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## EXPORT CONTROLS UPDATE July 2008

*This newsletter is a summary of changes to US export control regulations or other regulatory matters of interest for the month of July 2008.*

### REGULATORY UPDATES

July 24, 2008 – 73 Fed. Reg. 43601: President Bush continued for another year, the national emergency declared annually since 2001 when the Export Administration Act expired. The declaration of national emergency is necessary in order to authorize continued enforcement of the Export Administration Regulations (EAR) under the authority of the International Emergency Economic Powers Act (IEEPA).

#### Department of Commerce

July 9, 2008 – 73 Fed. Reg. 38908: The Bureau of Industry and Security (BIS) amended the EAR to implement the agreements reached at the April 2008 plenary meeting of the Australia Group multilateral export control forum. The description of highly pathogenic avian influenza viruses in Commerce Control List (CCL) Export Control Classification Number (ECCN) 1C352.a.2 was revised; new fax numbers and addresses were provided in EAR Sections 745.1(a)(2), 745.1(b)(3), and 745.2(a)(2) for submissions required by the Chemical Weapons Convention (CWC); and Congo (Republic of the) and Guinea-Bissau were added to the list of states parties to the CWC in EAR Part 745, Supp. No. 2.

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July 9, 2008: BIS posted questions and answers (Q&As) on the effects of the President's removal of North Korea from the State Sponsor of Terrorism list. Essentially, the Q&As state that the President's announcement will not have any short-term effects on export controls to North Korea. Controlled items and EAR 99 items other than food and medicine continue to require an export license.

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July 24, 2008 – 73 Fed. Reg. 43567: BIS proposed regulations to implement the provisions of the "Additional Protocol," an agreement with the International Atomic Energy Agency (IAEA) to allow monitoring and reporting of certain civil nuclear fuel cycle-related activities. The BIS regulations would primarily affect U.S. industry and certain other U.S. persons engaged in activities that are not regulated by the U.S. Nuclear Regulator Commission (NRC). The new requirements would involve reporting to BIS and granting access to the IAEA. Comments are due by August 25, 2008.

This newsletter is provided as a service to our clients and is not intended to replace the ITAR or EAR as a reference source. If you have questions concerning the correct interpretation of the regulations please call us at (703) 847-5801.

## FD ASSOCIATES, INC. - EXPORT CONTROLS UPDATE

### Department of Defense

July 21, 2008 – *73 Fed. Reg. 42274*: The Department of Defense (DoD) amended the Defense Federal Acquisition Regulation Supplement (DFARS) to add contract clauses expressly recognizing contractor responsibilities to comply with Commerce Department and State Department export control regulations and requiring contractors to flow-down export control requirements to subcontractors that have access to, or generate, export-controlled items. This important rule is effective immediately.

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July 21, 2008 – *73 Fed. Reg. 41258*: DDTC revised the registration requirements for manufacturers and exporters of defense articles or defense services, effective immediately, to limit the registration period for all registrants to one year. The new rule, which amends Sec. 122.3 of the International Traffic in Arms Regulations (ITAR), also requires registrants to submit renewal packages to DDTC no less than 30 days, but not more than 60 days, prior to the expiration date of their current registration.

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July 28, 2008 – *73 Fed. Reg. 43653*: DDTC proposed amendments to ITAR Parts 122 and 129 that would create a higher registration fee for manufacturers, exporters, and brokers. The new fee would be in three tiers:

- \$2,250 for new registrants and for registrants who have not submitted any license applications during the 12 months ending 90 days before the expiration of their current registration;
- \$2,750 for registrants who submitted 10 or fewer applications during the same base period;
- \$2,750 plus \$250 for each application over 10 that the registrant submitted during this period.

There are certain exceptions: Universities and other registrants that are exempt from tax under Sec. 501(c)(3) and registrants whose fee would otherwise exceed 3% of the total value submitted during the 12-month base period would pay \$2,750. The notice indicates that the new fees are part of DDTC's effort to become partially self-financing, as President Bush directed. Comments are due by August 27, 2008.

## SANCTIONS

### Department of Commerce

July 1, 2008 – *73 Fed. Reg. 37407*: Effective immediately, BIS waived a denial order that it imposed on Omega Engineering, Inc. of Stamford CT, thereby shortening the denial period by almost 6 months. BIS stated that it was waiving the remainder of the denial order because of Omega's "extraordinary cooperation" in a criminal investigation involving unlawful exports to Iran. Omega's cooperation "helped enable BIS to obtain evidence that was crucial to the investigation and successful prosecution of that criminal matter."

