

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

SEPTEMBER 2010

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Dear Members of the Exporting Community:

Since taking office, President Obama has pursued two important objectives: growing American prosperity and jobs at home, and keeping America safe from those who would do us harm. Encouraging more American businesses to export overseas, while maintaining our security and foreign policy objectives, is a national priority. As President Obama has said, "We want to ... concentrate our efforts on enforcing controls on the export of our most critical technologies, making America safer while enhancing the competitiveness of key American industries." The Office of Export Enforcement has the unique mission, and a specialized skill-set, within this Administration of carrying out this critical goal.

Export Enforcement at the Department of Commerce is the lead federal law enforcement agency in dual-use export investigations. The focus of these investigations over the past decade has evolved to address present-day global realities, targeting offshore procurement networks that seek to obtain U.S.-origin dual-use items in support of the proliferation of weapons of mass destruction, terrorism and state sponsors of terror, as well as the diversion of items to prohibited end-uses and end-users, including those that can enhance foreign military capabilities or be used in improvised explosive devices, or "IEDs," for use in terrorist attacks against coalition troops in Iraq and Afghanistan.

Our dedicated Special Agents work with the licensing officers of the Bureau of Industry and Security (BIS), the U.S. Department of Justice, other federal and foreign law enforcement agencies, and the intelligence and exporting communities to protect our country's national security and advance its foreign policy interests. Their exclusive focus on the complex regulatory field of export controls allows them to make a critical contribution to national security.

BIS regulates dual-use exports from start to finish. This helps ensure consistency with our national security and foreign policy objectives. Export Enforcement at BIS participates in the day-to-day development of export control policies and regulations, and works with licensing officers in the evaluation of license applications. This includes verifying the bona fides of parties associated with transactions, and conducting pre-license and post-shipment checks and verifications. Export Control Officers are stationed abroad at critical points of potential diversion concern.

Our partnership with industry is essential in fulfilling our enforcement role, and we rely on industry to assist us in our mission. Our outreach program is geared toward this goal in supporting the exporting community's compliance efforts, particularly small and medium-sized firms. Industry outreach also provides an opportunity to alert the relevant companies and industry sectors of illegal offshore procurement strategies, and allows BIS to respond to suspicious activities and purchase orders when alerted by industry. We seek a cooperative – not an adversarial – relationship.

Because our approach to law enforcement involves administrative remedies as well as traditional criminal investigations, we can take a measured approach in evaluating export violations. Our administrative remedies provide a major motivation for compliance, as has been demonstrated with the success of our antiboycott compliance program. Administrative remedies, which can be imposed independently or in conjunction with criminal investigations, include denials of export privileges (including temporary denial orders) and settlements conditioned upon outside audits. Where appropriate, foreign parties may also be placed on the BIS Entity List, requiring licensing for some or all exports subject to the Export Administration Regulations; such listing often carries with it a presumption of denial. The discussion in this booklet of closed criminal and administrative cases involving export violations demonstrates BIS's varied approach to enforcement and the manner in which these enforcement tools may be brought to bear on differing sets of facts.



As we move forward, we expect to place greater emphasis on the culpability of individuals for their knowing involvement in export control violations, as well as on the companies with which they are associated. Profit, whether individual or corporate, is no excuse for jeopardizing our national security.

Sincerely,

David Mills

Assistant Secretary for Export Enforcement

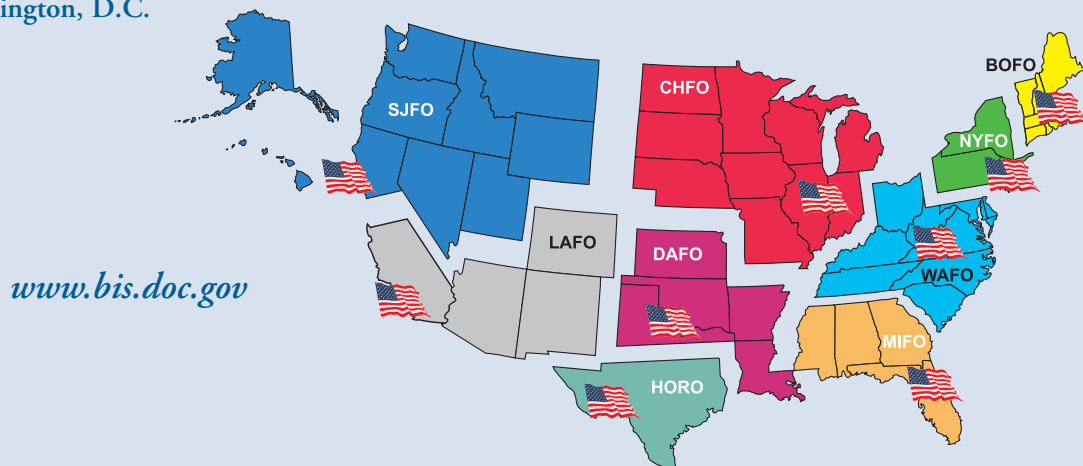
Introduction to U.S. Export Controls

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.



Export Enforcement also has Export Control Officers (ECOs) located in 6 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, Abu Dhabi and Singapore.

¹ On July 1, 2010, the President signed the Comprehensive Iran Sanctions, Accountability, and Divestment Act, Pub. Law 111-195, 124 Stat. 1312, which at Section 305 provides permanent law enforcement authorities to BIS's Office of Export Enforcement.

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 may 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 reexports of technology related to the production of special nuclear materials and the Department of Treasury, which administers economic sanctions.

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.²

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.

² Export control violations are based on the Export Administration Act of 1979, as amended (50 U.S.C. app. §§ 2401- 2420 (2000)) (EAA or the Act). The EAA is implemented by the EAR, 15 C.F.R. Parts 730-774 (2010). 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 12, 2010 (75 Fed. Reg. 50,681 (Aug 16, 2010)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. § 1701 et seq. (2000)) (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. 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.

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.³

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 administrative settlement agreements, a respondent who enters into an administrative settlement with BIS neither admits nor denies the charges made against it. Therefore, the administrative 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.

³ 15 C.F.R. § 766.25 (2010).

INCREASING TRANSPARENCY THROUGH PENALTY GUIDANCE

BIS has existing 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.

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 export

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 2010 Update Conference, Washington, D.C., September 1, 2010: Acting Deputy Assistant Secretary, Export Enforcement Robert Luzzi; Acting Director, Office of Export Enforcement, John Sonderman; Director, Office of Antiboycott Compliance, Edward Weant; Assistant Director, Office of Enforcement Analysis, Mark Roberts; Chief, Enforcement and Litigation Division, Office of Chief Counsel, Joseph Jest

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. 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.



Under Secretary for Industry and Security Eric Hirschhorn at the 2010 Update Conference in Washington, D.C., August 31, 2010. Under Secretary Hirschhorn explains that under the new export control initiatives, the Department will step up enforcement efforts "against individuals who flout the rules and against companies whose inadequate internal compliance programs tell us that they are indifferent to whether they follow the rules."

Chapter 1 – Major Enforcement Actions

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 Automated 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. 3 to Part 732, which is available on the BIS website.

Temporary Denial Orders

Temporary Denial Orders are issued by the Assistant Secretary for Export Enforcement, denying any or (typically) all of the export privileges of a company or individual to prevent an imminent or on-going export control violation. These orders are issued ex parte for a renewable 180-day period and cut off not only the right to export from the United States, but also the right to receive or participate in exports from the United States.

