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Advisors in Export
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LATEST EXPORT CONTROLS AND COMPLIANCE UPDATE

November 2009

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

Department of Commerce

Nov. 9, 2009 – 74 Fed. Reg. 57581: The Bureau of Industry and Security (BIS) amended Export Control Classification Number (ECCN) 2B116 and ECCN 1B101 to make it clear that the items meeting the parameters of these ECCNs are controlled when used in systems that are capable of a range of at least 300 km, regardless of the payload capacity. These changes implemented a decision made at the 2008 plenary meeting of the members of the Missile Technology Control Regime.

Nov. 18, 2009: BIS announced an online version of its System for Tracking Export License Applications (STELA). This version is already operative and will eventually replace the current phone-based STELA system. See the announcement at <http://www.bis.doc.gov/licensing/stela4u.htm>, and access the new STELA system at <http://snapr.bis.doc.gov/stela>.

Nov. 30, 2009: BIS announced that video and slide presentations from the Update 2009 Conference on Export Controls and Policy are now available online through web portal <http://bisecp.videohostpro.com>.

Department of State

Nov. 3, 2009: The Directorate of Defense Trade Controls (DDTC) announced various corporate name changes, which arose from a major corporate acquisition by BAE Systems plc. See http://www.pmdtcc.state.gov/licensing/documents/WebsiteNotice_BVTtoBAE.pdf for details of these name changes and required actions for amending licenses and agreements.

Nov. 16, 2009: DDTC announced the availability of a new system that allows access to DTrade 2 export license status directly on the Internet, without having to log into the DTrade 2 system. The system, called

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MARY "lite" is updated daily and has status information about cases that are in-process or have been finalized within the last 14 days. Go to www.pmdetc.state.gov/DTrade/ML_DT2Status.pdf, or through the D-Trade web page, www.pmdetc.state.gov/DTrade to access MARY lite.

Nov. 17, 2009: DDTC published its Report of Direct Commercial Sales Authorizations for Fiscal Year 2008. The report identifies the dollar volume of all defense articles and defense services that were authorized, and were shipped, during FY 2008. This report is broken down in various ways including by country of destination. Go to www.pmdetc.state.gov/reports/documents/rpt655_FY08.pdf.

Nov. 24, 2009 – *74 Fed. Reg. 61292*: DDTC published a long-awaited proposed rule amending the exemption in Sec. 125.4(b)(9) of the ITAR pertaining to exports of ITAR-controlled technical data for use by US persons overseas. Under this amendment, the exemption will permit a U.S. person employed by a U.S. corporation or U.S. Government agency to *send or* take ITAR-controlled technical data to a U.S. person who is employed by the same U.S. corporation or U.S. Government agency outside the U.S. The technical data can be in any medium or format (including on a laptop). Classified information may be carried under this rule, but it remains subject to the requirements of the National Security Industrial Procedures Operating Manual (NISPOM). The deadline for comments on this proposed rule is January 25, 2010.

Nov. 25, 2009: DDTC announced a new policy related to violations of the provisions of ITAR Sec. 123.4 for temporary imports of U.S. origin defense articles under exemption. The notice identifies that DDTC no longer requires a US company to voluntarily disclose a failure to properly import goods against the ITAR exemption. If the U.S. person determines they did not have responsibility for the violation, the U.S. person must submit a transmittal letter signed by the Empowered Official with the DSP-5 license application to return the defense article to the foreign person. The transmittal letter must explain the reasons why the applicant does not believe it has responsibility for the violation, the steps taken to make this determination; identities and addresses of all persons involved in the activities giving rise to the unauthorized temporary import; and any measures taken to prevent a reoccurrence. Call us for details if you think this rule might affect your company.

Nov. 25, 2009 – *74 Fed. Reg. 61586*: DDTC proposed an amendment to ITAR Sec. 126.6 to clarify the circumstances when an export license is not required in situations involving U.S. Government international programs, foreign-owned military aircraft and naval vessels and Foreign Military Sales programs. Call us for details if you think this rule might affect your company. Due date for comments on this proposal is January 25, 2010.

