

<p style="text-align: center;">EXPORT CONTROLS UPDATE March 2008</p>
--

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

REGULATORY UPDATES

Department of Commerce

March 5, 2008: The Bureau of Industry and Security (BIS) announced that effective March 31, 2008, it will no longer accept materials sent to P.O. Box 273 in Washington, DC. Materials may instead be mailed or couriered to Room 2705 at the main Department of Commerce building, 14th Street and Pennsylvania Ave., NW, Washington DC 20230.

March 10, 2008: BIS released an advisory opinion describing when a contract employee will be considered a “permanent employee.” This issue arises in the context of determining whether a corporation can be held responsible for the employee’s actions under the Export Administration Regulations (EAR), such that the company’s agreement to comply with a license condition applicable to “permanent employees” can be considered to cover actions of the contract employee. The opinion held that BIS –

“will interpret ‘permanent employees’ as follows: Individuals who are in a long-term employment arrangement with the consignee, or ... contract employees who satisfy all of the following criteria:

- “- The individual would work at the company's location or at locations assigned by the company (remote sites, travel, etc);
- “- The individual would use the company's equipment, tools and supplies in his or her activities;
- “- The individual would work under the company's direction and control on projects assigned by the signatory;
- “- The individual would work full time and exclusively for the company;
- “- The company would be responsible for determining the individual's work schedule and duties;
- “- The company would pay the staffing agency for the individual's labors (rather than for particular work products or end results), and the staffing company would pass some or all of that compensation to the individual;
- “- The individual would execute confidentiality certifications not to disclose confidential information received as part of her or her work for the company; and
- “- The staffing agency that has seconded the individual would have no role in the work the individual performs other than providing the

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.

individual for that work, and would not have access to any controlled technology governed by the license.”

March 19, 2008 – *73 Fed. Reg. 14687*: BIS corrected the entries for Tonga in the EAR Commerce Control List Overview and the Country Chart (Part 738, Supp. No. 1) by adding an “X” under the heading CC-3 for Tonga.

March 19, 2008 – *73 Fed. Reg. 14769*: As part of a multiyear systematic review of all dual-use items under BIS jurisdiction, BIS requested public comments on the crime control export and reexport license requirements in the EAR. In light of recent technological advances, “BIS is particularly, but not exclusively, interested in comments on whether items such as biometric devices, integrated security systems, and training software, particularly firearms training software should be subject to crime control license requirements.” Comments are also invited about possible additions or deletions of destinations subject to crime controls, as well as about improving the clarity of crime control license requirements. Deadline for comments is June 17, 2008.

Department of Defense

March 24, 2008 – *73 Fed. Reg. 15489*: The Defense Security Cooperation Agency reported notifying Congress of a possible Foreign Military Sale to Iraq amounting to \$1,389 million. Items to be sold include many types of motor vehicles, weapons and ammunition, communication equipment, medical equipment, clothing, and other equipment, as well as spare and repair parts, logistics, and related technical data and defense services. No contractors were identified.

Department of State

March 1, 2008: The Directorate of Defense Trade Controls (DDTC) updated the scope and procedures for expedited licensing directly related to supporting Operation Iraqi Freedom in Iraq and Operation Enduring Freedom in Afghanistan. See the notice at http://www.pmdtc.state.gov/docs/OEFandOIF_Guidelines2008.doc.

March 4, 2008: DDTC revised its January 2008 guidance for amending existing Technical Assistance Agreements (TAAs) and Manufacturing License Agreements (MLAs) to authorize third country/dual national employees from certain foreign countries to receive information without executing a non-disclosure agreement, as provided in International Traffic in Arms Regulations (ITAR) Sec. 124.16, which was added to the ITAR in December 2007. *If you submitted an amendment using the January guidance, it must be redone using the newly issued procedures.* The new guidance is on the DDTC website at http://www.pmdtc.state.gov/dual_nationals.htm.

March 13, 2008: DDTC revised the supporting documentation requirements for DSP-73 (temporary export) and DSP-61 (temporary import) license applications. DDTC will no longer accept stand-alone license applications that lack documentation supporting the requested transaction. The new requirements are at http://www.pmdtc.state.gov/license_applications_requirements.htm. Questions and Answers (Q & As) on the new requirements were posted on March 24, 2008 at http://pmdtc.state.gov/faqs_defense_trade.htm.

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.

March 24, 2008 – *73 Fed. Reg. 15409*: DDTC amended ITAR Section 126.1 to provide that it is U.S. policy to deny authorizations to export defense articles and defense services to Sri Lanka, except for the limited purposes of maritime and air surveillance and communications. The amendment implements a requirement imposed by Congress in the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2008.

