

# Capacity Building for Enforcement Agencies

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# Export Controls

**Challenge:** WMD-related materials, equipment, technologies and information are diverted for non-peaceful purposes.

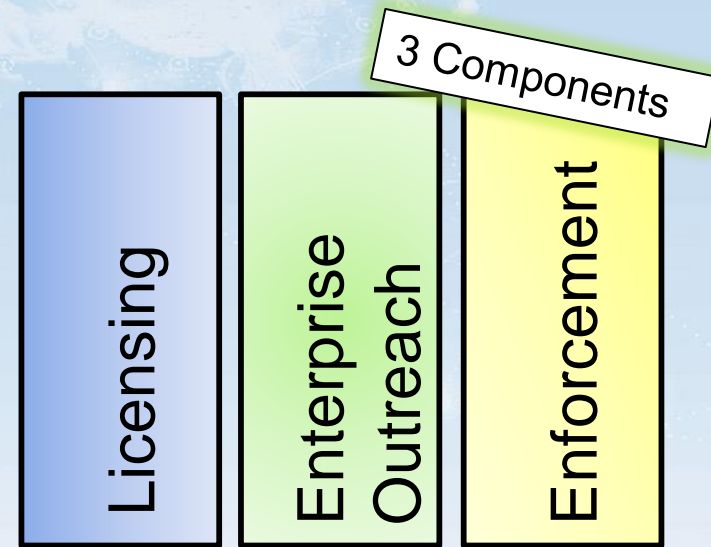
**Response:** Strengthen domestic and global capacity to detect and prevent the illicit transfer of WMD-related materials, equipment, and technology through programs that:

- Facilitate legitimate trade;
- Strengthen U.S. Government's ability to prevent and interdict U.S.-origin transfers that would contribute to foreign WMD programs of concern;
- Strengthen foreign partner national systems of export control; and
- Strengthen multilateral export control regimes.



# Strategic Trade Control is a Team Effort!

- **Licensing**
  - Comprehensive and transparent license review process that competently assesses proliferation risks associated with end-uses and end-users
- **Enterprise Outreach**
  - An ongoing national enterprise outreach program that regularly engages enterprises on the implementation of strategic trade management
    - Ensures awareness of the threat and export control obligations
    - Encourages implementation of internal compliance programs (ICP)
    - Maintains lines of communication between industry and enforcement agencies
- **Enforcement**
  - Coordinated whole of government approach with clearly defined roles and responsibilities for enforcement activities with the goal of detecting, deterring, and ideally preventing illicit or ill advised exports of strategic commodities
    - *Enables a variety of launch points for a wide spectrum of enforcement activities*
    - *Includes clearly defined, enforceable penalties*



# Component: Enforcement

**"However, compliance with the law may not be perfect, and enforcement agencies must detect, deter, and ideally prevent noncompliance. Both administrative and criminal enforcement measures are needed to deal effectively with STC violations."**

**– World Customs Organization**

Effective enforcement is a “whole of government” affair requiring open lines of communication between multiple ministries and agencies



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# Enforcement: Key Features

## Roles and Responsibilities: Generic Examples

Example Ministries and Authorities	Example Roles in Enforcement (not exhaustive or determinative)
<b>Ministry of Foreign Affairs</b> – Office of Nonproliferation	Exchanges and propagates tips to/from foreign partners, authorizes seizures of shipments
<b>Ministry of Finance</b> – Customs	Conducts shipment targeting and inspections, detains shipments, seizes shipments, and coordinates with investigative authorities
<b>Ministry of Trade</b> – Licensing authorities – Trade Investigative authority	Provides licensing determinations, provides commodity classification, conducts post-shipment audits, offers enterprise outreach activities
<b>Ministry of Justice</b> – Prosecutors – Justice investigative authority	Conducts investigations, pursues criminal prosecution, administrative penalties, and seizures/forfeitures, conducts enterprise outreach activities
<b>Ministry of Defense</b> – Defense investigative authority – Coast Guard	Interdicts shipments, conducts investigations, pursues criminal prosecution, administrative penalties, and seizures/forfeitures
<b>Ministry of National Security</b> – Intelligence services	Collects tips and information from external and internal sources
<b>Ministry of Internal Affairs</b> – Statistics Bureau	Collects and maintains trade data, provides trade data analysis and conducts targeting
<b>Court system</b>	Processes subpoenas and warrants, conducts trials for criminal prosecutions