Balli Group

The Violation: Beginning in at least October 2007, through July 2008, Balli Aviation Ltd. conspired to export three Boeing 747 aircraft from the United States to Iran without first having obtained the required export



license from BIS or authorization from the Treasury Department's Office of Foreign Assets Control (OFAC), in violation of the Export Administration Regulations (EAR) and the Iranian Transactions Regulations. Specifically, Balli Aviation Ltd., through its subsidiaries, the Blue Sky Companies, purchased U.S.-origin aircraft with financing obtained from an Iranian airline and caused these aircraft to be exported to Iran without obtaining the required U.S. government licenses. Further, Balli Aviation Ltd. entered into lease

arrangements that permitted the Iranian airline to use the U.S.-origin aircraft for flights in and out of Iran. On March 21, 2008, BIS issued a temporary denial order (TDO) suspending for 180 days the export privileges of Balli Group PLC (UK) and related companies and individuals, of Blue Airways (Armenia), and of Mahan Airways (Iran), based on evidence that the parties knowingly re-exported three U.S.-origin aircraft to Iran in violation of the EAR and were preparing to reexport three additional U.S.-origin aircraft to Iran in further violation of the EAR. On March 9, 2010, the Assistant Secretary signed a renewal of the TDO naming Mahan Airways as the respondent since Mahan continues to operate the aircraft in Iran. On February 5, 2010, Balli Aviation Ltd, a subsidiary of the United Kingdom-based Balli Group PLC, plead guilty to the illegal export of commercial Boeing 747 aircraft from the United States to Iran, and to violating the BIS TDO. On September 3, 2010, Assistant Secretary David Mills signed a renewal of the TDO against Mahan Airways, and added Gatewick LLC to the TDO as a related party.

The Penalty: On May 11, 2010, Balli Aviation was sentenced to a \$2 million criminal fine and corporate probation for five years. On February 4, 2010, Balli Group PLC and Balli Aviation entered a civil settlement with BIS and OFAC, which includes a civil penalty of \$15,000,000 – the largest civil penalty imposed under the EAR, of which \$2,000,000 is suspended pending no further export control violations. In addition, a five year denial of export privileges was imposed on Balli Aviation and Balli Group, which will be suspended provided that during the suspension period neither Balli Aviation nor Balli Group commits any future violations and has paid the civil penalty. Under the terms of the settlement, Balli Group and Balli Aviation will also have to submit the results of an independent audit of its export compliance program to BIS and OFAC for each of the next five years.

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: On October 5, 2005, DHL agreed to pay an \$18,000 civil penalty.

Expanded Entity List

The Commerce Department's Entity List, set forth in Supplement No. 4 to Part 744, contains a list of parties whose presence in a transaction can trigger a license requirement under the Export Administration Regulations. The list specifies the license requirements that apply to each listed party. These license requirements are in addition to any license requirements imposed on the transaction by other provisions of the EAR.

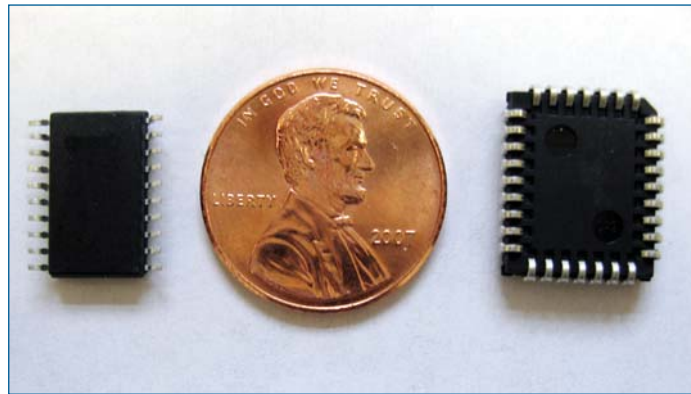
Mayrow General Trading Network

On September 17, 2008, 75 additions were made to the Commerce Department's Entity List because of the entities' involvement in a global procurement network which sought to illegally acquire U.S.-origin dual-use and military components for the Iranian Government, and for their relationship to the Mayrow General Trading Company.⁴ This network is spread across several countries, including the United States. U.S.-origin goods diverted to Iran via this network include those controlled by the EAR for missile technology, national security and anti-terrorism reasons as well as those controlled under the International Traffic in Arms Regulations.

For Mayrow General Trading Company, the Entity List sets forth a license requirement for all items subject to the EAR and a license review policy that is a presumption of denial.



Humvee Explosion



Electronic Devices

Commerce Control List Based Controls

A key in determining whether an export license is required from the Department of Commerce is knowing whether the item for export has a specific Export Control Classification Number (ECCN), an alpha-numeric code that describes a particular item or type of item, and shows the controls placed on that item. All ECCNs are listed in the Commerce Control List (CCL). Once an item has been classified, the next step is to determine whether an export license is required based on the "reasons for control" of the item and the country of ultimate destination. Reasons for control include nuclear nonproliferation, chemical and biological weapons controls, national security and crime control.

Nuclear Nonproliferation Controls:

Prime Technology Corporation/FirmSpace, Pte Ltd, Far Easton/Jowa Globaltech/Jian Wei Deng/Ping Cheng/Kok Tong Lim

The Violation: Between March 23, 2007, and April 6, 2008, Jian Wei Deng, of Singapore, Ping Cheng of Prime Technology Corporation, and Kok Tong Lim of the Singapore companies FirmSpace, Pte Ltd, Far Easton, and Jowa Globaltech, conspired to violate the Export Administration Regulations by exporting and

⁴ On September 22, 2008, BIS removed the entities from General Order No. 3 relating to Mayrow General Trading and related entities, and added them to the Entity List.

attempting to export high modulus carbon fiber material for an ultimate destination of the China Academy of Space Technology without the appropriate license. The U.S. requires a license to export that material for national security, nuclear non proliferation and antiterrorism reasons, because it has applications for rockets, satellites, spacecraft and uranium enrichment.

The Penalty: On October 8, 2009, Deng was sentenced to 46 months in prison and two years of supervised release. Lim was sentenced to just over one year of confinement and two years of supervised release because of his cooperation in the investigation. Cheng was sentenced to one year of probation because he, too, agreed to cooperate in the investigation.

Novamet Specialty Products Corporation

The Violation: On 32 occasions between April 2003 and January 2008, New Jersey-based Novamet Specialty Products Corporation (Novamet) exported nickel powders without the required licenses to the People's Republic of China, Singapore, Taiwan, Thailand, India, Israel, the Dominican Republic and Mexico. Nickel powders are controlled for nuclear non-proliferation reasons.

The Penalty: On October 1, 2009, Novamet agreed to pay a \$700,000 civil penalty, and to complete an internal export compliance audit and submit the results of that audit to BIS.

Foxsemicon Integrated Technologies, Inc./Foxsemicon LLC

The Violation: Between August 2005 and May 2006, Foxsemicon Integrated Technologies, Inc. (FITI) of Taiwan, through its San Jose, California branch office, made fifteen unlicensed exports of pressure transducers to the People's Republic of China (PRC), aided and abetted by Foxsemicon LLC of San Jose, California, a wholly-owned affiliate of FITI. The transducers are used as spare parts to larger manufacturing systems, and are controlled for nuclear nonproliferation reasons to the PRC.

The Penalty: On September 11, 2009, FITI agreed to a \$250,000 civil penalty with \$160,000 of the penalty suspended for one year, and Foxsemicon LLC agreed to pay a \$160,000 civil penalty.

Mitigating Circumstances: FITI and Foxsemicon LLC voluntarily disclosed the violations, and cooperated fully with the investigation.

