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Advisors in Export
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LATEST EXPORT CONTROLS AND COMPLIANCE UPDATE
March-April 2010

This newsletter is a listing of the latest changes in US export control regulations up to April 12, 2010. 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 Sanctions Fines & Penalties" section below for an update on companies and persons denied export privileges by the United States Government.

REGULATORY UPDATES

The President

March 11, 2010: In a speech on the U.S. National Export Initiative at the Export-Import Bank, President Obama announced two specific export control regulatory changes that the Administration intends to implement: introducing a one-time online review process for some encryption products that would replace the current 30-day technical review, and eliminating the need for a separate authorization for foreign persons with dual-or-third-country origins or nationality who are employed by a company, government, or international organization that receives items whose export is controlled on the U.S. Munitions List (USML).

Department of Commerce

March 19, 2010 – 75 Fed. Reg. 13262: The Bureau of Industry and Security (BIS) posted a reminder to firms involved in offset arrangements that they must file annual reports of 1) foreign sales of defense-related items and services that are subject to offset agreements exceeding \$5 million in value, and 2) transactions pursuant to existing offsets commitments for which the foreign party has claimed \$250,000 or more in offsets credit. These reports must be submitted to BIS by June 15, 2010.

March 23, 2010 – 75 Fed. Reg. 13672: BIS amended the Commerce Control List (CCL, Part 774 of the Export Administration Regulations) to implement understandings reached at the September 2009 plenary meeting of the Australia Group (AG). The amendments add technical notes clarifying the terms "alloys" as used in reference to certain types of "materials" and "nominal size" as used in reference to valves described on the AG control list, and removes "white pox" virus from the list of controlled biological agents.

March 23, 2010 – *75 Fed. Reg. 13674*: BIS corrected errors affecting Export Control Classification Numbers (ECCNs) 1A004 and 5A001 that had been contained in amendments to the EAR published on Dec. 11, 2009 (*74 Fed. Reg. 56999*).

March 25, *75 Fed. Reg. 14335*: BIS added new controls on millimeter wave security equipment, software, and technology (*i.e.*, equipment, software, and technology for concealed object detection). The new ECCN 2A984, controls concealed object detection equipment meeting specified criteria of frequency range and spatial resolution. New ECCN 2D984 controls software required for the development, production or use of equipment controlled by ECCN 2A984, and new ECCN 2E984 controls technology for the development, production, and use of such equipment, as well as development of software controlled by ECCN 2D984. Conforming amendments were made to ECCNs 2E001 and 2E002. The three new ECCNs are controlled for AT1 and RS2 reasons and therefore will require a license for export to any destination other than NATO, Australia, Japan or New Zealand. In addition, EAR Sec. 740.2(a)(8) has been amended to limit the available license exceptions for these items; Sec. 742.6 has been amended to provide a general presumption of license approval for these items to government end-users in Austria, Cyprus, Finland, Ireland, Israel, Malta, Mexico, Singapore or Sweden; and Supplement No. 2 to EAR Part 748 has been amended to require an end-user statement in support of specified license applications for these items.

April 5, 2010 – *75 Fed. Reg. 17052*: BIS made several amendments to the EAR that will enable it to eliminate the paper versions of most export and reexport licenses, Agricultural License Exception (AGR) notification results, encryption review request results, and notices of denial of license applications, return of an application without action, and results of classification requests. These amendments were issued in proposed form in December 2009. (*See December 2009 Update.*)

Department of Defense

April 8, 2010 – *75 Fed. Reg. 18034*: The Department of Defense amended the Defense Federal Acquisition Regulation Supplement (DFARS) to establish a single contract clause covering contractor responsibilities to comply with the Export Administration Regulations and the International Traffic in Arms Regulations that must be included in every DoD solicitation and contract. This final rule eliminates many of the complexities of the interim rule that has been in effect since July 21, 2008 (*73 Fed. Reg. 42274*). (*See July 2008 Update.*)

Department of State

March 8, and 23; April 5, 7, and 12: The Directorate of Defense Trade Controls (DDTC) announced the following name changes and corporate acquisitions on its home page, www.pmdtcc.state.gov. The notices specify the action required regarding pending and currently approved authorizations involving each renamed entity.

