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Advisors in Export
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LATEST EXPORT CONTROLS AND COMPLIANCE UPDATE

October 2009

This newsletter is a listing of changes in US export control regulations for the month of October 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 during October, 2009.

REGULATORY UPDATES

The President

Oct. 2, 2009 – 74 Fed. Reg. 50913: President Obama delegated to the Commerce Department the authority to notify Congress when an item listed in Category I or Category II of the Missile Technology Control Regime (MTCR) Annex is authorized for export to China. The certification, which must be made at least 15 days in advance of any covered export, provides that the export is not detrimental to the U.S. space launch industry and will not measurably improve China's missile or space launch capabilities. Items from the MTCR Annexes are included on both the U.S. Munitions List (USML) and the Commerce Control List (CCL). However, Section 126.1 of the International Traffic in Arms Regulations (ITAR) imposes an embargo on USML items to China. Therefore, the only MTCR items that have any possibility of being licensed to China are those that are under the jurisdiction of the Commerce Department.

Department of Commerce

Oct. 15, 2009 – 74 Fed. Reg. 52880: The Bureau of Industry and Security (BIS) published a final encryption simplification rule. An interim encryption simplification rule had been issued Oct. 3, 2008 (73 Fed. Reg. 57495). (See *October 2008 Update*.) The new rule corrects errors, clarifies some provisions, and resolves inconsistencies, but otherwise finalizes the 2008 interim rule.

Oct. 22, 2009: BIS revised its guidance on submitting requests for PINs (Personal Identification Numbers) and CINs (Company Identification Numbers) for individual and third-party users of the SNAP-R system. The new guidance is on the BIS website at www.bis.doc.gov/snap/pinsnapr.htm.

Department of State

Oct. 7, 2009: The Directorate of Defense Trade Controls (DDTC) announced that all U.S. applicants may submit new and re-baselined agreements electronically via D-Trade. Hard-copy applications will continue to be accepted in all cases, and hard copy will be required for amendments to existing

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.

FD ASSOCIATES, INC. - EXPORT CONTROLS & COMPLIANCE UPDATE

agreements that were submitted in hard copy. Detailed requirements for electronic submission of agreements are at http://pmddtc.state.gov/licensing/documents/WebNotice_ElectronicAgreements.pdf.

Oct. 7, 2009: The Department of State announced the name change of QinetiQ Limited Underwater Systems Division to Atlas Elektronik UK Limited. See the announcement on the DDTC website, www.pmddtc.state.gov about the effect of this change on licenses and agreements.

Oct. 9, 2009: DDTC published updated Electronic Agreements Guidelines (158 pages) at www.pmddtc.state.gov/licensing/documents/PreparingElectronciAgreements-Guidelines.pdf. These guidelines also apply to hard-copy agreements. They include some new requirements, e.g., providing a conformed copy of the agreement with every amendment request. If you are preparing an agreement or amendment, be sure to use this new version of the Agreements Guidelines rather than relying on prior versions.

Oct. 19, 2009: DDTC published a new version of the PureEdge Form DSP-61. This version 3.1 solves issues that had arisen with Block 20 (Foreign Intermediate Consignee) in the prior DSP-61.

Oct. 26, 2009: DDTC notified exporters that although there is no current U.S. or United Nations embargo on the Republic of Guinea, final decisions on applications for exports of USML items to Guinea may be delayed. DDTC encouraged applicants for exports to Guinea to provide detailed information on the end use and end user. DDTC's heightened concern about exports to Guinea is in response to the Guinean military's "brazen and inappropriate" use of force against civilians. The DDTC notice is on the DDTC website at http://www.pmddtc.state.gov/licensing/documents/WebNotice_Guinea.pdf.

Department of the Treasury

Oct. 7, 2009: The Office of Foreign Assets Control (OFAC) issued guidance on exporting or reexporting replacement parts pursuant to the Trade Sanctions Reform and Export Enhancement Act of 2000 (TSRA). See <http://www.treas.gov/offices/enforcement/ofac/faq/answer.shtml#119> for details.

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LATEST EXPORT VIOLATIONS, FINES, PENALTIES, AND SANCTIONS

October 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.*

Sep. 30, 2009: The Bureau of Industry and Security (BIS) Office of Anti-Boycott Compliance issued a warning letter to Centria of Moon Township, PA, a manufacturer of building enclosure systems concerning Centria's voluntarily reported violation of the Anti-Boycott provisions of the EAR (Part 760). Centria provided a commercial invoice to its freight forwarder that included the following language:

"The goods shipped are not of Israeli origin nor do they contain any Israeli materials. They are not designated to visit any Israeli ports nor are they exported from Israel. They are of USA origin."

Oct. 1, 2009: Novamet Specialty Products Corporation of Wyckoff, NJ agreed to pay a civil penalty of \$700,000 to settle charges that it had made two exports of controlled nickel powder products to China without the required authorization. Novamet was also ordered to perform an audit of its export control compliance program for the twelve months following the date of the order, and to provide the results of the audit to the BIS Office of Export Enforcement. Novamet was aware that these exports required licenses, because it had previously applied for and obtained an export license to export the same product to China.

Oct. 5, 2009: Chitron Electronics of Waltham, MA, Shenzhen Chitron of China, and three Chinese employees of Chitron Electronics, Zhen Zhou Wu, Yufeng Wei, and Bo Li were charged in federal court with 38 criminal counts relating to a 10-year conspiracy to export controlled items to China without the required authorization. The three individuals allegedly ordered controlled items from U.S. companies and had them shipped to Chitron's Waltham office. They then made weekly exports to China using freight forwarders in Hong Kong. One of the Chinese destinations, the Shanghai Academy of Spaceflight Technology, was on the Entity List. Charges against the 5 defendants included violations of the Arms Export Control Act and the Export Administration Regulations, causing the filing of false Shipper's Export Declarations, money laundering, and immigration fraud.

Oct. 8, 2009: Three men – Jian Wei Ding and Kok Tong Lim of Singapore and Ping Cheng of Manhasset, NY – were sentenced in federal court in Minneapolis, MN following their pleas of guilty to

FD ASSOCIATES, INC. - EXPORT CONTROLS & COMPLIANCE UPDATE

one count of conspiracy to export high-modulus carbon-fiber material to the China Academy of Space Technology without the required authorization. Ding was sentenced to 46 months in prison. Lim was sentenced to one year in prison and Ching to one year of probation because of their cooperation in the prosecution.

Oct. 15, 2009: Utech Products, Inc. of Schenectady, NY agreed to pay a civil penalty of \$125,000 to settle charges by BIS that on 3 occasions it had exported oscilloscopes to Pakistan without the required authorization. The oscilloscopes are controlled for nuclear nonproliferation reasons. Utech was also ordered to perform an audit of its export control compliance program for the twelve months following the date of the order, and to provide the results of the audit to the BIS Office of Export Enforcement.

Oct. 19, 2009: Stewart David Nozette of Chevy Chase, MD was charged with attempted espionage for knowingly and willfully attempting to transfer classified U.S. defense information to FBI agents that Nozette believed to be Israeli intelligence officers. The complaint does not allege that the government of Israel or anyone acting on its behalf committed any offense.

Oct. 29, 2009: FSI International of Chaska, MN, agreed to pay a civil penalty of \$450,000 to settle 66 charges by the BIS of exporting valves and pumps without the required authorization. The valves and pumps were controlled for chemical and biological weapons proliferation reasons. FSI voluntarily disclosed the violations to the BIS Office of Export Enforcement.
