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EXPORT CONTROLS UPDATE January 2009

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

REGULATORY UPDATES

The President

Dec. 30, 2008: President Bush signed the Additional Protocol (AP), an agreement between the U.S. and the International Atomic Energy Agency (IAEA), increasing the authority of IAEA inspectors to verify nuclear activities in the U.S. The Departments of Commerce, Energy, and Defense and the Nuclear Regulatory Commission will implement the AP. (*See Nov.-Dec. Update for Commerce Department regulations issued to implement the Additional Protocol.*)

National Academy of Sciences

Jan. 8, 2009: The National Academy of Sciences released a report, "Beyond Fortress America: National Security Controls on Science and Technology in a Globalized World," concluding that current export control regulations were designed for a world that no longer exists, are unsuitable for today's adversaries, and may negatively impact U.S. competitiveness and national security. Read this report, whose authors include many well-known names, at www.nap.edu/catalog.php?record_id=12567.

Department of Commerce

Jan. 5, 2009 – 74 Fed. Reg. 263: The Bureau of Industry and Security (BIS) requested comments on whether U.S. export controls affect foreign manufacturers' decisions to use U.S. parts and components in their commercial products. BIS especially desires specific information such as sales lost to foreign competitors and instances of marketing efforts highlighting the absence of U.S. components. Comments are due Feb. 19, 2009.

Jan. 6, 2009 – 74 Fed. Reg. 413: BIS requested comments on the impact of a possible revision to Export Administration Regulations (EAR) Section 736.2(b)(3) that would tighten U.S. export license requirements on foreign-produced direct products of U.S.-origin encryption technology and software products (not including "mass market" software classified under Export Control Classification Number (ECCN) 5D992). Comments are due March 9, 2009.

Jan. 8, 2009 – 74 Fed. Reg. 770: BIS expanded existing license requirements for exports to Burma to include persons whose property and interests in property were blocked by Executive Order 1364 (73 Fed. Reg. 24489, May 2, 2008).

Jan. 12, 2009: BIS issued an advisory opinion stating that software and technology related to avionics displays that employ techniques used to make a two-dimensional image appear as three-dimensional are

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categorized as EAR99. The issue in the opinion was whether such software and technology might be controlled in the same way as actual three-dimensional software and hardware, which are categorized as ECCN 7D003.d.7 and 7E004.a.3, respectively. The advisory opinion is available at http://www.bis.doc.gov/policiesandregulations/advisoryopinions/jan12_2009_avionics_display_software.pdf.

Jan. 13, 2009: BIS announced that it will fully implement the Validated End User (VEU) program for China, having reached agreement with China on “procedures to ensure the program’s secure and efficient operation.”

Jan. 15, 2009 – *74 Fed. Reg. 2355*: BIS amended EAR Parts 742 and 746 to add a license requirement for re-exports of items in ten ECCNs to Iran and added a new EAR Section 744.8 to impose licensing requirements on exports and reexports to parties identified with the suffix [NPWMD] on the Specially Designated Nationals List maintained by the Treasury Department Office of Foreign Assets Control (OFAC).

Jan. 27, 2009: BIS announced plans to establish a webpage where sources of public information on commodity classifications can be found. Companies that want to have their information accessible via the new BIS website are invited to send BIS information about where their classification information can be found. The BIS announcement is at <http://www.bis.doc.gov/commodityclassificationpage.htm>.

Department of State

Jan. 6, 2009: The Directorate of Defense Trade Controls (DDTC) updated the agreements guidance it had posted on Dec. 8, 2009, about foreign persons’ sub-licensing U.S. suppliers. The revised guidance is at http://www.pmdrtc.state.gov/licensing/documents/WebNotice_USSublicensing.doc. Related FAQs are at http://www.pmdrtc.state.gov/faqs/documents/FAQs_sublicensing.pdf.

Jan. 30, 2009: DDTC published a summary of changes it has made in the Guidelines for Preparing Agreements. Many of the changes are significant, including authorizing the combination of the value of defense services and technical data, guidance on transfers to contract employees, guidance on licensing foreign national employees of U.S. persons, and guidance on the use of ITAR § 124.16 (special retransfer authorizations for NATO and specified others). An updated revised edition of the entire Guidelines document and a summary of the changes made to the guidelines are at <http://www.pmdrtc.state.gov/licensing/agreement.html>.

