



Don't Let This **HAPPEN** **TO YOU!**



Actual Investigations of
Export Control *and*
Antiboycott Violations

July 2008 Edition



U.S. DEPARTMENT OF COMMERCE
Bureau of Industry and Security
Export Enforcement

DON'T LET THIS HAPPEN TO YOU!

An Introduction to U.S. Export Control Law

Actual Investigations of Export Control and Antiboycott Violations



EXPORT ENFORCEMENT

**BUREAU OF INDUSTRY AND SECURITY
U.S. DEPARTMENT OF COMMERCE**

July 2008

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Dear Members of the Exporting Community:

The Department of Commerce fosters conditions for economic growth and opportunity by promoting innovation, entrepreneurship and competitiveness. Earlier this year, Secretary of Commerce Carlos M. Gutierrez said, "One of our big responsibilities at the Commerce Department is helping U.S. entrepreneurs and exporters find new opportunities in global markets." Most consumers live outside the United States, so exports are vital to our economy. Exports fuel economic growth and create jobs.

Industry's vigilance when exporting dual-use goods and technology is critical in protecting our national security. Such goods and technology can be used for legitimate purposes, but also in weapons of mass destruction, as well as by terrorists and in terrorism-support. They can also be diverted to unauthorized military end uses. In today's post-9/11 world, a broad array of actors – including terrorist organizations, proliferation networks, rogue states and other countries of concern – actively seek dual-use goods and technology for such purposes.

The highest priorities of Export Enforcement at the Bureau of Industry and Security (BIS) are countering these dangerous and illicit activities, and also removing barriers to free trade through our antiboycott compliance efforts. That we succeed is critical to the national security, foreign policy and economic interests of the United States.

Repeated threats from our enemies make it clear that the consequences may be catastrophic if we fail. For example, an al-Qaeda affiliate, Ansar al-Islam, has stated, "We will strike you with all the weapons available to us ... including conventional, chemical, nuclear and biological weapons. You will see blacker days than the 11th September incidents." Moreover, our margin for error is slender. In his Commencement Address at the Coast Guard Academy, President Bush correctly observed that, "To strike our country, the terrorists only have to be right once; to protect our country, we have to be right 100 percent of the time."

The high degree of success required cannot be achieved by the government alone. Industry also has a critical role to play. It can do so by upholding its duty to comply fully with the U.S. dual-use export control system. All who are involved in export transactions – including exporters, carriers, freight forwarders and consignees – have important responsibilities under the Export Administration Regulations (EAR). By fulfilling those responsibilities, industry forges a partnership with the government that is rooted in compliance.

Industry compliance is the first and best line of defense in protecting our national security. Export Enforcement engages in industry outreach throughout the year to foster compliance. The benefits industry derives from compliance are greater than ever. The Department of Justice recently announced its Export Enforcement Initiative, and now devotes greater resources to prosecuting criminal export violations. Criminal and administrative penalties recently were increased by the International Emergency Economic Powers Enhancement Act of 2007. Compliance allows industry to avoid enforcement actions by preventing violations.

Effective compliance programs allow industry to detect violations first, and then make voluntary disclosures that significantly mitigate penalties. BIS also may also grant great weight mitigation from its penalties to companies that have effective compliance programs. Earlier this year, I announced the nine Principles of Effective Compliance Programs, which we use in determining whether to do so. The principles are also contained herein.

By contrast, the disadvantages that result from non-compliance are clear. In this booklet are actual closed criminal and administrative cases involving EAR violations. They illustrate the serious consequences that follow, including jail terms, criminal fines and administrative penalties, as well as denials of export privileges. Business and personal reputations also suffer.



To protect our future, BIS will continue working to keep the most sensitive goods and technology out of the most dangerous hands. Our national security demands that we vigorously pursue those who violate the U.S. export laws. We place the greatest premium, however, upon our relationship with those in industry who, through their compliance, join us as partners, thereby lending their invaluable efforts to protecting our nation's security and prosperity.

Sincerely,

Darryl W. Jackson
Assistant Secretary for Export Enforcement

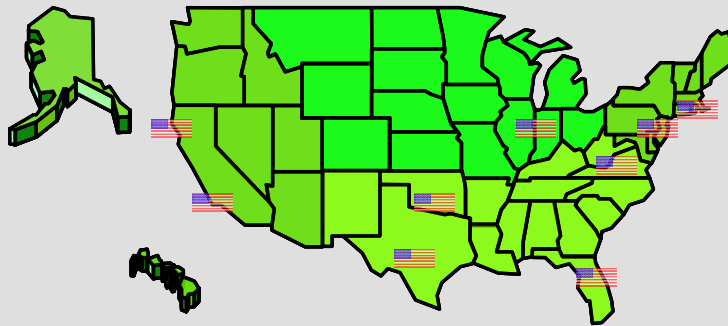
Introduction to U.S. Export Controls

Export Enforcement: Introduction and Mission

The Bureau of Industry and Security (BIS) is a part of the U.S. Department of Commerce. The Export Enforcement arm of BIS protects U.S. national security, foreign policy, and economic interests by educating parties to export transactions on how to improve export compliance practices, interdicting illegal exports, investigating violations, and prosecuting violators of export control laws. At the same time, Export Enforcement works to avoid impeding legitimate trade. Export Enforcement has federal law enforcement authority and its special agents work with BIS licensing officials and policy staff to deter the export of items which, in the hands of unreliable users, can prove damaging to U.S. national security and foreign policy interests. Export Enforcement personnel work closely with Department of Commerce lawyers in the Office of Chief Counsel for Industry and Security and Department of Justice lawyers in U.S. Attorneys' Offices to bring enforcement actions against violators of U.S. export control laws.

WHERE ARE WE LOCATED?

In addition to our Headquarters at the Department of Commerce in Washington, D.C., Export Enforcement has nine offices that have areas of responsibilities covering the entire United States. **They are located in: New York, Boston, Chicago, Dallas, Houston, Los Angeles, Miami, San Jose, and Washington, D.C.**



www.bis.doc.gov

Export Enforcement also has Export Control Officers (ECOs) located in 5 overseas locations. ECOs are Export Enforcement personnel on detail to the Foreign Commercial Service and report directly to the Embassies to which they are posted, with direction and oversight by Export Enforcement.

ECOs are posted in: Beijing, Hong Kong, New Delhi, Moscow, and Abu Dhabi.

Export Control Law

A number of executive branch agencies have responsibilities for regulating exports from the United States. The Department of Commerce is responsible for controlling the widest range of goods and technology, all of which are capable of being used for commercial purposes but which also present foreign policy or national security concerns. BIS implements export controls for the Department of Commerce through the Export Administration Regulations (EAR). Other federal agencies with a role in export control include the State Department, which controls arms exports, the Department of Energy, which controls exports and re-exports of technology related to the production of special nuclear materials and the Department of Treasury, which administers certain embargoes.

Responsible Parties

The EAR place legal responsibility on persons who have information, authority or functions relevant to carrying out transactions subject to the EAR. These persons may include exporters, freight forwarders, carriers, consignees, and other participants in an export transaction. The EAR apply not only to parties in the United States, but also to persons in foreign countries who are involved in transactions subject to the EAR.

Consequences of Violating the EAR

Violations of the EAR are subject to both criminal and administrative penalties. In some cases, where there has been a willful violation of the EAR, violators may be subject to both criminal fines and administrative penalties. However, for most administrative violations, there is no intent requirement, which means that administrative cases can be brought in a much wider variety of circumstances than criminal cases.

Under the International Emergency Economic Powers (IEEPA) Enhancement Act, which was signed into law on October 16, 2007, for administrative cases pending or commenced on or after October 16, 2007, a civil penalty amounting to the greater of \$250,000 or twice the value of the transaction may be imposed for each violation of IEEPA. For criminal violations in cases that were commenced on or after October 16, 2007, violators may be fined up to \$1,000,000 and/or face up to 20 years of imprisonment.¹



Special Agents in Seized
Computer Evidence Recovery
Lab

¹ Export control violations are based on the Export Administration Act of 1979, as amended (50 U.S.C. app. §§ 2401- 2420 (2000)) (“EAA” or “Act”). . The EAA is implemented by the Export Administration Regulations (“EAR”), 15 C.F.R. Parts 730-774 (2008). From August 21, 1994 through November 12, 2000, the Act was in lapse. During that period, the President, through Executive Order 12924, which had been extended by successive Presidential Notices, the last of which was August 3, 2000 (3 C.F.R., 2000 Comp. 397 (2001)), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701 - 1706 (2000)) (“IEEPA”). On November 13, 2000, the Act was reauthorized by Pub. L. No. 106-508 (114 Stat. 2360 (2000)) and it remained in effect through August 20, 2001. Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 C.F.R., 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 15, 2007 (72 Fed. Reg.46137, August 16,

BIS generally will not apply the enhanced IEEPA penalties to administrative cases involving:

- Voluntary Self-Disclosure notifications submitted prior to October 16, 2007;
- Charging letters filed with an Administrative Law Judge prior to October 16, 2007;
- Settlement offers approved/issued by BIS prior to October 16, 2007;
- Proposed charging letters issued prior to October 16, 2007, if settlement is reached before a charging letter is filed with an Administrative Law Judge;
- Statute of limitations waivers executed prior to October 16, 2007.

In addition, administrative penalties may include the denial of export privileges. A denial of export privileges prohibits a person from participating in any way in any transaction subject to the EAR. Furthermore, it is a violation of the EAR for anyone to participate in an export transaction subject to the EAR with a denied person. Under Section 11(h) of the Export Administration Act of 1979, as amended (EAA), a denial of export privileges may be imposed for up to ten years from the date of a person's prior conviction under a statute listed in the EAA.²

It should be noted that in most cases, BIS reaches negotiated settlements in its administrative cases prior to a formal administrative hearing. Those negotiated settlements are often reached as a result of Voluntary Self-Disclosures (VSDs) of violations made by companies and individuals. BIS considers VSDs to be a significant mitigating factor when negotiating settlements of administrative cases. VSDs can reflect a company's or individual's acceptance of responsibility for EAR violations. To encourage VSDs, in appropriate cases, fines and other administrative penalties may be significantly reduced as a result of the fact that BIS became aware of the violations as a result of a VSD. Guidance regarding administrative penalties is provided in Supplements No. 1 and No. 2 of Part 766 of the EAR and in chapter five of this publication. In the EAR's guidelines, certain factors, including VSDs, are given "great weight" and are viewed as significantly mitigating violations. In the following cases, VSD credit is noted where it was given.

As a standard provision of BIS settlement agreements, a respondent who enters with a settlement with BIS neither admits nor denies the charges made against him. Therefore, the violations referenced in many of the summaries in this booklet have neither been proven in court nor been admitted to by the company or individual. Please also be aware that this letter and booklet are not intended to create, nor do they create, any right or benefit, procedural or substantive, enforceable by law against the Department of Commerce or any other part of the U.S. Government. Nor should the cases in this booklet be interpreted as precedent in any future actions involving the U.S. Government.

2007), has continued the Regulations in effect under IEEPA. Prior to the enactment of the IEEPA Enhancement Act, the USA PATRIOT Improvement and Reauthorization Act of 2005, signed into law on March 9, 2006 (Pub. L. No. 109-177, 120 Stat. 192 (2006)), increased the limit of civil penalties available to \$50,000 per violation. Under the penalty regime that predated the USA PATRIOT Improvement and Reauthorization Act of 2005, the maximum penalty per violation was \$11,000.

² See Section 766.25 of the EAR (15 C.F.R. § 766.25 (2007)).

