

# EXPORT ENFORCEMENT & INVESTIGATIONS

January 29 & 30, 2008 • L'Enfant Plaza Hotel • Washington, DC

## THE PROSECUTORS' PERSPECTIVE ON WHAT MAKES A GOOD CASE

### *John Brownlee*

United States Attorney, Western District of Virginia  
*Prosecutor in the ITT plea agreement*

### *Craig Missakian*

Assistant US Attorney, Criminal Division  
Central District of California  
*Prosecutor in the Chi Mak case*

### *Edward C. O'Callaghan*

Chief, Terrorism & National Security Unit  
Southern District of New York

## KEYNOTE SPEAKER

### *Steven W. Pelak*

National Export Coordinator  
U.S. Department of Justice

## IN-HOUSE INSIGHTS

BAE Systems	General Motors
Boeing	KBR
Cobham	Meggitt
Dresser	Raytheon
General Dynamics	SAIC
General Electric	Tyco International
	Thales North America

Senior government officials, industry executives, export and white-collar crime attorneys will share their insights on:

- Dealing with enforcement agencies during an investigation, and what triggers inter-agency cooperation
- Attorney-client privilege: limits of protection and when to waive
- The aftermath of ITT and how to minimize the risks of outsourcing engineering, IT support and subcontracting
- Preparing and presenting voluntary disclosures to BIS, DDTC and OFAC
- How recent deemed export and re-export cases affect compliance programs
- Resolving conflicts of interest when employees are under investigation
- Dealing with Government visits and inquiries
- Appointing and working with special compliance monitors
- Empowered officials and export controls executives: exposure, liability and risk mitigation
- Conducting effective global internal investigations
- Managing the PR impact of an investigation or voluntary disclosure

## Exclusive Workshops – January 31, 2008

- A** Conducting Export Compliance Assessments and Audits
- B** M&A Due Diligence: Reducing the Risk of Successor Liability

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# Higher Penalties for Export Violations and a More Aggressive Enforcement Climate... Is Your Export Compliance Program Current and Effective?

Recent high-profile cases arising under U.S. export control laws have captured headlines and confirmed that the enforcement climate is more aggressive than ever. Moreover, the Department of Justice is launching a “national export enforcement initiative” and Congress just passed legislation that increases penalties for violations of export control laws from \$50,000 to \$250,000 per violation. The stakes for companies facing export enforcement actions have increased dramatically.

Companies engaging in international sales or transfer of sensitive information or technology must be vigilant about preventing, detecting and investigating potential export control violations before they damage corporate reputations, affect the bottom line and shareholder value, and result in criminal convictions, prison terms and multi-millions dollar civil and criminal penalties.

Now in its third successful year, this one of a kind **American Conference Institute “National Forum on Export Enforcement and Investigations”** has once again assembled an exceptional faculty of top business, legal and government officials who will provide you with practical information on how to defend your case and mitigate export control violations. Highlights from the program will include:

- Lessons from GM/General Dynamics and ITT cases and how to navigate deemed export and re-export issues
- How the agencies coordinate administrative and criminal enforcement
- What can be learned from recent voluntary disclosures
- How prosecutors assess the seriousness of a violation
- What agencies expect during a company visit and how to respond while protecting the company
- When, how, and by whom should a global investigation be conducted
- What positions have accountability beyond the boardroom
- What to do when individual and corporate interests collide

Participants will also receive a comprehensive set of written materials prepared by the speakers for the conference. These are invaluable reference materials which you will use again and again long after the conference is over.

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- Corporate Legal Professionals:
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  - Export Compliance Counsel
- Attorneys specializing in:
  - International Trade Compliance
  - White Collar Crime
  - Export Controls
- Vice Presidents and Directors of:
  - Export Controls
  - Export Compliance
  - Export Administration
  - Export Policy
  - Export Licensing
  - Government Relations
  - International (Worldwide/Global) Trade Compliance
  - Internal Controls

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## Tuesday • January 29, 2008

8:00 Registration Begins and Continental Breakfast 

8:30 Opening Remarks from Conference Co-Chairs

*F. Amanda DeBusk*  
Hughes Hubbard & Reed

*John Pisa-Relli*  
Senior Counsel, Thales North America

8:45 Export Enforcement Priorities and Targets:  
The Agencies Speak

*Kevin Delli-Colli*  
Director, Office of Export Enforcement, Bureau of  
Industry and Security, U.S. Department of Commerce