Jan. 30, 2009: DDTC posted a notice pertaining to change in name, corporate ownership of Eaton Aeroquip Inc. to Eaton Aeroquip LLC and the impact on any licenses and agreements involving Eaton Aeroquip. See the DDTC notice at <http://www.pmdrtc.state.gov/licensing/documents/>.

Jan. 30, 2009: DDTC posted instructions to be followed when informing DDTC of a change in name, address, and/or registration code in a U.S. entity on a DSP license or agreement. The changes allow for a General Correspondence (GC) request on all licenses/agreements and include a requirement to provide information about all pending and current authorizations. Read the new instructions at http://www.pmdrtc.state.gov/licensing/documents/WebNotice_GCus.doc.

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Jan. 30, 2009: DDTC posted instructions that should be followed when informing DDTC of a change in name of a foreign entity. These instructions call for general correspondence authored by the foreign entity rather than the traditional method of submitting a replacement DSP authorization or DSP-119 depending on the reason for the name change. Read the new instructions at http://www.pmdtc.state.gov/licensing/documents/WebNotice_GCforeign.doc.

FINES & PENALTIES

Jan. 5, 2009: Qioptiq Group of Luxembourg agreed to pay \$25 million to settle charges by DDTC of 163 violations of the ITAR and the Arms Export Control Act (AECA). The violations involved sensitive night vision technical data. The alleged violations are a library of “don’ts” in export compliance. Qioptiq and its predecessor, Thales High Technology Optic Group, located in Singapore, apparently transferred ITAR-controlled technical data to employees who were nationals of countries other than (or in addition to) Singapore and to unlicensed subcontractors in Singapore and China and exported equipment and technical data to several foreign countries. Further, U.S. government investigators discovered emails demonstrating that the companies were indifferent, or worse, to proper observance of U.S. export controls.

Jan. 10, 2009: William Chi-Wai Tsu, a naturalized U.S. citizen living in CA, was arrested on charges that he had exported controlled amplifier circuits to China without the required export license. The illegal exports were discovered when Tsu tried to return them to the seller under circumstances that made the seller suspect that they had been exported.

Jan. 14, 2009: A BIS administrative law judge suspended the export privileges of Wayne LaFleur of Naples, FL for three years and fined him \$8,000 for exporting a vessel to Cuba without the required license. The incident involved participation in a regatta. LaFleur had obtained permission to sail to Cuba from the U.S. Coast Guard, but did not obtain the required export license from BIS.

Jan. 17, 2009: Michael Ming Zhang and Policarpo Coronado Gamboa, both of Orange County CA, were arrested on charges involving exporting controlled items to China without a license, trafficking in counterfeit goods, and conspiracy. The exported items were dual-use 602 MIC bus controllers and 5 SRAM chips. The trafficking charges involved counterfeit Cisco electronic components.

Jan. 26, 2009: Hassan Saied Keshari and his corporation, Kesh Air International, of Novato, CA pled guilty in Miami, FL federal court to charges of conspiring to illegally export military and commercial aircraft parts to Iran by way of freight forwarders in Dubai, United Arab Emirates. Charges in the case are still pending against Traian Bujduveanu and his company, Irion Aviation Corp. of Broward County, FL, the alleged supplier of the illegally exported parts for the F-14 Fighter Jet, the Cobra AH-1 Attack Helicopter, and the CH-53A Military Helicopter. None of the defendants had registered with DDTC as an exporter of ITAR-controlled items, and none of the exports were licensed. Keshari has been in federal custody since his arrest in June 2008 and will remain there until his sentencing, scheduled for April 8, 2009. Bujduveanu also is in federal custody, awaiting trial in May 2009.

Jan. 29, 2009: OFAC reported settlements of two export-related cases:

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- Stena Bulk L.L.C., a Houston, TX shipping company, paid \$426,486 to settle charges that it had violated the Sudanese Sanctions Regulations by providing services for the transportation of oil to Sudan and the exportation of Sudanese-origin oil without the required license from OFAC. Stena Bulk voluntarily disclosed the violations.
- Vonberg Valve, Inc. of Rolling Meadows IL paid \$11,049.50 to settle allegations that it had exported goods to Iran without the required license from OFAC. Vonberg did not make a voluntary disclosure, but did make improvements in its U.S. sanctions compliance program.