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Advisors in Export
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LATEST EXPORT CONTROLS AND COMPLIANCE UPDATE

September 2009

This newsletter is a listing of the latest changes in US export control regulations for the month of September 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" for an update on companies and persons denied export privileges by the United States Government.

REGULATORY UPDATES

The President

Sep. 23, 2009 – 74 Fed. Reg. 48361: The President issued a finding resulting in the Maldives becoming eligible to receive defense articles and defense services.

Sep. 23, 2009 – 74 Fed. Reg. 48363: The President issued a finding resulting in the Economic Community of Central African States becoming eligible to receive defense articles and defense services.

Department of Commerce

Sep. 8, 2009 – 74 Fed. Reg. 45985: The Bureau of Industry and Security (BIS) eased the restrictions on exports to Cuba by liberalizing provisions on gift parcels, removing the weight limit on personal baggage for travelers, creating a license exception for personal communication devices such as mobile phone systems, computers and software, satellite receivers, and digital cameras, and revising the licensing policy to facilitate exports needed to establish telecommunications links between the U.S. and Cuba. Specific regulatory changes are amendments to License Exceptions GFT and BAG and creation of a new License Exception CCD (Consumer Communications Devices). Q&A on the changes are on the BIS web site at <http://www.bis.doc.gov/news/2009/cubaqa.htm>. (See below for a related action by the Treasury Department Office of Foreign Assets Control.)

Sep. 8, 2009 – 74 Fed. Reg. 45990: BIS revised the Export Administration Regulations (EAR) to clarify that restrictions and license requirements on exports and re-exports to entities and persons on the Entity List (Supp. No. 4 to EAR Part 744) also apply to in-country transfers. The amendments were made to EAR Secs. 744.10, 744.11 and 744.20 and to the Entity List itself.

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Sep. 11, 2009: BIS issued an advisory opinion stating that “a person or company would not be in violation of the EAR if it posts ‘mass market’ encryption software on the Internet for free and anonymous download and then at a later time the software is downloaded by an anonymous person in Iran, Cuba, Syria, Sudan or North Korea.” The opinion further states that if the company or person requires registration before allowing downloading, the download would not be considered anonymous. Therefore, a license would be required before permitting a download in one of these 5 countries. The opinion further cautioned that it concerned only the regulations of the Commerce Department, and did not cover OFAC restrictions that might apply.

September 24, 2009: BIS released the third version of its Commodity Classification Information Table (http://www.bis.doc.gov/pdf/ccats_table3.pdf) containing information submitted by companies regarding the export control classifications of their products. The new table contains information from nearly 40 companies, including McAfee, Inc., Sun Microsystems, Inc., and Texas Instruments, Inc.

Department of State

Sep. 9, 2009: The Directorate of Defense Trade Controls (DDTC) announced in a notice on its website (http://www.pmddtc.state.gov/licensing/documents/WebNotice_CatXXI.doc) that effective immediately, license submissions involving U.S. Military List (USML) Category XXI (Miscellaneous Articles) will be accepted only if they are accompanied by either a DDTC Commodity Jurisdiction determination letter or an official letter from the Director, Office of Defense Trade Controls Policy granting permission to use Cat. XXI.

Sep. 14, 2009: DDTC announced that effective immediately, licenses for the permanent export of CARC Paint classified under USML Category XIV(f)(5) no longer need to be accompanied by a DSP-83 end use statement. The announcement provides instructions for submitting a license on D-Trade without a DSP-83. See the announcement at: http://www.pmddtc.state.gov/licensing/documents/WebNotice_CARCPaint.doc,

Sep. 28, 2009: DDTC announced on its website home page (www.pmddtc.state.gov) that the only purpose for which DSP-119s may be used is to amend DSP-85 licenses. Amendments to DSP-5, DSP-61, or DSP-73 licenses may only be made on the companion amendment form via DTrade-2.

Sep. 28, 2009: In an announcement on its home page, DDTC requested comments on a new proposed DS-4076, Commodity Jurisdiction (CJ) Determination Form. Comments are invited through October 27, 2009. In a further announcement on Sep. 30, 2009, DDTC announced that applicants for a CJ may either use the newly proposed form or write an application in the style of a letter, as has been standard procedure. The new DS-4076 will eventually become an electronic submission. Until further notice, however, it may only be filed in hard copy.

