

## **BIS Charging Letter**

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The Bureau of Industry and Security (BIS) is a part of the United States Department of Commerce (DoC), with functions that include enforcing export controls like revoking export privileges to protect U.S. foreign policy objectives and ensuring compliance with foreign treaties. The BIS also advances U.S. economic interests by safeguarding the country's economic and national security objectives.

The BIS has seen a [surge in importance and notoriety](#) following Russia's invasion of Ukraine. Once an oft-forgotten part of the DoEC, this agency is now responsible for enforcing trade sanctions against Russian oligarchs and other members of the Russian government. Additionally, the Office of Export Enforcement (OEE), part of the BIS, has the authority to enforce these administrative sanctions.

### **The BIS and the Office of Export Enforcement Are Responsible for Enforcing American Import and Export Laws**

The BIS's Office of Export Enforcement enforces international trade treaties and the executive branch's Export Administration Regulations (EARs). The regulations have been established to protect the American people's interests while defending the country's technological advantages.

The BIS can prohibit or regulate business transactions with other countries, specifying how corporations can conduct operations in foreign nations and outlining what they must do to guard the interests of the United States. If the actions of an individual or company condone terrorism and human rights abuses, threaten American interests, or endanger regional stability, the BIS has the authority to investigate and take specific measures to prevent and penalize that illegal conduct.

As part of the BIS, the Office of Export Enforcement is authorized to investigate and prosecute individuals or organizations who violate U.S. import and export law. Additionally, the OEE has criminal and administrative jurisdiction over any business or individual in violation of these laws and regulations.

The Office of Export Enforcement and the BIS can each initiate an investigation into a company if they believe it violated an international trade treaty or Export Administration Regulation. When initiating an administrative enforcement action, a company or individual will receive a proposed charging letter notifying them that they are under investigation.

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As a formal notification from the government, the BIS charging letter indicates to the company that it has been placed under investigation for a [violation of existing import and export law](#). The company will receive a definition of the specific allegations of wrongdoing within the BIS charging letter. At this time, the informed party is also notified that an investigation into the violation can lead to potential sanctions and criminal consequences.

When a business receives a BIS charging letter, the BIS has moved beyond a mere allegation of wrongdoing to a substantial accusation of a violation. The issuance of a BIS charging letter signifies that the agency believes there is enough evidence to justify an investigation into the company's conduct. Additionally, the BIS will demand an explanation for the business's behavior in the BIS charging letter.

## **These BIS Investigations Are Now Public Record**

Until recently, the BIS sent charging letters to businesses or individuals in private. Only the BIS and other investigating agencies knew about these alleged activities. Usually, the involved party would take corrective action without releasing the information to the public. Since global politics and policies change rapidly, many violations are often accidental, with companies not realizing that they have been involved in any type of misconduct. Before 2022, the BIS understood that and would allow the administrative enforcement proceeding to be conducted behind closed doors.

With that in mind, the BIS withheld the information in the charging letter from the public until it completed the final administrative disposition. Many times, these investigations would take several years to examine the evidence and reach a final review of the allegations. By not releasing the charging letter to the public, the company could protect its reputation and quietly resolve the matter.

With the Russian invasion of Ukraine in 2022, the BIS amended its previous policy regarding Export Administration Regulations. Stemming from the economic sanctions imposed on the inner circle of Putin's regime, the BIS was determined to be more transparent with its policy violation process.

According to the BIS's final rule, companies and individuals accused of violating trade policies and regulations do not have the benefit of the doubt. Instead, the BIS can release the information in the charging letter to the public, potentially damaging a company's reputation.

With the updated policy, the BIS has the authority to release the letter at any point of the administrative enforcement proceedings rather than waiting for its conclusion. While not in practice, the policy now allows the BIS to publish the charging letter to the public at the same time it is served to the intended party involved in a possible EAR or trade sanction violation.

The penalties and consequences for violating the Export Administration Regulations can be severe, resulting in civil penalty or even criminal penalty. However, even false misconduct accusations can create negative publicity and damage companies' reputations. When agencies release charging letters to the public before administrative enforcement proceedings are complete, they can harm the companies being investigated, especially those who that are falsely accused.

## **Stiffer Penalties for Those Companies in Violation of Import or Export Laws**

The penalties for businesses and individuals who violate trade sanctions and regulations can vary depending on the specific alleged violations and severity of the misconduct. Many cases are considered civil administrative matters, although executives who blatantly violate trade sanctions

could face substantial prison time. Any evidence that a business violated these laws could mean the entity will be barred from international trade, must disengage from disgorging its profits, and pay hefty fines. In many situations, the economic penalties are often more severe than those on the criminal side.

The administrative sanctions from the U.S. government can seem particularly harmful, but the collateral consequences are often much worse. Accusations that a company does business with international pariahs can lead to reputational harm and loss of consumer trust and business partners. The BIS's current policy of publishing charging letters results in a premature public condemnation of the accused person or company. Even when no evidence of misconduct has been found, it can lead to reputational consequences.

## **What Happens If You Violate the Export Administration Regulations?**

The Export Administration Regulations protect foreign policy goals, national security, and trade relationships. Federal law enforcement officials enforce the EARs. Violators may receive a charging letter from the BIS as a result of an accusation of alleged violations. In some cases, the BIS receives referrals from other agencies to conduct its own investigation of an individual or business. Once a charging letter has been issued, administrative proceedings are initiated, and an administrative law judge presides over the case. The violation may lead to civil penalties and monetary sanctions if proven true in the final administrative hearing. If there is evidence indicating a serious criminal offense occurred or multiple recurring violations, criminal prosecution may result.

## **Updated BIS Policies Mean a Renewed Focus on Compliance**

Since BIS charging letters can be made public at an early stage in the process, non-compliance with Export Administration Regulations can have serious consequences for companies that import or export their products.

After the invasion of Ukraine, there were calls to sanction Russian President Vladimir Putin and his close associates. As a result, the EARs were revised in 2022 to prohibit certain transactions with these individuals. The result was a period of uncertainty for international companies as they audited transactions to avoid any non-compliance with the law.

The recent political upheaval and regional conflicts have created a challenging business environment. With the BIS regulations still in effect, businesses should comply with them to avoid harsh consequences that could damage their reputation with the American public.

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