March 24, 2008: DDTC posted Q & As on export licenses “in furtherance of” agreements along with Q & As on supporting documentation requirements for DSP-73 and DSP-61 license applications. See them at http://pmdtcc.state.gov/faqs_defense_trade.htm.

March 25, 2008: DDTC posted an update of its Guidelines for the Permanent Export, Temporary Export, and Temporary Import of Firearms and Ammunition. The revision is intended to streamline the guidance in order to help speed the review of license applications for firearms and ammunition. The new brochure includes a Sample Checklist for Completing Firearms/Ammunition Requests. See the update at <http://pmdtcc.state.gov/docs/oas.pdf>.

March 26, 2008 – *73 Fed. Reg. 15885*: DDTC amended ITAR Section 123.9 to clarify that NATO and its agencies are authorized under certain conditions to reexport or retransfer U.S.-origin components incorporated into a foreign defense article without the written approval of DDTC. This establishes NATO and its agencies in the same situation as governments of NATO member countries, Australia, and Japan.

March 27, 2008: DDTC published on its website the Implementing Arrangement for the proposed U.S.-Australia Defense Trade Cooperation Treaty. Full text of the Implementing Arrangement is at http://pmdtcc.state.gov/docs/US_Australia_Implementing_Arrangement.doc.

Department of the Treasury

March 13, 2008 -- *73 Fed. Reg. 13617*: The Treasury Department issued the current list of countries that require or may require participation in an international boycott. Listed countries are Kuwait, Lebanon, Libya, Qatar, Saudi Arabia, Syria, United Arab Emirates, and Republic of Yemen. As previously, Iraq is not on the list, but its status as to future lists remains under review.

SANCTIONS

Department of Commerce

March 6, 2008 – *73 Fed. Reg. 12073*: BIS denied the export privileges of Ali Asghar Manzarpour of Preston Technical Services, Ltd., Brighton East Sussex, United Kingdom for 20 years following his failure to respond to charges that he had violated the EAR by ordering a freight-forwarding company to ship a single engine aircraft that was controlled for anti-terrorism reasons under ECCN 9A991.b to Iran. The BIS administrative law judge found that in this transaction, Manzarpour had committed 3 violations: facilitating and coordinating an export without the required authorization; ordering, selling, or buying an item with knowledge that a violation of the EAR would occur; and taking action with intent to evade the EAR. Preston Technical Services, Ltd. was also mistakenly added to the Denied Persons List, but it was removed on March 13, 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.

March 12, 2008: BIS denied the export privileges of WaveLab Inc. of Reston, VA for five years and ordered an audit of its internal compliance program in settlement of charges that on 11 occasions in 2006, WaveLab had bought and/or forwarded microwave amplifiers to China with knowledge that a violation of the EAR would occur. The denial order will be suspended if WaveLab does not have any additional violations during the five-year period. The BIS penalty followed WaveLab's guilty plea on March 7 in Alexandria, VA federal court to unauthorized exports of 2,400 microwave power amplifiers to China with knowledge that the exports required a license. In its guilty plea, WaveLab agreed to forfeit \$85,000, roughly the amount of profit on the illegal exports. Sentencing will be June 6.

March 21, 2008 – *73 Fed. Reg. 15130*: BIS issued 6-month Temporary Denial Orders against Balli Group PLC, Balli Aviation, Balli Holdings, Vahid Alaghband, and Hassan Alaghband, Blue Sky One Ltd.; BlueSky Two Ltd., Blue sky Three Ltd., Blue Sky Four Ltd., Blue Sky Five Ltd., and Blue Sky Six Ltd., all of London, U.K.; Blue Airways of Yerevan, Armenia; and Mahan Airways of Tehran, Iran. BIS alleged that the respondents had reexported 3 U.S.-origin aircraft to Iran and were preparing to reexport three more U.S.-origin aircraft to Iran, all without authorization; made false statements to BIS regarding the ultimate destination of the aircraft; and failed to comply with a BIS order to return three aircraft to the U.S.

FINES & PENALTIES

March 6, 2008: Victor Bout, a Russian national regarded as one of the world's most notorious arms dealers, and an associate, Andrew Smulian, were arrested in Bangkok, Thailand as part of a U.S.-Thai sting operation. In the sting, undercover investigators posing as rebels from the Revolutionary Armed Forces of Colombia (FARC) sought to purchase millions of dollars in arms. Bout is suspected of having his own private air fleet, which has been used to supply weapons to the Taliban, Al Qaeda, FARC rebels, conflicting forces in Afghanistan, and various participants in civil wars in Africa. The U.S. has asked Thailand to extradite Bout and Smulian to the U.S.

