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Advisors in Export
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LATEST EXPORT CONTROLS AND COMPLIANCE UPDATE
May 2010

This newsletter is a listing of the latest changes in US export control regulations from May 8 through June 6, 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

Department of Commerce

May 10, 2010 – 75 Fed. Reg. 25763: The Bureau of Industry and Security (BIS) added Advanced Micro Devices China, Inc. to the list of validated end-users (VEUs) in Part 748 of the Export Administration Regulations (EAR). The VEU authorization permits exports, re-exports, and in-country transfers of certain items classified under Export Control Classification Numbers (ECCN) 3D002, 3D003, 3E001, 3E002, 3E003.e, 4D001, 4D002, 4D003, and 4E001 to AMD Technologies (China) Co., Ltd., Suzhou, Advanced Micro Devices (Shanghai) Co., Ltd., Shanghai, and AMD Technology Development (Beijing) Co., Ltd., in Beijing, all in the People's Republic of China (PRC).

May 14, 2010 – 75 Fed. Reg. 27185: BIS amended the list of VEUs in Part 748 of the EAR by updating the name of an existing VEU in China to Applied Materials China, Ltd., modifying the names and/or addresses of AMC's four (4) previously approved facilities in the PRC, adding AMC facilities in Beijing, Shanghai, and Wuhan, and expanding the list of items eligible for VEU treatment.

May 28, 2010 – 75 Fed. Reg. 29884: In the first of two installments of the 2009 review of the Entity List (Supplement No. 4 to EAR Part 744), BIS removed Speedy Electronics Ltd. of Hong Kong from the Entity List and amended the listings for H Logic of Egypt and Ben Gurion University of Israel.

June 4, 2010 – 75 Fed. Reg. 31678: BIS made minor amendments in many provisions of the EAR, as follows:

- Deleted Sec. 434.3(b)(4) to clarify *de minimis* rules regarding foreign content;
- Amended Sec. 748.13(b) to eliminate the requirement to obtain delivery verification issued by the foreign government if the item is not subject to national security export controls;
- Revised ECCN 2B001 to state that the NP reason for control does not apply to "turning machines under 2B001.a with a capacity no greater than 35 mm diameter"; and

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- Made several additional technical/editorial changes that do not change regulatory requirements.

Department of Defense

May 24, 2010: The Under Secretary of Defense issued a Memorandum clarifying DoD's guidance regarding the scope of "fundamental research" and directing that "unclassified contracted fundamental research awards should not be structured ... in such a manner that they become subject to controls under ... U.S. export control laws and regulations." Among other issues, the Memorandum specifically mentions that other than in special cases, contracted fundamental research "should not be managed in a way that it becomes subject to restrictions on the involvement of foreign researchers or publication restrictions." Exceptions to this policy are to be made "only with the approval of high-level Component management." Check <http://www.fas.org/irp/doddir/dod/research.pdf> for the full text of the DoD Memorandum.

Department of State

May 10, 2010: The Directorate of Defense Trade Controls (DDTC) published on its website www.pmdtcc.state.gov, a list of reported issues in the DTrade system, that have been encountered by users of Windows XP or Windows 7 and Internet Explorer 7 or 8 using the PureEdge View version 6.5. Users of these software programs are encouraged to download and install IBM Lotus Forms Viewer version 3.5.1. (FD Associates note: as of this date our experience is that these issues remain with regard to Windows 7.)

May 20 and 27, 2010: The Directorate of Defense Trade Controls (DDTC) posted notices of the following name changes and corporate acquisitions on its home page, www.pmdtcc.state.gov. Each notice specifies the action required regarding pending and currently approved authorizations involving the renamed entity:

- Routes Astroengineering, Ltd to COM DEV LTD.;
- Selex Sistemi Integrati Inc. to Selex Systems Integration, Inc.;
- Rockwell Collins Display Systems entity name & address changes;
- Zodiac US Corporation address change;
- M-LANDarch Co., Ltd. of Thailand address change;
- Geven S.r.L to Geven S.p.A.;
- Atlantic Diving Supply, Inc. address change;
- DACA Machine & Tool, Inc. to DACA Machine & Tool, LLC;
- EBV Explosives Environmental Company to General Dynamics Ordnance and Tactical Systems, Joplin Operations; and
- FLIR SYSTEMS AB Government Systems Sweden Division new division.

