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**LATEST EXPORT CONTROLS AND COMPLIANCE UPDATE**  
**August 2009**

*This newsletter is a listing of the latest changes in US export control regulations for the month of August 2009. The newsletter is provided as a complimentary service to assist readers with their 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 your company's international trade and export compliance functions. Call us at 703-847-5801 or email [info@fdassociates.net](mailto:info@fdassociates.net) with questions or comments.*

*See also our "Latest Export Violations, Fines, Penalties & Sanctions Newsletter" (below) for an update on companies and persons denied export privileges by the United States Government.*

**REGULATORY UPDATES**

**European Union**

Aug. 27, 2009: The European Union restated and revised its dual-use export control regulation. Important new features of the EU regulation include controls on brokering services involving transactions in controlled dual-use items between two third countries outside the EU where there is a potential WMD end-use, an option for Member States (MS) to adopt brokering controls involving non-listed items, and an option for MS to adopt transit controls where potential WMD end-uses are involved. (See June 2009 Update for a more detailed description of the changes in the EU Regulation.)

**United Kingdom**

Aug. 18, 2009: The United Kingdom Department for Business, Innovation and Skills amended the U.K. dual-use export control regulations to implement the new EU regulations referenced above. The new U.K. rules are at [The Export Control \(Amendment\)\(No.3\) Order 2009 \(S.I.2009/2151\)](#). Specific guidance on new dual-use brokering regulations is at [Export Control Organisation: guidance on brokering \(trade\) of dual-use items - Council Regulation \(EC\) no. 428/2009](#). The U.K. control list and several Open General Export Licenses (OGELs) have also been amended, effective Aug. 27, 2009. Details can be accessed from the main page of the Export Control Organisation, <http://www.berr.gov.uk/whatwedo/europeandtrade/strategic-export-control/contacts/index.html>.

**The President**

Aug. 14, 2009 – *74 Fed. Reg. 41323*: In an executive order, President Obama extended for another year the national emergency, originally declared in August 2001, "with respect to the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States in light of the expiration of the Export Administration Act of 1979, as amended." The declaration of national emergency permits the continued implementation of the Export Administration Regulations (EAR) under the authority of the International Emergency Economic Powers Act (IEEPA).

## FD ASSOCIATES, INC. - EXPORT CONTROLS & COMPLIANCE UPDATE

### Department of Commerce

Aug. 7, 2009: The Bureau of Industry and Security (BIS) published comprehensive guidance restating the existing policies restricting exports to Syria, including several FAQs, at [http://www.bis.doc.gov/policiesandregulations/syriaguidance8\\_07\\_09.htm](http://www.bis.doc.gov/policiesandregulations/syriaguidance8_07_09.htm).

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Aug. 11, 2009 – *74 Fed. Reg. 40117*: BIS invited comments on proposed amendments to the EAR to update and clarify the Crime Control export and reexport license requirements. This proposed amendment represents the first part of a larger effort by BIS to review and revise the crime control license requirements. The amendment would update and clarify the license requirements on striking weapons, restraint devices, shotguns and parts, optical sighting devices, and electric shock devices, add equipment designed for executions to the Commerce Control List (CCL), and adopt a definition of torture. Deadline for comments is Sep. 25, 2009.

### Department of State

Aug. 3, 2009 – *74 Fed. Reg. 38342*: The Directorate of Defense Trade Controls (DDTC) amended the International Traffic in Arms Regulations (ITAR) to put the Republic of Korea (i.e., South Korea) into the same category as NATO countries, Japan, Australia, and New Zealand, for certain situations in which these countries are given preferential treatment:

- reexports and retransfers of U.S.-origin components incorporated into foreign defense articles (ITAR Sec 123.9(e))
- higher threshold values above which the issuance of an export license requires prior approval by Congress or certification to Congress (ITAR Sec. 123.15)
- shorter waiting period following certification to Congress (ITAR Sec. 124.11(b))
- higher threshold values above which proposals to foreign persons regarding significant military equipment must be approved by DDTC (ITAR Sec 126.8(a))
- exemption from license requirement for brokering activities (ITAR Sec. 129.6(b) and 129.7(a))

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Aug. 6, 2009 – *74 Fed. Reg. 39212*: DDTC amended the ITAR, effective immediately, to add an exemption permitting the temporary export of body armor for exclusive personal use to all countries not listed in ITAR Sec. 126.1, and to Iraq and Afghanistan under special circumstances. The body armor must be for the exclusive use of the individual exporting it, must not be exported to any country whose laws would be violated by its import, and must be returned to the U.S.

