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## LATEST EXPORT CONTROLS AND COMPLIANCE UPDATE

April 2009

*This newsletter is a listing of the latest changes in US export control regulations for the month of April 2009. It is provided to clients and associates of FD Associates as a complimentary service to assist in ITAR and EAR export compliance responsibilities. It provides a summary of recent changes to US export control regulations or other regulatory matters of interest that may impact companies' international trade and export compliance functions. Call us at 703-847-5801, email [info@fdassociates.net](mailto:info@fdassociates.net) with questions or comments.*

### REGULATORY UPDATES

#### United Kingdom

April 6, 2009: The Export Control Office of the Department of Business Enterprise and Regulatory Reform (BERR/ECO) announced that a new Export Control Order introducing several important changes in U.K. export controls became effective on April 6, 2009. Export Control Order 2008 is available at <http://www.berr.gov.uk/whatwedo/europeandtrade/strategic-export-control/legislation/export-control-order-2008/index.html>.

#### Department of Commerce

April 17, 2009: The Bureau of Industry and Security (BIS) updated and expanded the information on its website about the Entity List, including 31 Q&As. Find this material at <http://www.bis.doc.gov/entities/default.htm>. The Entity List is in the Export Administration Regulations (EAR) at Part 744, Supp. No. 4.

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April 29, 2009 -- 74 Fed. Reg. 19382: BIS amended the Validated End User (VEU) provisions of EAR Part 748, to add Aviza Technology China, with facilities in Beijing, Shanghai, and Chengdu, to the list of VEUs; add additional items and destinations for existing VEUs; and change the name of existing VEU BHA Aerocomposite Parts Co., Ltd. to Boeing Tianjin Composites Co. Ltd.

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April 29, 2009 – 74 Fed. Reg. 19466: BIS proposed changes in the reporting rules applicable to sales of defense articles or defense services to foreign countries or foreign firms when the sales agreements involve offsets in excess of \$5 million. The proposed rule, made in response to a General Accountability Office (GAO) recommendation, attempts to clarify the information requirement. Comments are due by June 29, 2009.

#### Department of State

April 1, 6, and 22, 2009: The Directorate of Defense Trade Controls (DDTC) published guidance on its website regarding license and agreement amendments in connection with the following name changes:

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- Hispano Suiza's Electronics Division to Sagem Defense Securite
- VEGA Group plc UK to VEGA Consulting Services Ltd.
- VEGA IT Deutschland GmbH and Anite Deutschland GmbH & Co. KG to VEGA Deutschland GmbH & Co. KG
- Labinal Corinth Inc to Labinal Inc.
- MDA Ltd to MDA Systems
- ASTRA 1 GR S.a.r.L. to SES ASTRA 1N S.a.r.L.
- Boeing Australia Limited to Boeing Defence Australia

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April 6, 2009: DDTC published an update to the "Guidelines for Preparing Agreements – Revision 1", originally released in January 2009 (*see January 2009 Update*) that makes 15 changes to that document. An updated version of the Guidelines, with changes highlighted, is at [www.pmdtcc.state.gov/licensing/agreement.html](http://www.pmdtcc.state.gov/licensing/agreement.html).

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April 16, 2009: DTrade2, DDTC's new case management system, went into effect. DTrade2 is intended to supplant DTrade1 and streamline license processing. When first introduced, users experienced technical difficulties with DTrade2. As of April 30, DDTC advises that it tuned and optimized the new software to accept all industry submissions. Users still experiencing problems with DTrade2 should contact the DDTC helpdesk at 202-663-2838.

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April 22, 2009: [Economist.com](http://Economist.com) reported that Bigelow Aerospace, a North Las Vegas, Nevada, space technology company that is pioneering work on expandable space station modules, claimed to have received a ruling from DDTC permitting Bigelow to allow foreign passengers (except nationals of Sudan, Iran, North Korea and China) to be on a space station, or to train on the ground in a mock-up module, without obtaining an export license. Such a ruling would presumably be based on the principle that mere travel on a spaceship or space station does not necessarily involve a transfer of technology. However, the actual ruling was not made public. *Note: We recommend that readers verify this information with DDTC, prior to engaging any similar activities.*

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April 24, 2009 – 74 Fed. Reg. 18628: DDTC corrected a final rule it issued on May 21, 2004 (69 Fed. Reg. 29222) by restoring a note defining second and third generation image intensification tubes that it unintentionally left out of Category XII(c) of the U.S. Munitions List (USML).

### SANCTIONS

#### Department of Commerce

April 14, 2009 – 74 Fed. Reg. 17166: BIS added six related parties to an existing Temporary Denial Order (TDO) against Islamic Republic of Iran Shipping Lines of Iran, Tadbir Sanaat Sharif Technology Development Center of Iran, and Icarus Marine Pty. Ltd. of South Africa. The additional denied parties are:

- Ghasem Nabipour of Hong Kong and Iran
- Ahmad Sarkandi of Hong Kong, Iran, and England
- Starry Shine International of Hong Kong

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- Shawn Hugo de Villiers of South Africa
- Gunther Migeotte of Norway and South Africa
- Icarus Design, AS of Norway

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April 24, 2009 – *74 Fed. Reg. 18690*: BIS entered a seven-year denial order against Tariq Ahmed of Karachi, Pakistan, based on his actions to evade licensing requirements governing exports to a Pakistani organization listed on the Entity List.

