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<p style="text-align: center;"><b>EXPORT CONTROLS UPDATE</b> <b>April 2008</b></p>
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*This newsletter is a summary of changes to US export control regulations or other regulatory matters of interest for the month of April 2008.*

## **LEGISLATIVE UPDATE**

On May 15, 2008, the U.S. House of Representatives passed H.R. 5916, the Security Assistance and Arms Export Control Reform Act. The Act – which the Senate has not yet considered – includes many provisions that will be welcomed by exporters. Among them:

- Processing time for review of license applications by DDTC will not exceed 60 days. (This deadline applies only to licenses, not to agreements.)
- Processing time for review of commodity jurisdiction (CJ) requests will not exceed 60 days.
- CJ determinations will be posted on the DDTC website, and will remain on the website in an archive that will be publicly available. (Proprietary information will not be made public.)
- Beginning in FY 2010, DDTC will have at least 1 licensing officer per 1,250 applications.
- Beginning in FY 2009, DDTC will have at least 3 staff members assigned to reviewing CJ applications.
- To help pay for required staff increases, up to \$10 million collected in civil penalties each year can be applied to support DDTC.
- The International Traffic in Arms Regulations (ITAR) and the U.S. Munitions List (USML) will continuously be reviewed over five-year periods, 20% of each per year.
- A special licensing authorization will apply to exports of U.S.-manufactured spare and replacement parts and components in connection with defense items previously exported to NATO Member States, Australia, Japan, New Zealand, Israel, and South Korea.
- Within one year of the law's enactment, applicants for munitions licenses will be able to access status information electronically.
- Congressional review of proposed exports to Israel and South Korea that require congressional notification will be expedited.
- Within 180 days after enactment, the President will send a report to Congress regarding the extent to which export controls on satellites and related items are successfully preventing the transfer of sensitive technologies to countries of concern, the extent of foreign availability of comparable satellites and related items, recommendations about whether current export controls on satellites and related items should be altered, and whether other incentives or disincentives should be employed to discourage other countries to export satellites and related items to China.

View the full text of H.R. 5916 at <http://thomas.loc.gov/>. Plans for Senate action on this, or a comparable bill, are not clear as of this writing.

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## REGULATORY UPDATES

### The President

April 1, 2008 – *73 Fed. Reg. 17241*: President Bush issued a determination making Kosovo eligible to receive U.S. defense articles and defense services.

### Department of Commerce

April 7, 2008: In the version of the Commerce Control List (CCL), on its website <http://www.access.gpo.gov/bis/ear/pdf/774.pdf>, the Bureau of Industry and Security (BIS) added hotlinks to all references to “related controls.”

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April 18, 2008 – *73 Fed. Reg. 21035*: In the first product of the comprehensive review of the CCL that BIS began in July 2007 (July 17, 2007, *72 Fed. Reg. 39052*), the Bureau of Industry and Security (BIS) made technical amendments in 38 Export Control Commodity Numbers (ECCNs). “Related controls” are added or revised in 24 ECCNs, and the unit of measure is changed in 14 ECCNs. Also, an amendment to the Export Administration Regulations (EAR), Part 748, Supplement No. 1 adds new guidance to export license application instructions. The new guidance will facilitate applicants in providing information on foreign availability of items that are not controlled for national security reasons. Substantive amendments to the CCL will be made in a future announcement. Meanwhile, check the ECCNs of interest to you to see whether they are affected by the current announcement. (A correction on May 8, *73 Fed. Reg. 26000*, corrected an inadvertent error that had been made in ECCN 9A004 by the April 18 notice.)

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April 18, 2008 – *73 Fed. Reg. 21076*: BIS proposed amendments to the EAR to clarify and strengthen the provisions of the “catch-all” (end-use and end-user) nonproliferation controls that are described in EAR Part 744. The proposed amendments would harmonize the controls on nuclear proliferation activities with the similar controls relating to missile, chemical, and biological proliferation activities. The proposed amendments would also clarify the prohibition on proceeding with an in-transit export, re-export, or in-country transfer without first obtaining a license when a party is informed by BIS that a license is required because of an unacceptable risk that the items will be used in, or diverted to, a proliferation activity. The proposed amendment also revises the definition of the term “transfer” in EAR Part 772 to state more precisely that it includes in-country transfers and that it may also be used to designate an assignment. The deadline for comments on these proposals is June 17.

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April 23, 2008: BIS posted additional information on its website about its review of the CCL. The announcement is at <http://www.bis.doc.gov/policiesandregulations/cclreviewprocess.html>. After the current review is completed, one-third of the CCL will be reviewed each year. Reviews will emphasize the overall structure of the CCL, the types of items that should be on the CCL, particular industry sectors, item descriptions, and coordination and harmonization with the multilateral export control regimes.

