

<p style="text-align: center;"><b>EXPORT CONTROLS UPDATE</b> <b>December 2007</b></p>
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*This newsletter is a summary of changes to US export control regulations or other related regulatory matters of interest for the month of December 2007.*

### **REGULATORY UPDATES**

#### **The President**

Dec. 4, 2007: The President transmitted the U.S.-Australia Defense Trade Cooperation Treaty to the U.S. Senate for advice and consent to ratification. A Department of State report including an overview of the Treaty was sent with the Treaty. The purpose of the Treaty is to enhance the operational capabilities and interoperability of the armed forces of both countries.

#### **Department of Commerce**

Dec. 12, 2007 – 72 Fed. Reg. 70509: The Bureau of Industry and Security (BIS) amended license exceptions TMP and BAG to expand their “tools of trade” provisions to permit certain temporary exports and reexports of technology. Before this amendment, license exceptions TMP and BAG had applied to hardware and software, but not to technology. Therefore, PCs and other media containing controlled technology could be taken only to destinations for which the technology would not require an export license. The amendment expands license exceptions TMP and BAG to cover such technology exports, but only under specified conditions. Among other restrictions, controlled technology still may not be released to any person who is not already authorized to receive it under an export license or an exception. Before relying on amended exceptions TMP and BAG, be sure to check the restrictions in the current versions of the Export Administration Regulations (EAR) (Sec. 740.9 for TMP and Sec. 740.14 for BAG).

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Dec. 28, 2007 – 72 Fed. Reg. 73589: In EAR Part 772.1, “Definitions of Terms,” BIS removed the second definition of “Production.”

#### **Department of Defense**

Dec. 4, 2007: The Defense Security Cooperation Agency (DSCA) notified Congress of possible foreign military sales to Kuwait (PAC-3 missiles, PAC-2 missile upgrades, and PATRIOT ground support equipment upgrades) and the United Arab Emirates (PATRIOT Advanced Capability-3 Missile System and upgrades and refurbishments of E-2C aircraft).

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Dec. 7, 2007: DSCA notified Congress of possible foreign military sales to Saudi Arabia of mission equipment for AWACS aircraft and AN/AAQ-33 SNIPER Targeting Pods.

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Dec. 10, 2007: DSCA notified Congress of a possible foreign military sale of follow-on support for the Tomahawk Weapon System and associated equipment and services. to the United Kingdom.

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Dec. 17, 2007: DSCA notified Congress of a proposed foreign military sale of Mine Resistant Ambush Protected (MRAP) vehicles and associated equipment and services to the United Kingdom.

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Dec. 18, 2007: DSCA notified Congress of proposed foreign military sales to Morocco of F-16C/D Block 5-52 aircraft and associated equipment and services and T-6B Texan aircraft, Global Positioning System (GPS) with CMA-4124 GNSSA card and Embedded GPS/Inertial Navigation System (INS) spares, and other articles and services.

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Dec. 18, 2007: DSCA informed Congress of proposed foreign military sales to Switzerland of articles and services in support of an "Upgrade 25 Program" to extend the useful life of 33 Swiss Air Force F/A-18C/D aircraft.

### **General Accounting Office**

Nov. 30, 2007: GAO issued a report titled "State Department Needs to Conduct Assessments to Identify and Address Inefficiencies and Challenges in the Arms Export Process." Among the findings of the report: During the period 2003-2006, median times for processing munitions export license applications almost doubled, and the period before cases are referred for interagency review increased from 7 days in FY 2003 to 20 days during the first 7 months of FY 2007. The full GAO report is at [www.gao.gov/cgi-bin/getrpt?GAO-08-89](http://www.gao.gov/cgi-bin/getrpt?GAO-08-89); highlights are at <http://www.gao.gov/highlights/d0889high.pdf>. A Jan. 4, 2008 response from the State Department is at <http://www.state.gov/t/pm/rls/fs/98832.htm>.

### **Department of Justice**

Dec. 26, 2007 – 72 *Fed. Reg.* 72936: The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) amended its regulations by adding Afghanistan to the list of proscribed countries for exports and imports of defense articles and defense services; removing South Africa, Armenia, Azerbaijan, and Tajikistan from the same list; removing the arms embargo against Serbia and Montenegro; and updating references to the arms embargo on Zaire to refer to that country's current name, "Democratic Republic of the Congo." These changes conform the ATF rules with the International Traffic in Arms Regulations (ITAR).