Department of the Treasury

Nov. 9, 2009 – *74 Fed. Reg. 57593*: The Office of Foreign Assets Control (OFAC) issued the final version of the Economic Sanctions Enforcement Guidelines. These Guidelines describe the policies that OFAC will follow in determining an appropriate enforcement response to violations of the economic sanctions programs that it enforces. The Guidelines will be incorporated into OFAC's regulations as an Appendix to the Reporting, Procedures and Penalties Regulations (31 CFR Part 501). They replace an initial version that was published as an interim final rule on September 8, 2008. (*See September 2008 Update.*)

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Nov. 10, 2009 – *74 Fed. Reg. 58074*: The Treasury Department published the current list of countries that may require participation in, or cooperation with, an international boycott. The list, unchanged from recent lists, includes Kuwait, Lebanon, Libya, Qatar, Saudi Arabia, Syria, the United Arab Emirates, and the Republic of Yemen. As before, Iraq is not on the list, but its status is under review by the Treasury Department.

Nov. 24, 2009 – *74 Fed. Reg. 61030*: OFAC adopted an interim final rule making technical changes intended to clarify OFAC's policies on the issuance of one-year licenses to export agricultural commodities, medicine, and medical devices to Sudan and Iran.

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LATEST EXPORT VIOLATIONS, FINES, PENALTIES, AND SANCTIONS

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*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.*

Nov. 4, 2009: In Southwark Crown Court, England, Andrew Jackson of Dorchester, England, was sentenced to 32 months in jail after admitting selling military vehicles to Sudan without a license. Stephen Smithy, an employee of Jackson's company, L Jackson & Co, received a suspended jail sentence of 35 weeks plus 150 hours of community service. After his application for a license to send military personnel carriers to Sudan was denied, Jackson shipped 30 of these vehicles to Norway, from where they were transhipped to Sudan.

Nov. 5, 2009: Laura Wang-Woodford, a U.S. citizen working as a director for Monarch Aviation Pte, Ltd, a Singapore company trading in military and commercial aircraft components, was sentenced to 46 months of incarceration and ordered to forfeit \$500,000 for her role in a conspiracy that illegally transhipped U.S. aircraft parts, including parts for the Chinook military helicopter, to Iran via Singapore and Malaysia. Wang-Woodford had been incarcerated since she was arrested upon her arrival at San Francisco Airport in December 2007 on a flight from Hong Kong. She entered a guilty plea on March 16, 2009. (See details in March 2009 Update.)

Nov. 9, 2000 – 74 Fed. Reg. 57626: The U.S. Department of Commerce, Bureau of Industry and Security (BIS) renewed a temporary denial order (TDO) against Orion Air, S.L. of Madrid, Spain, and Syrian Pear Airlines of Damascus, Syria.

Nov. 17, 2009: York International Corporation of York, PA agreed to pay a civil fine of \$140,850 to settle charges of 122 violations of the anti-boycott regulations. York was charged with violations involving agreement to refuse to do business, furnishing information about business relationships with boycotted countries, and failing to report the receipt of requests to participate in an illegal boycott.

Nov. 23, 2009: Jacques Monsieur, a Belgian national resident in France, pleaded guilty in federal court in the Southern District of Alabama to conspiracy to illegally export F-5 fighter jet engines and parts from

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the U.S. to Iran. Monsieur had long been known to law enforcement officials as an international arms dealer who was a prominent supplier to the government of Iran. His arrest resulted from an undercover operation by U.S. authorities.

Nov. 30, 2009 – *74 Fed. Reg. 62560* (corrected Dec. 1, 2009 – *74 Fed. Reg. 62560*): BIS issued a 180-day TDO against the following six entities:

- Corezing International, China, Hong Kong, and Singapore;
- Kow Seng Lim, Singapore;
- Zhenyong Zhou, Hong Kong, and China;
- Jie Luo, Hong Kong, China, and Singapore;
- Insight Electronics Pte Ltd;
- Action Global Col, Limited

The TDO was based on evidence that the respondents were illegally transshipping controlled digital signal processors and Triquint brand power amplifiers and components from the U.S. to China via Singapore and Hong Kong.