May 20, 2010: DDTC announced that effective Sep. 1, 2010, unclassified Technical Assistance Agreements, Manufacturing License Agreements, and Warehouse Distribution Agreements (including major amendments) must be made via D-Trade 2 using Form DSP-5. Paper submissions will no longer be accepted.

May 24, 2010 – 75 Fed. Reg. 28848: The Department of State determined and certified to Congress that Cuba, Eritrea, Iran, North Korea, Syria, and Venezuela are not cooperating fully with U.S. antiterrorism efforts. Accordingly, they remain under a policy of denial under International Traffic in Arms (ITAR) Sec. 126.1(d).

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May 24, 2010 – 75 Fed. Reg. 28848: DDTC lifted the policy of denial that it had imposed on the Tula Instrument Design Bureau of Russia under ITAR Sec. 126.7.

May 26, 2010: DDTC posted a notice on its website, www.pmdrtc.state.gov that for DSP-5 submissions for rebaselined agreements, the value entered in Block 12 of the DSP-5, must be the total value of the proposed rebaseline agreement (*i.e.*, the value that was previously approved plus any increases due to changes in scope).

June 1, 2010: DDTC provided links to the following guidance on its home page, www.pmdrtc.state.gov

- “New Guidance: Requests for Proviso Reconsideration and/or Clarification”;
- “Guidance: for DSP-73 and DSP-61 License Applications - Supporting Documentation Requirements have been updated”;
- “Guidance: for License Support Documentation have been updated”;
- “Guidance: for General Correspondence for Amendment of Existing ITAR Authorizations Due to Foreign Entity Name Change have been updated”; and
- “Guidance: for General Correspondence for Amendment of Existing ITAR Authorizations Due to U.S. Entity Name/Address and/or Registration code Changes have been updated.”

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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

May 7, 2010 – 75 Fed. Reg. 25202: BIS renewed the denial order against Orion Air, S.L. of Madrid, Spain and Valencia, Spain and Syrian Pearl Airlines of Damascus, Syria for an additional 180 days.

Department of State

May 21, 2010 – 75 Fed. Reg. 28672: DDTC terminated its sanction prohibiting exports of ITAR-controlled articles to Tula Instrument Design Bureau of Russia.

May 21, 2010 – 75 Fed. Reg. 28673: DDTC terminated its sanction prohibiting exports of ITAR-controlled articles to Rosoboronexport of Russia.

Fines and Penalties

March 26, 2010: United Source One, Inc., a Maryland-based food logistics company specializing in shipping foods to restaurants in the Middle East, agreed to pay a civil penalty of \$19,800 to settle charges by BIS that it had failed to report five boycott-related requests.

March 18, 2010 and May 5, 2010: In cases involving related companies, Telogy International NV of Belgium agreed to pay a civil penalty of \$437,000 for unlicensed re-exports of oscilloscopes from Belgium to Israel and a spectrum analyzer to South Africa in 2007. Telogy International's former U.S. subsidiary, Telogy LLC of Union City, CA, also agreed to pay a civil penalty of \$76,000 for evasions of the EAR in 2005 and 2007. The fine to Telogy LLC will be suspended if the company commits no further export violations for a 1-year period. Additionally, all but \$75,000 of the fine to Telogy International will be suspended if the company commits no further export control violations for a 1-year period. The violations of both companies were disclosed voluntarily.