9:45 The Perils and Pitfalls of Outsourcing after ITT:  
Managing Risks in a Global Economy

*F. Amanda DeBusk*  
Hughes Hubbard & Reed

*Marynell DeVaughn*  
Senior Counsel, Raytheon Company

- Identifying the hot buttons: outsourcing engineering, IT support, subcontracting
- Pushing responsibility to the service provider
- The dilemma: how to make a TAA broad and at the same time provide the required information to DDTC
- Navigating deemed export and reexport issues
- Lessons from GM/General Dynamics and ITT cases
- Practical concerns for export compliance professionals trying to get it right
- Tips for working with the enforcement agencies when you discover problems

10:45 Networking Coffee Break 

11:00 Meeting the “Fine Art” of Dealing With  
Various Export Enforcement Agencies:  
Inter-Agency Cooperation and Expectations

*Kathleen Palma*  
Counsel, International Trade Regulation, General Electric

*John Pisa-Relli*  
Senior Counsel, Thales North America

*Marlene L. Tarbell*  
Director, Office of Export Compliance  
General Motors Corporation

*Michael D. Turner - Panel Moderator*  
MK Technologies

- Contrasting OFAC, DDTC and BIS approaches to export enforcement
- What does it mean to “cooperate”?
- How violations are discovered
- What happens when one agency identifies wrong doing and what triggers cooperation
- How the agencies coordinate administrative and criminal enforcement

12:15 Keynote Address: The Role and Priorities  
of the National Export Coordinator

*Steven W. Pelak*  
National Export Coordinator, U.S. Department of Justice

12:45 Networking Luncheon for Delegates and Speakers  
Sponsored by: **C L I F F O R D**

**C H A N C E**

2:00 Special Compliance Monitors: Setting the  
Boundaries and Making the Relationship Work

*Philip S. Rhoads*  
Rhoads & Reed

*David R. Johnson*  
Vinson & Elkins

- What is the role of a Monitor: a compliance guardian or a company-financed probation officer?
- Negotiating the scope of the Monitor's workplan
- Assessing the direct and indirect costs of a Monitor
- Establishing an effective working relationship with a Monitor
- Who monitors the Monitor?
- The effect of monitorship on privilege and work product

3:00 Attorney-Client Privilege: Limits of Protection  
and When To Waive

*Kevin Wolf*  
Bryan Cave

- The privilege in the context of export controls investigations and voluntary disclosures
- Avoiding waiver: circumstances that can preserve the privilege
- Examples where privilege was preserved
- When to waive and when not to waive privilege: strategic considerations
- How the waiver influences the conduct of the investigation
- Title waiver: the impact of the erosion of privilege on in-house investigations
- Recent developments in the law and policy regarding the privilege
- Joint Defense or Shared Information Agreement

3:45 Refreshment Break

4:00 Voluntary Disclosures: How the Government  
Evaluates Them and What to Include

*Carol Fuchs*  
International Trade Counsel, Tyco International (US) Inc.

*Patrick R. Thesing*  
Vice President – Legal & Compliance, KBR, Inc.

*Wendy Wysong*  
Clifford Chance

- Significance of “voluntary”
- In what circumstances is the lack of voluntary disclosures a negative factor?
- How government agencies evaluate voluntary disclosures
- Meeting the standards of complete and immediate: what do these terms really mean?
- Aggravating and mitigating factors
- How disclosures impact SEC filings
- Fines: managing corporate expectations, impact on defense contractors
- Lessons learned from recent voluntary disclosures

**Panel Session**

5:00 **Managing the PR Impact of An Investigation or Voluntary Disclosure**

*Stephen A. Best*  
LeBoeuf, Lamb, Greene & MacRae

- What makes an investigation or voluntary disclosure media-worthy?
- How to control the media frenzy
- Limiting company exposure once news hits
- What to tell the press and investors
- Minimizing the negative impact on management and employees