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Sep. 30, 2009: DDTC announced that effective immediately, value or quantity changes in DSP-5, DSP-61, DSP-72 and DSP-85 licenses must be the subject of a replacement license rather than an amendment. This applies even to changes resulting from obvious typographical errors. Approved amendments are not reported to Customs, and therefore the new numbers are not reflected in the Automated Export System (AES). The requirement of a replacement license is to assure that AES will have the updated information.

Sep. 30, 2009: DDTC updated its guidance on licensing of foreign persons employed by a U.S. person, at http://www.pmdtc.state.gov/licensing/documents/WebNotice_LicensingForeign.pdf.

Department of the Treasury

Sep. 8, 2009 – *74 Fed. Reg. 46,000*: The Office of Foreign Assets Control (OFAC) amended the Cuban Assets Control Regulations (CACR). In addition to liberalizing the rules for visits to close relatives in Cuba and remittances to family members in Cuba, these amendments also expand the range of permissible commercial telecommunications transactions with Cuba and expand the range of permissible actions related to marketing, sales negotiation, etc. of medical and agricultural products. A fact sheet is on the OFAC website at <http://www.treas.gov/press/releases/tg273.htm>. (See above for a related action by the Commerce Department Bureau of Industry and Trade.)

Sep. 9, 2009: OFAC issued a general license and amended the Sudanese Sanctions Regulations to authorize the export and reexport of agricultural commodities, medicine, and medical devices to the Specified Areas of Sudan (i.e., Southern Sudan, Southern Kordofan/Nuba Mountains State, Blue Nile State, Abyei, Darfur, and marginalized areas in and around Khartoum). Products associated with the petroleum or petrochemical industries in Sudan are excluded from this general license.

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LATEST EXPORT VIOLATIONS, FINES, PENALTIES, AND SANCTIONS

September 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.*

FINES, PENALTIES, AND SANCTIONS

Sep. 1, 2009: Derrick Corporation of Buffalo, NY agreed to pay a civil penalty of \$30,000 to settle a charge of violating the EAR by exporting an EAR99 Stack Sizer Screening Machine to Indian Rare Earths, Ltd., an Indian company that is listed on the Entity List (Supp. No. 4 to EAR Part 744), without the required authorization.

Sep. 2, 2009: Jacques Monsieur, a Belgian national and French resident, was arrested upon his arrival in New York on charges of conspiracy to illegally export F-5 fighter jet engines from the U.S. to Iran. Mr. Monsieur and Dara Fatouhi, an Iranian national and French resident who remains at large, were indicted on August 27, 2009 in the Southern District of Alabama for conspiracy, money laundering, and smuggling as well as violations of the Arms Export Control Act (AECA) and the IEEPA. Mr. Monsieur had long been suspected of selling arms to countries subject to international arms embargoes. The current charges resulted from dealings with a U.S. undercover agent.

Sep. 3, 2009: In two related cases, Foxsemicon Integrated Technologies, Inc. (FITI) of Taiwan agreed to pay a civil penalty of \$250,000 (of which \$160,000 will be suspended), and Foxsemicon LLC (LLC) of San Jose CA agreed to pay a civil penalty of \$160,000 to settle charges involving unauthorized exports of pressure transducers controlled under ECCN 2B230 to China. Pursuant to a logistics service agreement between the two companies, LLC provided information to FITI's freight forwarder that led to the filing of 8 Shipper's Export Declarations that falsely stated that the transducers qualified as NLR (No License Required). LLC was charged with aiding and abetting, and FITI was charged with illegal exports, acting with knowledge of a violation, and filing false statements. The companies voluntarily disclosed these violations.

Sep. 8, 2009: OFAC added the General Bureau of Atomic Energy and the Korea Tangun Trading Corporation, both of Pyongyang, North Korea, to the Specially Denied Nationals (SDN) List following

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their designation as proliferators by the U.S. Department of State. All U.S. persons are prohibited from conducting any transactions with these entities. The United Nations designated both entities in July 2009 for their involvement in North Korea's WMD and missile programs.