Nine Principles for an Effective Compliance Program

BIS weighs a variety of aggravating and mitigating factors in deciding the level of penalties to assess in administrative cases. As set forth in Supplements 1 and 2 to Part 766 of the EAR, an effective compliance program is entitled to great weight mitigation. BIS employs the following nine guiding principles when assessing the effectiveness of a company's export compliance program:

- Whether the company has performed a meaningful risk analysis, which includes consideration of the types of goods being exported and the destination of those goods;
- The existence of a written compliance program, that is communicated to others;
- Whether appropriate senior company officials are responsible for overseeing the export compliance program.
- Whether adequate training is provided to employees, so they understand what is required of them to remain in compliance;
- Whether the company adequately screens its customers and transactions;
- Whether the company meets recordkeeping requirements;
- The existence of an internal system for reporting export violations, including making Voluntary Self-Disclosures;
- The existence of internal/external reviews or audits to help determine whether company procedures and compliance programs need to be revised;
- Whether remedial activity has been taken in response to export violations.



Enforcement Panel at the March 2008 Export Control Forum, Newport Beach, California: Deputy Assistant Secretary for Export Enforcement Kevin Delli-Colli; Director, Office of Export Enforcement, Thomas Madigan; Assistant Director, Office of Enforcement Analysis, Todd Willis; Senior Compliance Officer, Office of Antiboycott Compliance, Cathleen Ryan

Department of Justice Export Enforcement Initiative

In October 2007, the Department of Justice launched an Export Enforcement Initiative. The purpose of the initiative is to counter the threat posed by foreign states and terrorist organizations that are actively seeking to acquire technical data, knowledge and equipment that will advance their efforts to develop their technological capacity and build weapons systems and weapons of mass destruction programs. The initiative harnesses the counter-proliferation assets of law enforcement and intelligence communities to improve the detection, investigation and prosecution of persons and companies violating U.S. export laws. The cornerstone of this initiative is the establishment of Counter-Proliferation Task Forces around the country to foster the multi-agency cooperation critical to the success of export control investigations and prosecutions. This initiative also provides U.S. Attorney's Offices with additional assistance, training and the expertise to undertake these complex and specialized prosecutions. The task forces include representatives from the Bureau of Industry and Security's Office of Export Enforcement, the Federal Bureau of Investigation, Immigration and Customs Enforcement and other U.S. Government agencies.



Assistant Secretary Darryl W. Jackson holding a triggered spark gap during speech at the press conference launching the Department of Justice's Export Enforcement Initiative, October 2007

Chapter 1 - Commerce Control List Based Controls

Introduction

Many exports of controlled items, including software and technology, require a license from BIS. It is the responsibility of the exporter to apply for a license when one is required under the EAR. License requirements for a particular transaction, as described in the EAR, are based on a number of factors, including technical characteristics of the item to be exported and the item's destination, end-user, and end-use. When determining whether a license is required for your transaction, you should be able to answer the following questions:

What is being exported?

Where is the item being exported?

Who will receive the item?

How will the item be used?

PREVENTIVE MEASURES YOU CAN TAKE

- **Check exporters and customers**
- **Check end users and end-uses**
- **Review Shipper's Export Declarations**

If you need assistance to determine whether the item you want to export requires a license you should:

1. Check the BIS Website <http://www.bis.doc.gov>, or
2. Call one of our export counselors at 202-482-4811 (Washington, DC) or 949-660-0144 (California) for counseling assistance.

Please note that, whether you are the exporter, freight forwarder, consignee, or other party to the transaction, you must address any red flags that arise because taking part in an export transaction where a license is required but not obtained may subject you to criminal or administrative liability. The EAR discuss red flags in a section entitled "Know Your Customer," Supplement No. Three to Part 732, which is available on the BIS website.

General Orders

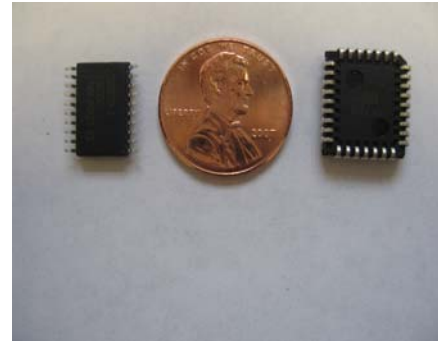
Mayrow General Trading

On June 5, 2006, BIS issued a General Order stating that it had come into possession of information giving reason to believe, based on specific and articulable facts, that Mayrow General Trading and related entities had acquired electronic components and devices (commodities), items subject to the EAR, that were capable of being used to construct Improvised Explosive Devices (IEDs). The Order further stated that these commodities have been and may continue to be employed in IEDs or other explosive devices used against Coalition Forces in Iraq and Afghanistan.

The Remedy: To curtail such use of these commodities in order to protect Coalition Forces operating in Iraq and Afghanistan, BIS imposed a license requirement for exports and re-exports of all items subject to the EAR where the transaction involved Mayrow General Trading and specific listed entities related to Mayrow. This Order provided information to exporters about Mayrow's activities to help them ensure that any transactions with Mayrow were legitimate, and it also provided BIS the opportunity to review those transactions to ensure they are in the national interest. The Order was subsequently amended in September 2006 and June 2007 to include additional persons and an expanded set of criteria for placement on the Order.



Humvee Explosion



Electronic Devices

Ace Systems Inc.

The Violation: In July 2006, Ace Systems Inc. (Ace), located in Gainesville, Georgia, attempted to violate the General Order Concerning Mayrow and Related Entities by acting to export dialogic voice cards to Mayrow General Trading (Mayrow) in Dubai, United Arab Emirates without the required license. Ace tendered the ten cards to its freight forwarder with instructions to export them to Mayrow. BIS special agents intervened and the cards never reached their destination.

The Penalty: Ace agreed to pay an administrative penalty of \$36,000.

Criminal and Administrative Case Examples

Nuclear Nonproliferation Controls:

Theresa Chang

The Violation: Theresa Chang made false statements related to the export of nickel powder to Taiwan without the required export license. The nickel powder is controlled for nuclear proliferation reasons.

The Penalty: On October 11, 2007, Theresa Chang was sentenced to three years' probation and a \$5,000 criminal fine.

SparesGlobal, Inc.

The Violation: SparesGlobal, Inc., of Pittsburgh, Pennsylvania, and company president, Om Sharma, conspired to falsify documents and make false statements about a 2003 illegal export of graphite products to a trading company in the United Arab Emirates that ultimately ended up in Pakistan. The graphite products can be used in nuclear reactors and in the nose cones of ballistic missiles. After the shipment, the company attempted to mislead federal investigators when questioned about the shipment and the documents.

The Penalty: On October 4, 2007, Spares Global Inc. was sentenced to a \$40,000 criminal fine.

Asher Karni

The Violation: Asher Karni, a South African businessman, conspired to violate and violated U.S. export restrictions arising out of unlawful exports to Pakistan and India of U.S.-origin goods controlled for nuclear nonproliferation reasons. Humayan Khan of Islamabad, Pakistan was indicted for conspiring to violate and violating U.S. export restrictions on goods controlled for nuclear nonproliferation reasons. Khan arranged, through Karni, the purchase and export to Pakistan of U.S.-origin triggered spark gaps, which can be used as nuclear weapons detonators. Khan falsely represented that the goods were intended for medical use.



Triggered Spark Gap

The Penalty: On August 4, 2005, Karni was sentenced to three years' imprisonment. On April 8, 2005, Khan was indicted for his role in diverting the controlled goods. On August 1, 2006, BIS issued a 10-year denial of export privileges against Karni and related parties, Pakland PME Corporation and Khan.



Atomic Weapon Using Triggered Spark Gaps

Metric Equipment Sales

The Violation: On March 21, 2005, Metric Equipment Sales ("Metric") pled guilty in the Northern District of California to one felony count of exporting digital oscilloscopes controlled for nuclear nonproliferation reasons to Israel without a BIS license. The oscilloscopes, with sampling rates exceeding 1 GHz, are capable of being utilized in WMD development and missile delivery fields.

The Penalty: Metric was sentenced to a \$50,000 criminal fine. Metric agreed to pay a \$150,000 administrative penalty and to a five-year suspended denial of export privileges.

Chemical/Biological Weapons Controls:

Yamada America, Inc.

The Violation: Between 2001 and 2005, Yamada America, Inc., an Illinois company, exported diaphragm pumps to Taiwan, Singapore, Brazil and Ecuador without the required licenses. In addition, Yamada made false statements on export control documents in connection with these shipments.

The Penalty: Yamada America agreed to pay an administrative penalty of \$220,000.

SCP Global Technologies, Inc.

The Violation: Between May 2003 and January 2005, SCP Global Technologies, Inc. (“SCP”) made 45 exports of controlled pumps and valves to Taiwan, China, and Israel, without the required export licenses. The items are controlled for their potential use in chemical and biological weapons, and would have required a license for shipment to Taiwan, China, or Israel. SCP had previously received a Warning Letter for the unlicensed export of controlled pumps.

The Penalty: SCP agreed to pay a \$264,000 administrative penalty.

Mitigating Circumstances: SCP voluntarily self-disclosed these violations and cooperated fully in the investigation.

Graco Inc.

The Violation: On two occasions in 2001, Graco Inc. exported diaphragm pumps to India, and on 11 occasions caused the re-export of the pumps to Saudi Arabia and Taiwan without the required export licenses. The pumps are controlled for their potential use in chemical and biological weapons.

The Penalty: The case settled in June 2007. Graco Inc. agreed to pay a \$97,000 administrative penalty.

Maine Biological Labs (see further details on p. 51)

Dr. Thomas Butler

The Violation: On January 14, 2003, Dr. Thomas Campbell Butler, M.D., a professor at Texas Tech University in Lubbock, Texas reported to the FBI that thirty vials of a potentially deadly plague bacteria, *Yersinia pestis* (the causative agent of human plague), were missing and presumed stolen from his research lab. The report sparked a bio-terrorism alert in west Texas and President Bush was informed



Dr. Thomas C. Butler

of the incident. However, an investigation proved that Dr. Butler had illegally exported the *Yersinia pestis*, which is a controlled item under the EAR and cannot be exported without the required export licenses from BIS. On January 15, 2003, Dr. Butler was arrested.

Dr. Butler was found guilty of numerous charges at trial, two of which were export control-related: making false, fraudulent and fictitious statements regarding the exports to federal agents and making an unauthorized export to Tanzania.

The Penalty: Dr. Butler was convicted of forty-seven counts of a sixty-nine count indictment that stemmed from BIS's investigation. He was sentenced to two years in prison on March 10, 2004, and he resigned from Texas Tech. On October 24, 2005, the U.S. Court of Appeals for the Fifth Circuit affirmed his earlier conviction. In the administrative case, Dr. Butler agreed to pay a \$37,400 administrative penalty and accept a denial of his export privileges for a period of ten years.

Wilden Pump and Engineering

The Violation: Wilden Pump and Engineering Co., LLC (Wilden), a company based in Grand Terrace, California, violated the EAR in connection with unauthorized exports of diaphragm pumps from the United States to the Iran, Israel, People's Republic of China, Syria, and the United Arab Emirates without the required Department of Commerce export licenses. Between 2000 and 2003, Wilden exported diaphragm pumps without the required licenses, in some cases transferring diaphragm pumps with knowledge that violations of the EAR would occur. Wilden also made false statements on export control documents related to these transactions.

The Penalty: Wilden agreed to pay a \$700,000 administrative penalty. It also agreed to be subject to a three-year denial of export privileges for items on the CCL. The denial was suspended in its entirety for two years provided that Wilden did not commit any violations of the EAR during the suspension period.

EMD Biosciences, Inc./EMD Chemicals Inc.

The Violation: EMD Biosciences, Inc. (EMD Biosciences), of San Diego, California, a division of Merck, exported biological toxins to Canada in violation of the EAR. Between June 2002 and July 2003, EMD Biosciences committed 134 violations of the EAR in connection with 67 exports of biological toxins to Canada that were made without the required Department of Commerce export licenses. EMD Chemicals Inc. ("EMD Chemicals"), a division of Merck KGaA (Merck), of Darmstadt, Germany, exported hydrofluoric acid to Guatemala without the required licenses and caused the re-export of industrial pigments to Iran without the required government authorization.

