

# EXPORT COMPLIANCE UPDATE

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## Record Keeping And The ITAR

### U.K. Export Regulations

US industry learned first hand about changes to the U.K. Export Regulations at a recent industry seminar. A speaker from a UK freight forwarding company provided insights into the UK licensing regime including types of licenses, how those licenses apply and the impact on industry on complying with these regulations.

The UK export regulations are based on the Export Control Act 2002. They are administered by the Export Control Organisation (ECO) of the Department of Trade and Industry (DTI). These regulations have equivalents to both the U.S. Munitions List (the Military List) and also the Commerce Control List (the Dual Use List). In general, if the goods are controlled in the U.S., they will also be controlled in the U.K. One significant difference between the U.S. and U.K. export regulations is that there is no "deemed export" rule (the licensing of transfers of technical data to a foreign person) encompassed within the U.K. regulations.

There are three types of licenses within the UK system.: The Standard Individual Export License (SIEL), Open Individual Export License (OIEL) and Open General Export License (OGEL). The SIEL allows shipments of specified goods to a specific consignee up to the quantity specified by the license. Such licenses are valid for two years for permanent exports and one year for temporary exports. The OIEL is specific to an individual exporter and covers multiple shipments to specified consignees and generally valid for two years (for military goods or technology) to three years (for other goods). The OGEL is a broad authorization established by the ECO that allows for the export of specified controlled goods by any exporter, removing the need for exporters to apply for individual licenses,

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Companies may be aware of the recent revisions to the International Traffic In Arms Regulations (ITAR) that permit the maintaining of required ITAR records in an electronic format. (August 28, 70 FR 50958-50966 - Final rule).

Language in Section 122.5 of the ITAR has been amended accordingly and identifies that if an exporter is maintaining records in an electronic format, the information must be capable of being reproduced legibly on paper and the stored information, if altered must keep track of all changes, who made them and when they were made.

While addressing what is becoming a prevalent practice in an electronic age, the revised language makes very clear the exporters' responsibilities with regard to electronic maintenance of records to include all drafts, revisions and edits, which should encompass all hardcopy documents with hand-written notes or changes. Given the scope of records required under the ITAR, companies should have in place a comprehensive record keeping system for storing export documents. Does your company have such a system?

Which records should a company keep? The ITAR Section 127.2, in describing export control documents, identifies as a bottom line "Any other document used in the regulation or control of defense article defense service, or technical data for which a license or approval is required by the [ITAR]." In addition, Section 123.22, in discussing the requirements for filing, record retention and return of export licenses, identifies that for exports under agreements (TAAs or MLAs) subsequent to the initial notice of export, "records of all subsequent exports shall be maintained by the exporter". Clearly the intent is that all records pertaining to exports of ITAR controlled technical data, hardware and services must be maintained to include both hard copy and electronic documents, (emails, webhostings, ftp transfers), as well as records of oral or visual disclosures, (meetings, teleconferences, visits etc.).

Your record keeping system should be written and disseminated to all responsible personnel. The policy/procedure should identify not only which records should be maintained but for how long. The plan should also identify methods of storage and destruction to encompass the ITAR requirement to maintain records for five years from the expiration or license of other authorization. Finally, records should be able to be produced on demand. In establishing your ITAR compliance program, record keeping is an integral and key component that must be carefully planned, and fully compliant. *The devil is in the details!*

### COMPLIANCE REMINDER

#### **TIME TO RENEW YOUR AGREEMENTS:**

MLA's and TAA's normally expire on the last day of a given calendar year, i.e. December 31. It is Department of State policy that renewals be submitted 60 days in advance of the termination date of agreements.

If your agreement expires December 31, 2005, the deadline for filing is November, 1, 2005. Please file accordingly.

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.

## PRESIDENT'S EXPORT COUNCIL

A key organization involved in export matters is the President's Export Council Subcommittee on Export Administration (PECSEA). PECSEA is a separately chartered subcommittee of President's Export Council and is administered by the Bureau of Industry and Security, Department of Commerce (BIS). PECSEA is made up of industry representatives and BIS personnel.

PECSEA reports to the President's Export Council on export control matters. In a recent meeting the PECSEA reviewed and made comment on several key issues pertaining to export of commercial dual-use items subject to the Export Administration Regulations (EAR).

> BIS will seek public comment on a proposed rule that will focus on the export of dual-use items for military end-uses to countries that the US has implemented an arms embargo. The proposed rule would include a presumption of denial for the export of dual-use items in these circumstances.

> To date in 2005, there have been 29 criminal actions resulting in \$7.7M in fines and 63 Administrative actions resulting in \$6.2M in fines related to violations of the Export Administration Act and EAR. BIS anticipates the fines levied in 2005 for such violations will double the fines levied for 2004.

> BIS has initiated the "Fast Track" program, which seeks to handle voluntary self-disclosures more expeditiously. It is important to note that there were no criminal convictions in 2004 or 2005 for cases related to self-disclosures. Additionally, administrative settlements in conjunction with self-disclosures resulted in fines 50% less than the possible maximum fines.