- GE Fanuc Intelligent Platforms Technology Corporation to GE Intelligent Platforms Technology Corporation
- GE Fanuc Intelligent Platforms Embedded Systems, Inc. to GE Intelligent Platforms Embedded Systems, Inc.
- GE Fanuc Intelligent Platforms (Colorado), Inc. to GE Intelligent Platforms (Colorado), Inc.
- ITT Systems Division and ITT Federal Services International Corporation to ITT Systems Corporation
- Aeroflex International Limited of the United Kingdom to Aeroflex Limited
- City Centre Archives, Inc. to City Centre Archives, Ltd.
- Defense Technology Corporation of America to Safariland, LLC

- GE Fanuc Intelligent Platforms (Ottawa) Ltd. of Canada to GE Intelligent Platforms (Ottawa) Limited
- GE Fanuc Intelligent Platforms Holdings PLC of the United Kingdom to GE Intelligent Platforms Holdings PLC
- i-Logistics Corp. of Japan to ITOCHU Logistics Corp.
- Seattle Aero International to Seattle Aero LLC
- Tenix Datagate (UK), Limited to BAE Systems Datagate Limited
- Teuchos S.A. and the Engineering & Technology Division of Labinal S.A. to Safran Engineering Services
- Toyo Radio Systems Co., Limited, NEC Microwave Tube Limited, NETCOMSEC and Totsu Denshi Co., Limited to NETCOMSEC Co., Limited
- Lear Sieglar Services, Inc. and EG&G Technical Services, Inc. to URS Federal Support Services, Inc. and URS Federal Technical Services, Inc. respectively.
- Ramix Europe Ltd. Of the United Kingdom to GE Intelligent Platforms UK Ltd.
- Snecma Services to Snecma SA
- Stork SP Aerospace B.V. to Fokker Landing Gear B.V.
- Accurate Products Co. to Evaero, Inc.
- ORBIMAGE, Inc. to GeoEye, Inc.
- BAE Systems Information Technology, Inc. to BAE Systems Information Solutions, Inc.
- Detica Inc. and Detica Federal Inc. merged into BAE Systems Information Solutions, Inc.
- BAE Systems Datagate Inc. merged into BAE Systems Information Solutions, Inc.

March 5, 2010: The Department of State notified Congress of its recommendation that the Treasury Department Office of Foreign Assets Control (OFAC) issue a general license authorizing downloads of free mass market software to Iran necessary for personal communications and information-sharing over the Internet. Similar exemptions from U.S. sanctions on Iran already exist for the exchange of direct mail and telephone calls.

March 29, 2010 – 75 Fed. Reg. 15388: DDTC proposed to amend the International Traffic in Arms Regulations (ITAR) by deleting Section 126.8, which currently requires prior approval or prior notification of detailed proposals relating to sales of Significant Military Equipment (SME) valued in excess of \$14 million and destined for end use by a foreign military of a country other than a NATO member, Australia, New Zealand or Japan and proposed manufacturing agreements for SME of any value to be used by any foreign military. The deadline for comments on this proposal is May 28, 2010.

March 31, 2010: DDTC posted guidelines regarding the form of company names that are listed on online license applications. Only the bare legal name of a company should be used, without mention of subsidiary or any other information. Specific examples are provided in the notice at http://www.pmdtdc.state.gov/DTRADE/documents/Guidelines_CompletingDSPForms.pdf.

April 5, 2010: DDTC announced that it will not accept paper applications for Technical Assistance Agreements and Manufacturing License Agreements after Sep. 1, 2010. Only electronic submissions will be accepted after that date.

April 9, 2010: DDTC posted a notice that decisions on applications for exports to Kyrgyzstan may be delayed in view of the “current situation” in that country. Persons applying for a license to export or retransfer USML items to Kyrgyzstan are advised to provide detailed information on the proposed end use and end user.

Department of the Treasury

March 10, 2010 – 75 Fed. Reg. 10996: OFAC amended the Cuban Assets Control Regulations to interpret the term “payment in cash in advance” as payment before the transfer of title to, and control of, exported items to a Cuban purchaser. “Payment in cash in advance” is one of the two payment terms authorized by the Trade Sanctions Reform and Export Enhancement Act of 2000 for exports from the U.S. to Cuba.

March 10, 2010 – 75 Fed. Reg. 10997: OFAC issued a final rule authorizing Internet-related exports to Iran, Sudan and Cuba. Amendments to the Sudanese Sanctions Regulations and the Iranian Transactions Regulations add general licenses authorizing the export of certain services and software incident to the exchange over the Internet of personal communications such as instant messaging, chat, email, social networking, sharing of photos and movies, web browsing, and blogging. Services and software exported under this authorization must be publicly available at no cost, and must be classified as EAR99, not subject to the EAR, or mass market software classified under Export Control Classification Number 5D992. Exports to Cuba of *services* incident to the same types of personal communication to Cuba are also authorized by a new general license. Exports of *software* to Cuba are not included in this rule, because the exportation of goods, software, and technology to Cuba is under the jurisdiction of the Department of Commerce.