Well Being Enterprise Co., Ltd./Elecmat, Inc. Hui-Fen Chen/Theresa Chang

The Violation: Between 2003 and 2006, Well Being Enterprise Co., Ltd. (Well Being) of Taiwan, Elecmat, Inc. of San Francisco, Hui-Fen Chen, a Well Being employee and Theresa Chang, Elecmat's former manager, engaged in a conspiracy related to unlicensed exports of chemicals and metals, including nickel powder, hafnium, zirconium, and bismuth, from the United States to Taiwan. These items are controlled for nuclear nonproliferation reasons. Elecmat procured these items from U.S. suppliers for export to Well Being in Taiwan, but disguised the fact that the items were intended for export to Taiwan so that its U.S. suppliers would not require that export licenses be obtained. BIS also issued proposed charges of evasion and



Elecmat, Inc.

commanding or inducing acts violating the Regulations to Well Being and proposed charges of acting with knowledge and engaging in unlicensed exports to Elecmat. In addition, Chang made a false or misleading statement to BIS during the course of the investigation.

The Penalty: On January 26, 2009, Well Being, Elecmat, and Chen all agreed to a twenty-year denial of export privileges for items on the Commerce Control List. On January 28, 2009, Chang agreed to a two year denial of export privileges for items on the Commerce Control List. In addition, Well Being agreed to pay a \$250,000 civil penalty, of which BIS agreed to suspend \$220,000, provided that no additional violations occur in the next five years. Chang was also sentenced to three years' probation, and a \$5,000 criminal fine.

SparesGlobal, Inc.

The Violation: SparesGlobal, Inc., of Pittsburgh, Pennsylvania, its supplier Ameri-Source, Inc., of Bethel Park, Pennsylvania, and others, 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 attempted to violate U.S. export restrictions arising out of unlawful exports to Pakistan 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. Karni falsely represented that the goods were intended for medical use.

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.



Triggered Spark Gap



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, to settle charges related to these unlicensed exports.

Chemical/Biological Weapons Controls:

FMC Technologies, Inc.

The Violation: Between 2003 and 2007, FMC Technologies, Inc., headquartered in Houston, Texas, exported and reexported to a variety of countries butterfly and check valves classified under Export Control Classification Number 2B350 and controlled for reasons of chemical and biological weapons proliferation.

The Penalty: On August 13, 2009, FMC Technologies, Inc. agreed to pay a \$610,000 civil penalty.

Mitigating Circumstances: FMC Technologies, Inc. voluntarily disclosed the violations, and cooperated fully with the investigation.

Buehler Limited

The Violation: Between November 2001 and July 2006, Buehler Limited of Lake Bluff, Illinois, a global manufacturer of scientific equipment and supplies for use in materials research and analysis, made 80 exports of a product called “Coolmet,” a mixture containing triethanolamine (TEA) that is used as a lubricant with cutting tools, to various destinations including China, Hong Kong, Thailand, India, Brazil and Israel, without the required BIS licenses. Additionally, on one occasion in August 2005, the company’s German affiliate reexported Coolmet from Germany to Iran without the required U.S. government authorization. TEA is a Schedule 3 chemical precursor and is controlled for chemical/biological/anti-terrorism, and chemical weapons reasons.

The Penalty: On December 12, 2008, Buehler Limited agreed to pay a \$200,000 civil penalty.

Mitigating Circumstances: Buehler Limited voluntarily disclosed the violations, and cooperated fully with the investigation.

Nalco Company

The Violation: Between April 2003 and September 2006, Nalco Company of Naperville, Illinois made thirteen unlicensed exports of items containing the chemical solution Triethanolamine (TEA) to Angola, the Bahamas, and the Dominican Republic. TEA is a commodity that, depending on its composition in various solutions, can be used as a precursor for toxic agents and is controlled for chemical/biological, anti-terrorism, and chemical weapons reasons.

The Penalty: On September 12, 2008, Nalco agreed to pay a \$115,000 civil penalty.

Mitigating Circumstances: Nalco voluntarily disclosed the violations, and cooperated fully with the investigation.

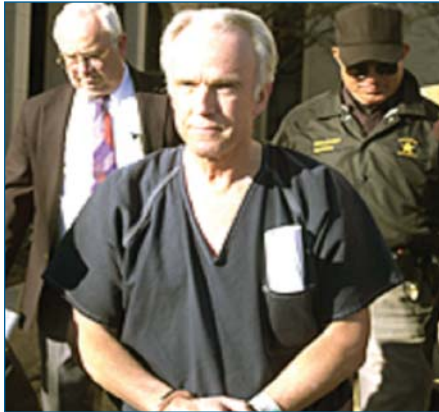
Graco Inc.

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.

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 the President was informed of the incident. An investigation ultimately proved that Dr. Butler had illegally exported *Yersinia pestis* to Tanzania. The bacteria is a controlled item under the EAR and cannot be exported to Tanzania without an export license from BIS. On January 15, 2003, Dr. Butler was arrested.



Dr. Thomas C. Butler

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 export 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. 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. On May 15, 2006, the Supreme Court declined Dr. Butler's petition for a subsequent appeal. In the administrative case, in 2006, Dr. Butler agreed to pay a \$37,400 civil penalty and accept a denial of his export privileges for a period of ten years.

National Security Controls

Alex Wu/Annie Wei/ Eric Lee /Chitron Electronics, Inc.

The Violation: On May 17, 2010, Zhen Zhou Wu, a/k/a Alex Wu, Yufeng Wei a/k/a Annie Wei, and Chitron Electronics, Inc. (Chitron-US) were convicted of unlawfully exporting defense articles and Commerce-controlled goods through Hong Kong to China in violation of U.S. export control laws between 2004 and 2007. In addition, Bo Li, a/k/a Eric Lee, manager of Chitron-US in 2007, Wu and Wei were convicted of filing false shipping documents with the U.S. Department of Commerce in connection with these shipments.

The exported equipment is used in electronic warfare, military radar, fire controlling, military guidance and control equipment, and satellite communications, including global positioning systems.

Penalty: On July 22, 2010, Eric Lee was sentenced to 11 months imprisonment (time served), 3 years of supervised release, \$1000 fine, and a \$100 special assessment fee. Wu and Wei are scheduled to be sentenced on November 29 and 30, 2010.

ARC International/Yaming Nina Qi Hanson/Harold DeWitt Hanson

The Violation: Between 2007 and 2008, Yaming Nina Qi Hanson (Qi), her husband Harold Dewitt Hanson (Hanson) (an employee at Walter Reed Army Medical Center), and a Maryland company, Arc International, LLC, illegally exported miniature Unmanned Aerial Vehicle (UAV) Autopilots to Xi'an Xiangyu Aviation Technical Group in China. On November 13, 2009, Hanson and Qi pled guilty to making false statements. The UAV components are controlled for export to China for national security reasons.



The Penalty: On February 3, 2010, Harold Hanson (Hanson) and Nina Yaming Qi Hanson (Qi) were sentenced in U.S. District Court in the District of Columbia. Qi was sentenced to 105 days in jail with credit for time served, placed on one year of supervised release, ordered to pay a fine of \$250 and a

\$100 special assessment fee and ordered to attend a U.S. Department of Commerce sponsored educational training program. Hanson was sentenced to 24 months' probation, required to pay a fine of \$250 and a \$100 special assessment fee, ordered to perform 120 hours of community service, and ordered to attend a U.S. Department of Commerce sponsored training program.

Joseph Piquet/AlphatronX Inc.