The Penalty: EMD Biosciences agreed to pay a \$904,500 civil penalty. EMD Biosciences' export privileges under the EAR were denied for a period of two years, all of which was suspended provided that EMD Biosciences committed no violations of the EAR during the period of suspension. EMD Chemicals agreed to pay a \$44,000 administrative penalty for its violations.

BJ Services Company

The Violation: Between 1999 and 2002, BJ Services Company of Tomball, Texas committed 37 violations of the EAR in connection with 13 exports of items controlled for chemical and biological weapons reasons to various destinations without obtaining the required export licenses.

The Penalty: BJ Services agreed to pay a \$142,450 administrative penalty and perform an audit of its internal compliance program that is required to be submitted to BIS.

Mitigating Circumstances: BJ Services voluntarily self-disclosed these violations and cooperated fully with the investigation.

National Security Controls

WaveLab Inc.

The Violation: In February and October 2006, WaveLab Inc., of Reston, Virginia, exported power amplifiers to the People's Republic of China without the required licenses. The amplifiers are controlled for national security reasons.

The Penalty: On June 6, 2008, WaveLab Inc. was sentenced to one year of supervised probation and a \$15,000 criminal fine, together with a \$85,000 criminal forfeiture previously ordered. In addition, on March 7, 2008, WaveLab Inc. was denied export privileges for five years.

JSR Micro Inc.

The Violation: Between 2004 and 2005, JSR Micro Inc., of Sunnyvale, California, exported photoresists, items controlled for national security and anti-terrorism reasons, to Israel, Taiwan and Singapore, without the required U.S. government authorizations. In addition, JSR Micro Inc. made false or misleading representations, statements, or certifications on Shipper's Export Declarations regarding the authorization of the exports.

The Penalty: JSR Micro Inc., agreed to pay a \$270,000 administrative penalty.

Mitigating Circumstances: JSR Micro Inc. voluntarily self-disclosed these violations and cooperated fully with the investigation.

Littelfuse, Inc.

The Violation: Between 2002 and 2005, Littelfuse, Inc., of Des Plaines, Illinois, exported ceramic yarn controlled for national security reasons to the Phillipines and the People's Republic of China without the required licenses. In addition, Littelfuse, Inc. failed to comply with the reporting requirements.

The Penalty: Littelfuse, Inc. agreed to pay a \$221,100 administrative penalty.

Andrew Huang

The Violation: Between 1999 and 2001, Andrew Huang, owner of McAndrew's, Inc., an international export company, made false statements to the Federal Bureau of Investigation in connection with the illegal sale and transfer of millions of dollars in telecommunications equipment from China to Iraq. Huang was operating as a representative for the Chinese Electronic System Engineering Corporation, the technology procurement arm of the Chinese government.

The Penalty: On April 10, 2007, Huang was sentenced to two years' probation, and a \$5,000 criminal fine.

Alpine Armoring, Inc./Fred Khoroushi

The Violation: Between January 2002 and September 2004, Alpine Armoring, Inc., headquartered in Herndon, Virginia, exported ballistic helmets to Suriname without the required licenses. In addition, Alpine Armoring's president and director, Fred Khoroushi, made false statements on a Shipper's Export Declaration in connection with these shipments.

The Penalty: Fred Khoroushi and Alpine Armoring, Inc. each agreed to pay \$200,000 in criminal fines and administrative penalties.

EHI Group USA, Incorporated/Qing Chang Jiang

The Violation: From September 2001 through May 2002, EHI Group USA, Incorporated (EHI), of Cupertino, California, and EHI's principal, Qing Chang Jiang, conspired with others to export and knowingly exported microwave amplifiers to the People's Republic of China without the required licenses.

The Penalty: EHI and Jiang each agreed to pay an administrative penalty of \$17,000 and were each denied export privileges for five years.

Hittite Microwave Corporation

The Violation: On six occasions between on or about July 2000 and January 2001, Hittite Microwave Corporation, Chelmsford, Massachusetts, exported microwave solid state amplifiers and related equipment, including downconverters, from the United States to Russia, China and Latvia, without obtaining licenses from the U.S. Department of Commerce. In addition, on one occasion, Hittite made a false statement to the U.S. Government on a Shipper's Export Declaration.

The Penalty: Hittite agreed to pay a \$221,250 administrative penalty.

Ning Wen and Hailin Lin

The Violation: Ning Wen and Hailin Lin used a business called “Wen Enterprises,” which they operated from their home in Wisconsin, to ship semiconductors and other controlled electronic components with radar and satellite applications, both military and civilian, to Jian Guo Qu and Ruo Ling Wang at Beijing Rich Linscience Electronic Company in China. For most of these transactions, Lin obtained the restricted components from a United States manufacturer or supplier based on a request from Wang or Qu, falsified shipping documents by concealing the true nature of the shipments and stating that a license was not required for the shipments and then shipped the product to Wang and/or Qu in China, without obtaining the required export license.

The Penalty: In 2005, Qu was sentenced to 46 months’ imprisonment (later reduced to 22 months based on his cooperation in prosecution of co-defendants) a \$2,000 criminal fine, and two years’ supervised release. Lin was also sentenced in 2005 to 42 months in prison and a \$50,000 fine for her role in these unauthorized exports. In 2006, Wen was sentenced to five years in prison, a \$50,000 fine and two years’ supervised release. Additionally, the court ordered the forfeiture of Wen and Lin's home and over \$329,000 in cash.

Manten Electronics/Kevin Wu/Linda Chen/Jenny Chan/Daqing Zhou

The Violation: Four former employees of Manten Electronics in Beijing, China, Weibu Xu, aka Xu Weibu, aka Kevin Wu; Hao Li Chen, aka Ali Chan; Xiu Ling Chen, aka Linda Chen; and Kwan Chun Chan, aka Jenny Chan, illegally exported millions of dollars of sensitive national security controlled items with application in radar, electronic warfare and communications systems, to state-sponsored institutes in China. On September 13, 2005, Kevin Wu pled guilty to violating the Export Administration Act and the Arms Export Control Act. The four defendants also pled guilty to conspiracy charges.

The Penalty: On May 1, 2006, the four defendants were sentenced. Kevin Xu was sentenced to 44 months in prison, and two years’ probation; Ali Chan was sentenced to 30 months in prison and two years’ probation; Linda Chen was sentenced to 18 months in prison and two years’ probation; and Jenny Chan was sentenced to six months’ home confinement and two years’ probation. The defendants also agreed to forfeit \$391,337, their revenue from the illegal exports. On November 3, 2006, Daqing Zhou, an employee of Manten Electronics in Beijing, China, was denied export privileges for twenty years for his role in the conspiracy detailed above. On November 27, 2007, Kevin Xu, and related persons, Ali Chan, Linda Chen and Jenny Chan, were each denied export privileges for ten years, pursuant to Section 11(h) of the Export Administration Act.

Missile Technology Controls

Valtex International

The Violation: Between September 2002 and October 2002, Vladimir Alexanyan and his company, Valtex International of Palto Alto, California committed export violations and made false statements in connection with the attempted export of satellite/missile insulation blankets to the Chinese Academy of Space Technology in Beijing. BIS had previously rejected Valtex's application for an export license for these items.

The Penalty: Alexanyan was sentenced to a \$12,000 criminal fine and three years' probation and was barred from any international activities or trade for the term of his probation. Valtex was ordered to pay a \$250,000 criminal fine. In addition, Alexanyan agreed to pay an \$88,000 administrative penalty, and Valtex agreed to pay a \$77,000 administrative penalty. Alexanyan's and Valtex's export privileges to China were denied for five years. Valtex also agreed to implement an export management system.

Zhaoxin Zhu

The Violation: On May 6, 2004, Zhaoxin Zhu of Shenzhen, China pled guilty to conspiring to purchase controlled satellite and radar technology for illegal export to China. Zhu negotiated with undercover federal agents to purchase a variety of sensitive goods, including traveling wave tubes with satellite and radar applications, for export to China.

The Penalty: Zhu was sentenced to twenty-four months in prison and three years' supervised release.

Crime Controls

Armor Holdings, Inc.

The Violation: Between 2001 and 2004, Armor Holdings, Inc. (Armor), located in Jacksonville, Florida, exported crime control items (handcuffs, riot helmets, fingerprinting equipment, and face shields) without first obtaining the required licenses, and exported three shipments in excess of the licensed value to foreign consignees in 41 countries including Egypt, Mexico and France. In addition, Armor failed to file Shipper's Export Declarations ("SEDs") for some shipments and misrepresented the license authority on SEDs that it filed for other shipments.

The Penalty: Armor agreed to pay an administrative penalty of \$1,102,200.

John Carrington

The Violation: Between September 2000 and March 2004, John Carrington, the former president of Sirchie Fingerprint Laboratories and a former North Carolina state Senator, illegally

exported approximately \$1.2 million dollars in crime control equipment to China without the required licenses through intermediaries in Italy and Hong Kong.

The Penalty: In the criminal case, Carrington was sentenced in March 2006 to 12 months' probation and agreed to pay an \$850,000 criminal penalty. In the related administrative case, Carrington accepted a five-year denial of his export privileges. Sirchie also agreed to pay a \$400,000 administrative penalty and accepted a five-year suspended denial.



Special Agents seizing evidence during search warrant

Stoelting Company

The Violation: Stoelting Company, of Wood Dale, Illinois, and its president, LaVern Miller, illegally exported polygraph machines to China without required export licenses. These items are restricted to China for human rights reasons.

The Penalty: Stoelting was sentenced to two and a half years' corporate probation and a \$20,000 criminal fine. Miller was sentenced to two and a half years' probation, including six months of electronically monitored home confinement, 500 hours of community service and a criminal fine equivalent to the costs of his probation and monitoring, estimated to be \$18,000. In addition, Stoelting and Miller each agreed to pay \$44,000 in administrative penalties, and Stoelting agreed to a five-year suspended denial of export privileges.

Bass Pro, Inc.

The Violation: Between June 1999 and January 2004, Bass Pro, Inc. exported gun sights to a variety of destinations without a license in violation of the EAR. Gun sights are controlled pursuant to U.S. treaty obligations, as well as for human rights and anti-terrorism reasons.

The Penalty: Bass Pro agreed to pay a \$510,000 administrative penalty.

Worldwide Sports & Recreation, Inc. / Bushnell Corporation

The Violation: Between September 1995 and December 1997, Worldwide Sports & Recreation, Inc., which does business as Bushnell Corporation, exported Night Ranger night vision devices to Japan and fourteen other countries, without the required BIS export licenses. Bushnell sold the cameras to a Japanese company but transferred them to a U.S. company in Florida knowing that they were going to be exported to Japan. The foreign company and the domestic intermediary pled guilty and cooperated.

The Penalty: In the criminal case, Bushnell was sentenced to a \$650,000 criminal fine and five years' probation. In the related administrative case, Bushnell agreed to pay an administrative penalty of \$223,000 and to a one-year suspended denial of export privileges.

Chapter 2 - License Conditions

Introduction

To minimize the potential diversion or misuse of licensed exports, BIS adds conditions to nearly all export licenses. License conditions may, among other things, restrict the way an item is used after export, or it may require certain reports to be made by the exporter. The conditions are created through an interagency process that includes BIS and agencies at the Departments of State and Defense, among others. The use of license conditions allows the Government to approve license applications that might otherwise be denied. Once a license is issued, BIS seeks to ensure compliance with the conditions.