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LATEST SANCTIONS FINES & PENALTIES

*This section of our newsletter provides information on the latest sanctions, fines and penalties 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.*

Sanctions

Department of Commerce

March 8, 2010 – 75 Fed. Reg. 10462: BIS suspended the export privileges of Mohamad M. Elkateb for one year. Elkateb consented to the denial after being charged with conspiring to export U.S.-origin laboratory equipment to Syria via Indonesia after the U.S. manufacturer had informed him of U.S. restrictions on exports to Syria.

March 10, 2010 – 75 Fed. Reg. 11112 and 11113: BIS denied the export privileges of Aviation Services International B.V. and its president, Robert Kraaijpoel, both of the Netherlands, for 7 years. The denial was part of a civil settlement among ASI, Kraaijpoel, BIS, and OFAC involving charges of conspiracy to export U.S.-origin aircraft parts, electronic components, and polyamide film to Iran via The Netherlands, Cyprus, and the United Arab Emirates (UAE) without the required authorization. Civil penalties of \$250,000 each were also assessed against ASI and Kraaijpoel, but these will be suspended for 3 years and waived thereafter if ASI and Kraaijpoel do not violate U.S. export control laws during that time. This civil settlement follows a criminal conviction involving the same conspiracy. (See September 2009 Update.)

March 18, 2010 – 75 Fed. Reg. 13079: BIS renewed a temporary denial order (TDO) against Mahan Airways of Tehran, Iran for an additional 180 days. Mahan allegedly violated the prior TDO by continuing its involvement in the export of Boeing 747 aircraft to Iran.

April 2, 2010 – 75 Fed. Reg. 16732 and 16735: Acting under a settlement agreement, BIS issued a 10-year denial order and assessed civil penalties of \$100,000 each against Aqua-Loop Cooling Towers Co. and Bob Rahimzadeh, both of Folsom, CA. Payment of the penalties will be suspended for 10 years and then waived if no further violations are committed during that time. The charges against Aqua-Loop and Rahimzadeh involved unauthorized exports to Iran via the UAE.

Department of State

March 19, 2010 – *75 Fed. Reg. 13330*: DDTC imposed statutory debarment on the following persons based on their convictions of violations of the Arms Export Control Act (AECA):

- (1) Jesus Lorenzo Torres-Lopez
- (2) Peter K. Spitz
- (3) Traian Bujduveanu
- (4) Ugur Yildiz
- (5) Bing Xu
- (6) Artur (AKA Alex) Solomonyan
- (7) Christiaan Dewet
- (8) Ioseb (AKA Soso) Kharabadze
- (9) John Reece Roth
- (10) Jose Luis Hernandez-Ochoa
- (11) Luis Miguel Hernandez-Hernandez
- (13) Pedro Javier Lopez-Lopez
- (14) Amado Iracheta-Delgado
- (15) Laiza Moreno
- (16) Julio Cesar Tamez-Hernandez
- (17) Obed Damian Guajardo-Silva
- (18) Juan Carlos Bocanegra
- (19) Ramon Salazar-Rostro
- (20) Justo Manuel Fernandez-Hernandez
- (21) Alejandro Reyes-Baez
- (22) Nestor Rangel
- (23) Juan Vasquez
- (24) Reynol Garcia
- (25) Antonio Rodriguez-Capetillo
- (26) Mario Hector Quilantan-Garcia
- (27) Pedro Cayetano Gonzalez-Flores
- (28) Roberto Carlos Garcia-Salazar
- (29) Manuel Rangel Rivera
- (30) Ding Zhengxing (AKA Zhengxing Ding and Zheng Xing Ding)
- (31) Su Yang (AKA Yang Su)
- (32) Taipan Enterprises, Ltd.

The updated full List of Statutorily Debarred Parties is on the DDTC website at <http://pmdtdc.state.gov/compliance/debar.html>.

March 10, 2010 – *75 Fed. Reg. 11223*: The Department of State lifted nonproliferation measures against Glavkosmos of Moscow, Russia, that had been in effect since 1998 (August 6, 1998 -- *63 Fed. Reg. 42089*). However, Glavkosmos remains on the BIS Entity List (EAR Part 744, Supp. No. 4.)