The Violation: On five separate occasions from March 2004 through February 2005, Joseph Piquet, President of AlphatronX Inc., of Port St. Lucie, Florida, purchased high-tech, military-use electronic components from a domestic corporation, and then shipped the items to Hong Kong and the People's Republic of China without first obtaining the required export licenses under the Arms Export Control Act and the International Emergency Economics Powers Act. Among the commodities involved in this conspiracy were high power amplifiers designed for use by the U.S. military in early warning radar and missile target acquisition systems, and low noise amplifiers that have both commercial and military use. Piquet submitted false end-use certificates to the manufacturer to conceal the intended final destination of the parts, which he then forwarded through conspirators in Texas and Hong Kong. Piquet was convicted in March 2009 after a four-day trial on all seven counts charged.

The Penalty: On May 14, 2009, Joseph Piquet was sentenced to 60 months in prison and two years of probation. On May 28, 2010, a 10 year denial was imposed on Piquet, pursuant to Section 11(h) of the EAA.

William Tsu/Cheerway Corporation

Violation: On March 13, 2009, William Tsu of Cheerway Corporation pled guilty to exporting and attempting to export semiconductors and integrated circuits to China without the required export license.

The Penalty: On August 3, 2009, Tsu was sentenced to 40 months in prison, three years of supervised probation, and a \$200 special assessment.

Printing Plus/Zhi Yong Guo/Tah Wei Chao/Evan Chang

Violation: In April 2008, Zhi Yong Guo and Tah Wei Chao were arrested at the Los Angeles International Airport after authorities recovered 10 thermal imaging cameras that had been hidden in their suitcases, stuffed in shoes and concealed in clothing. Both Chao and Guo were convicted of conspiracy and exporting and/or attempting to export restricted items related to a plot to procure and export thermal imaging cameras to the People's Republic of China without obtaining the required licenses. The export of thermal-imaging cameras to China is controlled for national security and regional stability reasons because of their use in a wide variety of civilian and military applications. On August 25, 2008, Evan Zhang pled guilty for his involvement in the conspiracy.

The Penalty: On August 3, 2009, Chao was sentenced to 20 months in prison, three years of supervised probation, a \$3,000 fine, and issued a special assessment of \$300. Guo was sentenced on July 27, 2009 to 60 months in prison, three years of supervised probation, a \$12,500 fine, and issued a special assessment of \$200. On April 5, 2010, Evan Zhang was sentenced to six months at a community corrections center, six months of house arrest, three years probation and a \$20,000 criminal fine.

David Lee/Lucena Technology Inc.

The Violation: On December 16, 2008, David Lee, a/k/a David Young, owner and sole operator of Lucena Technology Inc., was indicted on charges that he knowingly and willfully exported seven thermal imaging cameras to South Korea. On March 25, 2009, Lee pled guilty to violating the International Emergency Economic Powers Act in connection with these shipments.

The Penalty: On June 3, 2009, Lee was sentenced to a criminal fine of \$3,000, a court-ordered forfeiture of \$4,375 plus interest, and 2 years' probation.

Marysol Technologies, Inc.

The Violation: Between 2003 and 2006, Marysol Technologies, Inc., of Clearwater, Florida, exported laser resonator modules, cavities and components, classified under Export Control Classification Number 6A005, to the People's Republic of China, India, Belarus and Russia without the required export licenses. These items are controlled for national security reasons.

The Penalty: On September 26, 2008, Marysol agreed to pay a \$180,000 civil penalty.

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, which was suspended provided that during the suspension period, WaveLab commits no further violations.

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: In 2007, 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: In 2007, Littelfuse, Inc. agreed to pay a \$221,100 administrative penalty.

Manten Electronics/Kevin Xu/Ali Chan/Linda Chen/Jenny Chan/Daqing Zhou

The Violation: Four former employees of Manten Electronics in Beijing, China, Xu Weibo aka Kevin Weibo aka Kevin Xu; Hao Li Chen aka Ali Chan; Xiu Ling Chen aka Linda Chen; and Kwan Chun Chan aka Jenny Chan, illegally conspired to export millions of dollars of sensitive national security controlled items with applications in radar, electronic warfare and communications systems, to state-sponsored institutes in China. On May 4, 2006, Kevin Xu pled guilty to violating IEEPA 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 from the date of Kevin Xu's May 2006 conviction, pursuant to Section 11(h) of the EAA.

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

Aaron Henderson/Valhalla Tactical Supply

The Violation: On September 18, 2009, Aaron Henderson, doing business as Valhalla Tactical Supply, pled guilty to charges relating to the export of sighting devices to Taiwan and Afghanistan without the required export licenses from the Department of Commerce.

The Penalty: On September 18, 2009, Henderson was sentenced to time served followed by two years of supervised release, and a \$100 payment to the Crime Victims Fund. On May 28, 2010, a 10 year denial of export privileges was imposed on Henderson and Valhalla Tactical Supply, pursuant to Section 11(h) of the EAA.

Donald Wayne Hatch/Rigel Optics Inc.

The Violation: On July 31, 2008, Donald Wayne Hatch and Rigel Optics Inc. entered a guilty plea to making false statements and violating the Arms Export Control Act in connection with an illegal export of night vision goggles. Hatch and Rigel Optics Inc. sold night vision optical equipment to various foreign customers.

The Penalty: On May 12, 2009, Donald Wayne Hatch was sentenced to two years of probation and a \$5,000 fine with a \$100 special assessment for causing false statements to be made on Shipper's Export Declarations. At the same proceeding, a fine of \$90,000 and a \$400 special assessment was levied against Rigel Optics, Inc. for the unlicensed export of Generation II night vision goggles.

Syrvet, Inc.

The Violation: Syrvet, Inc., a veterinary supply wholesaler based in Waukeg, Iowa, made sixteen unlicensed exports of electric cattle prods, from the United States to Mexico, Chile, South Africa, Dominican Republic, Colombia and El Salvador. These items are on the Commerce Control List for crime control reasons.

The Penalty: On December 24, 2008, Syrvet, Inc. agreed to pay a \$250,000 civil penalty. BIS agreed to suspend \$150,000 of the fine provided no additional violations occur and payment of the remaining \$100,000 is made in accordance with the agreed upon schedule.

Cabela's Incorporated

The Violation: In 2004 and 2005, Cabela's Incorporated, an outdoor equipment outfitter based in Sidney, Nebraska, exported optical sighting devices for firearms to Argentina, Brazil, Canada, Chile, Finland, India, Ireland, Malaysia, Malta, Mexico, Pakistan, the Philippines, South Africa, Sweden, and Taiwan without the required licenses. These devices are on the Commerce Control List for crime control and firearms convention reasons and require a license to export to the various destinations at issue. In addition, Cabela's failed to file the required Shipper's Export Declarations in connection with these shipments.

The Penalty: On November 7, 2008, Cabela's agreed to pay a \$680,000 civil penalty.

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: In 2007, Armor agreed to pay an administrative penalty of \$1,102,200.

Sirchie Acquisition Company/John Carrington

The Violation: Between September 2000 and March 2004, Sirchie Fingerprint Laboratories (now Sirchie Acquisition Company) and John Carrington, its former president, illegally exported approximately \$1.2 million dollars in crime control equipment to China through intermediaries in Italy and Hong Kong without the required licenses. Included in his 2005 settlement agreement was a five year denial order issued by BIS, which prohibited the former president from being involved, directly or indirectly, in export transactions. Evidence collected during the course of a new investigation in 2009 showed that the former president had participated in setting prices for a host of products intended to be sold overseas while subject to this Denial Order.



