

Fact Sheet
November 1, 2007

BIS's Charging and Penalty Practices

Under the IEEPA Enhancement Act, BIS may now proceed with the Enhanced Penalties for administrative enforcement actions pending or commenced on or after October 16, 2007 with five general exceptions, which are noted below. BIS will continue to make penalty determinations in accordance with the penalty guidelines set forth in Supp. No. 1 to Part 766 of the EAR for export control cases. For antiboycott cases, BIS will continue to make penalty determinations in accordance with the penalty guidelines set forth in Supp. No. 2 to Part 766 of the EAR.

BIS will generally not pursue the Enhanced Penalties provided under the IEEPA Enhancement Act in the following circumstances:

- Violations with respect to which a valid Voluntary Self-Disclosure (VSD) initial notification was submitted to BIS in accordance with Part 764.5(c)(2) (export control violations) or Part 764.8(c)(2) (antiboycott violations) of the EAR prior to October 16, 2007;
- Violations with respect to which BIS filed charging letters with an Administrative Law Judge prior to October 16, 2007;
- Violations with respect to which BIS has approved settlement offers or issued settlement offers prior to October 16, 2007, if settlement is reached prior to BIS filing a charging letter with an Administrative Law Judge;
- Violations with respect to which BIS issued proposed charging letters prior to October 16, 2007, if settlement is reached prior to BIS filing a charging letter with an Administrative Law Judge; and
- Violations with respect to which the parties have executed a statute of limitations waiver prior to October 16, 2007, whether or not a proposed charging letter has been issued, and settlement is reached prior to BIS filing a charging letter with an Administrative Law Judge.

RECENT PRIOR CHANGES TO IEEPA SECTION 206: Prior to the most recent amendments, section 206 was last changed on March 9, 2006, pursuant to the USA PATRIOT ACT Improvement and Reauthorization Act of 2005, to increase the civil penalties from \$10,000¹ to

¹ BIS was able to impose civil penalties of \$11,000 per violation based on the Federal Civil Penalty Inflation Adjustment Act, which allows for routine adjustments of civil penalties to keep up with inflation.

\$50,000, and, for criminal violations, to increase from 10 to 20 years the maximum jail time violators can be given, as detailed above. This amendment only applied to violations that occurred after March 9, 2006.

BIS previously revised its charging and penalty practices to reflect the enhanced administrative penalties provided by the USA PATRIOT Act Improvement and Reauthorization Act of 2005. The PATRIOT Act reauthorization increased BIS's administrative penalties under IEEPA to \$50,000 for violations occurring on or after March 9, 2006. The revised charging and penalty practices may now be applied to all BIS administrative enforcement actions under the IEEPA Enhancement Act, with the general exception of the five circumstances identified above. Those charging and penalty practices include:

- For cases that settle before filing of a charging letter with an Administrative Law Judge, BIS generally charges only the most serious violation per transaction.
- For cases that settle before filing of a charging letter with an Administrative Law Judge, BIS may also charge each violation not directly connected to a specific export or antiboycott related transaction which may include conspiracy, evasion, or false statements made to a Special Agent.
- If BIS chooses to file a charging letter with an Administrative Law Judge because a mutually agreeable settlement cannot be reached, then BIS will reserve its right to proceed with all available charges based on the facts presented.
- BIS draws meaningful distinctions based upon the relative seriousness of an offense. More serious offenses result in higher penalties for the purposes of settlement discussions.
- BIS affords great weight mitigation of up to a 25% reduction of the amount of penalties to be assessed for the existence of an effective export compliance program in place before the violation and later upgraded.
- For all valid Voluntary Self-Disclosures, BIS gives great weight mitigation that generally results in a reduction of at least 50% of the calculated penalty – and does so after considering the aggravating and mitigating factors in the case.
- As always, the penalty amounts proposed by BIS are based upon the totality of the circumstances involved in the case. BIS reserves the discretion to make penalty determinations based on all of the relevant circumstances.