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## LATEST EXPORT CONTROLS AND COMPLIANCE UPDATE

July 2009

*This newsletter is a listing of the latest changes in US export control regulations for the month of XX 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

#### Department of Commerce

June 30, 2009: The Bureau of Industry and Security (BIS) announced that effective October 1, 2009, it will tighten up the edits on the Electronic Export Information (EEI) reported in AES records. Details are in the BIS announcement at [http://www.bis.doc.gov/news/2009/bis\\_to\\_add\\_new\\_aes\\_edits\\_on\\_eccns.pdf](http://www.bis.doc.gov/news/2009/bis_to_add_new_aes_edits_on_eccns.pdf).

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July 1, 2009: BIS issued an advisory opinion regarding Export Control Commodity Number (ECCN) 1A007, covering certain explosive detonators and their firing sets. The opinion holds that in the License Requirement Note stating that "ECCN 1A007 does not apply to equipment when accompanying its operator," BIS interprets the word "operator" to apply to "any agent of the exporting company, including a contract carrier or an employee of the export license applicant, ultimate consignee, or end-user."

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July 2, 2009 – 74 Fed. Reg. 31620: BIS amended Supplement No. 7 to Part 748 of the Export Administration Regulations (EAR) to designate General Electric India as the first Validated End-User (VEU) in India, and to identify the items that are eligible for export and reexport to various GE India facilities under Authorization VEU. (See June 2009 Update for BIS' announcement that General Electric India will be the first VEU in India.)

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July 6, 2009 – 74 Fed. Reg. 31850: BIS amended the EAR to implement decisions made by the Australia Group in October 2008. Important changes include a revision of ECCN 2B350.g (certain valves used in chemical manufacturing); addition of a new ECCN 2D351 (dedicated software for toxic gas monitoring systems and their dedicated detecting components controlled under ECCN 2B351); addition of the Bahamas, Dominican Republic, Iraq, and Lebanon to the list of States Parties to the Chemical Weapons Convention; and changes reflecting changes to the AG "Guidelines for Transfers of Sensitive Chemical or Biological Items."

*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 or email us at [info@fdassociates.net](mailto:info@fdassociates.net).*

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

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July 8, 2009: BIS released its Annual Report to the Congress for Fiscal Year 2008. This report contains many details about BIS operations in FY 2008 including, among others, regulatory changes, summaries and tables of closed export enforcement cases, and applications approved for Country Group D:1 and Cuba. A link to the Annual Report is on the BIS home page, [www.bis.doc.gov](http://www.bis.doc.gov).

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July 21, 2009 – 74 Fed. Reg. 35797: BIS added thirteen persons to the Entity List (EAR Part 744, Supp. No. 4) and removed 3 persons.

Persons added to the Entity List are:

Germany:

- Christof Schneider, Wermelskirchen, Germany;
- Hans Werner Schneider, Wermelskirchen, Germany
- Schneider GMBH, Wermelskirchen, Germany

Hong Kong:

- Able City Development Limited, Wanchai, Hong Kong
- Sik Yin Ngai, a.k.a., Spencer Ngai, Kowloon, Hong Kong
- Siu Ching Ngai, a.k.a., Terry Ngai, Wanchai, Hong Kong
- Sysdynamic Limited, Shatin, New Territories, Hong Kong
- Tam Shue Ngai, Wanchai, Hong Kong.

Ireland:

- Mac Aviation Group, a.k.a., Mac Aviation Limited, County Sligo, Ireland
- Mac Aviation Nigeria, County Sligo, Ireland
- Sean Byrne, County Sligo, Ireland
- Sean McGuinn, County Sligo, Ireland
- Thomas McGuinn a.k.a., Tom McGuinn, County Sligo, Ireland

Persons removed from the Entity List are:

- Karachi CBW Research Institute, University of Karachi's Hussein Ebrahim Jamal Research Institute of Chemistry (HEJRIC), Pakistan
- Feroz Jafar, Abu Dhabi, U.A.E.
- Telectron, Abu Dhabi, U.A.E.

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### Department of State

July 2, 2009 – The Directorate of Defense Trade Controls (DDTC) posted an announcement and Q&As on its website about electronic agreement submissions. In the current, initial phase of the transition to electronic submissions of agreements, a few firms have been invited to submit agreements electronically. DDTC anticipates making electronic submission available to all applicants by about October 1, 2009, and mandatory by Spring 2010.

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July 10, 13, and 24, 2009 – DDTC's home page announced the following corporate name changes:

Hawker de Havilland Aerospace Pty Limited to Boeing Aerostructures Australia Pty Limited  
MacDonald, Dettwiler and Associates, Ltd. (MDA Ltd) to MDA Systems Ltd.  
Thales MESL Limited to MESL Microwave Limited.

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Airbus UK Ltd. to Airbus Operations Ltd.  
Airbus Holding S.A.S. to Airbus Operations S.A.S.  
Airbus Espana S.L. to Airbus Operations S.L.  
Airbus Deutschland GmbH to Airbus Operations GmbH

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

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July 20, 2009 – *74 Fed. Reg. 35115*: DDTC amended Category XII(c) of the U.S. Munitions List (USML) to correct an error in a recent correction (April 24, 2009 – *74 Fed. Reg. 18628*). This latest correction replaces the erroneous word “hold” with the word “hole” in the Special Definition in the Note following Paragraph XII(c).