### FINES & PENALTIES

March 4, 2009: Nureddin Shariff Sehweil of Abu Dhabi, UAE, agreed to pay a penalty of \$11,000 to settle charges by BIS that he violated the EAR by shipping U.S.-origin items, including traveling screen water, linear shaft, and bushing to The Netherlands and then re-exporting them to Libya without the required export authorization. The settlement included a one-year denial of export privileges, which BIS suspended in its entirety. On the same day, BIS settled similar charges against Jamie Radi Mustafa and Uni-Arab Engineering and Oil Field Services, both of Abu Dhabi, UAE, with one-year denials of export privileges and no monetary penalty. BIS also suspended these denials in their entirety.

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April 2, 2009: Stuart Wax, of Los Angeles, CA and his company, M.M.M. Wheels, Inc., pleaded guilty in U.S. District Court in Connecticut to one count of making a false statement in an export control document by indicating on shipping documents that a box contained “plumbing parts for repair,” although they knew that the parts being shipped were actually for military aircraft.

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April 2, 2009: Traian Bujduveanu, of Plantation, FL pleaded guilty on behalf of himself and his company, Orion Aviation, to one conspiracy count in connection with the unlicensed exports of parts designed for military aircraft to Iran via Dubai, United Arab Emirates (UAE). Bujduveanu and his co-conspirator, Hassan Keshari, have remained in federal custody since their arrest in June 2008. Keshari pleaded guilty in January 2009 (*see January 2009 Update*). Bujduveanu is a U.S. citizen and Romanian national.

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April 2, 2009: Baktash Fattahi of Lancaster, CA was arrested after being indicted, along with 10 non-resident co-conspirators, on charges of conspiring to export U.S.-made military aircraft parts to Iran. The conspirators allegedly exported 13 different ITAR-controlled aircraft parts to Iran, transshipping them through Dubai, UAE. According to the indictment, defendants in Iran sent orders for specific aircraft parts by e-mail to a co-conspirator in California. The California co-conspirator requested quotes for the parts and arranged for their sale and shipment to a co-conspirator in Dubai, from where they were transshipped to Iran. Fattahi is an Iranian national and U.S. legal resident.

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April 7, 2009: Falmouth Scientific, Inc. of Catuamet, MA agreed to pay a civil penalty of \$50,000, with \$25,000 suspended, for misrepresentation of facts in requesting the classification of an underwater tracking system. In seeking a classification of an underwater tracking system, Falmouth represented to BIS that the system was commercial and had not been designed to meet military specifications when it knew, or should have known, that it had been designed to meet Chinese Navy specifications. In a related case, on March 31, 2009 William Dalton of New Smyrna, FL agreed to pay a fine of \$25,000 for making the misrepresentations to BIS. \$15,000 of the penalty will be suspended if Dalton commits no more violations within 1 year.

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April 7, 2009: Shu Quan-Sheng of Newport News, VA was sentenced to 51 months in prison after pleading guilty to violations of both the Arms Export Control Act (AECA) and the Foreign Corrupt Practices Act (FCPA). Shu also forfeited \$386,740 to the federal government. Shu's company, AMAC International Inc. of Newport News and Beijing, performs research under grants from the U.S. Department of Energy and National Aeronautics and Space Administration. Shu exported defense services without the required authorization by assisting China in the design and development of a cryogenic fueling system for space launch vehicles to be used at the heavy launch facility in Hainan, PRC and by exporting other controlled military technical data to China. The FCPA charge involved bribing Chinese government officials to obtain a contract to develop a liquid hydrogen tank system. Shu is a Chinese-born naturalized U.S. citizen.

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April 9, 2009: 61 year old, Silicon Valley business man, Fu-Tain Lu was arrested upon disembarking from an airplane at San Francisco International Airport after the U.S. Attorney for the Northern District of California announced that Lu had been indicted for making false statements to a government agency. Lu and two companies he had founded, Funshine Technology, Inc. in the San Jose, CA area and Everjet Science and Technology Corporation in Shenzhen, China, had been indicted for conspiring to export microwave amplifier products to China without the required authorizations from BIS. The indictment quoted from internal company e-mails regarding concealing that the shipments were destined for China.

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April 22, 2009: BJ Services, an oil and gas field service provider based in Houston, TX, agreed to pay \$800,000 to settle charges of 67 violations involving unlicensed exports of valves controlled under ECCN 2B350.g to numerous countries including Colombia, Kazakhstan, Kuwait, Libya, Peru, Saudi Arabia, the UAE, and Venezuela. The high fine was imposed notwithstanding BJ Services' voluntary disclosure of the violations. A voluntary disclosure is a mitigating factor when penalties are determined. However, the indictment stated that the supplier of the valves had informed BJ Services that they were controlled under ECCN 2B350. This may have led BIS to consider that BJ Services conduct demonstrated serious disregard for export compliance responsibilities, an aggravating factor that is given great weight in penalty determinations.

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April 30, 2009: The U.S. Treasury Department Office of Foreign Assets Control (OFAC) announced that Varel Holdings, Inc. of Dallas, TX had remitted \$110,000 to settle allegations that a foreign subsidiary of Varel had made eleven unlicensed exports of goods in which Cuba or Cuban nationals had an interest. Varel voluntarily disclosed the violations to OFAC.