5:30 **Conference Adjourns for the Day**

**Wednesday • January 30, 2008**

8:30 **Recap from Day 1 and Opening Remarks from Co-Chairs**

8:35 **Anatomy of a Good Export Case: How Prosecutors Assess a Violation**

*John Brownlee*  
United States Attorney, Western District of Virginia  
*Prosecutor in the ITT plea agreement*

*Craig Missakian*  
Assistant US Attorney, Criminal Division  
United States Attorney's Office, Central District of California  
*Prosecutor in the Chi Mak case*

*Edward C. O'Callaghan*  
Chief, Terrorism & National Security Unit  
United States Attorney's Office, Southern District of New York

*Mary Carter Andruet - Panel Moderator*  
Howrey

- How prosecutors assess the seriousness of a violation
- What makes a case criminal?
- Defining "intent"
- Modes of discovery – voluntary disclosure, disgruntled employee, government investigation
- Presence of red flags – obvious, repeated, effect on behavior of exporter
- Internal decision-making of federal prosecutors

9:35 **Managing and Responding to Government Visits and Inquiries**

*Erin L. Crockett*  
Director, Global Trade Compliance, Dresser Inc.

*Melissa B. Mannino*  
Wilson Sonsini Goodrich & Rosati

- Developing a company's policy and procedures regarding Government visits
- Who's knocking at the door?
- And then there are two . . . multi-agency visits – what are the chances?
- What Agencies expect during a company visit and how to respond while protecting the company
- What you should do if agents arrive with a search warrant
- How to respond to a grand jury subpoena for documents or testimony
- Preparing company officials for interviews with auditors

10:30 **Networking Coffee Break ☕**

10:45 **Conducting Effective Global Internal Investigations**

*Edward J. Krauland*  
Steptoe & Johnson

*Jason A. Monahan*  
Senior Counsel, International, General Dynamics

*Mario Treitler*  
Senior Manager, Global Trade Controls  
IDS Network and Space Systems, The Boeing Company

- When, how, and by whom should the global investigation be conducted?
- Navigating local privacy and data protection laws
- Cultural considerations and their impact on how interviews should be conducted in the foreign country
- Data maintenance, preservation and retrieval procedures for your overseas offices
- How to conduct a global investigation cost-effectively
- How much is enough in trying to learn the facts

11:45 **Empowered Officials and Export Controls Executives: Responsibilities and Exposure in an Era of Increased Scrutiny**

*Peter Lichtenbaum*  
Vice President, Regulatory Compliance and International Policy  
BAE Systems

*Heather C. Sears*  
Director & Counsel, US Compliance & Security, Cobham

*William M. Sullivan, Jr.*  
Winston & Strawn

- What positions have accountability beyond the boardroom
- What kind of person should be appointed as an EO?
- Is it best to have the EO be a lawyer, or not?
- What should the EO's relationship be with the General Counsel?
- Are there ways in which to cloak the EO with privilege?
- Difference between an EO and an Ombudsman
- Should the government question companies about EO qualifications?
- What are a company's responsibilities to educate and train their EOs?
- EO's obligations if they sign a statement and later learn it is false
- What happens when the EO knows there is a violation?
- Should EOs be held to a higher standard than other trade compliance personnel?

12:45 **Networking Luncheon for Delegates and Speakers**



2:00 **Deemed Export Enforcement: How Recent Cases Will Impact Compliance Programs**

*Lawrence R. Fink*  
Director, Corporate Export Administration, SAIC

*Kay Georgi*  
Arent Fox

- The intersection of data privacy with deemed export requirements
- Fallout of the GM/General Dynamics case for compliance programs
- A fresh look at data classification obligations, screening, firewalls and passwords
- Guessing at government requirements for servers, help desks, software programming, database restrictions: What is really required?
- Do Commerce and DDTTC have different requirements?

