



FD ASSOCIATES, INC.

1950 Old Gallows Road
Suite 350
Vienna, VA 22182
Phone 703-847-5801
Fax 703-847-1523

Advisors in Export
Compliance and Licensing

EXPORT CONTROLS UPDATE February 2009

This newsletter is a summary of changes to US export control regulations or other regulatory matters of interest for the month of February 2009.

REGULATORY UPDATES

Department of Commerce

Feb. 10, 2009: The Bureau of Industry and Security (BIS) posted a notice reminding exporters of the procedure specified in Export Administration Regulations (EAR) Sec. 750.10 that must be used to transfer an export license. If the transfer is due to a corporate merger in which the licensee will cease to exist, the transfer must be requested prior to the effective date of the merger, since only the licensee can request the transfer.

Feb. 17, 2009: The Census Bureau revised its memorandum clarifying the requirements for filing information in the Automated Export System (AES) for exports to international waters (e.g., shipments to vessels or to offshore oil rigs or drilling platforms in waters outside the U.S. territorial sea). (*See November-December Update.*) The new version is at <http://www.census.gov/foreign-trade/regulations/ftletters/ftno3-shipments-to-iw-revised.html>.

Feb. 19, 2009 – *74 Fed. Reg. 7658*: BIS extended the period during which the public is invited to comment on the effects of export controls on decisions to use or not use U.S.-origin parts and components in commercial products, and the effects of such decisions. The new deadline is April 20, 2009. This may be an opportune time to be heard on this topic, in view of the National Academy of Sciences report concluding that current export controls do not meet today's needs (*see January 2009 Update*) and the possibility that the Obama Administration may pursue new export control legislation.

Feb. 20, 2009: BIS posted on its website a completely redesigned Export Compliance Audit Module Self-Assessment Tool. The Tool is intended to be used both in the development of a new Export Management and Compliance Program and in assessing whether an exporter has implemented appropriate internal controls. In addition to a detailed audit questionnaire, the Tool includes a Pre-audit Checklist and a Post-audit Checklist. This important new document is on the BIS web site at http://www.bis.doc.gov/complianceandenforcement/emcp_audit.pdf.

Feb. 24, 2009 – *74 Fed. Reg. 8182*: BIS removed Britestone of Hong Kong from the Entity List, based on Britestone's request that the End-User Review Committee remove it from the list, its cooperation with the U.S. government, and its assurances of future compliance with the EAR. In the same announcement, BIS also corrected the addresses on the Entity List of Antcorp System and Mohd Ansari, both of Penang and Kuala Lumpur, Malaysia.

FD ASSOCIATES, INC. - EXPORT CONTROLS UPDATE

Department of State

Feb. 2, 2009: The Directorate of Defense Trade Controls (DDTC) posted notices about the following changes in name, corporate ownership, etc:

- Northrop Grumman Ship Systems, Inc. to Northrop Grumman Shipbuilding, Inc.
- Newport News Shipbuilding & Dry Docks Company to Northrop Grumman Shipbuilding, Inc.

Requirements for licenses and agreements involving these companies are at http://www.pmddtc.state.gov/licensing/documents/WebNotice_NGShip.doc and http://www.pmddtc.state.gov/licensing/documents/WebNotice_NewportNews.doc.

Feb. 5, 2009: DDTC published a comprehensive, 15-page draft, "Aircraft and Associated Equipment License Guidance," at http://www.pmddtc.state.gov/licensing/documents/Aircraft_Guidelines.doc. Comments and suggestions are invited and can be sent to MisbinKS@State.gov and McPhersonEA@State.gov. A final edition is to be issued March 27, 2009.

Feb. 10, 2009: DDTC posted a 13-page report on actions taken by the Department of State in FY 07 to implement the "Blue Lantern" program in which it monitors on-site the end use of commercially exported defense articles and defense services. Twenty-three percent of the 634 Blue Lantern cases closed in FY 07 resulted in an "unfavorable" finding. The report is at http://www.pmddtc.state.gov/reports/documents/End_Use_FY2007.doc.

SANCTIONS

Department of Commerce

Feb. 2, 2009 – *74 Fed. Reg. 5812, 5814, and 5815*: BIS issued 20-year denial orders against Elecmat, Inc., of San Francisco, CA, Well Being Enterprise Co., Ltd. of Taipei, and Taiwan Hui-Fen Chen (a.k.a. Angela Chen) of Taipei, Taiwan, an employee of Well Being. Well Being also was assessed a civil penalty of \$250,000, with all but \$30,000 suspended. All three participated in a scheme whereby Elecmat, upon instructions from Well Being, procured controlled chemicals, metals, and electronic components without informing the U.S. suppliers that the items would be exported, and then exported them to Well Being without the required export licenses. The denial order against Elecmat applies to all items subject to the EAR. The denial orders against Well Being and Chen apply to all items listed on the Commerce Control List (CCL).

Feb. 5, 2009 – *74 Fed. Reg. 6134*: BIS issued a 2-year denial order against Theresa Huei-Min Chang of Cupertino, CA in connection with the same scheme that involved Elecmat, Chen, and Well Being. Chang was the former manager of Elecmat. The denial order against Chang applies to all items listed on the CCL. Chang had previously pleaded guilty to making a false statement to the BIS Office of Export Enforcement in connection with the investigation, and had been sentenced to three years probation and a \$5,000 criminal fine.