Criminal and Administrative Case Examples

WesternGeco LLC/ Western Geophysical

The Violation: From June through November 2000, Western Geophysical Company of America, of Houston, TX, failed to abide by conditions on export licenses for underwater geophysical mapping equipment exported to the People's Republic of China (PRC). Between December 2000 and January 2001, WesternGeco LLC, also of Houston, TX, took control of the equipment that was subject to the licenses at issue, and also failed to abide by the same license conditions.

The license conditions required the equipment, which was controlled for national security reasons, to be monitored on a weekly basis while stored in the PRC.

The Penalty: On September 1, 2006, WesternGeco agreed to pay a civil penalty in the amount of \$925,000, and Western Geophysical Company of America agreed to pay administrative penalties totaling \$1,965,600.

Ocean Bottom Cables, Modules and Hydrophones



E.D Bullard

The Violation: Between 2000 and 2002, E.D. Bullard, of Kentucky, exported and re-exported thermal imaging cameras to Austria, the Czech Republic, France, Germany, Israel, Spain, Switzerland, and Venezuela, in violation of the EAR. Bullard, with assistance from Bullard Gmbh of Bonn, Germany, caused the export, re-export, reselling and transferring of thermal imaging cameras from the United States to the aforementioned countries without the required export licenses, to intermediate consignees not authorized under a license, after a license had expired, in quantities exceeding those authorized by a license, and in violation of the terms and conditions of a license. In addition, Bullard made false statements on Shipper's Export Declarations in connection with many of the shipments. Bullard Gmbh also resold, re-exported, and transferred thermal imaging cameras to Austria, France and Switzerland in violation of the EAR.

The Penalty: E.D. Bullard agreed to pay a \$330,000 administrative penalty in June 2005. Bullard Gmbh agreed to pay a \$36,000 administrative penalty.

Chapter 3 - Deemed Exports

Introduction

Most people think of an export as the shipment of a commodity from the United States to a foreign country, but that is only one type of export. Under the EAR, the release of technology or source code subject to the EAR to a foreign national in the United States is also “deemed” to be an export to the home country or countries of the foreign national and may require a license under the EAR. Technology can be released through visual inspection, oral exchanges of information, or the application to situations abroad of personal knowledge or technical experience acquired in the United States. For example, if a graduate student who is a foreign national with a valid visa reviews controlled technology pursuant to a grant from a private company, an export license or may be required because the release of the technology to the student could be considered a “deemed export.”

Criminal and Administrative Case Examples

TFC Manufacturing, Inc.

The Violation: Between March and April 2006, TFC Manufacturing, Inc. (TFC), a Lakewood, California-based aerospace fabrication facility, released U.S.-origin technology for the production of aircraft parts (classified under ECCN 9E991) to an Iranian national employee in the U.S. without the required license under the EAR.

The Penalty: TFC agreed to pay a \$31,500 administrative penalty.

3DSP Corporation

The Violation: Between 2002 and 2004, 3DSP Corporation, of Irvine, California, granted a professor and five students from the People’s Republic of China access to physical layer technology without the required licenses under the Export Administration Regulations. This technology was to be used in wireless LAN integrated circuits. The professor and students were working on behalf of the Beijing University of Aeronautics and Astronautics (BUAA) at the time of the technology release, pursuant to a contract between 3DSP and BUAA. BUAA is an entity set forth on the EAR’s Entity List, a compilation of end-users that pose a risk of WMD proliferation.

The Penalty: 3DSP Corporation agreed to pay a \$36,000 administrative penalty.

Hexcel Corporation

The Violation: From October 2001 through October 2002, Hexcel Corporation (“Hexcel”) released technology to produce bismaleimide resin to a Taiwanese national in the U.S. without the required export license under the EAR. Bismaleimide resin is controlled for national security reasons. In addition to the deemed export transaction, Hexcel exported 21 shipments of carbon fiber (AS4, AS4C, and Nextel 312) to various countries without the required export licenses.

AS4 and AS4C carbon fiber and Nextel 312 are controlled for export based on national security and anti-terrorism policy reasons.

The Penalty: Hexcel agreed to pay a \$203,400 administrative penalty covering the deemed export violation and the other export violations.

Mitigating Circumstances: Hexcel voluntarily self-disclosed the violations and cooperated fully in the investigation.

Suntek Microwave, Inc. and Charlie Kuan

The Violation: Suntek Microwave, Inc. of Newark, California and its former president, Charlie Kuan, failed to obtain required export licenses for shipments of detector log video amplifiers (DLVA). The items are controlled for national security reasons. Suntek shipped the items to Chengdu Jeway Microwave Telecommunications, a company controlled by the Chinese government. Suntek also failed to obtain export licenses under the deemed export provisions of the Export Administration Regulations for Chinese nationals who worked at Suntek and were trained in DLVA manufacturing technology controlled by the EAR.

The Penalty: Suntek agreed to pay a \$339,000 criminal fine. Kuan was sentenced in July 2005 to imprisonment for twelve months and one day. BIS assessed Suntek a \$275,000 administrative penalty (suspended) and Kuan a \$187,000 administrative penalty (suspended) and issued orders denying both Suntek's and Kuan's export privileges for 20 years.

Mitigating Circumstances: Suntek voluntarily self-disclosed the violations and cooperated fully in the investigation.

Fujitsu Network Communications, Inc.

The Violation: On 21 occasions between 1996 and 2000, Fujitsu Network Communications, Inc. of Richardson, Texas failed to obtain the required BIS licenses for the release of controlled technology to foreign nationals from the PRC and Ukraine employed by the firm in the U.S. to conduct research on the development and manufacturing of commercial digital fiber optic transmission and broadband switching equipment, software, and technology controlled for national security reasons.

The Penalty: Fujitsu agreed to pay a \$125,000 administrative penalty.

Mitigating Circumstance: Fujitsu voluntarily self-disclosed the violations and cooperated fully with the investigation.

New Focus, Inc.

The Violations: From 2000 to 2002, New Focus failed to obtain the export licenses required to release controlled manufacturing technology to two Iranian nationals and one Chinese national who were employed in the United States. Also, between 1997 and 2001, New Focus failed to

obtain the required export licenses for shipments of amplifiers to the Czech Republic, Singapore, and Chile.

The Penalty: New Focus agreed to pay a \$200,000 administrative penalty.

Mitigating Circumstance: New Focus voluntarily self-disclosed the violations and fully cooperated with the investigation.

Lattice Semiconductor Corporation

The Violations: Between July 2000 and January 2002, Lattice Semiconductor Corporation, without obtaining the required BIS licenses, released controlled technology in the form of technical assistance that was provided to Chinese nationals who were brought to the United States for technical training. Also, between April 2000 and July 2001, Lattice exported extended temperature range programmable logic devices to the PRC without the required export licenses and exported the related technical data to the PRC without the required export licenses.

The Penalty: Lattice agreed to pay a \$560,000 administrative penalty.

Mitigating Circumstance: Lattice voluntarily self-disclosed the violations and fully cooperated with the investigation.

Chapter 4 - State Sponsors of Terrorism

Introduction

The United States maintains broad export controls against countries that have been designated by the Secretary of State to be state sponsors of terrorism. In some cases, such countries are subject to partial or complete embargoes, maintained on a multilateral or unilateral basis. As a result, many exports to these countries, even of ordinary commercial items such as iPods and digital cameras that are not typically controlled to other countries, may require authorization from the U.S. Government. BIS or the Department of the Treasury's Office of Foreign Assets Control (OFAC)—or in some cases both agencies together—work to implement the licensing requirements and enforce these controls. Trade with these destinations should be undertaken with extra caution.

Regional Considerations:

It is important to familiarize yourself with the restrictions that apply to the ultimate destination of your export. U.S. law in this area frequently changes in accordance with an evolving foreign policy. The following websites are good resources:

OFAC's website:

<http://www.treas.gov/offices/enforcement/ofac/>

BIS's website:

<http://www.bis.doc.gov/PoliciesAndRegulations/regionalconsiderations.htm>



What is OFAC and what does it do?

The Office of Foreign Assets Control administers and enforces economic sanctions programs against countries and groups of individuals, such as terrorists and narcotics traffickers. The sanctions can be either comprehensive or selective, using the blocking of assets and trade restrictions to accomplish foreign policy and national security goals.

Criminal and Administrative Case Examples

KZ Results

The Violation: Between 2003 and 2004, KZ Results and its owner, Mazen Ghashim, made approximately 30 unlicensed exports and two attempted unlicensed exports of controlled computers to Syria, some directly and some via the United Arab Emirates. The total value of all items exported exceeded \$800,000.

The Penalty: In the criminal case, Mazen Ghashim pled guilty to attempting to export controlled computers to Syria through the United Arab Emirates without a license. On February 14, 2008, Ghashim was sentenced to three years' probation. In the administrative case, which was resolved on September 12, 2006, KZ Results agreed to pay a \$1,089,000 administrative penalty, of which all but \$22,000 was suspended for five years. Ghashim agreed to pay a \$22,000 administrative penalty, all of which was suspended for five years. Ghashim and his two companies, including KZ Results were each denied export privileges for 20 years.

Ali Khan/TurboAnalysis

The Violation: Ali Khan, owner of TurboAnalysis, of Phoenix, Arizona, conspired to export aircraft components to Iran without the required licenses.

The Penalty: On July 30, 2007, Ali Khan was sentenced to five years' probation, 300 hours of community service, \$1,400,000 in forfeiture, and \$100,000 in criminal fines. Khan also agreed to pay an administrative penalty of \$110,000.

Juan Sevilla

The Violation: Juan Sevilla, Sales Director of United Calibration Corporation, of Huntington Beach, California, attempted to illegally export to Iran machinery used to measure the tensile strength of steel, in violation of the U.S. embargo. The technology is on the Nuclear Supplier's Group "Watch List" as a commodity that can make a contribution to nuclear activities of concern.

The Penalty: On December 5, 2006, Sevilla was sentenced to five years' probation, six months of home confinement, 100 hours of community service and a \$10,000 criminal fine. On January 16, 2008, Sevilla and his company, JS Engineering, were denied export privileges for five years pursuant to Section 11(h) of the Export Administration Act.

Primavera Systems, Inc.

The Violation: Primavera Systems, Inc. (Primavera) exported computer software programs to Iran without the required authorization. Primavera also failed to comply with recordkeeping requirements.

The Penalty: On May 8, 2007, Primavera agreed to pay a \$55,000 administrative penalty.

Mitigating Circumstance: Primavera voluntarily self-disclosed the violations and cooperated fully in the investigation.

Naji Antoine Abi Khalil and Tomer Grinberg

The Violation: Naji Antoine Abi Khalil (“Khalil”) and Tomer Grinberg (“Grinberg”) were involved in a scheme to ship night vision equipment to Greece without the licenses required by State and BIS. Khalil also attempted to contribute goods to Hezbollah, a Specially Designated Terrorist.

The Penalty: . Khalil pled guilty to two conspiracy charges relating to money laundering and the unlicensed export of the equipment to Greece. He also pled guilty to one IEEPA violation in connection with attempting to and making or receiving a contribution of funds to and for the benefit of Hezbollah. Grinberg pled guilty to a conspiracy to violate the IEEPA. On February 13, 2006, Khalil was sentenced to two five-year prison terms and a fifty-seven month prison term, all to be served concurrently, and a \$100,000 criminal fine. Grinberg was sentenced on April 12, 2006 to six months in prison. On November 14, 2006, BIS denied Khalil’s and Grinberg’s export privileges for ten years, pursuant to Section 11(h) of the Export Administration Act. On January 4, 2007, Grinberg was deported from the United States.

Khalid Mahmood and David Tatum

The Violation: In 2003, Khalid Mahmood, d/b/a Sharp Line Trading, of Dubai, U.A.E., committed export violations in connection with the sale to an Iranian company of forklift parts from a Kentucky-based U.S. supplier, Clark Material Handling Company (“Clark”), in violation of the U.S. embargo. The transaction was allegedly structured through Mahmood/Sharp Line in the U.A.E. to conceal the ultimate destination of the goods. In November 2005, Mahmood pled guilty to one count of conspiracy. David Tatum, formerly a Vice President of Clark, pled guilty to making a false statement to federal agents in connection with the case.

