
 - Makes export control regulations and licensing procedures clear and verifiable to industry
 - Dispels industry concerns of unfairness or bias in licensing and product-control processes
 - Builds confidence of international community
- Ways to promote transparency:
 - Informative and up-to-date website
 - Publicly available contact information for relevant officials
 - Informative and accurate written materials
 - Periodic reports concerning licensing procedures, decisions, controlled items and transactions, and statistics
 - Official gazette containing all laws, regulations, rules, ordinances, and control lists and stipulating changes when they occur

Elements: Customized Information and Assistance



- Customized assistance:
 - Should respond to specific trader questions or concerns
 - Helps government and industry develop a more cooperative working relationship
 - Can potentially aid governments in more effectively implementing trade controls
- Examples of customized information and assistance:
 - Assistance classifying a specific commodity
 - Licensing insight/assistance
 - Information concerning possible catch-all-controlled transactions
 - Answers to questions concerning a firm's legal/regulatory compliance
- Tools governments can use:
 - Contact information on website or in publications
 - Helpline
 - E-mails and letters
 - Personal meetings
 - Question-and-answer sessions at seminars and training activities
 - Non-governmental or affiliated organizations
 - On-site inspections of company compliance measures and advice for how to improve

Elements: Tools to Detect Suspicious Orders and Customers



- Examples of tools governments can offer:
 - Entity lists
 - “Red flag” indicators
- Benefits of offering such tools:
 - Encourages industry awareness and acceptance of nonproliferation goals
 - Enables traders to eliminate select transactions before licensing is necessary
 - Facilitates implementation of catch-all controls

Tools to Detect Suspicious Orders and Customers: “Red Flag” Indicators



- *Examples of “red flags” distributed by national export control authorities around the world:*
- Customer is reluctant to discuss end-use or end-user
- Only way to contact the customer is via a Post Office Box or mobile phone
- Product’s capabilities do not fit buyer’s type of business
- Product is incompatible with technical level of destination country
- Customer has little or no business background
- Customer offers unusually favorable terms, such as lump-sum cash payment or higher-than-listed price
- Customer is unfamiliar with product’s performance characteristics but still wishes to purchase it
- Credit information is not available from normal business sources; customer is unknown
- Customer rejects routine installation, training or maintenance services
- Customer offers vague delivery dates
- Freight forwarder is listed as product’s final destination
- Shipping route is abnormal
- Size, packaging, labeling, or requested place of delivery is unusual

Elements: Encouraging Industry Compliance and Voluntary Self-Restraint



- Advantages of encouraging industry compliance:
 - Enables industry to self-regulate
 - Facilitates more effective enforcement of trade controls
 - Serves government's foreign and national security policies
 - Beneficial to country's international reputation
- Tools to encourage industry compliance:
 - Commodity classifications
 - Pre-licensing determinations
 - Encouragement of voluntary self-disclosure
 - Spreading awareness of penalties for strategic trade violations
 - Publication of successful enforcement cases
 - Recommendations/requirements for internal compliance programs (ICPs)
 - Trade Facilitation Programs (e.,g., bulk license arrangements)

Why Should Strategic Traders Construct an ICP?



- To Attempt to Ensure Compliance with Applicable Laws and Regulations
- To Maintain a Favorable Public Image
- To Detect Accidental Export Control Violations before They Occur
- To Prevent Contributions to Proliferation of Sensitive Goods, Technologies, and Information
- To Detect Trends in Past Transactions and More Effectively Perform “Due Diligence”
- To Reap the Benefit of Trade Facilitation Programs
- To Gain a Competitive Business Advantage

Emerging Agreement: Examples of International Forums that Have Addressed the ICP Question



- International Export Control Conferences (2000-2007)
- Southeast Asia Regional Forum on Transshipment Controls (2002)
- APEC Export Control Conference (2005)
- Global Transshipment and Enforcement Seminar (2006)
- International Export Control Association (2006)
- Wassenaar Arrangement Best Practice Licensing Guidelines (2006)

Key Elements of Effective Internal Compliance Programs



- Management Policy Commitment Statement
- Internal Export Control Organization and Personnel
- Development and Dissemination of Standard Operating Procedures
- Recordkeeping
- Training
- Order Screening Processes for Controlled Goods and Technologies, Customers, Destinations, End-Users, and End-Uses
- Auditing

Key Elements of Effective Internal Compliance Programs (Con.)