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July 8, 2008 – *73 Fed. Reg. 38971*: BIS imposed a five-year denial of export privileges on Reza Mohammed Tabib of Winchester, CA and related person Terri Tabib following Reza M. Tabib's guilty plea and conviction for willfully attempting to export aircraft parts, including F-14 maintenance kits, and transship them to Iran, without obtaining the required export license from the Treasury Department Office of Foreign Assets Control (OFAC). Reza M. Tabib was sentenced on May 8, 2007 to 24 months of imprisonment followed by 3 years of supervised release. BIS also revoked any export licenses in which Mr. Tabib had an interest at the time of his conviction.

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## FD ASSOCIATES, INC. - EXPORT CONTROLS UPDATE

July 17, 2008 – 73 Fed. Reg. 42544: BIS modified its June 6, 2008 Temporary Denial Order against Ankair, a Turkish charter airline, to increase its scope to cover all exports and re-exports of items subject to the EAR. Previously, the TDO applied only to transactions involving a Boeing 747 cargo jet that Ankair had sought to send from Turkey to Iran without the required authorization.

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July 24, 2008 -- 73 Fed. Reg. 43208: BIS added related persons Blue Airways FZE and Blue Airways, both of Dubai, United Arab Emirates (UAE), to the temporary denial order it had issued on March 17, 2008, against Balli Group PLC of London, United Kingdom, and other parties.

### **Department of the Treasury**

July 9, 2008: OFAC posted a summary, guidance, and legal source information on the Iraq Sanctions. Links are provided to the guidance and sources that are listed.

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July 31, 2008: OFAC posted a summary, guidance, and legal source information on the Sudan sanctions. Links are provided to the guidance and sources that are listed.

### **FINES & PENALTIES**

June 17, 2008: The Boeing Company of Chicago, IL agreed to pay \$3 million in civil penalties to settle 40 violations of the Arms Export Control Act (AECA) and ITAR that were alleged by DDTC. Boeing also agreed to take remedial measures including additional training for employees involved in Technical Assistance Agreements (TAAs) and Manufacturing License Agreements (MLAs); continued implementation of an automated export compliance system; and multiple audits conducted by outside consultants on the effectiveness of Boeing's corrective actions. The violations alleged by DDTC included manufacture of hardware by foreign signatories to manufacturing license agreements far in excess of the approved amounts and failure to submit timely required documents and necessary amendments. As a result of some of these violations, required reports to Congress were not made.

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July 3, 2008: Thirty-two computers destined for Cuba were seized at the U.S./Mexico border in McAllen, TX, from a convoy sponsored by U.S. Pastors for Peace. The computers did not have the required OFAC export licenses.

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July 10, 2008: Advanced Orientation Systems of Linden, New Jersey agreed to pay a fine of \$31,500 to settle charges by BIS that it shipped 11 inclination sensors to Mayrow General Trading Company in Dubai, UAE, without the required license. \$16,500 of the penalty will be waived if AOS commits no further violations for one year. *Note:* This penalty is an illustration of how critical it is to keep current with export regulations and to implement them diligently. The export to Mayrow was illegal because Mayrow is listed in General Order No. 3 in EAR Part 736, Supplement No. 1. This prohibition is relatively obscure, and it came into effect on June 5, 2006, only weeks before AOS exported the items in August 2006.

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## FD ASSOCIATES, INC. - EXPORT CONTROLS UPDATE

July 10, 2008: Riad Skaff, a naturalized U.S. citizen originally from Lebanon, was sentenced to two years in prison for using his position as a ground services coordinator at O'Hare International Airport in Chicago to help smuggle \$396,000 in cash and illegally export weapons scopes, military night vision goggles, and a cellular phone "jammer." Skaff was charged after facilitating several illegal exports that were actually requested by U.S. undercover agents during the course of a "sting" operation.

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July 11, 2008: Gregg William Bergersen of Alexandria, VA was sentenced to 57 months in prison and 3 years of supervised release for conspiracy to disclose national defense information to persons not entitled to receive it. Documents filed with Bergersen's plea agreement said that Bergersen, a Weapons Systems Policy Analyst at the Defense Security Cooperation Agency (DSCA) of the Department of Defense, provided national defense information mainly about U.S. military sales to Taiwan over a one-year period ending in February 2008 to Tai Shen Kuo of New Orleans, LA. Without Bergersen's knowledge, Kuo in turn passed the information to a Chinese government official. During this time, Kuo gave Bergersen dinners, trips, and money. Kuo pleaded guilty to conspiracy to deliver national defense information to a foreign government and was subsequently sentenced to 15 years in prison and forfeiture of \$40,000 on August 8, 2008. Another conspirator, Yu Xin Kang of New Orleans, LA, pleaded guilty to aiding and abetting an unregistered agent of a foreign government and was sentenced to 18 months in prison on August 2, 2008.