The Penalty: On January 19, 2006, Mahmood was sentenced to time served (17 months). On August 4, 2006, Tatum was sentenced to one year probation, 50 hours of community service and a \$5,000 fine.



Khalid Mahmood



David Tatum



Sepahan Lifter Company

Erik Kyriacou

The Violation: Erik Kyriacou, a former NBC cameraman and resident of Long Island, New York, attempted to illegally export night vision lenses to Iran. The lenses had been stolen from NBC News in New York. Kyriacou attempted to sell the lenses on the Internet to undercover agents posing as international arms brokers. Kyriacou agreed to sell the lenses to the agents knowing that they were destined for shipment to Iran in violation of the U.S. embargo.

The Penalty: Kyriacou was sentenced to five years' probation, with the first four months as home confinement. On March 1, 2006, an order was imposed denying Erik Kyriacou's export privileges for ten years, pursuant to Section 11(h) of the Export Administration Act.

State Sponsors of Terrorism:

- ***Cuba***
- ***Iran***
- ***North Korea****
- ***Sudan***
- ***Syria***

** On June 26, 2008, the President notified Congress of his intention to lift the designation of North Korea as a State Sponsor of Terrorism pursuant to Section 6(j) of the Export Administration Act and several other statutes. Barring further Congressional action, the formal rescission of North Korea's designation would be undertaken by the Secretary of State 45 days after this notification.*

Chapter 5 – Transshipment and Re-exports

Introduction

Parties to an export transaction cannot bypass the EAR by shipping items through a third country. The transshipment, re-export, or diversion of goods and technologies in international commerce may be a violation of U.S. law. For example, an exporter cannot bypass the U.S. embargo against Iran by shipping an item to a distributor in the United Kingdom and asking that distributor to transship the item to a customer in Iran. Under U.S. law, this would be considered an export to Iran, even though it does not go directly to that country, and both the U.S. exporter and the United Kingdom distributor could face liability.



Assistant Secretary Darryl W. Jackson, Special Agent-in-Charge of the Office of Export Enforcement's Miami Field Office Michael Johnson and Port Everglades Business Development Manager Andy Deering, in Port Everglades, Florida

Criminal and Administrative Case Examples

Ali Asghar Manzarpour

The Violation: In April 2004, Ali Asghar Manzarpour, through his companies, Preston Technical Services, Ltd., and Baronmode, Ltd., in the United Kingdom, acquired a single engine aircraft from the United States and instructed a freight forwarder to ship the aircraft to the United Kingdom, and then transship it to Iran, without the required authorization

The Penalty: Manzarpour was criminally indicted. He was administratively charged with causing an unlicensed export and a related knowledge violation. On March 3, 2008, Manzarpour's export privileges were denied for twenty years.

**Winter Aircraft Products SA/Rufina Sanchez Lopez/
Jose Alberto Diaz Sanchez**

The Violation: In 2000, Winter Aircraft Products SA, also known as Ruf S. Lopez SA, located in Madrid, Spain, and its executive officers, Rufina Sanchez Lopez and Jose Alberto Diaz Sanchez, acquired aircraft parts from the United States, concealed the identity of the ultimate destination from the U.S. suppliers, and then transshipped the parts through Spain to Iran with a substantial markup in price.

The Penalty: A ten year denial of export privileges was imposed on each party. In May 2008, based on evidence that Iberair Lines (a/k/a “Deserrollos Ind. Iberair, SL”) and (a/k/a “Desarrollos Empresariales Iberair L’”) (“Iberair”) and Ana Belen Diaz Sanchez (a/k/a “Ana Vazquez”), both of Madrid, Spain, are related to Winter Aircraft by ownership, control, position of responsibility, affiliation or other connection in the conduct of trade or business, Iberair and Ana Vazquez were added to the Order imposed against Winter Aircraft in order to avoid evasion of that Order.

Mohammad Fazeli

The Violation: In September 2004, Mohammad Fazeli, of Los Angeles, California, attempted to export 103 Honeywell pressure sensors to Iran, through the United Arab Emirates, without the required authorization from the Treasury Department’s Office of Foreign Assets Control.

The Penalty: Fazeli’s export privileges were denied for six years, pursuant to Section 11(h) of the Export Administration Act.

Patrick Gaillard

The Violation: In November 2006, Patrick Gaillard, through his company, Oyster Bay Pump Works, of Hicksville, New York, attempted to export two laboratory equipment systems, valued collectively at approximately \$300,000, to Iran via an intermediary in the United Arab Emirates without the required export license. James Gribbon, former sales manager for Oyster Bay Pump Works, pled guilty to conspiracy for his involvement in the illegal export of laboratory equipment to Iran.

The Penalty: On May 1, 2008, Patrick Gaillard was sentenced to one month in prison, and a \$25,000 criminal fine. Gribbon is awaiting sentencing.

Tak Components/Saied Shavsavarani

The Violation: Tak Components, Inc. of Naperville, Illinois (“Tak Components”), knowingly made of at least 16 unlicensed export shipments of equipment described as “gaskets, bearing balls, auto parts, oil or fuel filters and other parts and accessories for tractors” from the United States to Iran during the 2003-2005 period. Saied Shavsavarani, President of Tak Components, falsely represented in shipping documents that the end destination for each shipment was in

Dubai, United Arab Emirates, concealing the intended final destination for the equipment was Iran.

The Penalty: On October 11, 2007, Tak Components was sentenced to one year of probation, and \$38,016 in forfeiture. On the same date, Shahsavarani was sentenced to three years' probation, and a \$1,000 criminal fine.

Proclad International Pipelines, Ltd.

The Violation: In February 2004, Proclad International Pipelines, Ltd.(Proclad), a British corporation, headquartered in Scotland, United Kingdom, conspired to illegally export nickel alloyed pipes to Iran through the United Kingdom and/or the United Arab Emirates (UAE) and took actions with the intent of evading the EAR in connection with such exports. Proclad engaged in negotiations and ordered nickel alloy pipes with knowledge that the intended ultimate destination for the items was Iran.

The Penalty: Proclad agreed to pay a \$100,000 administrative penalty. In addition, a seven year denial of export privileges was imposed, but suspended provided that the company did not violate the EAR. On March 14, 2008, Proclad was sentenced to a criminal fine of \$100,000, and five years of corporate probation.

Sharon Doe/Andrew Freyer

The Violation: Sharon Doe, Sales Manager, and Andrew Freyer, another employee, of Crane Pacific Valves, of Signal Hill, California, conspired to export U.S. origin petrochemical valves to Iran and Iraq through Australia in violation of the Export Administration Regulations.

The Penalty: On December 17, 2007, Freyer was sentenced to 17 months in prison and a \$10,000 criminal fine. On October 15, 2007, Doe was sentenced to three years' probation, six months of home detention, and a \$5,000 criminal fine.

Mitigating Circumstance: Crane Pacific Valves voluntarily self-disclosed the violations and cooperated fully in the investigation.

Go Trans (North America)/Roger Unterberger/Muhammad Bhatti

The Violation: Go-Trans (North America), of Jamaica, New York, Roger Unterberger, a retired Senior Vice President of Gondrand AG, headquartered in Basel, Switzerland, and Muhammad Bhatti, Chief Operating Officer of Go-Trans, made false statements in connection with the attempted export of pipe-cutting machines to Iran via Germany.

The Penalty: All three pled guilty to false statement charges. On October 24, 2007, Go Trans was sentenced to one year of probation and a \$34,000 criminal fine; Roger Unterberger was sentenced to one year of probation and a \$5,000 criminal fine; and Muhammad Bhatti was

sentenced to one year of probation. In the related administrative cases, Bhatti paid a \$34,000 penalty, Unterberger paid a \$25,500 penalty, and Go Trans paid a \$34,000 penalty.

Mine Safety Appliances Company

The Violation: Between May 2001 and December 2005, Mine Safety Appliances Company (“MSA”), of Pittsburgh, Pennsylvania, through its branch office in Abu Dhabi, United Arab Emirates (“UAE”), re-exported helmets, gas masks, detection equipment, filters, and other related safety equipment to Iran and Syria from the UAE without the required U.S. government authorization.

The Penalty: MSA agreed to pay an administrative penalty of \$470,000.

Mitigating Circumstance: MSA voluntarily self-disclosed the violations and cooperated fully in the investigation.

Henry Schein, Inc.

The Violation: Between October 2001 and March 2003, Henry Schein, Inc., of Melville, New York, and two of its employees, Jennifer Marr and David McCauley, exported and conspired to export dental equipment to Iran through the United Arab Emirates without the required U.S. government authorization. In addition, the company made false statements on Shipper’s Export Declarations regarding the ultimate destination, took actions to evade the Regulations, and failed to comply with recordkeeping requirements.

The Penalty: Henry Schein, Inc. agreed to pay a \$165,000 administrative penalty. Marr agreed to pay \$7,700 and McCauley agreed to pay \$6,380 in administrative penalties.

Mohammed Farahbakhsh

The Violation: Mohammed Farahbakhsh, Hamid Fatholoomy, and their UAE-based companies, Diamond Technology and Akeed Trading, conspired to illegally export computer goods satellite communications equipment, and other goods from a U.S. supplier to an entity in Iran that was affiliated with Iran’s ballistic missile program.

The Penalty: In September 2005, Farahbakhsh was sentenced to seven months in prison and two years' probation.

INCREASING TRANSPARENCY THROUGH PENALTY GUIDANCE

BIS has issued guidance (found in Supplement No. 1 to Part 766 of the EAR) to provide the public with a comprehensive description of how BIS determines appropriate penalties in the settlement of administrative export control enforcement cases. It explains that BIS carefully considers each settlement offer in light of the facts and circumstances of the case, relevant precedent, and BIS's objective to achieve an appropriate level of penalty and deterrent effect.

The penalty guidance is available online at: <http://www.access.gpo.gov/bis/ear/pdf/766.pdf>

Several factors are taken into account when determining the appropriate administrative penalty. The penalty guidance encourages parties to provide information to BIS that would be helpful in the application of the guidance to their cases and discourages parties from proceeding in a manner that BIS would consider harmful to the resolution of their cases or that may cause interference.

Some factors are given "great weight" and are treated as considerably more significant than factors that are not so designated.

■ **General factors for consideration include:**

- Destination of the export
- Degree of willfulness involved in violations
- Number of violations
- Criminal charges

■ **Mitigating factors include:**

- Voluntary Self--Disclosure of violations ("great weight")
- Effective export compliance program ("great weight")
- Cooperation with BIS investigation
- Assistance to other BIS investigations
- No previous record of violations

■ **Aggravating factors include:**

- Deliberate effort to hide or conceal violations ("great weight")
- Serious disregard for export compliance responsibilities ("great weight")
- Item is significant due to its sensitivity or reason for control ("great weight")
- History of violations
- High quantity or value of exports

Petrom GmbH International Trade

The Violation: Petrom GmbH International Trade of Munich, Germany, conspired to export check valves to Iran without the required authorization and solicited unlicensed exports to Iran via Germany without the required authorization.

The Penalty: On May 26, 2005, an order was issued imposing a \$143,000 administrative penalty and denying Petrom's export privileges for 20 years. On February 4, 2007, Petrom Internacional Trade, S.L., Koto Comercio Iberica, S.L. and Majid Rahmanifar were added to the denial order as related persons.

Ernest Koh

The Violation: Between 2001 and 2005, Singapore businessman Ernest Koh, doing business as Chong Tek, obtained U.S. aircraft parts, which can be used in C-130 military transport planes and P-3 Naval Aircraft, and diverted those parts to Malaysia for transshipment to Iran, in violation of the U.S. embargo against Iran. Koh obtained the aircraft parts from co-conspirator, an American aircraft parts supplier, without the required export licenses. In addition, Koh laundered millions of dollars from his bank accounts in Singapore through accounts in the U.S. to promote the ongoing illegal scheme.