Special Agents seizing evidence during search warrant

The Penalty: In the criminal case, Carrington was sentenced in March 2006 to 12 months of 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. On February 9, 2010, Sirchie Acquisition Company, Ltd. entered a Deferred Prosecution Agreement (DPA) and related settlement with BIS, under which Sirchie Acquisition Company agreed to pay a total of \$12.6 million in fines, including \$10.1 million in criminal fines and \$2.5 million in

administrative penalties. In addition, the company agreed to cooperate with the Government regarding the ongoing criminal investigation of the former president and to retain an independent compliance monitor to ensure the company's compliance with the DPA.

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 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, Brazil, the Czech Republic, France, Germany, Israel, the Netherlands, Slovakia, Spain, Switzerland, and Venezuela, in violation of the EAR or of the conditions of licenses issued to Bullard under 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 without the required export licenses. In addition, contrary to the terms and conditions of the license, Bullard exported thermal imaging cameras to intermediate consignees not authorized under a license, after a license had expired, in quantities exceeding those authorized by 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, and contrary to the license terms and conditions.

The Penalty: E.D. Bullard agreed to pay a \$330,000 administrative penalty in June 2005. Bullard GmbH agreed to pay a \$36,000 civil 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 may be required because the release of the technology to the student could be considered a “deemed export.”

Criminal and Administrative Case Examples

Atmospheric Glow Technologies, Inc./J. Reece Roth

The Violation: Between January 2004 and May 2006, through the Tennessee-based company Atmospheric Glow Technologies, Inc., J. Reece Roth, a Professor Emeritus at the University of Tennessee, engaged in a conspiracy to transmit export controlled technical data to foreign nationals from the People’s Republic of China and Iran. This controlled technical data was related to a restricted U.S. Air Force contract to develop plasma actuators for a military unmanned aerial vehicle. On September 3, 2008, a federal jury in the Eastern District of Tennessee convicted Roth on 18 counts of Conspiracy and Arms Export Control Act violations.

The Penalty: On July 1, 2009, Roth was sentenced to 48 months in prison and two years of supervised release.

Maxim Integrated Products, Inc.

The Violation: Between June 2002 and September 2005, Maxim Integrated Products, Inc. (Maxim) of Sunnyvale, California, made 31 unlicensed exports and reexports of national security controlled integrated circuits and related components to the People’s Republic of China, Estonia, Russia and the Ukraine. In addition, on two occasions, Maxim released controlled technology for the development of electronic components to an Iranian national employee and a Chinese national employee without the required BIS license. Maxim applied for a deemed export license for release of controlled technology to the Chinese national, but failed to restrict his access to the technology while the license application was under review.

The Penalty: On November 4, 2008, Maxim agreed to pay a \$192,000 civil penalty.

Ingersoll Machine Tools

The Violation: Between November 2003 and January 2007, Ingersoll Machine Tools (IMT) of Rockford, Illinois committed seven unlicensed deemed exports of production and development technology for vertical fiber placement machines and production technology for five axis milling machines to Indian and Italian nationals. The technology was controlled for national security and missile technology reasons to Italy and India. In addition, the technology was also controlled to India for nuclear nonproliferation reasons.

The Penalty: On August 12, 2008, IMT agreed to pay a \$126,000 civil penalty.

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 license required under the EAR.

The Penalty: In May 2008, TFC agreed to pay a \$31,500 civil 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: In December 2007, 3DSP Corporation agreed to pay a \$36,000 civil penalty.

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 including portable digital music players, 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 extreme 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

Thermon Europe B.V./Thermon Far East Ltd. Thermon Heat Tracers Pvt. Ltd. /Thermon Korea Ltd. Thermon (U.K.) Ltd.

The Violation: Between October 2002 and June 2006, five foreign subsidiaries of San Marcos, Texas-based firm Thermon Manufacturing Company--Thermon Europe B.V., Thermon Far East Ltd., Thermon Heat Tracers Pvt. Ltd., Thermon Korea Ltd., and Thermon (U.K.) Ltd.-- committed a total of 33 violations by reexporting or causing the export to Iran, Syria, Libya and listed entities in India of EAR99 heat tracing equipment manufactured in the United States by Thermon Manufacturing, without the required BIS license or, for shipments to Iran, a license from the Treasury Department's Office of Foreign Assets Control. The Thermon subsidiaries did not inform Thermon Manufacturing of the ultimate destinations for the items, even though they had been informed by Thermon Manufacturing in February 2005 that "products manufactured by Thermon US may not be sold to countries on the US trade sanctions list," including specifically Iran, Syria and Libya.

The Penalty: On September 11, 2009, the five foreign subsidiaries of Thermon Manufacturing Company agreed to pay a total of \$176,000 in combined civil penalties.

Mitigating Circumstances: Thermon Manufacturing Company voluntarily disclosed the violations and cooperated fully in the investigation.

Fawzi Mustapha Assi

The Violation: On November 29, 2007, Fawzi Mustapha Assi pled guilty to providing material support or resources to a designated foreign terrorist organization.

The Penalty: On December 12, 2008, Assi was sentenced to 10 years in prison and two years of probation for his involvement in unlicensed exports to Lebanon. On July 12, 2009, the Under Secretary for Industry and Security issued an order denying Assi's export privileges for 20 years.

CVC Services

The Violation: CVC Services sold oil and gas valve parts to Italy with knowledge that the parts were destined for Iran. In March 2008, the company pleaded guilty to selling to Iran valves that turn gas and oil pipelines on and off without a license. The National Iranian Oil Company had sought the valves.

The Penalty: On June 9, 2008, CVC Services was sentenced to a \$51,000 fine and an \$800 special assessment.

Allied Telesis Labs, Inc.

The Violation: Allied Telesis Labs, Inc. (ATL) was engaged in the design of telecommunication equipment and systems including high capacity Multiservice Access Platforms (iMAPs) and related items capable of routing a large volume of information. On March 18, 2008, ATL pleaded guilty to charges that the corporation conspired with another to trade with the Islamic Republic of Iran in violation of the law.

Specifically, ATL and its related corporate entities conspired to land and execute a \$95,000,000 contract with the Iranian Information Technology Company (IRITCO) to rebuild and upgrade the telecommunications systems of approximately 20 Iranian cities, including Tehran.

The Penalty: On July 28, 2008, ATL was sentenced to a \$500,000 criminal fine and was placed on probation for two years.

Afshin Rezaei

The Violation: On April 24, 2008, Afshin Rezaei pled guilty to one count of violating the International Emergency Economic Powers Act for the unlicensed export of computers to Iran via the United Arab Emirates. The computers were controlled for anti-terrorism reasons.

The Penalty: On May 15, 2008, Rezaei was sentenced to six months of prison (credit for time served), followed by three years of supervised release, and agreed to forfeit \$50,000. On February 18, 2010, a 10 year denial of export privileges was imposed on Rezaei, pursuant to Section 11(h) of the EAA.

Ghashim Group d/b/a KZ Results

The Violation: Between 2003 and 2004, KZ Results and its owner, Mazen Ghashim, made 25 unlicensed exports and two attempted unlicensed exports of controlled computers to Syria, some directly and some via the United Arab Emirates. The exports through the U.A.E. were made after Ghashim learned that licenses were required to export or transship to Syria. 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 cases, which were resolved on September 12, 2006, KZ Results and Ghashim each agreed to a \$1,089,000 civil penalty, of which all but \$22,000 was suspended for five years. Ghashim and his two companies, including KZ Results, were each denied export privileges for 20 years.