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July 15, 2008: Air Shunt Instruments Inc., which repairs and overhauls components of military aircraft in Chatsworth, CA, was sentenced to a criminal fine of \$250,000 following its guilty plea to making a false statement on a Shipper's Export Declaration (SED) in the U.S. District Court for the Central District of California. Air Shunt stated on the SED, that a gyroscope that it was shipping to Thailand did not require an export license, although in fact it was ITAR-controlled and did require an export license. Meanwhile, enforcement authorities are actively seeking Air Shunt's former vice president and international sales manager, John Nakkashian, who apparently fled the United States after being indicted in May 2007 for illegal exports of ITAR-controlled components for F-5 fighter jets and another military component to Dubai, as well as the gyroscope to Thailand.

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July 16, 2008: Select Engineering of Fitchburg, MS agreed to pay a fine of \$52,800 to settle charges by BIS involving an export of EAR-99 medical electrode sensor elements and stainless steel snap connectors to Iran via the UAE without the required authorization from OFAC. David Rainville, Select's vice president, agreed to pay a fine of \$35,200 to settle a charge of making false representations to a BIS agent during the investigation of the unlicensed export. Specifically, he allegedly told the agent that he had discussed the export with a BIS international trade specialist after the export, when in fact the specialist had informed him of the license requirement in an e-mail exchange prior to the export.

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July 17, 2008: Cryostar SAS of Hesingue, France was sentenced to a \$500,000 criminal fine and 2 years of probation after pleading guilty to conspiracy, export without a license, and attempted export without a license for its role in an unauthorized export of cryogenic submersible pumps to a petrochemical complex in Iran. (See fuller description of this case in April 2008 Update.)

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## FD ASSOCIATES, INC. - EXPORT CONTROLS UPDATE

July 17, 2008: Tah Wei Chao pled guilty in U.S. District Court in the Central District of California to conspiracy, unauthorized exports, and attempted unauthorized exports to China. After participating in the illegal export of 3 dual-use thermal-imaging cameras, Chao and codefendant Zhi Yong Gou were arrested at Los Angeles International Airport after 10 more cameras were found in their luggage

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July 28, 2008: Allied Telesis Labs of Raleigh, NC, a U.S. subsidiary of Japan's Allied Telesis K.K., was sentenced in U.S. District Court in the Eastern District of North Carolina to a \$500,000 criminal fine and 2 years of supervised probation after pleading guilty to conspiracy to export multiservice access platforms ("iMAPs") to Iran. Specifically, ATL and its related corporate entities conspired to win and execute a \$95,000,000 contract with the Iranian Information Technology Company (IRITCO) to rebuild and upgrade the telecommunications systems of approximately 20 Iranian cities, including Tehran. Under the conspiracy, the iMAPs would be manufactured in Singapore using US-origin software technology and then exported to Iran via the UAE. ATL proceeded far enough with the project to support a conviction for conspiracy even though the negotiations with Iran ultimately failed and the exports did not occur.

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July 28, 2008: Capt. Tomoaki Iishiba, an army officer stationed at Fort Lewis, WA, pleaded guilty in U.S. District Court in Seattle to providing false information on customs declarations to send firearms parts to Japan without the required export license. Iishiba, who recently served as an I Corps intelligence liaison to the Japanese military, admitted to purchasing 60 gun sights and sending them to individuals and business entities that he had met in Japan during his military career. Federal prosecutors acknowledged that Iishiba did not intend to threaten U.S. security or foreign policy interests and recommended a sentence of 3 years probation. The maximum sentence would be \$250,000 and 5 years in prison. Iishiba will be sentenced November 7, 2008.

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July 29, 2008: Doli Sharief Pulungan of Indonesia was sentenced to 4 years in federal prison for conspiring to violate the AECA by trying to purchase 100 rifle scopes for eventual shipment to Indonesia without the required export license. *Note:* This case illustrates the importance of paying attention to circumstances that indicate the possibility of an illegal proposed export. Pulungan offered to pay \$100,000 for rifle scopes that were actually worth only \$70,000. This may have been one of the circumstances that led the potential seller to report the request to the FBI.