### **Department of State**

Dec. 13, 2007 – 72 *Fed. Reg.* 70777: The Directorate of Defense Trade Controls (DDTC) amended the Voluntary Disclosure (VD) provisions in Part 127 of the ITAR. The new provisions include a 60-calendar day deadline after the initial notification to submit a full disclosure (subject to extension upon written request). Also, they specify the scope of identifying information that must be provided in a VD; clarify that corrective actions and compliance initiatives implemented must be directly in response to the violation being disclosed, and designed to deter a repeat of that violation; and specify that a senior officer must sign VDs involving a major violation, a systemic pattern of violations, or the absence of an effective compliance program.

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Dec. 19, 2007 – 72 *Fed. Reg.* 71575: DDTC amended the ITAR by adding the following at the end of Sec. 126.1(c): "United Nations Arms Embargoes include, but are not necessarily limited to the following countries: Cote d'Ivoire, Democratic Republic of Congo, Iraq, Iran, Lebanon, Liberia, North Korea, Rwanda, Sierra Leone, Somalia, and Sudan."

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Dec. 19, 2007 – 72 *Fed. Reg.* 71785 (updated Jan. 4 on DDTC web site): In a move that will streamline the operation of many TAAs, DDTC amended the ITAR by adding new Sec. 124.16, “Special Retransfer Authorizations for Unclassified Technical Data and Defense Services to Member States of NATO and the European Union, Australia, Japan, New Zealand, and Switzerland.” Under the amendment, the U.S. applicant for a Technical Assistance Agreement or Manufacturing License Agreement may request further release of technical data and defense services and access to defense articles exported pursuant to or produced as a result of the TAA/MLA to certain third country/dual national (TC/DN) employees of the foreign signatory, without requiring the TC/DNs to execute nondisclosure agreements (NDAs). The changes, which also apply to employees of sub-licensees authorized under the agreement, apply only to TC/DNs who are nationals of countries that are members of the North Atlantic Treaty Organization (NATO), the European Union (EU), Australia, Japan, New Zealand, and Switzerland, and of no other country outside this group. DDTC notes that in determining nationality, it considers country of birth as well as citizenship.

To implement this change, a clause has been added to the transmittal letter required under ITAR Sec. 124.12 (c) in which the applicant can request that the retransfer of defense articles and services be authorized without the requirement to execute NDAs. An existing TAA/MLA can utilize this new rule by amending the document to add a clause listing the countries of the nationals who will receive the technical data, having U.S. and foreign signatories re-execute the amended agreement, and submitting it to the Office of Defense Trade Controls Licensing (DTCL). This is considered a minor amendment under ITAR Sec. 124.1(d) and will not require prior approval by DTCL.

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Dec. 28, 2007: DDTC revised and restated the “Guidelines for Exporting Hardware Via Separate License in Furtherance of an Agreement” in Sec. 9.4 of the Guidelines for Preparing Agreements. As part of the implementation of D-Trade, the new guidelines shift some audit responsibilities from DDTC licensing officers to license applicants. For example, it will not be possible to submit a license application in furtherance of an agreement until the agreement is approved, and the system will not accept a license request that exceeds the hardware value authorized by the agreement. Also included in the revised Guidelines is a new “Sample Letter of Explanation” template that reflects the record keeping requirements of ITAR Sec. 122.5. Effective Feb. 1, 2008, any submission not meeting the requirements of the new Sec. 9.4 is subject to Return Without Action.

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Dec. 31, 2007: DDTC announced that Robert S. Kovac is the new Managing Director of DDTC. Mr. Kovac was formerly director of licensing at the Defense Technology Security Administration.

### **Department of the Treasury**

Nov. 28, 2007: The Office of Foreign Assets Control (OFAC) announced on its web site that in processing compliance cases, it will consider the increased maximum penalties provided by the International Emergency Economic Powers Enhancement Act to be available for all violations with respect to which a Final Penalty Notice had not been issued as of October 16, 2007.