### UK, Continued from Page 1

providing the shipment and destination are eligible and the conditions are met. Exporters must register with the ECO before they can make use of most OGELs. OGELs remain in force until they are revoked.

US industry learned that, as in the U.S., UK laws and regulations apply to any article or technical data that is in the UK. If an article or technical data requires a license to go to the UK, it will most likely need a license to leave the UK. As an example, a U.S. company will generally need a UK license (e.g. generally a SIEL license) to return a defense article from a UK trade show. The same is true for controlled technical data.

The UK regulations also place a heavy responsibility on industry for record keeping and compliance. Records are required to be kept for five years. Companies that use OGELs are subject to audit by the DTI, on a regular basis, every 18 months to two years.

Exporters are reminded that in any international transaction, it is important not only to know and comply with the export laws of your own country, but to also be aware of the laws of the country to which you are exporting, to avoid any penalties associated with violations of those laws.

## ITAR ANSWER

If the data is within the scope of the TAA authorization, you may transfer the data to the UK MOD.

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You should make sure that the data is clearly marked ITAR controlled, and that transfer is restricted to only those parties identified in the TAA. You should also report the details of the transfer (time, method, description, etc.) to your US export compliance personnel or other person responsible for maintaining records under the TAA. Finally, you should delete the data from your blackberry, otherwise, there may be UK export licensing requirements to take the data out of the United Kingdom.

## REGULATORY UPDATES

### The President

Sep. 28, 2005 – *P.D. 2005-39*: President Bush issued a Presidential Determination waiving provisions of the Arms Export Control Act (AECA) to permit the issuance of licenses for exports of defense articles or defense services to Libya for the purpose of destroying Libya's chemical weapons. *Note: We expect to see changes to the ITAR regarding these events shortly.*

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Sep. 28, 2005 – *P.D. 2005-40*: President Bush issued a Presidential Determination waiving provisions of the AECA to permit the issuance of licenses for brokering activities and exports of defense articles and defense services to Libya to assist in the disposition, including any required refurbishment, of Libyan-owned C-130H aircraft. *Note: We expect to see changes to the ITAR regarding these events shortly.*

### Department of Commerce

Sep. 16, 2005 – *70 Fed. Reg. 54626*: The BIS amended several provisions in the EAR. The changes affect EAR Parts 736, 738, 742, 744, and 748 and are largely clerical. The most significant change eliminates one method for submitting in-country transfer applications. Such applications must now be submitted using the BIS Multipurpose Application (Form 748-P) or the Simplified Network Application Process (SNAP). New instructions clarifying the information required are contained in a new paragraph (v) of Supplement No. 2 to EAR Sec. 748.

## Fines & Penalties

Sep. 13, 2005: Four owner-operators of Manten Electronics, Inc., of Mount Laurel, NJ pleaded guilty to illegally transferring controlled items including monolithic microwave integrated circuits to state-sponsored research institutes in China. The company president, Xu Weibo, pleaded guilty to violating the Export Administration Act and the Arms Export Control Act and to conspiracy to violate both laws. The remaining three defendants, Xiu Ling Chen, Hao Li Chen, and Kwan Chun Chan, pleaded guilty to the conspiracy charge only. The defendants, all naturalized U.S. citizens, also agreed to forfeit \$391,337, representing their revenue from the illegal exports.

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## REGULATORY UPDATES

Sep. 15, 2005: LPPAI, Ltd., a Houston, TX company doing business as PA, Inc., pleaded guilty to one count of attempted export without a license. The plea agreement called for a criminal fine of \$50,000 and corporate probation of three years. As part of a global resolution of the charges, LPPAI also entered into an administrative settlement with BIS calling for an administrative penalty of \$50,000, a five-year suspended denial order, and forfeiture of commodities worth \$33,000 that were seized during the investigation. The charge involved PA's attempt to transport oil field equipment to Iran without the required license by indicating a destination in the United Kingdom after PA was informed by its air freight manager that a shipment to Iran required an export license.

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Sep. 16, 2005: Price Brothers (UK) Ltd of Surrey, United Kingdom, agreed to pay an administrative penalty of \$101,500 to settle charges of 29 violations of the EAR involving re-exports of EAR 99 machinery spare parts and other items from the United Kingdom to Libya without the required authorization. Price Brothers had voluntarily disclosed the violations.

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Sep. 21, 2005: Ning Wen of Manitowoc, WI was convicted by a Milwaukee jury of 9 counts of conspiring to export over \$500,000 in controlled electronic components to China without the required export licenses. He faces a sentence of up to 25 years in prison. Three other defendants in the case, Hailin Lin, Jian Guo Qu, and Ruo Ling Wang, had already pled guilty. Lin awaits sentencing; Qu was sentenced to 48 months in prison and a \$2,000 fine; and Wang was sentenced to time served – 7 months – and a \$1,500 fine. The case involved money laundering and false statements to FBI agents as well as export control violations.