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May 5, 2010: GE Healthcare Bioscience BioProcess Corp. of Piscataway, NJ agreed to pay a civil penalty of \$126,000 to settle charges by BIS, that its predecessor company Wave Biotech LLC, had prior to its acquisition by GE Healthcare, exported bioreactor kits classified under ECCN 2B352 to India, Mexico, PRC, Singapore, and Taiwan and re-exported similar kits from Ireland to Israel without the required export authorization. GE Healthcare voluntarily disclosed the violations.

May 11, 2010: Balli Aviation Ltd., a subsidiary of United Kingdom-based Balli Group PLC, was sentenced in federal court in the District of Columbia to a \$2 million criminal fine and 5 years of corporate probation on charges that it had illegally exported 3 commercial Boeing 747 aircraft from the U.S. to Iran, and that it had continued to negotiate foreign sales of U.S.-origin aircraft, in violation of a Temporary Denial Order issued by BIS. Balli's sentencing followed a February 2010 guilty plea and agreement on a civil settlement with OFAC and BIS involving a \$15 million fine, a five-year suspended denial of export privileges, and annual audits of its export control activities. (*See details about Balli's criminal plea and civil settlement agreement with BIS and OFAC in February Update.*)

May 13, 2010: Yi-Lan Chen, a Taiwanese businessman, and his corporation pleaded guilty in federal court in Miami, FL to conspiracy and attempt to export 120 circular hermetic connectors and 8,500 glass-to-metal seals to Iran. The first attempted shipment of 60 seals was seized by U.S. agents prior to their export, and Chen was arrested before taking delivery of the seals and the remaining connectors. The *New York Times* reported that Chen is cooperating with U.S. investigators and will likely receive less than the maximum 20-year prison sentence for each count.

May 17, 2010: Wesco Industrial Products, Inc. of Lansdale, PA agreed to pay a civil penalty of \$50,000 to settle charges by BIS that its predecessor company, Neptune Chemical Pump Co., Inc. had exported pressure relief valves classified under ECCN 2B350.g.2 and .3 to Singapore, Mexico, and Hong Kong without the required export licenses.

May 17, 2010: Zhen Zhou (Alex) Wu and Yufeng (Annie) Wei, both Chinese nationals, and Chitron Electronics Inc., a company headquartered in Shenzhen, China with a U.S. office in Waltham, MA, were convicted after a jury trial in federal court in Boston, MA of unlawfully exporting defense and dual-use articles to China and conspiring to violate U.S. export control laws. In addition, Wu and Wei were convicted of filing false shipping documents with the U.S. Department of Commerce; Wei was convicted of immigration fraud; and a contempt order carrying a \$1.9 million fine was issued against Chitron's Shenzhen company for refusing to appear for trial. A co-defendant, Bo Li (Eric Lee), had previously pleaded guilty to making false statements on shipping documents. The violations involved shipments to China via a freight forwarder in Hong Kong, of defense articles used in military phased array radar, electronic warfare, military guidance systems, and military satellites as well as other dual-use equipment used in electronic warfare, military radar, satellite communications systems and space applications. (*Chitron companies in China and Hong Kong were added to the Entity List January 13, 2010. See January Update.*)

May 24, 2010: Juwhan Yun of Short Hills, NJ pleaded guilty in federal court for the Southern District of Florida to attempting to export RD-180 rocket propulsion systems and technology to South Korea without the required State Department export license. Yun had previously served a 30-month term in federal

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prison after a 1989 conviction for conspiracy to sell sarin gas to Iran. *(See details of charges against Yun in May 2009 Update.)*

June 4, 2010: OFAC announced that KLM Cargo of Chicago, IL had been assessed a civil penalty of \$5,336.26 for violating the Sudanese Sanctions Regulations by transporting oil field equipment and hydraulic hoses to Khartoum, Sudan without an export license. OFAC reduced the penalty amount that it originally proposed because after the violations, KLM had sent an internal bulletin to all its operations in North America to remind personnel of bookings that cannot be accepted.