## **SANCTIONS**

### **Department of Commerce**

Dec. 10, 2007 – 72 *Fed. Reg.* 69649: BIS denied the export privileges of Ernest Koh Chong Tek, a citizen of Singapore currently incarcerated in the U.S., for 10 years following his conviction for unauthorized exports of Commerce-controlled civilian aircraft wheel components and vanes to Iran and money laundering.

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Dec. 10, 2007 – 72 *Fed. Reg.* 69650: BIS denied the export privileges of Xu Weibo, Hao Li Chen, Xiu Ling Chen, and Kwan Chun Chan for ten years. The four persons had been convicted for their various roles in illegal exports to China of gallium arsenide monolithic microwave integrated circuits, an item controlled under Export Control Classification Number (ECCN) 3A001. Xu had also been convicted for violations of the Arms Export Control Act (AECA).

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Dec. 14, 2007 – 72 *Fed. Reg.* 71117: BIS renewed for a further 180 days a Temporary Denial Order against Cirrus Electronics LLC (Cirrus) of Simpsonville, SC, Cirrus Electronics Pte Ltd. of Singapore, Cirrus Electronics Marketing (P) Ltd. of Bangalore, India; Parthasarathy Sudarshan (managing director of Cirrus) of Simpsonville, SC; Mythili Gopal (international manager of Cirrus) of Simpsonville, SC; Akn Prasad (CEO of India Operations of Cirrus) of Bangalore, India; and Sampath Sundar (Director of Operations of Cirrus) of Singapore.

### **Department of State**

Dec. 12, 2007 – 72 *Fed. Reg.* 70642: DDTC imposed statutory debarment on 14 persons or companies that were convicted of violating or conspiring to violate the Arms Export Control Act (AECA). The debarred persons are:

- L&M Manufacturing Corporation
- Nesco NY, Inc.
- Alejandro Felix-Canez
- Yssouf Diabate
- Ronald W. Wiseman
- Gustavo Gonzalez, Jr.
- Carlos Ivan Deblas
- Francisco Jimenez Briceno
- Balbina Morales-Oscoy
- Pedro Martinez-Carrillo
- Lorenzo Sanchez-Castruita
- Ovet Chavira
- Miguel Loya
- Jeffrey Roll

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Dec. 19, 2007 – 72 *Fed. Reg.* 70642: DDTC terminated the statutory debarment of Rotair Industries, Inc.

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Dec. 31, 2007: DDTC announced on its website a new policy of denying applications for licenses and other approvals to export or transfer defense articles and services to Sri Lanka. The only exception to this policy will be that licenses for technical data or equipment made available for the limited purposes of maritime and air surveillance and communications will be considered on a case-by-case basis. This embargo is required by the recently passed Consolidated Appropriations Act of 2008.

### **FINES & PENALTIES**

Oct. 30, 2007: The U.S. District Court for the Northern District of Alabama dismissed a five-count indictment against Axion Corporation of Huntsville, AL, and its owner, Nooredin Latifi, for lack of evidence. Axion and Latifi had been indicted in March 2007 on charges of illegal exports of ITAR-controlled technology, submitting false documents to the government, and related crimes. The alleged

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crimes involved exports to overseas manufacturers of technical drawings of the bifilar weight assembly for the UH-60 Black Hawk helicopter.

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Nov. 29, 2007: Proclad Pipelines Ltd. of Scotland agreed to pay a civil penalty of U.S. \$100,000 and to be subject to a suspended seven-year term on the Denied Persons List to settle charges that it committed three violations of EAR § 764.2(b) (causing, aiding, or abetting a violation of the EAR), one violation of EAR § 764.2(d) (conspiracy to violate the EAR), two violations of EAR § 764.2(e) (ordering nickel alloy pipes with knowledge that a violation of the EAR is intended to occur), two violations of EAR § 764.2 (h) (taking actions with the intent of evading the EAR), and two violations of the EAR § 764.2 (g) (misrepresentation and concealment of facts) by ordering and attempting to export nickel alloy pipes, items subject to the EAR and to the Iranian Transactions Regulations and classified as EAR 99, from the United States to Iran through the United Arab Emirates and/or the United Kingdom without the required U.S. Government authorization.