March 6, 2008: Parthasarathy Sudarshan of Simpsonville, SC pleaded guilty in federal court in Washington, DC to a felony charge of conspiracy to violate various laws including the Arms Export Control Act and the International Emergency Economic Powers Act. Sudarsdhan is president and CEO of Cirrus Electronics, which has offices in South Carolina, Singapore, and Bangalore, India. BIS had renewed a 6-month temporary denial order against Sudarshan and Cirrus on December 14, 2007. Sudarshan allegedly provided controlled microprocessors and electronic components to Indian state entities involved in developing ballistic missiles, space launch vehicles, and fighter jets, including two entities that are on BIS' Entity List. The items, all of which were exported without licenses, were sent to India via Cirrus' Singapore office to conceal their actual destinations. Cirrus was also alleged to have shipped 500 ITAR-controlled microprocessors without the necessary authorization to an agency of the Indian Ministry of Defence, for use in the navigation and weapons systems of the Tejas, a fighter jet that India was developing.

March 7, 2008: Associated Press reported that Mohammad Farahbakhsh, an Iranian national and naturalized U.S. citizen, had pleaded guilty in New Haven, CT federal court to unauthorized exports to Iran and had been sentenced to time already served in prison based on extraordinary circumstances relating to the health of a family member. Records of the case were sealed by the court on March 4. At the time of Farahbakhsh's indictment in 2005, prosecutors alleged that he had installed a controlled U.S. satellite communication system on an Iranian government oil tanker and exported computer equipment to the Shahid Hemmat Industrial Group, a branch of the Iranian government involved in developing and

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.

producing ballistic and cruise missiles. According to the indictment, Farahbakhsh hid the transactions by using a branch of an Iranian bank in the United Arab Emirates. The court did not make public the reason for sealing the records, but defense attorneys suggested that this might suggest that Farahbakhsh had cooperated with federal authorities investigating others who might have been involved in the case.

March 11, 2008: Sesyed Mostafa Maghloubi, a U.S. citizen of Iranian origin, was sentenced in Los Angeles federal court to a prison term of three years and five months following an August 2007 guilty plea to attempting the unauthorized export of night vision goggles and up to 10,000 Uzis to Iranian government officials opposed to Iranian President Mahmoud Ahmadinejad. Maghloubi was apprehended in a sting operation during which a Los Angeles detective pretended to be an arms dealer.

March 12, 2008: MTS Systems Corporation of Eden Prairie, MN, pleaded guilty in federal court in Minnesota to submitting false export license applications to BIS. Under the plea agreement, MTS was sentenced to two years probation and a \$400,000 fine and was also required to implement and maintain a model export compliance program and to sponsor an export compliance conference at a later date. In license applications to BIS for exports of ECCN 9B990 seismic testing equipment to India, MTS failed to reveal its knowledge that the systems might be used for testing components of unregulated nuclear power plants.

March 14, 2008: DHL Holdings (USA) of Plantation, FL agreed to pay a civil penalty of \$37,500 to settle charges by BIS that it had aided and abetted an unlicensed transaction by forwarding EAR99 tiltometers to Mayrow General Trading in the United Arab Emirates. Exports to Mayrow require a license pursuant to General Order No. 3 in Supp. No. 1 to EAR Part 736.

March 18, 2008: Allied Telesis Labs of Raleigh, NC pleaded guilty to conspiracy to violate the International Emergency Economic Powers Act (IEEPA) by negotiating to win a contract to rebuild telecommunications systems in various Iranian cities including Teheran and designing and producing high-capacity multiservice access platforms known as "iMAPs" for the project. These actions were sufficient to support a conviction for conspiracy even though negotiations with Iran ultimately failed, and the iMAPs were not exported to Iran. Under the plea agreement, Allied will pay a fine of \$500,000.

March 19, 2008: Agility International, Inc., of Springfield, VA agreed to pay a civil penalty of \$13,200 to settle charges of one violation of causing, aiding or abetting an attempted unauthorized export and one violation of misrepresentation. Agility allegedly prepared, packaged, and attempted to ship concealable vests, body armor, and bomb blast blankets to Iraq, in violation of both the EAR and the Iraqi Sanctions Regulations maintained by the Office of Foreign Assets Control (OFAC) of the U.S. Treasury Department.

March 23, 2008: Chi Mak, the Chinese-born U.S. citizen who had been convicted in May 2007 of conspiracy to export U.S. defense technology to China, was sentenced in Los Angeles federal court to 24-1/2 years in federal prison. Mak's trial had raised difficult issues involving the scope of public-domain information that is not controlled under U.S. export control laws.

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.