Fines and Penalties

Jan. 8, 2010: GM Daewoo Auto & Technology Company, a Korean company majority-owned by General Motors Company, agreed to pay a civil penalty of \$88,500 to settle charges by BIS that it had violated the antiboycott regulations of the Export Administration Regulations (EAR) by furnishing

information about business relationships with boycotted countries or blacklisted persons. The illegal activity occurred in connection with the sale of Korean-origin goods to Libya. The penalty will be waived if GMDAT commits no further violations within the next 6 months.

Feb. 18, 2010: Samer Mehdi of Paraguay; Khaled T. Safadi of Miami, Ulises Talavera of Miami, FL; Emilio Jacinto Gonzalez-Neira of Paraguay; Cedar Distributors, Inc. (Cedar), a Miami-based freight forwarding company owned by Safadi; Transamerica Express of Miami, Inc. (Transamerica), a Miami-based freight forwarding company owned by Talavera; and Jumbo Cargo, Inc. (Jumbo), a Miami-based freight forwarding company owned by Gonzalez-Neira, were indicted in Miami, FL on charges involving the export of electronics to a U.S. designated terrorist entity in Paraguay. According to the indictment, Transamerica and Jumbo exported Sony electronics to Jomana, an electronics company located in Galeria Page, a shopping center in Ciudad del Este, Paraguay. The Treasury Department Office of Foreign Assets Control (OFAC) has designated Galeria Page as a Specially Designated Global Terrorist, and therefore shipments to all entities located in Galeria Page are banned. The indictment states that the defendants were aware of this prohibition. If convicted, the individual defendants face up to 20 years in prison on charges of violating the International Economic Emergency Powers Act (IEEPA) in addition to 10 years in prison on smuggling charges and five years in prison on a conspiracy charge. The companies each face up to five years of probation on all charges, fines of up to \$1,000,000 on the IEEPA charges, and \$250,000 on the smuggling and conspiracy charges. Safadi, Talavera, and Gonzalez-Neira are being held in federal custody. Mehdi remains at large.

March 1, 2010: BAE Systems plc (BAES), a multinational company with headquarters in the United Kingdom, pleaded guilty in U.S. District Court in the District of Columbia to a conspiracy involving violations of the Arms Export Control Act (AECA) and the International Traffic in Arms Regulations (ITAR) as well as the Foreign Corrupt Practices Act (FCPA). Among many other charges, BAES admitted to knowingly and willfully failing to identify commissions paid to third parties for assistance in soliciting, promoting or otherwise securing sales of defense items in violation of the AECA and ITAR. BAES was sentenced to pay a fine of \$400 million and to adopt compliance programs to detect and deter violations of the FCPA and U.S. export control laws. According to the U.S. Department of Justice press release, none of the criminal conduct described in the plea involved the actions of BAE Systems Inc., the U.S. subsidiary of BAES.

March 18, 2010: G&W International Forwarders of Buffalo, NY agreed to pay a civil penalty of \$20,000 to settle charges by BIS that it had aided and abetted the export of an EAR99 screening machine to a company on the Entity List without the required export authorization.

March 26, 2010: Deepsouth Hardware Solutions, Inc., of Hammond, LA agreed to pay a civil penalty of \$32,000 to settle charges by BIS of an unauthorized export of parts and accessories for automatic regulating and controlling instruments classified under ECCN 1B999 to an entity in Pakistan listed on the Entity List.

March 28, 2010: In an indictment unsealed in U.S. District Court in Boston, Hok Shek Chan, a Hong Kong citizen, resident in Hong Kong, was charged with conspiring and attempting to illegally export tachometers used in C-130 flight simulators from the United States without the authorization required

from the Department of State according to the ITAR. Chan was extradited to the U.S. to face these charges. If convicted, he faces up to 10 years in prison and a fine of up to \$1 million.”

European Union

February 8, 2010: A United Kingdom court found Gideon Sarig and Howard Freckleton, both London arms dealers, guilty of trading in controlled goods with the intent to evade controls. Sarig, convicted on 12 counts, was jailed for 9 years, and Freckleton, convicted on 3 counts, was jailed for 7 years. The majority of the charges involved provision of high-explosive bombs and armor-piercing incendiary ammunition to the Sri Lankan air force.

April 7, 2010: German federal prosecutors announced that they had filed charges against an Iranian national and a German-Iranian citizen for violating Germany’s export control laws by providing Iran with a vacuum sintering oven that could be employed to harden rocket parts to withstand the heat of launch and re-entry. The Iranian national was arrested in October 2009; the German-Iranian is not in custody.
