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Advisors in Export
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LATEST EXPORT CONTROLS AND COMPLIANCE UPDATE

June 2009

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

May 5, 2009: The European Union issued a new dual-use regulation, Council Regulation 428/2009, that will completely replace the current dual-use regulation (Council Regulation 1334/2000), effective August 27, 2009. The most significant changes are introduction of transit controls; imposition of brokering controls, including a broad definition of brokering; new types of licenses; and updating of the dual-use control list. The new transit and brokering controls are obligatory regarding items on the control list that are intended for Weapons of Mass Destruction (WMD) end uses, and at national option for non-listed items for WMD end uses. The full text of the re-cast regulation is at http://trade.ec.europa.eu/doclib/docs/2009/june/tradoc_143390.pdf.

U.S. Federal Courts

June 15, 2009: The U.S. Court of Appeals for the Seventh Circuit overturned the conviction of Doli Syarief Pulungan for attempted unlicensed exports of rifle scopes to Indonesia in violation of the Arms Export Control Act (AECA). (See July 2008 Update.) The court interpreted the AECA to say that while the decision of the State Department's Directorate of Defense Trade Controls ("DDTC") to put a category of items on the U.S. Military List (USML) is non-reviewable, the determination by DDTC that a particular item falls within a USML category is subject to judicial review. Further, the court held that since DDTC had not made a public determination that a rifle scope is a USML item, the prosecution would be unable to prove that Pulungan knew that the rifle scopes that he attempted to export to Indonesia required an export license. While this decision by a federal court is precedent only in the Seventh Circuit (Illinois, Indiana, and Wisconsin), it is likely to be influential in decisions in other circuits as well.

Department of Commerce

June 17, 2009: The Bureau of Industry and Security (BIS) announced that General Electric India (GE India) has been designated as a Validated End-User (VEU). VEU status will enable GE India to receive specified controlled items including civilian aircraft technology and explosive detection equipment without the individual validated licenses that would otherwise be required. GE India is the first Indian company to achieve VEU status. Similar to the VEUs that have already been designated in China, GE

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.

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India agreed to accept enhanced compliance requirements including periodic record reviews and discretionary on-site reviews by U.S. government personnel.

June 25, 2009: BIS announced that the Update 2009 Conference will be held in Washington, DC from September 30 – October 2. Registration is a 2 step process: prior to registration, between June 25 and July 17, you must submit an online “Interest Form”. See the BIS website at http://www.bis.doc.gov/seminarsandtraining/2009_update.htm for more information.

Nuclear Regulatory Commission

June 23, 2009 – 74 Fed. Reg. 29614: The Nuclear Regulatory Commission proposed to amend its regulations governing the export and import of nuclear equipment and material. The amendments would update, clarify, and correct several provisions to improve the regulatory framework for the export and import of nuclear equipment and material and radioactive waste. Deadline for comments is Sep. 8, 2009.

Department of State

June 15, 2009: The Directorate of Defense Trade Controls (DDTC) announced that effective immediately it will RWA (return without action) all applications for the export of rifles to Thailand that are classified as USML Category I(a) items with calibers of .223, .30-06, .308, and .338, or equivalent. The Thai Government informed the U.S. Embassy in Bangkok that from June 1–November 30, 2009, Thai registrars are prohibited from issuing permits to possess or use rifles meeting those criteria.

June 19, 2009: DDTC announced the following name changes:

>“Hispano Suiza Regulation Systems Division” to “Snecma SA”

>“Persides Limited” to “Persides Consultancy Services Limited”

Similar to other name changes that have been announced on the DDTC website, pending applications using the former names will be adjudicated without prejudice; new applications received after August 1 that identify the old name as a party may be RWA’d; and currently approved agreements require an amendment to reflect this name change that DDTC will treat as a minor amendment per 22 CFR 124.1(d).

June 25, 2009: DDTC posted on its website a 49-page report from the Defense Trade Advisory Group (DTAG) proposing new and revised definitions to be included in the ITAR. The proposals cover important ITAR terms such as a changed definition of “defense article” and new definitions of “normal commercial use” and “specially designed.” Links to this report and a report on proposed new priorities for DTAG are on the DDTC home page, www.pmdtcc.state.gov.

Department of the Treasury

June 10, 2009 – 74 Fed. Reg. 27434: The Office of Foreign Assets Control (OFAC) amended the Sudanese Sanctions Regulations to expand the scope of an existing authorization of certain imports for diplomatic or official personnel. The revised scope will allow provision of goods or services in the United States to the diplomatic missions of the Government of Sudan to the United States and the United Nations, and to the employees of such missions, subject to certain conditions.

June 19, 2009: OFAC updated its guidance on sanctions against North Korea. The new guidance titled “North Korea – What You Need To Know About Sanctions” is on the OFAC website at www.treas.gov/offices/enforcement/ofac/programs/nkorea/nkorea.pdf.