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Dec. 3, 2007: Elettronica Aster S.p.A. of Milan, Italy, agreed to pay a civil penalty of U.S. \$18,000 to settle charges that it committed one violation of EAR § 764.2 (b) (aiding and abetting the export of items without the required Department of Commerce license) and one violation of EAR § 764.2(e) (transportation of items with knowledge that a violation of EAR was about to occur) in connection with the export of an instrument landing system, an item subject to the EAR and classified under ECCN 7A994, from the United States through Italy to Iran, without the U.S. Department of Commerce license that EAR § 746.7 requires.

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Dec. 3, 2007: Philip Cheng of Cupertino, CA was sentenced to two years in prison and ordered to pay a \$50,000 fine after pleading guilty to brokering the export of an ITAR-controlled Panther I night vision camera and its accompanying technology to the North China Research Institute of Electro-Optics and the China National Electronics Import & Export Corporation without the required authorization and without registering as a broker of defense items, as required under the ITAR.

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Dec.6, 2007: In a classic deemed export case, 3DSP Corp. of Irvine, CA, agreed to pay \$36,000 to settle charges by BIS that it had exported physical layer technology classified under ECCN 5E991 to Beijing University of Aeronautics and Astronautics by releasing this technology to a BUAA professor and five BUAA students in the United States.

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December 7, 2007: Mine Safety Appliances Company of Pittsburgh, PA agreed to pay a \$470,000 civil penalty to settle charges by BIS that through its branch office in Abu Dhabi, MSA Middle East, it made 107 reexports of safety and protection-related items from the UAE to Iran and Syria without the required export licenses. Some of the reexported items were on the CCL, while others were classified under EAR 99. BIS stated that the fine had been mitigated because MSA voluntarily disclosed the illegal reexports and cooperated fully in the investigation, and also had increased its compliance efforts.

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Dec. 7, 2007: Cryostar-France SA of Hesingue, France agreed to pay a civil penalty of \$66,000 to settle charges of conspiracy, aiding and abetting, acting with knowledge that a violation would occur, attempted illegal export, and actions to evade the requirements of the EAR in connection with the sale of U.S.-origin cryogenic pumps to Iran without the required authorization from OFAC.

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Dec. 7, 2007: State of the Art, Inc. of State College, PA agreed to pay \$35,000 to settle charges by BIS of false statements on Shipper's Export Declarations and an unlicensed export to a Listed Entity. SoA

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allegedly falsely identified the United Arab Emirates (UAE) as the ultimate destination on Shipper's Export Declarations when the items were actually intended for an Indian end user on BIS' Entity List.

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Dec. 12, 2007: The Treasury Department's Office of Foreign Assets Control (OFAC) assessed a \$2,750 penalty against MIC & Associates for violating the Sudanese Sanctions Regulations by attempting to facilitate the exportation of goods from Ukraine to Sudan without an OFAC license.

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Dec. 14, 2007: A Securities and Exchange Commission filing by ITT Industries revealed that following its plea agreement regarding violations of the AECA and ITAR, ITT entered into an "Administrative Compliance Agreement" with the U.S. Department of the Army's Suspension & Debarment Office. The text of the agreement is at

[https://www.jagcnet.army.mil/JAGCNETInternet/Homepages/AC/ArmyFraud.nsf/\(JAGCNetDocID\)/AGREEMENTS?OpenDocument](https://www.jagcnet.army.mil/JAGCNETInternet/Homepages/AC/ArmyFraud.nsf/(JAGCNetDocID)/AGREEMENTS?OpenDocument).

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Dec. 21, 2007: Marubeni Citizen-Cincom, Inc. of Allendale, NJ agreed to pay \$32,940 to settle charges by BIS that it had exported machine tools classified under ECCN 2B001 to Mexico and Brazil without the required authorization, having stated "NLR" (no license required) on the Shipper's Export Declarations.

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Dec. 28, 2007: ITT Corporation entered into a consent agreement with DDTC to resolve administrative complaints stemming from the same events that led to ITT's criminal plea and \$100 million fine in March 2007. In this civil case, ITT will pay a civil penalty of \$28 million and undertake a series of specific compliance measures.

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