- **Management Policy Statement**
 - **Foundation of an ICP**
 - **Should be Issued by the Highest Levels of the Company and Subscribed to by All Employees**
 - **Should Demonstrate the Company's Commitment to Adhering to Export Controls Laws and Regulations**
- **Internal Export Control Organization and Personnel**
 - **Institutional Skeleton of an ICP**
 - **The Structure of the ICP Should be Clear and Communicated Throughout the Company**
 - **Responsible Personnel Should be Clearly Identified and Their Responsibilities Clearly Defined**

Key Elements of Effective Internal Compliance Programs (Con.)



- **Standard Operating Procedures**
 - Set of Rules Created to Address Company's Export Control Obligations in Any Given Circumstance
 - Should be Disseminated and Clearly Communicated to All Relevant Employees
 - Should be Regularly Updated
- **Recordkeeping**
 - Most Countries Require Strategic Traders to Maintain Records of Transactions for a Given Period
 - Allows Companies to More Easily Cooperate with Government Inspections and Law Enforcement Investigations
 - Enables Traders to Detect Accidental Violations and Demonstrate they are Performing Due Diligence

Key Elements of Effective Internal Compliance Programs (Con.)



- **Training**
 - Ensures Employees are Aware of Export Control Obligations
 - Minimizes Risk of Accidental Violations
 - Training Techniques and Curriculum Should be Tailored
- **Order Screening Processes**
 - The Key to a Strategic Trader's ICP
 - Should Include Screening Mechanisms to Check All Critical Processes (e.g, Customer, End-Use, End-User, Product, Destination Country)
 - Should Include a Mechanism to Suspend Sensitive Transactions and Stop Prohibited Transactions
 - System may be Manual, Electronic or a Combination of Both

Key Elements of Effective Internal Compliance Programs (Con.)



- **Auditing**
 - **Enables a Company to Identify System Strengths and Weaknesses and Continually Improve and Upgrade its Compliance Efforts**
 - **Company Should Conduct Periodic and Random Audits of its ICP for Effectiveness**
 - **Audits Should be Conducted by Internal Personnel and an Independent Outside Auditor**

Government-Industry Cooperation: Examples



- US Customs and Border Protection cooperative programs
 - C-TPAT [Customs Trade Partnership Against Terrorism]
 - Smart Containers /RFID systems
 - CSI [Container Security Initiative]

Government-Industry Cooperation: Examples



- US BIS [Bureau of Industry & Security] cooperative programs
 - Training in EMS [Export Management Systems]
 - “Confidential tip” hotline
 - “Red Flags” Guidance
 - Less penalty for self-disclosures
 - TACs [Technical Advisory Committees]
 - Govt-Industry Taskforces

Government-Industry Cooperation

Non-US examples



- **European Union** → Authorized Economic Operator program
- **Sweden** → StairSec program
- **Canada** → Partners in Protection program
- **Australia** → Frontline and Accredited Client Program

All these ensure:

- Base level of supply chain security assessment
- Higher inspection rates of uncertified cargo
- Increased likelihood of early warning and prevention
- Increased incentives for industry to join

Govt-Industry Cooperation: Asian Examples



Japan

- METI Helped Establish CISTEC (NGO)
 - To provide outreach to Japanese industry (training and publication of research materials)
 - Advise industry on individual cases (email and in-person)
 - To convey industry concerns to the Government
 - To help Japan provide assistance to neighbors

Singapore

- Customs Department
 - Extensive website provides information, links, contacts
 - Offers courses to industry
 - Approved Company Scheme

Govt-Industry Cooperation: Asian Examples (Con.)



China

- **MOFCOM**
 - Website provides information, links, contacts
 - Customized Information and Assistance (e.g., License Assessments)
 - Training and Seminars
- **CACDA (NGO)**
 - Provides Outreach Seminars to industry with help of CITS & others
- **Trade Associations (CCCME)**
 - Provide Trainings and Outreach to Association Members

Summary and Conclusions



- Government outreach to industry is essential to an effective strategic trade control system
- Ideal elements of a government-industry outreach strategy:
 - Legal Basis
 - Readily available and accurate information
 - Training and education
 - Industry input to system
 - Transparency
 - Customized information and assistance
 - Tools to assist companies in detecting suspicious orders and customers
 - Mechanisms to encourage industry compliance
- Strategic traders should develop an internal compliance program (ICP) in order to ensure effective controls on restricted items and transactions



Thank you for your time and attention!

QUESTIONS?

Contact Information:

Julia A. Khersonsky

UGA Center for International Trade and Security

+1 (202) 828-8558

j.khersonsky@cits.uga.edu

Confidential and Proprietary
For CITS training purposes only