Sep. 9, 2009 – *74 Fed. Reg. 46416*: BIS imposed a denial order until Feb. 8, 2013, on Bertrand Lalsingh of Hollywood, FL based on his February 2008 guilty plea to knowingly and willfully exporting an ITAR-controlled holographic weapon sight to Germany without the required authorization. Lalsingh was sentenced to 5 months in prison, 5 months of home confinement, 2 years of probation, and a \$100 special assessment. He was released from prison on August 19, 2008.

Sep. 9, 2009 – *74 Fed. Reg. 46415*: BIS imposed a 10-year denial order on Andrew Ward Freyer of La Quinta, CA based on his December 2007 conviction for violating the International Economic Emergency Powers Act (IEEPA) and conspiracy related to unauthorized exports of valves to Iran via Australia. Freyer was sentenced to 17 months in prison followed by 2 years of probation, plus a \$10,000 fine. He was released from prison April 21, 2009.

Sep. 11, 2009: Affiliates of Thermon Manufacturing Company of San Marcos, TX in five foreign countries agreed to pay civil penalties totaling \$176,000 to settle charges of unauthorized exports to sanctioned countries including Iran, Syria, and Libya, and to an Indian company that was included on the Entity List. The affiliates are Thermon UK Ltd., Thermon Europe B.V., Thermon Far East Ltd., Thermon Heat Tracers Pvt. Ltd., and Thermon Korea, Ltd. Thermon Manufacturing Company had previously informed its affiliates that products manufactured by the U.S. company could not be sold to sanctioned countries. (*See related OFAC cases against Thermon in August Regulatory Update.*)

Sep. 14, 2009: DDTC published an updated list of statutorily debarred parties on its website at <http://www.pmdtdc.state.gov/compliance/debar.htm>.

Sep. 18, 2009 – *74 Fed. Reg. 47915*: BIS renewed a temporary denial order (TDO) suspending the export privileges of Mahan Airways for an additional six months. This TDO does *not* cover the following other entities that were named in the original TDO: Balli Group PLC, Balli Aviation, Balli Holdings, Vahid Alaghband, Hassan Alaghband, Blue Sky One Ltd., Blue Sky Two Ltd., Blue Sky Three Ltd., Blue Sky Four Ltd., Blue Sky Five Ltd., Blue Sky Six Ltd, and Blue Airways.

Sep. 24, 2009: Aviation Services International, B.V., an aircraft parts supply company; Robert Kraaiipoel, its director; and Robert Neils Kraaiipoel, its sales manager, all of the Netherlands, pleaded guilty in Federal District Court for the District of Columbia to charges of conspiracy to export aircraft components and other items from the U.S. to entities in Iran via the Netherlands, the United Arab Emirates, and Cyprus without the required export authorizations from OFAC. They allegedly provided false end-user certificates to suppliers in the U.S. and had materials shipped to addresses in other countries to conceal their actual destination in Iran. ASI agreed to pay a \$100,000 fine and to be on corporate probation for 5 years. The two individual defendants each face a potential sentence of 5 years in prison and a maximum fine of \$250,000 or twice their pecuniary gain.

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Sep. 24, 2009: Electronic Cable Specialists of Franklin, WI agreed to pay a civil penalty of \$27,500 to settle charges by BIS of unlicensed exports of accelerometers controlled for missile technology reasons to Malaysia and Indonesia. Electronic Cable voluntarily disclosed the violations.

Sep. 25, 2009: GE Homeland Protection of Newark, CA agreed to pay a civil penalty of \$22,000 to settle charges by BIS of unlicensed exports to South Korea and South Africa made by InVision Technologies, Inc., its predecessor company. In both cases, the unauthorized exports were made with knowledge of a violation, since InVision had previously filed a voluntary disclosure regarding the same types of items and destinations.

Sep. 29, 2009: Griffin & Howe, Inc., of Bernardsville, NJ agreed to pay a civil penalty of \$67,000 to settle charges by BIS of unauthorized exports of optical sighting devices classified under ECCN 0A987 to Zambia and shotguns classified under ECCN 0A984 to Canada and Chile.