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Sep. 22, 2005: Sirchie Fingerprinting Labs, Inc. of Youngsville, NC agreed to pay a penalty of \$400,000 to settle charges of 181 violations of the EAR involving exports of fingerprint imaging equipment and fingerprint powder to Hong Kong. The violations included exports without the required license; false statements on export control documents; taking action with knowledge that a violation was about to occur; and taking action with intent to evade the EAR. Searchie also received a suspended five-year denial order. A denial order was also entered against Searchie's former president, John H. Carrington, who also faces criminal

charges. *See Sanctions and Denial Orders.*

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Sep. 27, 2005: Arif Ali Durrani, a Pakistani deported from Mexico, was charged with conspiracy to smuggle jet engine components from the U.S. to Malaysia, the United Arab Emirates, and Belgium. Durrani had earlier been charged with the illegal export of military jet engine parts to Iran, but that charge had been dropped when the government learned that the parts had actually been shipped to Jordan under an export license. Durrani was arrested on the earlier indictment in June, when his plane from Mexico to Pakistan landed in Los Angeles. Durrani was in U.S. prison from 1987 to 1992 on three counts of violating the Arms Export Control Act by illegally exporting missile parts to Iran.

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Sep. 27, 2005: Sermatech International, Inc. of Pottstown, PA agreed to pay \$17,500 to settle charges that on 5 occasions it had violated the EAR by exporting technical data on gas turbine engines to its South Korean joint venture without obtaining the required export license.

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Sep. 27, 2005: Parker Hannifin Corp. of Cleveland, OH agreed to pay \$185,000 to settle charges involving 17 exports of controlled check valves to Taiwan without the required export licenses. The charges covering these exports included illegal exports; acting with knowledge of a violation; and misrepresentation through false statements on Shipper's Export Declarations (SEDs).

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Sep. 28, 2005: Norman, Fox & Co. of Los Angeles, CA agreed to pay \$42,000 to settle charges involving 12 shipments of triethanolamine, a controlled chemical, to Hong Kong without the required export licenses.

### Sanctions & Denial Orders

#### Department of Commerce

Sep. 16, 2005, *70 Fed. Reg. 54710*: BIS extended for 180 days the temporary denial order (TDO) for Gold Technology Limited, Hero Peak Limited, Joanna Liu, and Portson Trading Limited, all of Hong Kong; Oriental Trading Corporation of Pakistan; and Zhenke International Trading Co. Ltd. of PRC.

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Sep. 28, 2005 – *70 Fed. Reg. 56630*: BIS imposed a 5-year denial order on John H.

Carrington of Raleigh, NC, settling charges of 181 violations of the EAR. The charges included 25 unlicensed shipments of fingerprint imaging equipment and fingerprint ink and powder to Hong Kong via Italy for ultimate destination in China, false statements, and taking actions with intent to evade the regulations. In addition, Carrington was indicted in federal court in Raleigh, NC on October 5 on criminal charges of exporting crime control equipment valued at over \$1.2 million to China without the required export licenses. Carrington is expected to plead guilty and may face an \$800,000 fine in addition to a possible prison sentence. Carrington was a state senator in North Carolina when the exports occurred. He is the former president of Sirchie Finger Print Laboratories of Youngsville, NC, which was also charged in the BIS civil action. *See item about Sirchie above.*

#### Department of State

Sep. 6, 2005: ORBIT/FR Inc., of Horsham, PA announced a final settlement with the Directorate of Defense Trade Controls (DDTC) terminating the statutory debarment that had been imposed in 1999 as a result of the company's conviction of violations of the AECA. ORBIT agreed to pay a fine of \$100,000 and an additional penalty of \$200,000 to be spent on implementing agreed compliance measures. An additional \$200,000 penalty was suspended on condition that the company and its foreign subsidiaries refrain from exporting non-U.S. defense articles or non-U.S. defense services to any country identified in ITAR Part 126 for a period of six years. The same restriction will apply to ORBIT's foreign affiliates for a period of three years.

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Sep. 30, 2005 – *70 Fed. Reg. 57349*: DDTC announced the three-year statutory debarments of Equipment & Supply, Inc.; Klaus Ernst Buhler; and Rotair Industries, Inc. as a result of their having been convicted of violations of the AECA.

#### Department of the Treasury

Sep. 19, 2005: The Office of Foreign Assets Control (OFAC) added Dr. Abdul Latif Saleh, a Jordanian citizen resident in the United Arab Emirates, to the Specially Designated Nationals (SDN) List.

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Sep. 29, 2005: OFAC added 7 Egyptian nationals to the SDN List.

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## ITAR QUIZ

**Q** I am on travel in the United Kingdom and am participating in a meeting with my UK MOD customer for a joint US/UK program. My company has a TAA for this program and the meeting that I am attending is within the scope of the TAA. I have just received ITAR controlled technical data via my “blackberry” from my company in the United States. The data is within the scope of the program.

May I transfer this technical data to the UK MOD? If so, what records should I keep?