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July 21, 2009: As a consequence of an agreement between the U.S. and India that effectively changed U.S. policy to permit the launch of civil or non-commercial satellites containing ITAR-controlled components on Indian space launch vehicles, DDTC published new documentation requirements for applications to export or retransfer USML Category XV satellites or components for incorporation into satellites destined for launch from India. Commercial satellites will continue to be subject to a presumption of denial, while hybrid commercial satellites containing non-commercial payloads will be reviewed on a case-by-case basis. This DDTC announcement is at <http://www.pmdtc.state.gov/licensing/documents/WebNoticeIndiaLaunch.doc>.

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July 21, 2009: DDTC requested that applicants for exports of USML Category VIII unmanned aerial vehicles (UAVs) and Inertial Measurement Units (IMUs) include specific language on their applications. The requested language is at <http://www.pmdtc.state.gov/licensing/documents/WebNoticeUAV-IMU.doc>.

### **Department of the Treasury**

July 9, 2009 – *74 Fed. Reg. 33016*: The Treasury Department identified the following countries that may participate in the boycott of Israel: Kuwait, Lebanon, Libya, Qatar, Saudi Arabia, Syria, United Arab Emirates, and Yemen. As in prior lists, the announcement noted that Iraq is not included in this list, but its status with respect to future lists remains under review.

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July 13, 2009: The Office of Foreign Assets Control (OFAC) updated information on the Cuba sanctions on its web site. These materials include an overview of the sanctions and a list of applicable laws and regulations. The web site is at <http://www.treas.gov/offices/enforcement/ofac/programs/cuba/cuba.shtml>.

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July 30, 2009: OFAC updated its guidance on the Iran Sanctions. The updated guidance, including Q&As, is at <http://www.treas.gov/offices/enforcement/ofac/programs/iran/iran.shtml>.

**LATEST EXPORT VIOLATIONS, FINES, PENALTIES, AND SANCTIONS**  
**July 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).*

July, 2009: Chi Tong Kuok, a Chinese citizen resident in Macau, was indicted for violations of the Arms Export Control Act (AECA) involving the attempted export of a General Dynamics KG-175 Taclane Encryptor to Kuok at his address in Macau. Kuok became the subject of an undercover investigation in 2006 after he tried to purchase a device used for encrypted military satellite communications from a contact in the U.S. defense industry. The defense industry contact referred him to an undercover agent who pursued the sale. Kuok was arrested when he stopped in Atlanta en route from Macau to Panama, where the device was to be delivered to him. An investigation later revealed that Kuok had been purchasing export-controlled items for export to China over eBay since 2005.

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July 8, 2009: Air Shunt Instruments, Inc. of Chatsworth, CA and the Directorate of Defense Trade Controls agreed to settle 4 violations involving unauthorized exports and misrepresentation and omission of facts on an export control document. Air Shunt was assessed a civil penalty of \$100,00, of which \$70,000 will be suspended on the condition that it had applied that amount to self-initiated remedial compliance measures prior to the Consent Agreement, and the remaining \$30,000 will be suspended on the condition that it be applied to remedial compliance measures specified in the Consent Agreement.

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July 13, 2009: Bruker AXS Inc. of Madison, WI agreed to pay a civil fine of \$7,500 based on its voluntary disclosure that it had exported an EAR 99 X-ray system to the CBW Research Institute at the University of Karachi's Hussein Ebrahim Jamal Research Institute of Chemistry (HEJRIC) without the export license that was required because HEJRIC was on BIS' Entity List. (*See this month's Regulatory Update: HEJRIC was removed from the Entity List on July 21, 2008.*)

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July 16, 2009: Dongfan "Greg" Chung of Orange County, CA was convicted of conspiracy to commit economic espionage to benefit a foreign country, by acting as an unregistered agent of the People's Republic of China, and making false statements to the FBI. Chung was the first person tried under a 1996 federal law that prohibits theft of trade secrets for the benefit of a foreign government. Chung was a long-time former employee of Rockwell International and Boeing. At his trial the Government proved that Chung had taken and concealed Boeing trade secrets relating to the Space Shuttle and the Delta IV rocket for the benefit of the PRC. The case against Chung arose out of the investigation of Chi Mak, an engineer who is currently serving a 24-1/2-year prison sentence for providing defense articles to the PRC.

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

July 24, 2009: BIS published an order staying the enforcement of its May 26, 2009 order that imposed a \$126,000 civil penalty and a 5-year denial of exports on Micei International of Skopje, Macedonia. (*See May 2009 Penalties Update.*) Enforcement will be stayed pending consideration of an appeal by Micei.

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July 30, 2009: The U.S. District Court in Knoxville, TN released retired professor J. Reece Roth on bond while he pursues an appeal of his conviction and sentencing in a deemed export case involving plasma technology for use on an unmanned aerial vehicle. (*See June 2009 Penalties Update.*) The district court judge granted Roth's request for release on bond based on his finding that there were substantial questions of law that when appealed might lead to a new trial and/or a reduction in Roth's sentence to less than the expected duration of the appeals process.

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July 31, 2009: The U.S. Treasury Department Office of Foreign Assets Control announced that MGE UPS Systems, Inc. (now known as American Power Conversion Corporation) of Costa Mesa, CA paid a civil fine of \$10,341 for violating the Cuban Assets Control Regulations. MGE had sold electrical regulators that were ultimately destined for Cuba.