# Enforcement: Key Features

## Enforcement Launch/Discovery/Activities



### Non-exhaustive examples of Export Control Activities that support Enforcement

- Data collection, maintenance, analysis
- Investigations
- Post-shipment audits
- Risk assessment/Targeting/Profiles
- Shipment detention
- Commodity seizure
- Commodity classification
- End use/End user evaluation
- Licensing determination
- Technical support
- Collection of tips
- Inspection
- Administrative penalties
- Criminal prosecution
- Enterprise outreach
- Information sharing

# Enforcement: Key Features

## Enforcement Penalties

- Seizure/Forfeiture
  - Enforcement agencies should have the ability to seize items in violation of export control laws. These seizures may be temporary, recoverable, or permanent
  - Various agencies may have the authority to force forfeiture of a commodity involved in an export violation
- Administrative penalties
  - Monetary penalties
  - Denials – loss of exporting privileges
- Criminal prosecution
  - Many countries include options for pursuing criminal penalties for export control violations which may include monetary fines and imprisonment
  - Criminal prosecutions generally have different and more stringent requirements than administrative penalties

Many, if not most, improper export activities of strategic items will potentially violate multiple laws and regulations

Penalties will depend on which laws and regulations were violated and under what circumstances.

The decision to pursue forfeiture, administrative, and/or criminal penalties is often a multi-ministry/agency decision



# Scenario-Based Events – Enforcement Issues to be Examined

- Almost all EC Enforcement activities have multi-Ministry/agency aspects
  - Enforcement launch/discovery mechanisms
  - Applicable laws and regulations
  - Interdiction
  - Investigative/Prosecution authorities
  - Technical support and licensing determinations
  - Determination and application of penalties

For EC Enforcement to be effective the following must be understood and defined before an improper export occurs

- Roles, responsibilities, and authorities
- Lines of communications
- Coordination and deconfliction

Systems in place for other enforcement actions will likely be applicable to EC Enforcement





# Scenario-Based Events – Self-discovery of areas for improvement

- Scenario-Based Events enable self-discovery and gap analysis of a selected topic
  - places attendees in realistic situation that requires action on their part
- Scenario-Based Events promote discussion and dialogue on a specific, targeted topical area

What Scenario-Based Events are not:

- Scenario-Based Events are not training events.
  - Scenario-based learning (SBL) is a well-established method of incorporating scenarios into training events
  - SBL teach attendees specific skills as part of their training.
- Scenario-Based Events are not Table Top Exercises (TTX)
  - TTXs test known **existing** roles, responsibilities, and lines of communication



# Scenario-Based Events – Process

- Scenario-Based Events
  - Are designed by a development team for specific objectives and a target audience/attendees
  - Each step in the simulated situation is paired with carefully crafted questions that address the objectives for the attendees
  - Are led by a skilled facilitator who:
    - guides attendees through the scenario steps and questions, and
    - assists attendees in exploring how their current system works, how an idealized system might work, and how they would like it to see their system function.



# Scenario-Based Events – Outcomes

- A Facilitator led Scenario-Based Event can help a country identify new policies or processes needed for effective export control enforcement
  - Policies and processes can be developed internally after a review of the results of the Scenario-Based Events
- Scenario-Based Events may identify areas where additional training may be helpful
  - Scenario-Base Events allow a country to request a specific type of training from an international partner
  - The focused nature of the training allows for more effective trainings to be offered that responds to a self-identified need



# Summary

- Export Control Enforcement is a complex, whole of government endeavor
- Export Control Enforcement builds on existing enforcement systems and processes to specifically address improper exports of controlled items
- Carefully crafted scenario-based events have proven effective in facilitating
  - deeper understanding of Export Control Enforcement, and
  - self-discovery of areas for improvement in Export Control Enforcement



# Questions?

## Thank You

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