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Aug. 11, 2009: DDTC announced that it had stopped accepting new license applications under the DTrade 1 electronic licensing system. All new applications must be submitted via DTrade 2. It will not be possible to use DTrade 2 to track submissions made via DTrade 1.

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Aug. 31, 2009: The following corporate name changes were announced on DDTC's home page, [www.pmdt.state.gov](http://www.pmdt.state.gov):

- Oerlikon Space Ltd to RUAG Space Ltd
- RUAG Aerospace AG to RUAG Switzerland Ltd
- RUAG Aerospace Sweden AB to RUAG Space AB

See the individual announcements about the effect of these changes on licenses and agreements.

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### LATEST EXPORT VIOLATIONS, FINES, PENALTIES, AND SANCTIONS

August 2009

*This section of our newsletter provides information on the latest fines, penalties and sanctions for export violations or matters of non-compliance with the ITAR or EAR issued by the US government enforcement agencies. It is provided as a service to clients and associates of FD Associates to remind them of the importance of extreme due diligence in all international trade and export compliance matters, particularly those involving exports subject to the ITAR or the EAR. **Don't let this happen to you or your company!** Call us with questions or concerns at 703-847-5801 or email [info@fdassociates.net](mailto:info@fdassociates.net).*

Aug. 3, 2009 – 74 Fed. Reg. 38394: The Commerce Department Bureau of Industry and Security (BIS) stayed the enforcement of a denial order that had been issued against Micei International of Skopje, Macedonia, pending resolution of a petition for review that Micei's new U.S.-based counsel had filed in the U.S. Court of Appeals for the District of Columbia Circuit.

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Aug. 6, 2009 – 74 Fed. Reg. 39374: The Department of State terminated the debarment of Electro-Glass Products, Inc., effective June 9, 2009. Electro-Glass had been statutorily debarred after being convicted by a U.S. District Court in Pennsylvania in 2007 for violating the Arms Export Control Act. The State Department determined that Electro-Glass had "taken appropriate steps to address the causes of the violations and to mitigate any law enforcement concerns."

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Aug. 6, 2009: In a joint settlement with BIS and the Treasury Department's Office of Foreign Assets Control (OFAC), DHL Express (USA) Inc. and DPWN Holdings (USA), Inc. (formerly known as DHL Holdings (USA) Inc.), both of Plantation, FL agreed to pay a civil penalty of \$9,444,744, hire an unaffiliated third-party consultant to conduct audit covering exports to Iran, Syria and Sudan from March 2007 through December 2011, and submit the audit report to the BIS Office of Export Enforcement. BIS allegations covered by the settlement included eight (8) instances of causing aiding or abetting the export of items subject to the EAR to Syria by transporting the items to Syria without the required licenses, and failure to maintain air waybills and other required documents in connection with ninety (90) exports from the U.S. to Syria. OFAC allegations covered by the settlement included four actual or attempted unlicensed shipments from the U.S. to Sudan, 63 unlicensed shipments from the U.S. to Iran, and one unlicensed shipment from Iran to the U.S., as well as failure to maintain records of thousands of exports to Iran. The settlement agreement did not specify how the money was to be divided between BIS and OFAC. This sizable penalty highlights the fact that exporters are not the only ones in the export chain who are liable for export license requirements. Forwarders and carriers are also liable.