The Penalty: Koh was sentenced to 52 months in prison. On November 27, 2007, Koh's export privileges were denied for 10 years.

Supermicro Computer Incorporated/Mohammad Mayssami

The Violation: Between December 2001 and January 2002, Supermicro Computer Incorporated ("Supermicro") exported 300 computer motherboards to Dubai, United Arab Emirates (UAE), for transshipment to Iran, without the required export license. Supermicro made the shipment to Super Net Computers, L.L.C. (Super Net), in Dubai, United Arab Emirates, aided or abetted the exports. In addition, Mohammad Ali Mayssami, a jeweler and gems dealer from San Diego, California, took action to finance the transactions.

The Penalty: In the criminal case, Supermicro was sentenced to a criminal fine of \$150,000. Supermicro also agreed to pay an additional \$125,400 in civil penalties. As part of the plea agreement, Supermicro implemented a new export control program. On May 21, 2007, Super Net was denied export privileges for five years. On April 28, 2008, Mohammad Mayssami was sentenced to two years' probation, a \$10,000 criminal fine, and 160 hours of community service at a charity of his choosing, for his part in financing the export transactions.

Dresser, Inc.

The Violation: Between June 2000 and April 2004, Dresser Inc. and seven of its affiliate companies violated the EAR by exporting and reexporting various oil industry-related items and causing, aiding or abetting the export of such items through 141 transactions involving Iran, Iraq, Libya and Cuba that occurred without the required licenses from the Department of Commerce.

The Penalty: Dresser and its affiliates agreed to pay administrative penalties totaling approximately \$1.1 million.

Mitigating Circumstance: Dresser voluntarily self-disclosed the violation and cooperated fully with the investigation.

Ebara International Corporation

The Violation: Ebara International Corporation (EIC) of Sparks, Nevada and Everett Hylton, EIC's founder and former Chief Executive Officer, violated the EAR by conspiring with others to export cryogenic in-tank submersible pumps to Iran without the required export licenses and evading the requirements of the EAR by participating in actions to conceal the illegal exports. Specifically, between 2000 and 2003, EIC, Hylton and their co-conspirators devised and employed a scheme under which EIC sold the pumps to Cryostar SAS, formerly known as Cryostar France, a French corporation, headquartered in Hesingue, France, which resold the pumps to "TN", a French company with a U.S. subsidiary, which then forwarded the pumps to Iran. In order to conceal the illegal exports, EIC and Hylton falsified documents to conceal the fact that the pumps were destined for Iran, created documents stating the ultimate destination was France, and avoided marking parts for the pumps with EIC identification stamps.

The Penalty: In the criminal case, on September 23, 2004, Ebara pled guilty to conspiring to violate U.S. export control laws and was sentenced to a \$6.3 million criminal fine and three years' probation. On the same day, in the related administrative case, Ebara agreed to pay a \$121,000 administrative penalty and to a three-year suspended denial of export privileges. In a related criminal case, Hylton was sentenced on that day to a \$10,000 criminal fine and three years' probation. In the related administrative case, Hylton agreed to pay a \$99,000 administrative penalty and to a three-year suspended denial of export privileges. Finally, in the criminal case, in July 2008, Cryostar SAS pled guilty to conspiracy, exporting without an export license, and attempted exporting without an export license, and was sentenced to a \$500,000 criminal fine and two years' probation.

Chapter 6 - Freight Forwarder

Introduction

Primary responsibility for compliance with the EAR generally falls on the “principal parties in interest” in a transaction, who are usually the U.S. seller and the foreign buyer. However, freight forwarders or other agents acting on behalf of the principal parties are responsible for their actions, including the representations they make by signing an export declaration or other export control document.

To help avoid liability in an export transaction, agents and exporters must decide whether any aspect of the transaction raises red flags, inquire about those red flags, and ensure that suspicious circumstances are not ignored. Both the agent and the principal party are responsible for the accuracy of each entry made on an export document. Good faith reliance on information provided by the exporter may excuse an agent’s actions in some cases, but the careless use of pre-printed “No License Required” forms or unsupported entries can get an agent into trouble.

Criminal and Administrative Case Examples

Elite International Transportation, Inc.

The Violation: Elite International Transportation, Inc. (“Elite”), a freight forwarder in Houston, Texas, misrepresented the licensing authority on a Shipper’s Export Declaration (SED). Elite filed a SED on behalf of the exporter, Equistar Chemicals LP (“Equistar”), of Houston, Texas, stating that exports of triethanolamine to Mexico were authorized pursuant to NLR (“No License Required”), when, in fact, a license was required for the exports.

The Penalty: Elite agreed to pay a \$156,000 administrative penalty. In a related matter, Equistar agreed to a civil penalty of \$39,650. Equistar had filed a Voluntary Self Disclosure with BIS in 2004, and cooperated with the BIS investigation. Upon discovering the previous violations, Equistar immediately began applying for and receiving licenses for exports of the chemicals at issue.

International Freight Forwarder

The Violation: In June 2000, International Freight Forwarder (IFF), a Canadian company, aided and abetted an attempted illegal export to Cuba when it picked up several boxes of medical equipment from the United States and agreed to arrange for the shipment of that equipment from the United States to Cuba, through Canada. The equipment was not licensed for export to Cuba and was later seized by the Canadian Government before reaching Cuba.

The Penalty: In 2008, the Under Secretary for Industry and Security affirmed an administrative law judge’s recommended penalty of \$6,000 and a three year denial of export privileges, which would be suspended as long as IFF paid the monetary penalty within thirty days.

P.R.A. World Wide Trading Company, Inc. (See details of case on p. 46)

Salinas International Freight Company, Inc.

The Violation: Salinas International Freight Company, Inc. (Salinas) exported computers and related equipment, in violation of Tetrabal Corporation's temporary denial order. Salinas also made a misrepresentation of license authority on the SED. Salinas filed a SED stating that computers and related equipment qualified for export as NLR, when, in fact, a license was required for the exports.

The Penalty: Salinas agreed to pay administrative penalties totaling \$11,600.

DHL Holdings USA, Inc.

The Violation: DHL Holdings USA, Inc. (DHL) violated the EAR by forwarding items subject to the EAR, including a strobe, networking equipment and printers, to Saudi Arabia on behalf of parties subject to a Temporary Denial Order.

The Penalty: DHL agreed to pay an \$18,000 administrative penalty.

DSV Samson Transport

The Violation: DSV Samson Transport, a freight-forwarding company based in New Jersey, pled guilty to forwarding shipments to India despite being warned by Special Agents from the BIS Office of Export Enforcement on at least three occasions that such shipments would be in violation of BIS export controls designed to prevent nuclear proliferation.

The Penalty: In the criminal case, DSV Samson Transport was sentenced to a \$250,000 criminal fine and five years of probation. In the related administrative case, DSV Samson agreed to pay a \$399,000 administrative penalty.



Chapter 7 – “Catch-All” Controls

Introduction

As mentioned in Chapter One, BIS controls exports of items not only based on their technical specifications, but also based on their intended end-use and end-user. The EAR impose license requirements on exports of items subject to the EAR if the exporter knows or has reason to know that any of the items will be used in an end-use of particular concern to the U.S. Government, such as a missile or nuclear weapons program. These controls are often referred to as “catch-all” controls because they apply to any item subject to the EAR, even if the item would not ordinarily require a license based on its technical specifications.

The U.S. Government has officially notified the public, through the Entity List published in Supplement Four to Part 744 of the EAR, that exports to certain end-users present an unacceptable risk of being diverted to an end-use of concern and require a license. While this List assists businesses in determining whether an entity poses proliferation concerns, it is not comprehensive. It does not relieve parties to an export transaction of their responsibility to determine the nature and activities of potential customers who may not be on the Entity List (see BIS’s “Know Your Customer” Guidance in Supplement No. Three to Part 732 of the EAR, available on the BIS website).

The Entity List is published in the Federal Register. The Federal Register is the official source of information about organizations on BIS’s Entity List. The Federal Register from 1995 to the present is available on the Government Printing Office Access Web site. The current Entity List can also be found on the BIS website at <http://www.bis.doc.gov/>.

Criminal and Administrative Case Examples

Parthasarathy Sudarshan/Cirrus Electronics LLC

The Violation: Between 2002 and 2006, Parthasarathy Sudarshan, of Simpsonville, South Carolina, president of Cirrus Electronics LLC (Cirrus), with offices in Simpsonville, South Carolina, Singapore, and Bangalore, India, conspired with others to illegally export U.S. microprocessors and electronic components for space launch vehicles and ballistic missile programs to the Vikram Sarabhai Space Centre (VSSC) and Bharat Dynamics, Ltd. (BDL), two Indian government entities involved in rocket and missile production without the required licenses. VSSC and Bharat are on BIS’s Entity List. Sudarshan and others at Cirrus provided the U.S. vendors of electrical components with fraudulent end-use certificates and routed them through the Singapore office to conceal the ultimate destination of the goods.

The Penalty: On June 16, 2008, Sudarshan was sentenced to 35 months in prison, two years of supervised release, and a \$ 60,000 criminal fine. Sudarshan will receive credit for time served, which at the time of sentencing was approximately 15 months. In the administrative context, in June 2007, BIS imposed a 180-day Temporary Denial Order (TDO) on Sudarshan, three other Cirrus officials, and the three Cirrus offices (South Carolina, Singapore, and India). The TDO was renewed for an additional 180 days in December 2007.

**Megatech Engineering & Services Pvt. Ltd./
Ajay Ahuja/Ravi Shettigar/T.K. Mohan**

The Violation: Megatech Engineering & Services Pvt. Ltd., and its employees, Ajay Ahuja, Ravi Shettigar, and T.K. Mohan, of Mumbai, India, conspired to export certain high-tech testing equipment without the required BIS authorization to the Indira Gandhi Centre for Atomic Research, which is on BIS's Entity List. The conspiracy involved a front company in India named Technology Options, and its employee, Shivram Rao, which received the exported equipment and diverted it to the Indira Gandhi Centre for Atomic Research.

The Penalty: Ahuja, Shettigar, Mohan and Megatech were each denied export privileges for fifteen years, and Technology Options and Shivram Rao were each denied export privileges for ten years.

Data Physics Corporation/Sri Welaratna

The Violation: In 2001 and 2002, Data Physics Corporation (Data Physics), of San Jose, California, and president, Sri Welaratna, knowingly exported vibration testing equipment to two organizations in China on BIS's Entity List, the 33rd Institute, a.k.a. the Beijing Institute of Automatic Control Equipment or Beijing Automation Control Equipment Institute (BACEI), and the Chinese Academy of Launch Vehicle Technology (CALT), without the required licenses. Data Physics and Welaratna had been subject to a Temporary Denial Order since May 23, 2006 in connection with these allegations.

The Penalty: Data Physics agreed to pay a \$55,000 administrative penalty and to a five-year denial of export privileges to the People's Republic of China. Welaratna agreed to pay a \$55,000 administrative penalty and to a five year suspended denial of export privileges to China.



Biospherical Instruments, Inc./ Baltrans Logistics, Inc.

The Violation: In 2004, Biospherical Instruments, Inc. of San Diego, CA, exported a profiling radiometer system to the Space Application Center in India, an organization on BIS's Entity List, without the required license, and made a false representation to the U.S. government in connection with the preparation and submission of an export control document. Baltrans Logistics, Inc., of Torrance, CA, aided/abetted the unlicensed export.

The Penalty: Biospherical Instruments, Inc. agreed to pay a \$13,200 administrative penalty. Baltrans Logistics, Inc. agreed to pay a \$6,000 administrative penalty.