Feb. 6, 2009 – *74 Fed. Reg. 6265*: BIS issued a 180-day temporary denial order against Islamic Republic of Iran Shipping Lines and Tadbir Sanaat Sharif Technology Development Center, both of Tehran, Iran, and Icarus Marine (Pty) Ltd. of Cape Town, South Africa.

FD ASSOCIATES, INC. - EXPORT CONTROLS UPDATE

Department of State

Feb. 2, 2009– *74 Fed. Reg. 5881, 5882 and 5883*: The Bureau of International Security and Nonproliferation (BISN) imposed sanctions on certain North Korean, Chinese and Iranian entities:

- Korea Mining and Development Corporation (KOMID) (No. Korea)
- Moksong Trading Corporation (No. Korea)
- Sino-Ki (No. Korea)
- Shahid Bakeri Industrial Group (Iran)
- Dalian Sunny Industries, a/k/a/ LIMMT (China)
- Shahid Bakeri Industrial Group (Iran)
- Bellamax (China)
- Shahid Hemmat Industrial Group (Iran)

Accordingly, for a period of 2 years all existing approvals for export or re-export of defense articles to these entities are suspended, and it is the policy to deny all applications for exports of defense articles or defense services to them.

Feb. 19, 2009 – *74 Fed. Reg. 7733*: DDTC terminated the statutory debarment of Electrodyne Systems Corporation, now AdComm, Inc., based on a finding that AdComm has taken appropriate steps to address the causes of the violations and to mitigate any law enforcement concerns.

FINES & PENALTIES

Jan. 20, 2009: Jeffrey Weiss of Yonkers, NY, pled guilty in U.S. District Court for the Southern District of New York to making false statements on Shipper's Export Declarations (SEDs) related to the illegal export of medical equipment to Iran through the United Arab Emirates (UAE). Weiss' associate, Behram "Ben" Meghazehe, who pled guilty earlier, was sentenced in October 2008 to 5 years of probation, a \$2,000 criminal fine, 6 months home confinement, and a \$100 special assessment. (*See Nov.-Dec. 2008 Update.*)

Jan. 30, 2009: James Gribbin, former sales manager for Oyster Bay Pump Works of Hicksville, NY, was sentenced in U.S. District Court in the Eastern District of New York to 3 years of probation and a special assessment of \$100. Gribbin had pled guilty to conspiracy to violate the International Emergency Economic Powers Act and the EAR in connection with an attempt to export laboratory equipment worth approximately \$300,000 to Iran via the UAE. Patrick Gaillard, President of Oyster Bay Pump Works, who earlier pled guilty to conspiracy in the same attempted export, was sentenced in May 2008 to 30 days in prison, a \$25,000 criminal fine, three years of probation, and a \$100 special assessment.

Feb. 3, 2009: Timothy Oldani of Scott Depot, WV, and Joseph Oldani of Camp Lejeune, NC, pleaded guilty in U.S. District Court for the Southern District of West Virginia to conspiring to steal high-grade military optics and illegally export them. Joseph Oldani admitted to stealing the optics from his U.S. Marine Corps duty station while on duty with the U.S. Marine Corps and transporting them to Timothy Oldani, who subsequently sold them on the Internet and delivered them to purchasers in Hong Kong, Japan, and Taiwan. Federal agents reportedly discovered the optics – which are not available on the public market – for sale on EBay, made several purchases, and had them delivered to an undercover mailbox. Upon sentencing, the brothers will each face up to 60 months in prison and a \$250,000 fine.

FD ASSOCIATES, INC. - EXPORT CONTROLS UPDATE

Feb. 12, 2009: Ameri-Source Inc. of Bethel Park, PA agreed to pay a civil penalty of \$11,500 to settle charges in connection with a false statement on an SED and other export control documents. Thomas J. Diener, the director of Ameri-Source, agreed to pay a separate civil penalty of \$11,500. In information provided to a freight forwarder, an Ameri-Source employee falsely represented the item being exported, and Ameri-Source also forged a mill certificate to document the false representation. The forwarder filed a false SED due to the actions of Ameri-Source and its employees.

Feb. 13, 2009: Yaming Nina Qi Hanson of Silver Spring, MD was charged in District of Columbia Federal District Court with violating IEEPA by exporting miniature autopilots for unmanned aerial vehicles to China without the required authorization. Qi Hanson reportedly claimed that the autopilots were to be used by model airplane enthusiasts. If convicted of the charge, Qi Hanson faces a maximum sentence of 20 years in prison and/or a \$1,000,000 fine.

Feb. 23, 2009: Zhi Yong Guo, a Chinese national resident in Beijing, was convicted in federal court in Los Angeles of conspiracy and attempted illegal exports of dual-use thermal imaging cameras. Guo and an accomplice, Tah Wei Chao, were arrested in 2008 at Los Angeles International Airport as they tried to board an airplane to China with 10 controlled thermal imaging cameras in their luggage. Guo will be sentenced on May 11. Chao pleaded guilty in July 2008 and will be sentenced on March 16, 2009. (*See July Update.*)

Feb. 24, 2009: Bing Xu, a manager of Everbright Science and Technology in Nanjing, China, pleaded guilty to conspiring to export military-grade night vision technology to China without the required authorization. Xu has been in custody since the fall of 2007. He admitted that after an export license was denied, he and other Everbright employees tried to obtain the equipment in order to export it illegally. In the process, they sent more than \$14,000 to an undercover agent posing as a supplier.