### Government Accountability Office

April 24, 2008: The GAO released testimony to a U.S. Senate subcommittee: “Export Controls: State and Commerce Have Not Taken Basic Steps to Better Ensure U.S. Interests Are Protected.” See the full report at <http://www.gao.gov/cgi-bin/getrpt?GAO-08-710T>. Highlights are at <http://www.gao.gov/highlights/d08710thigh.pdf>.

### Department of State

April 11, 2008 – *73 Fed. Reg. 19778*: The Directorate of Defense Trade Controls (DDTC) proposed to add a note to Category VIII(h) of the U.S. Munitions List (USML) to clarify the jurisdiction over certain

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civil aircraft parts and components. The proposed rule would provide that the EAR (not the ITAR) applies when an aircraft part or component is, without doubt, 1) standard equipment; 2) covered by a civil aircraft type certificate; and 3) an integral part of such civil aircraft, *if* the item is not designated as Significant Military Equipment (SME) on the USML. The proposal would also newly designate all military “hot section” engine components and digital engine controls as SME. Definitions and guidance for determining whether a particular item meets all three criteria are also proposed. The proposal is an effort to clarify DDTC’s interpretation of Section 17(c) of the Export Administration Act of 1979 (EAA) which, although no longer legally binding, continues to be recognized as the standard for distinguishing between ITAR and EAR coverage of airplane parts and components. Comments on this proposed rule were due by May 12, 2008.

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April 15, 2008 – *73 Fed. Reg. 20349*: DDTC published notifications to Congress of 53 proposed commercial export licenses. The largest single category of exports was launches of commercial communication satellites destined for international waters, Russia, Kazakhstan, Guiana, and France. Most other commercial exports were to NATO, Israel, or Asian allies of the U.S. Other destinations included Brazil, Mexico, Saudi Arabia, and the United Arab Emirates. DDTC also published a certification of a proposed amendment to a manufacturing license agreement for manufacture of SME in Russia in connection with the RD-180 Liquid Propellant Rocket Engine Program. Dates of the notifications ranged from November 13, 2007 to April 2, 2008.

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April 15, 2008 – *73 Fed. Reg. 20357*: In January 2008, President Bush directed the State Department to complete action on most export license applications within 60 days of receipt, unless “national security exceptions” apply. (See January 2008 Regulatory Update.) In this notice, DDTC announced 5 such exceptions:

- 1) when Congressional Notification is required;
- 2) when required government end-use assurances have not been received;
- 3) when end-use checks have not been completed;
- 4) when the Department of Defense has notified State that an overriding national security exception exists; and
- 5) when the license application requires a waiver of existing restrictions (*e.g.*, a sanctions waiver).

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April 22, 2008: DDTC posted instructions and FAQs about “rebaselining” agreements – revising an existing agreement to “clean up” the agreement by bringing it into compliance with current guidance and policies and/or incorporating numerous amendments and provisos. These documents are accessible from the home page of DDTC’s web site, [www.pmdtdc.state.gov](http://www.pmdtdc.state.gov).

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April 22, 2008: DDTC posted guidance and FAQs about updated procedures for licenses “in furtherance” of agreements. This new guidance is accessible from the DDTC home page, [www.pmdtdc.state.gov](http://www.pmdtdc.state.gov).

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April 28, 2008: DDTC posted guidance and FAQs on license support documentation and additional guidance and FAQs about supporting documentation requirements specifically for DSP-73 and DSP-61 license applications. All are accessible from [www.pmdtdc.state.gov](http://www.pmdtdc.state.gov).

## **SANCTIONS**

### **Department of Commerce**

April 11, 2008 – *73 Fed. Reg. 19809*: BIS extended for a further 180 days a temporary denial order against the following persons: Aviation Services International B.V., Delta Logistics, B.V., Robert Kraaiipoel, Niels Kraaiipoel, T.P.C., B.V., and Mia Van Gemert, all of Heerhugowaard, Netherlands; Mojir Trading and Reza Amidi of Dubai, United Arab Emirates; and Lavantia, Ltd. and Mita Zarek of Nicosia, Cyprus.

### **FINES & PENALTIES**

March 25, 2008: Northrop Grumman agreed to pay a civil fine of \$15 million, including \$5 million to be spent on remedial compliance measures, to settle charges by DDTC that 1) Litton Industries, prior to its purchase by Northrop Grumman in 2001, had provided portions of source code related to the inertial navigation system modified for use on Air Force One to a company in Russia without the required State Department export license, and 2) that both before and after its purchase by Northrop Grumman, Litton had transferred controlled computer guidance systems to Angola, Indonesia, Israel, China, Ukraine, and Yemen. Northrop Grumman submitted voluntary disclosures of these exports beginning in 2004 and fully cooperated in the government review of the exports.