### 3:00 Resolving Conflicts of Interest When Employees Are Under Investigation

*Mark Rochon*  
Miller & Chevalier

- Representing current and former employees
  - parallel proceedings: external and internal
  - assertion of Fifth Amendments rights
  - employment implications of non-cooperation
  - joint defense arrangements
  - relationship with company counsel
  - access to evidence
  - indemnification of legal fees
  - attorney-client privilege
- When and how to provide separate counsel for individuals
- Developments regarding Company paying for counsel for employees

- What to do when individual and corporate interests collide
- Integrating professional ethical rules into balancing Company interests and employee rights
- Updating Upjohn warnings to match particular investigations and developing law

### 3:45 Extraterritoriality and the ABN AMRO Case

*Dale Turza*  
Cadwalader Wickersham & Taft

- Foreign parent responsibilities in complying with U.S. law
- Why was the fine so high at \$ 80 million?
- What type of compliance program is adequate
- Challenges for multinationals in complying with U.S. unilateral sanctions

### 4:15 Co-Chairs' Closing Remarks and Conference Ends

## Thursday • January 31, 2008 EXCLUSIVE POST-CONFERENCE WORKSHOPS

# A

9:00 am to 12:30 pm

### Conducting Export Compliance Assessments and Audits

*John P. Priecko*  
Vice President, Global Trade Compliance  
JPMorgan, Global Trade Services

*David L. Broyles*  
Group Export Compliance Manager, Meggitt PLC

The skillful ability to consistently carry out comprehensive and effective external and internal assessments and audits are more important now than ever, particularly in light of the government's invigorated and increasingly more aggressive approach to export enforcement. To have and maintain a "world class" export compliance program, periodic external and internal assessments and audits are essential elements to objectively and independently evaluate all aspects of your global export compliance program.

Participants in this interactive and practical workshop will learn essential concepts, methodologies, processes, policies and procedures to successfully prepare for, conduct and follow-up on export compliance assessments and audits, including:

- How assessments and audits differ and why the difference in focus on transactions versus processes
- Why self-assessments/audits alone aren't sufficient
- When is a self-assessment/audit needed and what's the nature, frequency and scope?
- What's the proper balance between external and internal analysis?
- Pros and cons of independent oversight
- The role of consultants and law firms and how to select them
- What about privilege protection and related considerations?
- Composing the right assessment/audit team
- How to best gather and control information
- Who needs to be included in the interview process
- What to do about interim corrective actions and remedial measures
- Distributing assessment/audit reports of findings
- What to do about document review and retention of results?
- Getting the word out internally to avoid repeat offenses
- Keeping management up to-speed from beginning to end
- Why is preventive medicine far better than corrective action?
- What are the Sarbanes-Oxley Act and Sentencing Guidelines implications?
- What's the government's perspective and expectations?
- Lessons learned from recent settlements and plea agreements
- What constitutes an effective export compliance assessment or audit

# B

1:30 pm to 5:00 pm

### M&A Due Diligence: Reducing the Risk of Successor Liability

*Judith A. Lee*  
Gibson, Dunn & Crutcher LLP

When engaging in acquisition and merger activity, is your company leaving itself wide open for liability relating to the other entity's omissions and misdeeds that may have been committed years ago? Do you think that the Government is not going to hold your company liable for export violations committed by a company that no longer exists and by employees of that company who have long since left the scene? Do you think that having a robust export compliance program will absolve your company from any liability for the actions of those companies acquired that may have had less than stellar programs? If so, this workshop is for you. Come and learn:

- When will agencies impose successor liability?
- Is there a difference in approach between BIS, DDTC, OFAC and the US Justice Department?

- Will doing an asset deal rather than a stock deal insulate you from successor liability?
- Is there a difference in position on this issue taken by the different government agencies?
- Is it really worth it to do significant diligence on export control and sanctions issues?
- Is it ever worth it to not do diligence and take the risk?
- Does every deal deserve the same amount of diligence?
- Is there ever a time that a position less than "scorched earth" can be justified? If so, how do you do a risk assessment and determine what is the appropriate amount of risk?
- How to convince the business unit or the deal lawyers that this exposure is real
- Drafting representations and warranties (both on the buy side and the sell side). When does "less is more" apply?
- Determining whether to request or resist a reserve for export control liabilities
- When to do a voluntary disclosure for violations uncovered during diligence, and who should be responsible for it (the buyer or the seller)? What is the ideal time for filing?

American Conference Institute's 3rd Annual Forum on

# EXPORT ENFORCEMENT & INVESTIGATIONS

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## Exclusive Workshops:

- A** Conducting Export Compliance Assessments and Audits
- B** M&A Due Diligence: Reducing the Risk of Successor Liability

January 31, 2008

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