Mitigating Circumstance: Biospherical Instruments, Inc. voluntarily self-disclosed the violation and cooperated fully with the investigation.

Magnetic Shield Corporation

The Violation: Magnetic Shield Corporation of Bensonville, IL exported and attempted to export magnetic shielding materials to the Indira Gandhi Centre for Atomic Research (IGCAR), an organization on BIS's Entity List, without the required license. The company also failed to enter the license authority on the Shipper's Export Declaration.

The Penalty: Magnetic Shield Corporation agreed to pay a \$19,000 administrative penalty.

Mitigating Circumstance: Magnetic Shield Corporation voluntarily self-disclosed the violation and cooperated fully with the investigation.

Fiber Materials Inc.

The Violation: Fiber Materials Inc. of Maine, its wholly owned subsidiary, Materials International of Massachusetts, and the companies' two top officers, Walter Lachman and Maurice Subilia, violated and conspired to violate U.S. export restrictions in connection with the unlicensed export to India of equipment used to manufacture carbon-carbon components with applications in ballistic missiles. The equipment, a specially designed control panel for operation of a hot isostatic press used to produce carbon-carbon items, was exported to the Defense Research Development Laboratory in India and delivered to Agni, the defense laboratory developing India's principal nuclear-capable ballistic missile.

The Penalty: Lachman was sentenced to three years' probation, the first year of which was to be spent in home detention. Subilia was sentenced to three years' probation, the first six months of which was to be spent in community confinement to be followed by one year of home detention. Lachman, Subilia, and Fiber Materials were each fined \$250,000. No fine was imposed on Materials International because it is a wholly-owned subsidiary of Fiber Materials. On March 12, 2007, Lachman, Subilia, Fiber Materials, and Materials International were each denied export privileges for ten years.

Chapter 8 - Denial of Export Privileges

Introduction

BIS has the authority and discretion to deny all export privileges under the EAR of a particular domestic or foreign person or company. BIS may impose a denial of export privileges as a sanction in an administrative case, or as a result of a person's criminal conviction of certain statutes (e.g. the Arms Export Control Act), and may also impose temporary denials (TDOs) to prevent an imminent violation of the EAR. The standard terms of a BIS denial order are published in Supplement Two to Part 764 of the EAR. In addition, under Section 11(h) of the Export Administration Act of 1979 (EAA), a denial of export privileges may be imposed for up to ten years from the date of a person's prior conviction under a statute listed in the EAA

BIS publishes the names of persons who have had their export privileges denied in the Federal Register. The Federal Register is the official source of information about denied persons. The Federal Register from 1995 to present is available on the Government Printing Office Access Web site. A current list of persons denied export privileges can also be found on the BIS website at <http://www.bis.doc.gov/>.

Criminal and Administrative Case Examples

George Charles Budenz II/Richard Scott Tobey/Arif Ali Durrani

The Violation: George Charles Budenz II, of Escondido, CA, Richard Scott Tobey, of Temecula, CA, and Arif Ali Durrani, of Pakistan, exported controlled military aircraft parts, specifically, engine parts for F-5 fighters, T-38 trainers, and Chinook helicopters to Malaysia and Belgium without obtaining a license from the State Department.

The Penalty: On June 9, 2007, a five-year denial of export privileges was imposed on each party, pursuant to Section 11(h) of the Export Administration Act.

Erika P. Jardine

The Violation: Erika P. Jardine, aka Eriklynn Pattie Jardine, aka Erika Pattie Jardine, of Vista, CA, exported/attempted to, and caused to be exported defense articles (small arm protective inserts (SAPIs)), from the United States to several European countries, without having first obtained a State Department license.

The Penalty: On February 9, 2007, a seven-year denial of export privileges was imposed on Jardine, pursuant to Section 11(h) of the Export Administration Act.

Fernando Sero

The Violation: Fernando Sero, aka Ferdie Resada, caused to be exported defense articles (weapons parts) from the United States to the Island of Mindanao in the Southern Phillipines, without having first obtained a State Department license.

The Penalty: On January 22, 2007, a ten-year denial of export privileges was imposed on Sero, pursuant to Section 11(h) of the Export Administration Act.

BiB Industrie-Handel Dipl.Ing M. Mangelsen GMBH/Malte Mangelsen

The Violation: From September 2001 through June 2002, BiB Industrie-Handel Dipl.Ing M. Mangelsen (BiB) and owner Malte Mangelsen (Mangelsen), of Bremen, Germany, conspired with others, Jeffrey Woodbridge and Sigma Enterprises, both of the United Kingdom, and John Clements and Minequip Company, of Miami, Florida, to arrange for the export of spare parts for hydraulic shears to Libya without the required export authorization. During the 2002-2003 period, BiB also took actions to evade the Export Administration Regulations in connection with such unlicensed exports to Libya.

The Penalty: BiB and Mangelsen were each ordered to pay a \$77,000 administrative penalty and a 20-year denial of export privileges was imposed. In the criminal cases, Clements and Minequip were sentenced to 3 years' probation and fined a total of \$5,500. Woodbridge was sentenced to time served plus 3 years' probation and fined \$7,100; Sigma Enterprises was fined \$21,000. In the related administrative cases, Clements and Minequip agreed to pay a total of \$24,000 (\$12,000 each) in administrative penalties; Woodbridge agreed to pay \$15,000 in administrative penalties; and Sigma Enterprises agreed to pay \$18,000 in administrative penalties.

Swiss Telecom/Teepad Electronics General Trading

The Violation: Between December 17, 2001 and March 7, 2002, Swiss Telecom, of Toronto, Canada, purchased telecommunication equipment from a U.S. company with knowledge that the equipment was destined for Iran. In connection with the same transaction, Teepad Electronics General Trading, of Dubai, United Arab Emirates, forwarded telecommunications equipment from a U.S. company to Iran. These transactions were conducted without authorization from the Department of the Treasury, Office of Foreign Assets Control.

The Penalty: A ten year denial of export privileges was imposed on both companies.

Mitigating Circumstances: Both companies voluntarily self-disclosed the violations and cooperated fully with the investigation.

Ihsan Elashi

The Violation: During late 2001 and early 2002, Ihsan Elashi, a former corporate officer of InfoCom Corporation of Richardson, Texas, violated a Temporary Denial Order (a 180-day denial of export privileges issued to prevent an imminent violation of the EAR) on numerous occasions, both individually and through a new corporation, Tetrabal Corp.. Moreover, InfoCom and four of its corporate officers, including Bayan, Ghassan, Basman, and Hazim Elashi, were convicted of dealing in the funds of a Specially Designated Terrorist, a high-ranking official of the terrorist organization Hamas, and, the four, along with Ihsan Elashi, conspired to export

certain proscribed computer equipment to Libya and Syria (two state sponsors of terrorism) and conspired to file false Shipper's Export Declarations.

The Penalty: Ihsan Elashi was sentenced to four years in federal prison for violating the denial order and six years in prison and two years' probation for the export violations, conspiracy charges, and false statements. Hazim Elashi was sentenced to five years in prison and two years' parole. He was also ordered to be deported from the United States at the end of his prison term. In October 2006, Basman Elashi and Ghassan Elashi were sentenced to 80 months in prison. Infocom was sentenced to two years' probation. In the related administrative case, the Under Secretary for Industry and Security issued an order requiring Ihsan Elashi to pay a \$330,000 administrative penalty and imposed a 50-year denial of export privileges. Basman, Bayan, Hazim, and Ghassan, along with Fadwa Elafrangi, Majida Salem, Maysoun Al Kayali, Infocom Corp., Tetrabal Corp., Al Kayali Corp's Mynet.net Corp., and Synoptix.net were all made subject to Ihsan's 50-year denial of export privileges.

Yaudat Mustafa Talyi

The Violation: In November and December 2002, Yaudat Mustafa Talyi violated a BIS Temporary Denial Order placed against him on September 30, 2002, by participating in an attempted export of items to the United Arab Emirates and directing another exporter to handle one of his pending exports.

The Penalty: In the criminal case, in April 2004, Talyi was sentenced to a \$25,000 criminal fine and five months in prison, five months' home confinement and twelve months' supervised release. In the related administrative case, Talyi was ordered to pay a \$121,000 administrative penalty. A twenty-year denial of export privileges was also imposed.

Chapter 9 - False Statement / Misrepresentation of Fact

Introduction

A party to an export transaction may be subject to criminal and/or administrative sanctions for making false statements to the U.S. Government in connection with an activity subject to the EAR. Most frequently, the false statements are made on an export document or to a federal law enforcement officer. Common types of false statements seen by BIS are statements on a Shipper's Export Declaration or Automated Export System filing that an export does not require a license (i.e., that it is "NLR") when in fact a license is required for the shipment, or statements that an export was shipped under a particular license number when in fact that license was for a different item. False statements that are made to the U.S. Government indirectly through another person, such as a freight forwarder, constitute violations of the EAR.

Criminal and Administrative Case Examples

MTS Systems Corp.

The Violation: In 2003 and 2004, MTS Systems, Corp. (MTS), of Eden Prairie, Minnesota, submitted export license applications containing misleading representations of material facts to the Department of Commerce for proposed shipments of seismic testing equipment to India. In both instances, MTS had knowledge that the equipment, controlled on the Commerce Control List, could be used for testing on behalf of Indian nuclear facilities. In one instance, MTS omitted information that India's Department of Atomic Energy, which is listed on the Entity List set forth in Part 744 of the EAR, had provided funding for the proposed transaction. After initially submitting the applications, MTS communicated on several instances with the Department of Commerce to provide supplemental information, but failed to share its knowledge of the potential nuclear end-uses associated with the proposed transactions.

The Penalty: On March 12, 2008, MTS was sentenced to two years' probation and a \$400,000 criminal fine. In addition, MTS was ordered to implement and maintain a model export compliance program and to sponsor an export compliance conference, which was held on June 24, 2008, in St. Paul, Minnesota. Also on March 12, 2008, MTS agreed to pay a \$400,000 administrative penalty. The administrative case was settled under the enhanced IEEPA penalties.

P.R.A. World Wide Trading Company, Inc.

The Violation: Between June 1, 2001 and December 20, 2002, P.R.A. World Wide Trading Company, Inc. (PRA), of Brooklyn, New York, conspired to make false statements and falsely represented the value of items on Shipper's Export Declarations (SEDs). PRA's owner and President, Igor Cherkassky pled guilty to conspiracy for instructing employees to prepare and submit SEDs that contained false information.

The Penalty: On December 19, 2006, Cherkassky was sentenced to two months of imprisonment, three years of supervised release, and a \$5,000 criminal fine. In 2007, PRA agreed to pay a \$250,000 administrative penalty, \$90,000 of which was suspended.

Aviacsa Airlines

The Violation: On 75 occasions between February 2002 and May 2003, Aviacsa Airlines failed to file with U.S. Government the Shipper's Export Declarations (SEDs) required by the EAR in connection the with export of aircraft parts to Mexico.

The Penalty: Aviacsa agreed to pay administrative penalties totaling \$450,000, of which \$225,000 was suspended.

EPMedSystems, Inc.

The Violation: Between 2000 and 2004, EPMedSystems, Inc. of West Berlin, NJ, exported and re-exported cardiac equipment to Iran without the required U.S. government authorization. Subsequently, EPMedSystems filed a Voluntary Self-Disclosure (VSD) with BIS which contained false statements regarding EPMedSystem's records and actions taken regarding the unlicensed exports and reexports.

The Penalty: EPMedSystems, Inc. agreed to pay a \$244,000 administrative penalty.

Elatec Technology Corporation/William Kovacs/Stephen Midgley/Sunford Trading Ltd.

The Violation: William Kovacs, his company, Elatec Technology Corporation, Haverhill, Massachusetts, Stephen Midgley, former Production Manager for Elatec, and Sunford Trading Ltd., Hong Kong, China, committed export violations and made false statements relating to the illegal export of a vacuum hot press furnace from the United States to China.