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March 28, 2008: Aviktor Trading Corporation of Palmetto Bay, FL agreed to pay a civil fine of \$16,000 to settle charges by BIS that it exported a thermal imaging camera controlled under ECCN 6A003.b.4 to Ecuador without the required export license and that it failed to file a Shipper's Export Declaration.

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April 4, 2008: A federal district court in Birmingham, AL awarded Alex Latifi and his company, Axion Corporation, legal fees, filing costs, expert witness fees, and other costs of defending a prosecution after they were acquitted of charges of violating the Arms Export Control Act (AECA). (See report of their acquittal in Regulatory Update, December 2007.) This is believed to be the first time the U.S. Government has been ordered to reimburse legal fees and costs incurred by a defendant for an unsuccessful prosecution for export violations.

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April 5, 2008: Yong Guo Zhi, a Chinese national, and Tah Wei Chao, a U.S. citizen, were arrested as they boarded a plane to China at Los Angeles International Airport after ten ITAR-controlled thermal imaging cameras, valued at about \$5,000 each, were found in their checked baggage. FLIR Systems, the manufacturer of the cameras, had alerted authorities to a likely violation. Zhi and Chao had ordered the cameras from FLIR in the name of a company called "Printing Plus Graphics." Knowing that a storefront print shop would not need such cameras, FLIR recognized the "red flag" and informed authorities.

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April 10, 2008: Cryostar SAS, headquartered in Hesingue, France, pleaded guilty in D.C. Federal Court to one count each of conspiracy, export without a license, and attempted export without a license for facilitating an unauthorized export of cryogenic submersible pumps to a petrochemical complex in Iran. Cryostar served as the middleman in the illegal export by purchasing the pumps from Ebara International Corp., Inc., of Sparks, NV and reselling them to "TN," a French company, falsely indicating that the end user was in France, when all parties to the transaction knew that the ultimate and intended destination of the pumps was Iran. Under the plea agreement, Cryostar will be sentenced to a criminal fine of \$500,000 and two years of corporate probation. Ebara pleaded guilty in 2004 to conspiracy, money laundering, and illegal exports involving this transaction and was fined \$6.3 million. Its former chairman, Everett Hylton,

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pleaded guilty to conspiracy to make false statements and received a \$99,000 fine and a 3-year suspended prison term.

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April 14, 2008: The Treasury Department Office of Foreign Assets Control (OFAC) announced that Good Hope International, Inc. of Lenexa, KS, had been fined \$900 for violating the Iranian Transactions Regulations by using the services of an Iranian vessel to transport goods from India to Holland without a license from OFAC.

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April 15, 2008: Daniel Max Sherman of Littleton, CO, a physicist formerly employed at Atmospheric Glow Technologies, Inc., of Knoxville, TN, pleaded guilty in federal court in Tennessee to conspiracy to violate the AECA in a deemed export case involving disclosures to a Chinese graduate student at the University of Tennessee. According to the plea agreement, Sherman, AGT, and J. Reece Roth, a professor emeritus at the university, conspired to release controlled technical data to the Chinese graduate student in connection with research under a restricted U.S. Air Force contract to develop plasma actuators for Unmanned Aerial Vehicles controlled under the ITAR. The University of Tennessee was not involved in the conspiracy.

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April 21, 2008: Tai Mak was sentenced to 10 years in federal prison after pleading guilty to conspiring to violate export control laws. Mak was arrested as he boarded a flight to Hong Kong and Guangzhou, China, after investigators found three encrypted CDs in his baggage that contained controlled technical data relating to submarine propulsion systems. In March, Tai Mak's brother, Chi Mak, was sentenced to 24-1/2 years in prison for his larger role in the same conspiracy.

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April 24, 2008: James C. Angeher and John N. Fowler, the owners of Engineering Dynamics, Inc. of New Orleans, LA, pleaded guilty in New Orleans federal court to a single count of conspiracy to violate the International Emergency Economic Powers Act (IEEPA) and the Iranian Transactions Regulations. In a related civil action on April 29, 2008, EDI agreed to pay a civil fine of \$132,791 to settle a similar charge. Both cases involved a conspiracy to export a software program controlled for anti-terrorism reasons to Iran via Brazil without the required export license.

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April 24, 2008: Afshin Rezaei pleaded guilty in federal court in Georgia to violating the IEEPA by exporting a computer controlled for anti-terrorism reasons to Iran via the United Arab Emirates (UAE).