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June 23, 2009 – *74 Fed. Reg. 29741*: OFAC published an updated Appendix A to the Foreign Assets Control Regulations (31 CFR chapter V) reflecting changes in its Alphabetical Listing of Blocked Persons, Blocked Vessels, Specially Designated Nationals, Specially Designated Terrorists, Specially Designated Global Terrorists, Foreign Terrorist Organizations, and Specially Designated Narcotics Traffickers that have been made since the last publication of the full list. This update also incorporates other changes that have been made in the sanctions programs administered by OFAC.

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LATEST EXPORT VIOLATIONS, FINES, PENALTIES, AND SANCTIONS

June 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.*

May 7, 2009: Gulf International Bank of New York, NY agreed to pay a civil penalty of \$49,850 to settle charges by BIS that it had violated the antiboycott provisions of the EAR, by furnishing information about business relationships with boycotted countries, failing to report the receipt of a request to engage in a boycott, and failing to maintain records.

June 11, 2009 – 74 Fed. Reg. 27773: The Commerce Department denied the export privileges of Ghassan Tabbaa of Bonita Springs, FL for 5 years based on his guilty plea and conviction of knowingly and willingly violating the embargo against Syria by attempting to export two Mercedes Benz automobiles to Syria via the Lebanese Republic without the required export license and for making a false statement. Tabbaa had been sentenced in the U.S. District Court for the Southern District of Florida to 4 days in prison (with credit for time served), 6 months of home confinement, a \$200 special assessment, and confiscation of one Mercedes Benz.

June 11, 2009: Traian Bujduveanu was sentenced in Miami, FL federal court to 35 months in prison followed by 3 years of supervised release for his part in a conspiracy to export aircraft parts to Iran by transshipping them through Dubai. Mr. Bujduveanu has been held in federal prison since his arrest in June 2008. Bujduveanu and his company, Orion Aviation of Plantation, FL, were participants in the same scheme for which Hassan Saied Keshari was sentenced to a 17-month prison term last month. (See May 2009 Update.)

June 15, 2009: Delphi Corporation of Troy, MI agreed to pay a civil penalty of \$50,000 to settle charges by BIS of unlicensed exports of triethanolamine, an item controlled under Export Control Commodity Number (ECCN) 1C350.c.9 for chemical and biological proliferation reasons, to South Africa and China.

June 18, 2009 – 74 Fed. Reg. 28910: BIS suspended the export privileges of TAK Components, Inc. of Naperville, IL for 5 years, based on TAK's guilty plea and conviction for willfully exporting replacement

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and service parts and equipment for agricultural machinery to Iran via the United Arab Emirates without the required authorization from OFAC. In the criminal case, TAK had been sentenced to one year of probation and ordered to pay a special assessment of \$6,400 and to forfeit approximately \$181,000 that it had obtained from the illegal transactions. TAK's president, Saied Shahsavarani, was also subjected to the denial order on the basis of his relationship to TAK. Shahsavarani had pled guilty to knowingly aiding and abetting the operation of an unlicensed money transmitting business.

June 2009: Oxbow Carbon and Minerals LLC of West Palm Beach, FL agreed to pay a civil penalty of \$276,250 to settle allegations by OFAC that it had violated the Iranian Transactions Regulations by engaging in transactions in or related to services of Iranian origin, and that it facilitated trade-related transactions by non-U.S. persons that involved the use of vessels owned and/or managed by the Islamic Republic of Iran Shipping Lines without obtaining the required authorization from OFAC.

June 2009: Philips Electronics of North America Corporation ("Philips") paid \$128,750 to settle allegations that it had acted without the required OFAC license through an employee's travel to Cuba in connection with the sale of medical equipment by a foreign affiliate. (*See May 2009 Update, reporting that Philips had agreed to pay BIS a civil fine of \$9,000 to settle charges of unauthorized export of two EAR 99 medical devices to Cuba.*)

June 2009: Willbros USA, Inc. of Houston TX paid \$6,600 to settle an allegation by OFAC that it had violated the Sudanese Sanctions Regulations by contracting to bid on an oil development project in Sudan. This was regarded as having illegally facilitated the export of goods, technology, or services to Sudan in contravention of the Sudanese Sanctions Regulations.

July 1, 2009: J. Reece Roth, a retired professor at the University of Tennessee, was sentenced to 4 years in prison followed by two years of supervised release in U.S. District Court in Knoxville, TN, following denial of his motion for a new trial. Roth had been convicted in September 2008 of conspiracy and unauthorized exports of ITAR-controlled technical data in a case involving disclosure of technical data related to plasma technology for use on an unmanned aerial vehicle (UAV) to a graduate student from China and personally carrying controlled technology to China. (*See reports on this case in April, May, and August 2008 Updates.*)