The Penalty: On October 4, 2006, Kovacs was sentenced to one year and one day in prison and three hundred hours of community service after pleading guilty to criminal conspiracy. On January 10, 2005, Stephen Midgley was sentenced to a \$1,500 criminal penalty and one year probation after pleading guilty to making a criminal false statement. Sentencing for Elatec Technology is still pending. In the related administrative cases, Kovacs was found in default and assessed a \$66,000 administrative penalty and a five year denial of export privileges, based on several charges, including charges that Kovacs made false statements to federal agents in the course of an investigation. Midgley agreed to pay a \$5,000 administrative penalty, of which \$4,000 was suspended to settle a charge that he made a false statement on a Shipper's Export Declaration. Sunford Trading agreed to pay a \$33,000 administrative penalty and accept a three year denial of export privileges based on several charges related to the unlawful export.

Spector International, Inc./Norman Spector

The Violation: Between November 2000 and January 2003, Spector International, Inc., d/b/a Norsal Export, of Monroe Township, New Jersey, and its principal officer, Norman Spector, also of Monroe Township, New Jersey, each committed 44 violations of the EAR by exporting

microwave amplifiers to China with knowledge that violations of the EAR would occur in connection with the items. They also filed false SEDs in support of the unlicensed exports. The amplifiers were classified under ECCN 3A0D1 and controlled for national security reasons.

The Penalty: Norsal was sentenced in February 2005 to a \$57,000 criminal fine. On August 22, 2007, Norsal Export agreed to pay a \$462,000 administrative penalty, all of which was suspended for a period of one year. Norsal Export's president, Norman Spector also agreed to pay a \$462,000 administrative penalty, of which \$442,000 was suspended, with \$22,000 due in payment. In addition, a twenty-five year denial of export privileges was imposed on both Norsal Export and Spector.

Chapter 10 - Antiboycott Violations

Introduction

The antiboycott provisions of the EAR, which are set forth at 15 C.F.R. Part 760 (“Restrictive Trade Practices or Boycotts”), prohibit U.S. persons from complying with certain requirements of unsanctioned foreign boycotts, including requirements that the U.S. person provide information about business relationships with a boycotted country or refuse to do business with persons on certain boycott lists. In addition, the EAR requires that U.S. persons report their receipt of certain boycott requests to BIS. Failure to report receipt of certain boycott requests may constitute a violation of the EAR. Under the antiboycott provisions of the EAR, certain foreign subsidiaries of domestic U.S. companies are considered to be U.S. persons.

On July 17, 2007, the Department of Commerce published Supplement No. 2 to 15 C.F.R. Part 766 providing guidance regarding BIS’s penalty determination process in the settlement of administrative cases involving violations of part 760 of the EAR. and violations of part 762 (“Recordkeeping”) when the recordkeeping requirement pertains to part 760. The guidance is partly modeled on Supplement No. 1 to part 766, which provides guidance regarding administrative export control cases, and describes how BIS determines appropriate penalties in settlement of violations in antiboycott cases. The guidance contains a comprehensive description of the factors taken into account in determining administrative penalties including significant mitigating and aggravating factors. On the same date, in connection with the penalty guidance, BIS published a new EAR provision, 15 C.F.R. 764.8, which sets forth the procedures for making voluntary self-disclosures of antiboycott violations. These procedures concern timing requirements, and the information that must be included in the initial notification and narrative account of the disclosure.



Director of Export Enforcement's Office of Antiboycott Compliance Ned Weant gave a presentation at the International Financial Services Association (IFSA) Commercial Letter of Credit Workshop in New York in June 2008. Mr. Weant presented on the application of antiboycott provisions of the Export Administration Regulations to letter of credit transactions and provided an update on current boycott trends.

An Overview of the Antiboycott Laws

History

During the mid-1970's, the United States adopted two laws to counteract the participation of U.S. citizens in other nations' economic boycotts of countries friendly to the United States. These "antiboycott" laws were the 1977 amendments to the Export Administration Act (EAA) (as carried over into the Export Administration Act of 1979) and the Ribicoff Amendment to the 1976 Tax Reform Act (TRA).

Objectives

The antiboycott laws were adopted to encourage, and in specified cases, require U.S. persons to refuse to participate in foreign boycotts that the United States does not sanction. They have the effect of preventing U.S. persons from being used to implement foreign policies of other nations which run counter to U.S. policy.

Primary Impact

The Arab League boycott of Israel is the principal foreign economic boycott that U.S. persons must be concerned with today. The antiboycott laws, however, apply to all boycotts of countries that are friendly to the United States imposed by foreign countries.

Who Is Covered by the Laws?

The antiboycott provisions of the EAR apply to all "U.S. persons," defined to include individuals and companies located in the United States and their foreign affiliates. These persons are subject to the law when their activities relate to the sale, purchase, or transfer of goods or services (including information) within the U.S. or between the U.S. and a foreign country. This covers U.S. exports, forwarding and shipping, financing, and certain other transactions by U.S. persons not in the U.S.

For questions about boycott-related matters please contact the BIS Office of Antiboycott advice line at (202) 482-2381 or send an e-mail as indicated in the antiboycott compliance section of the BIS website.

Criminal and Administrative Case Examples

Colorcon Limited

The Violation: During the period 2001 through 2005, Colorcon Limited of the United Kingdom, a wholly owned subsidiary of Colorcon, Inc. of West Point, Pennsylvania, furnished to persons in Syria ten items of prohibited information about another person's business relationships with boycotted countries or blacklisted persons. In addition, Colorcon knowingly agreed to refuse to do business with another person and failed to report its receipt of a boycott request.

The Penalty: Colorcon agreed to pay a \$39,000 administrative penalty.

Dresser Incorporated

The Violation: From January 2001 through January 2004, Dresser Incorporated (Dresser), located in Texas, failed to report in a timely manner its receipt of nine requests to engage in a restrictive trade practice or boycott relating to Israel.

The Penalty: Dresser agreed to pay a \$9,000 administrative penalty.

Mitigating Circumstance: Dresser voluntarily self-disclosed the violation and cooperated fully with the investigation.

Hyundai Engineering and Construction Co., Ltd.

The Violation: Hyundai Engineering and Construction Company Ltd. of Englewood Cliffs, New Jersey agreed to settle allegations that it committed two violations of the EAR when, in connection with transactions involving Kuwait, it furnished two items of prohibited information about another person’s business relationships with Israel. Additionally, Hyundai agreed to settle allegations that it failed to report a request from Saudi Arabia and a request from Kuwait to provide prohibited boycott-related information.

The Penalty: Hyundai agreed to pay a \$12,000 administrative penalty to settle these allegations.

Maine Biological Labs

The Violation: Maine Biological Labs (MBL) and its employees committed anti-boycott violations in connection with MBL’s unlicensed export of avian vaccine containing Newcastle virus to Syria. MBL provided two shipping documents indicating “that the goods were not of Israeli origin.” Additionally, MBL failed to report the receipt of the buyer’s shipping instruction which was in support of an unsanctioned foreign boycott.



John Donahoe,
Former MBL
President

The Penalty: Three individuals, two former employees of MBL and a consultant, were sentenced to two years’ probation; five others were sentenced to terms of imprisonment ranging from nine months to twelve months and one day. The former employees were also fined in amounts ranging from \$5,000 to \$30,000. MBL received a criminal fine of \$500,000, and was placed on five years’ probation. MBL also agreed to pay a \$20,000 administrative penalty for the antiboycott violations and a \$100,000 administrative penalty for the illegal export violations.



Vial of Avian
Influenza

Johns Hopkins Health System Corporation

The Violation: Johns Hopkins Health System violated the antiboycott provisions of the EAR when it discriminated against a U.S. person in support of the Arab League boycott of Israel. The person had been seeking a position in the company's International Services Department, which markets medical services around the world, including the Middle East. The discriminatory conduct, BIS believes, was motivated by the company's concern about having a Jewish person in that position because of the Arab League boycott of Israel.

The Penalty: Johns Hopkins agreed to pay a \$10,000 administrative penalty.

Mitigating Circumstance: Johns Hopkins Health System voluntarily self-disclosed the violation and cooperated fully with the investigation.

Alison Transport

The Violation: On three occasions, in connection with transactions involving the sale and transfer of goods from the United States to Oman, Kuwait, and Saudi Arabia, Alison Transport furnished prohibited information about another company's business relationships with Israel in violation of the EAR. Alison also failed to report its receipt of a request from Oman to provide a certificate that the aircraft used in the transactions were not blacklisted by the Arab League Boycott Committee.



The Penalty: Alison agreed to pay a \$22,500 administrative penalty.

St. Jude Medical Export GmbH

The Violation: St. Jude violated the EAR when it failed to report in a timely manner its receipt of three requests from an Iraqi government agency to adhere to the rules of the Arab League boycott of Israel during the 2000-2001 reporting period. On four occasions, St. Jude also violated the EAR by agreeing to refuse to do business with blacklisted persons.

The Penalty: St. Jude agreed to pay a \$30,000 administrative penalty.

Mitigating Circumstance: St. Jude voluntarily self-disclosed the violations and cooperated fully with the investigation.

Chapter 11 - Successor Liability

Introduction

Recent administrative cases have made clear that businesses can be held liable for violations of the EAR committed by companies that they acquire. Businesses should be aware that the principles of successor liability may apply to them and perform “due diligence” in scrutinizing the export control practices of any companies that they plan to acquire.

A properly structured due diligence review can determine whether an acquired company has violated any export laws. This review should examine the company’s export history and compliance practices, including commodity classifications, technology exchanges, export licenses and authorizations, end-users, end-uses, international contracts, the status of certain foreign employees who have access to controlled technologies, and the target company's export policies, procedures and compliance manuals. Failure to scrutinize properly a company's export practices can lead to liability being imposed on the acquiring company.

Criminal and Administrative Case Examples

Northrop Grumman Corporation

The Violation: Between January 1998 and September 2002, Northrop Grumman Corporation (Northrop), of Los Angeles, California, both in its own capacity and as successor to Litton Industries, Inc., which Northrop acquired in April 2001, exported specially designed components for navigation equipment and module manufacturing data to destinations in the Philippines, Singapore, Malaysia, Italy and the United Kingdom without the required licenses.

The Penalty: Northrop agreed to pay a \$400,000 administrative penalty

Mitigating Circumstance: Northrop voluntarily self-disclosed the violations and cooperated fully with the investigation.

LogicaCMG

The Violation: LogicaCMG, Inc. of Houston, Texas was held liable for the export violations relating to the shipment of a single node short message service center (SMSC) from the United States through Panama to Cuba without the required license. From July 2001 through October 2001, LogicaCMG, Inc.’s predecessor and affiliated entities, CMG Telecommunications and CMG Wireless Data Solutions of Brazil, conspired to export and did export the SMSC through Panama for ultimate delivery to the Cuban end-user.

The Penalty: LogicaCMG agreed to pay a \$99,000 administrative penalty, and a criminal fine of \$50,000 was imposed.

Cerac, Inc.

The Violation: Between October 1, 1999 and March 26, 2001, Cerac, Inc., of Milwaukee, Wisconsin (previously named CR International), both in its own capacity, and as successor to Cerac, Inc., exported inorganic materials controlled for nuclear nonproliferation reasons to India, Israel, the People's Republic of China, Taiwan and Thailand without the required export licenses. In addition, Cerac exported quantities of Iron and Selenium, specialty inorganic materials, to the Inter University Consortium in India, which was then on the Entity List, without the required export licenses. Finally, Cerac made false statements on Shipper's Export Declarations in connection with some of these transactions, stating that no license was required, when, in fact, a license was required.

The Penalty: Cerac agreed to pay a \$297,000 administrative penalty.



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