Khalid Abdelgadir Ahmed and Entisar Hagosman

The Violation: On March 13, 2008, Khalid Abdelgadir Ahmed and Entisar Hagosman were convicted on charges related to the smuggling of gun parts to Sudan. Entisar Hagosman pled guilty to making false statements relating to her activity, and Khalid Abdelgadir Ahmed pled guilty to illegal smuggling from the United States.

The Penalty: On June 6, 2008, Ahmed was sentenced to five months in prison, five months of community confinement, a \$1,500 fine, and three years of supervised release. Hagosman was sentenced to time served and two years of supervised probation.

Ali Khan/TurboAnalysis

The Violation: In 2003, Ali Khan, owner of TurboAnalysis, of Phoenix, Arizona, conspired to export aircraft components to Iran through Singapore and Malaysia 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. In August 2005, Khan agreed to pay a civil penalty of \$110,000, to settle conspiracy, false statement, and unlicensed export charges.

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 EAA.

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: In May 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, a Specially Designated Terrorist Organization. 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 EAA. On January 4, 2007, Grinberg was deported from the United States.

Khalid Mahmood and David Tatum

The Violation: In 2003, Khalid Mahmood (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



David Tatum



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. In a related administrative case settled in May 2007, Mahmood's export privileges were denied for ten years.



Khalid Mahmood



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 EAA.

State Sponsors of Terrorism*:

- Cuba
- Iran
- Sudan
- Syria

**On October 11, 2008, United States rescinded 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.*

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 be liable for violating U.S. law.



Export Control Officers at Update Conference, Washington, D.C., August 31-September 1, 2010.

Criminal and Administrative Case Examples

Monarch Aviation Ltd./Jungda International Pte. Ltd/ Laura Wang Woodford/Brian D. Woodford

The Violation: Between January 1998 and December 2007, Laura Wang Woodford, a U.S. citizen and owner and operator of Monarch Aviation Ltd. (Monarch) located in Singapore, and her husband, Brian D. Woodford, a U.K. citizen who served as chairman and managing director of Monarch, exported controlled U.S. aircraft parts from the United States to Singapore and Malaysia, and then re-exported those items to companies in Tehran, Iran, without obtaining the required export licenses. As part of the charged conspiracy, the defendants falsely listed Monarch and Jungda International Pte. Ltd, the Singapore-based successor to Monarch, as the

ultimate recipients of the parts on export documents filed with the U.S. government. The illegally exported aircraft parts included aircraft shields, shears, “o” rings and switch assemblies. The superseding indictment further charged that the defendants arranged for the illegal export of U.S. military aircraft components, designed for use in Chinook military helicopters, to Monarch in Singapore.

The Penalty: On November 5, 2009, Wang-Woodford was sentenced to 46 months in prison. Wang-Woodford was also ordered to forfeit \$500,000 to the U.S. Treasury Department. Brian Woodford remains a fugitive.

Aviation Services International, B.V./Robert Kraaiipoel/Neils Kraaiipoel

The Violation: Between October 2005 and October 2007, Aviation Services International BV (ASI), an aircraft supply company in the Netherlands, Robert Kraaiipoel, Director of ASI, Neils Kraaiipoel, sales manager of ASI, and Delta Logistics received orders from customers in Iran for U.S.-origin items, then contacted companies in the United States and negotiated purchases on behalf of the Iranian customers. The defendants provided false end-user certificates to U.S. companies to conceal the true end-users in Iran. The defendants caused U.S. companies to ship items to ASI in the Netherlands or other locations in the United Arab Emirates (UAE) and Cyprus; the items were then repackaged and transshipped to Iran. On September 24, 2009, ASI, Robert Kraaiipoel and Neils Kraaiipoel pleaded guilty to charges of conspiracy to illegally export aircraft components and other items from the United States to entities in Iran via the Netherlands, UAE and Cyprus.

The Penalty: ASI, Robert Kraaiipoel and Neils Kraaiipoel have not yet been sentenced. In addition, on March 2, 2010, the Assistant Secretary for Export Enforcement signed a Final Order imposing civil penalties of \$250,000 (suspended) against ASI, Robert Kraaiipoel and Neils Kraaiipoel, as well as a seven year denial of export privileges against ASI and Robert Kraaiipoel and a three year suspended denial of export privileges against Neils Kraaiipoel.

Orion Aviation/Traian Bujduveanu/Kesh Air International/Hassan Saied Keshari

The Violation: On April 2, 2009, Traian Bujduveanu, the owner and operator of Orion Aviation of Plantation, Florida, pled guilty to conspiracy to violate the International Emergency Economic Powers Act and the Arms Export Control Act in connection with his role in the illegal export of civilian and military aircraft parts to Iran Defense Industries Organizations. On January 26, 2009, Hassan Saied Keshari and his corporation, Kesh Air International, pled guilty to conspiracy for their role in the illegal export scheme. Keshari, an Iranian national and naturalized United States citizen, purchased aircraft parts through Kesh Air International on behalf of purchasers in Iran, and exported the aircraft parts to Iran by way of freight forwarders in Dubai, United Arab Emirates.

The Penalty: On June 11, 2009, Bujduveanu was sentenced to 35 months in prison followed by three years of supervised release. Bujduveanu’s co-defendant, Keshari, and his corporation, Kesh Air International, were sentenced in May 2009.

Nicholas Groos/Viking Corporation

The Violation: Nicholas Groos engaged in a scheme to willfully transship U.S.-origin fire fighting equipment to Iran using his position as Director of the Viking Corporation subsidiary located in Luxembourg, in violation of the Iranian Transaction Regulations and the Export Administration Regulations. On August 11, 2008,

Groos entered a guilty plea to three counts of violating the International Emergency Economic Powers Act, and one count of making false statements.

The Penalty: On December 10, 2008, Groos was sentenced to 60 days in prison, one year of supervised release, a \$249,000 criminal fine, and a \$400 special assessment. In July 2007, Viking Corporation agreed to pay a \$22,000 civil penalty, and Viking SA agreed to a \$44,000 civil penalty.

James Angehr/John Fowler/Nelson Galgoul/Engineering Dynamics Inc.

The Violation: Beginning in March 1995 and continuing through February 2007, James Angehr and John Fowler, owners of Engineering Dynamics Inc., a Louisiana company that produced software to design offshore oil and gas structures, exported and attempted to export software to Iran through a co-conspirator in Brazil without having first obtained the required authorization from BIS and the U.S. Department of Treasury's Office of Foreign Assets Control. On April 24, 2008, Angehr and Fowler pled guilty to charges that they conspired to violate U.S. export licensing requirements in connection with this export. Nelson Galgoul, director of the Brazilian engineering company, Suporte, acted as an agent for Engineering Dynamics Inc. in the marketing and support of this software and trained users of the software in Iran. On August 2, 2007, Galgoul pled guilty to exporting and attempting to export controlled engineering software to Iran without the required U.S. authorization.

The Penalty: On August 7, 2008, Angehr and Fowler were sentenced to five years of probation. Angehr was additionally sentenced to six months of confinement in a halfway house, and Fowler was sentenced to four months of confinement in a halfway house. Each defendant was fined \$250,000, and ordered to forfeit \$218,583. On May 22, 2008, Galgoul was sentenced to 13 months in prison, three years of supervised release, a \$100,000 criminal fine, and a \$109,291 forfeiture for his part in the conspiracy. In April 2008, Engineering Dynamics, Inc. agreed to pay a civil penalty of \$132,791.39. In addition to the civil penalty paid to BIS, Engineering Dynamics Inc. paid \$132,791.39 to OFAC.