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## FD ASSOCIATES, INC. - EXPORT CONTROLS & COMPLIANCE UPDATE

Aug. 10, 2009: Daniel Max Sherman was sentenced to 14 months in prison for his involvement in the project headed by University of Tennessee Professor Emeritus John Reece Roth that included deemed exports to graduate students from China and Iran of plasma technology for use on an unmanned aerial vehicle. (*See June 2009 and July 2009 Penalties Update.*) Sherman's relatively light sentence resulted partly from his having provided information and documents to investigators that helped lead to Roth's conviction. The prosecuting attorney noted that Sherman did not profit financially from the project beyond his salary.

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Aug. 11, 2009: Southwall Technologies, Inc. of Palo Alto, CA agreed to pay \$16,000 to settle charges that it had exported a sputter depositions roll-to-roll coater controlled under ECCN 2B005.e to China without the required export license and that it had made a false statement on an Shipper's Export Declaration. Southwall voluntarily disclosed the violations.

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Aug. 13, 2009: FMC Technologies, Inc. of Houston, TX agreed to pay \$610,000 to settle charges that it had exported valves controlled under ECCN 2B350 for chemical and biological weapons reasons to China, Mexico, Tunisia, and Venezuela, and reexported similar valves from its warehouses in Singapore, the United Arab Emirates (UAE), and the United Kingdom to eighteen countries, without the required licenses. FMC disclosed the violations voluntarily. *The BIS press release on this case noted that an amendment to ECCN 2B350 in 2005 had significantly increased the scope of this item and pointed out that "not staying up to date with regulatory changes can lead to violations of the export regulations."* See the July 2009 Update regarding a further amendment of ECCN 2B350 on July 6, 2009.

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Aug. 13, 2009: RF Micro Devices, Inc. of Greensboro, NC agreed to pay \$190,000 to settle a total of 41 charges by BIS of exporting without the required export license; acting with knowledge that a violation of the EAR was occurring, was about to occur, or was intended to occur; and making false statements on the Shipper's Export Declarations involving exports of spread-spectrum modems controlled under ECCN 5A001 to China. RF disclosed the violations voluntarily. *Also, see the following item regarding charges against an individual employee of RF involving false statements to BIS in the course of the investigation of these violations.*

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Aug. 13, 2009: Carol Wilkins of Summerfield, NC, an export control compliance manager at RF Micro Devices, Inc. (above), agreed to pay \$15,000 to BIS to settle charges filed by BIS against her personally of having made a false statement to BIS in the course of an investigation. Wilkins falsely told a BIS special agent that an outside export control consultant had advised her that all RF's products were classified as EAR99.

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Aug. 20, 2009: Eastways Shipping Corporation, a freight forwarder based in New York, NY, agreed to pay a \$70,000 penalty to settle charges that it had arranged for the export of scrap metal classified under as EAR99 and valued at \$95,335 to Allied Trading Company of Karachi, Pakistan. The shipment required an export license because Allied is included on the Entity List (Supp. No. 4 to EAR Part 744). Shipments to persons listed on the Entity List require an export license. Ironically, the entry for Allied on the Entity List specifies a presumption of approval for EAR99 items; however, Eastways committed a violation by shipping to Allied without obtaining the required license. Subsequent news reports indicated that the \$70,000 penalty might force Eastways to go out of business.

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Aug. 25, 2009 – *74 Fed. Reg. 42949*: The Department of State Directorate of Defense Trade Controls (DDTC) imposed statutory debarment on 53 entities that had been convicted of violating the Arms Export Control Act. Each of the debarments is effective for three years, beginning on the date of the entity's AECA conviction. A debarred person is prohibited from direct or indirect participation in any activity regulated by the International Traffic in Arms Regulations (ITAR). Reinstatement after the three-year debarment period requires an application and interagency review.

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Aug. 31, 2009: OFAC announced that Thermon Manufacturing Company of San Marcos, TX had remitted \$14,613.24 to settle allegations that it had violated the Sudanese Sanctions Regulations by engaging in and facilitating the export and/or reexport of heat tracing equipment, directly or indirectly, to Sudan. Thermon voluntarily disclosed the violations and reported corrective measures to its OFAC compliance procedures that it had taken in response to its discovery of the violations.