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. On February 24, 2005, Manzarpour was criminally indicted. He was administratively charged with causing an unlicensed export and a related knowledge violation.

The Penalty: On March 6, 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 "Desarrollos 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.

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. Gaillard and Oyster Bay also sold lab equipment to a company in Germany, knowing that the items would be reexported to Cuba without a 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. On January 30, 2009, James Gribbon was sentenced to 36 months of probation and a \$100 mandatory special assessment. In June 2010, Gaillard and Oyster Bay agreed to a three year denial order against each, which was fully suspended so long as neither party violates export control laws during that period. The company also agreed to a \$300,000 civil penalty, which was also fully suspended, and ordered to perform an audit of its internal export controls compliance program within one year of settlement. Gaillard agreed to a \$300,000 civil penalty, all but \$25,000 of which was suspended for one year.

Tak Components/Saied Shahsavarani

The Violation: Tak Components, Inc. of Naperville, Illinois (“Tak Components”), knowingly made 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 Shahsavarani, 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, a special assessment of \$6,400, and \$38,016 in forfeiture. On the same date, Shahsavarani was sentenced to three years’ probation, a \$1,000 criminal fine, and a special assessment of \$100. On June 10, 2009, a five year denial of export privileges was imposed on Tak Components and Shahsavarani, pursuant to Section 11(h) of the EAA.

Proclad International Pipelines, Ltd.

The Violation: On or between February and April 2004, Proclad International Pipelines, Ltd. (Proclad), a British corporation, headquartered in Scotland, United Kingdom, committed 10 violations of the EAR, including conspiring to illegally export nickel alloyed pipes to Iran through the United Kingdom and/or the United Arab Emirates (UAE), and taking actions with the intent of evading the EAR in connection with such exports. Additionally, Proclad engaged in negotiations regarding 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. On September 1, 2009, a ten year denial of export privileges was imposed, pursuant to Section 11(h) of the EAA.

Mine Safety Appliances Company

The Violation: On over 100 occasions 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), reexported helmets, gas masks, detection equipment, filters, and other safety-related equipment to Iran and Syria from the UAE without the required U.S. government authorization.

The Penalty: In 2007, MSA agreed to pay an administrative penalty of \$470,000.

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

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 a 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, followed by three years of supervised release. On November 27, 2007, Koh's export privileges were denied for 10 years, pursuant to Section 11(h) of the EAA.

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. Additionally, in December 2007, Cryostar agreed to pay a \$66,000 civil penalty. 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, on July 17, 2008, was sentenced to a \$500,000 criminal fine and two years' probation.

Chapter 6 - Freight Forwarder

Introduction

Primarily 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

DPWN Holdings (USA), Inc. (formerly known as DHL Holdings (USA), Inc.) and DHL Express (USA)

The Violation: DPWN Holdings (USA), Inc. (formerly known as DHL Holdings (USA), Inc.) and DHL Express (USA), Inc. (collectively “DHL”) unlawfully aided and abetted unlicensed exports to Syria, Iran and Sudan and failed in connection with numerous exports to these countries to comply with recordkeeping requirements of the EAR and OFAC regulations. BIS charged that on eight occasions between June 2004 and September 2004, DHL caused, aided and abetted acts prohibited by the EAR when it transported items subject to the EAR from the United States to Syria, and that with regard to 90 exports between May 2004 and November 2004, DHL failed to retain air waybills and other export control documents required to be retained by the EAR. OFAC charged that DHL violated various OFAC regulations between 2002 and 2006 relating to thousands of shipments to Iran and Sudan. Like DHL's EAR violations, its OFAC violations primarily involved DHL's failure to comply with applicable recordkeeping requirements.

The Penalty: In August 2009, DHL agreed to pay a civil penalty of \$9,444,744 and conduct external audits covering exports to Iran, Syria and Sudan from March 2007 through December 2011.⁵

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

The Violation: Go-Trans (North America), of Jamaica, New York, a freight forwarder, Roger Unterberger, a retired Senior Vice President of Gondrand AG, headquartered in Basel, Switzerland, and Muhammad Bhatti,

⁵ See DHL Holdings USA, Inc. case in Chapter One under the Temporary Denial Order section.

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 Batti 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.

Elite International Transportation, Inc.

The Violation: Between 2000 and 2004, Elite International Transportation, Inc. (“Elite”), a freight forwarder in Houston, Texas, misrepresented the licensing authority on Shipper’s Export Declarations (SEDs). Elite filed SEDs on behalf of an exporter, Equistar Chemicals LP (“Equistar”), of Houston, Texas, stating that exports of the chemical 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 civil penalty. In a related matter, Equistar agreed to a civil penalty of \$39,650. Equistar had filed a Voluntary Self-Disclosure (VSD) with BIS in 2004.

International Freight Forwarder

The Violation: In June 2000, International Freight Forwarders (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.

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 on a Shipper’s Export Declaration (SED) related to the transaction. Salinas filed an SED stating that the computers and related equipment qualified for export as NLR, when, in fact, a license was required for the exports.

The Penalty: In 2005, Salinas agreed to pay civil penalties totaling \$11,600.

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. 3 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

Samuel Shangteh Peng

The Violation: In September 2007, Samuel Shangteh Peng pled guilty to exporting electronic sensors and vibration test equipment to Hindustan Aeronautics Limited (HAL) Engine Division, a listed entity in India while acting as the Export Compliance Manager for Endevco Corporation of California. In 1998, the U.S. government designated this facility in India as an end-user of concern for proliferation reasons.

The Penalty: On May 11, 2009, Peng was sentenced to three years of probation, five months of home confinement, 400 hours of community service, and a \$6,000 fine.

Engineering Physics Software Inc.

The Violation: Between 2003 and 2006, Engineering Physics Software Inc., also known as COADE Inc., a provider of plant design and engineering software for the process industries, based in Houston, Texas, exported

software to Iran via the United Arab Emirates and to Indian and Pakistani end-users listed on BIS's Entity List without the required licenses.

The Penalty: In December 2008, Engineering Physics Software Inc. agreed to pay a \$130,000 civil penalty.

Mitigating Circumstances: The company voluntarily disclosed the violations and cooperated fully with the investigation.

Interpoint Corporation

The Violation: During the period 2003-2005, Interpoint Corporation exported DC-to-DC converters and/or electromagnetic interference filters to the Peoples' Republic of China (PRC), with knowledge that the items would be used in Chinese rocket programs. Interpoint also exported such items to the 13th Institute in the PRC, an end-user on BIS's Entity List without the required licenses.

The Penalty: On December 18, 2008, Interpoint Corporation agreed to pay a \$200,000 civil penalty.

Mitigating Circumstances: The company voluntarily disclosed the violations and cooperated fully with the investigation.

Parthasarathy Sudarshan/Mythili Gopal/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, including Mythili Gopal, to illegally export U.S. microprocessors and electronic components for space launch vehicles and ballistic missile programs to the Vikram Sarabhai Space Centre (VSCC) and Bharat Dynamics, Ltd. (BDL), two Indian government entities involved in rocket and missile production without the required licenses. VSCC 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. Gopal cooperated with the government against her co-conspirator, Parthasarathy Sudarshan.

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 received 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. On August 11, 2008, Mythli Gopal was sentenced to a \$5,000 fine, four years of probation with the condition of 60 days of home confinement, and 200 hours of community service.

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: In 2007, Ahuja, Shettigar, Mohan and Megatech were each denied export privileges for fifteen years.

Data Physics Corporation/Sri Welaratna



The Violation: In 2001 and 2002, Data Physics Corporation (Data Physics), of San Jose, California, and its 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: In May 2007, Data Physics agreed to pay a \$55,000 civil penalty and to a five-year denial of export privileges to the People's Republic of China. Welaratna agreed to pay a \$55,000 civil 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: On April 20, 2007, Biospherical Instruments, Inc. agreed to pay a \$13,200 civil penalty. On the same day, Baltrans Logistics, Inc. agreed to pay a \$6,000 civil 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: On April 20, 2007, Magnetic Shield Corporation agreed to pay a \$19,000 civil 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, pursuant to Section 11(h) of the EAA.

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 No. 1 to Part 764 of the EAR. In addition, under Section 11(h) of the 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

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 was sentenced to one year and a day of imprisonment followed by two years of supervised release and fined \$3,000. On September 12, 2007, Fazeli's export privileges were denied for six years, pursuant to Section 11(h) of the Export Administration Act.

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: Budenz was sentenced to 36 months of imprisonment and fined \$10,000, followed by three years of supervised release. Tobey was placed on probation for five years and fined \$10,000. Durrani was sentenced to 150 months of imprisonment followed by three years of supervised release. On June 9, 2007, a five-year denial of export privileges was imposed on Budenz and Tobey, and on the same day, a ten year denial of export privileges was imposed on Durrani, pursuant to Section 11(h) of the EAA.

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: Jardine was sentenced to six months of imprisonment followed by three years of supervised release and fined \$6,500. 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 Philippines, without having first obtained a State Department license.

The Penalty: Sero was sentenced to 40 months of imprisonment followed by three years of supervised release. 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.

Swiss Telecom/Teepad Electronics General Trading

The Violation: Between December 17, 2001 and March 7, 2002, Swiss Telecom, of Toronto, Canada, ordered 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.

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 criminally convicted of dealing in the funds of a Specially Designated Terrorist, a high-ranking official of the terrorist organization Hamas, and the four 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 a \$330,000 civil penalty and 50 year denial order were imposed by BIS. 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. 50 year denial orders were imposed on Hazim, Bayan, Ghassan, Basman, Infocom, and seven other individuals and corporations as related persons to Ihsan Elashi. 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 civil penalty and imposed a 50-year denial of export privileges. Basman, Bayan, Hazim, and Ghassan, along with Fadwa Elafrangi, Majida Salem, Maysoon 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 civil penalty. A 20 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

Jeffery Weiss/Atlantis Worldwide/ Behram "Ben" Meghazehe

The Violation: On January 20, 2009, Jeffery Weiss, owner of Atlantis Worldwide of Yonkers, NY, pled guilty to making false statements on Shipper's Export Declarations related to the illegal export of medical equipment to Iran through the United Arab Emirates. On May 14, 2008, Weiss' associate, Behram "Ben" Meghazehe, pled guilty to one count of false statements in connection with the illegal shipment of radiographic equipment to Iran.

The Penalty: On June 17, 2009, Weiss was sentenced to three years of probation and a \$20,000 fine. On October 28, 2008, Meghazehe was sentenced to five years of probation, a \$2,000 criminal fine, six months of home confinement, and a \$100 special assessment.

RF Micro Devices, Inc.

The Violation: In 2002 and 2003, RF Micro Devices, Inc. (RFMD) of Greensboro, North Carolina, exported spread-spectrum modems, classified under Export Control Classification Number (ECCN) 5A001 and controlled for national security reasons, to the People's Republic of China without the required licenses. In addition, on 13 occasions, RFMD made false or misleading statements on Shipper's Export Declarations in connection with these shipments. In 2004, Carol Wilkins, an RFMD manager, made a false or misleading statement in the course of the BIS investigation of RFMD. She stated that an outside export control consultant had confirmed that RFMD's products were not controlled to any regions where the company was marketing or selling its products, despite having repeatedly been advised by BIS that certain RFMD products were classified under the ECCN, and may have required an export license.

The Penalty: On August 13, 2009, RFMD agreed to pay a \$190,000 civil penalty, and Ms. Wilkins agreed to pay a \$15,000 civil penalty.

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 civil penalty. The administrative case was settled under the enhanced IEEPA penalties.

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, and attempted to export armored vehicles to Iraq without the required BIS 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: In 2007, Fred Khoroushi and Alpine Armoring, Inc. agreed to pay \$200,000 in criminal fines and civil penalties. Both parties also agreed to a five year denial of export privileges, which was to remain suspended for five years as long as no further violations were committed.

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 June 17, 2008, The U.S. Department of Commerce’s Bureau of Industry and Security (BIS) unveiled the latest addition to its highly successful *BIS Online Training Room* with a presentation aimed at helping exporters better understand the antiboycott provisions of the Export Administration Regulations. The Training Room also houses a number pre-recorded webinars covering a variety of topics, including the basics of U.S. dual-use export controls and deemed exports. The training modules are presented in a video streaming format.

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 civil 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.

A recent trend in boycott-related activity concerns requests to comply with unsanctioned foreign boycotts issued to U.S. companies seeking to export to Libya. Since most U.S. trade sanctions against Libya were rescinded in April 2004, the number of boycott-related requests generated by Libyan entities and reported to the Department of Commerce by U.S. companies has increased significantly. Reports of prohibited requests, specifically, those that U.S. businesses are prohibited from complying with, increased by a factor of six for the reporting periods 2004 through 2009. For advice concerning boycott-related requests contained in export transactions to Libya, or any other matter concerning the antiboycott provisions of the EAR, please visit the Office of Antiboycott Compliance portion of the BIS website: www.bis.doc.gov/complianceandenforcement/index.htm#oac, or contact the OAC advice line via the website, above, or (202) 482-2381.

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

Gulf International Bank (New York)

The Violation: On eight occasions during the years 2002 through 2004, Gulf International Bank (New York), the U.S. branch of Gulf International Bank, headquartered in Bahrain, furnished prohibited information to Syria about another person's business relationship with boycotted countries or blacklisted persons. In addition, the Bank, on seventeen occasions, failed to report its receipt of boycott requests, and on one occasion, failed to maintain records, as required by the EAR.

The Penalty: Gulf International Bank (New York) agreed to pay a \$49,000 civil penalty.

American Rice, Inc.

The Violation: During the years 2002 through 2006, in connection with fifteen transactions involving the sale of U.S. origin goods to the United Arab Emirates, American Rice, Inc., of Houston, Texas, failed to report in a timely manner its receipt of a requirement to engage in a restrictive trade practice or boycott.

The Penalty: American Rice, Inc. agreed to pay a \$30,000 civil penalty.

Rohde & Liesenfeld, Inc.

The Violation: On thirty-six occasions during the years 2002 and 2003, Rohde & Liesenfeld, Inc., a freight forwarder located in Houston, Texas, in connection with transactions involving the sale and transfer of goods from the United States to Syria, furnished prohibited information about its or another company's business relationships with or in a boycotted country.

The Penalty: Rohde & Liesenfeld, Inc. agreed to pay a \$108,000 civil penalty.

Colorcon Limited

The Violation: During the period 2001 through 2005, Colorcon Limited of the United Kingdom (Colorcon), 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 civil 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 transaction involved the sale of goods to Pakistan.

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

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

Hyundai Engineering and Construction Co., Ltd.

The Violation: In connection with transactions involving Kuwait, Hyundai Engineering and Construction Company Ltd. (Hyundai) of Englewood Cliffs, New Jersey 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 civil penalty to settle these allegations.

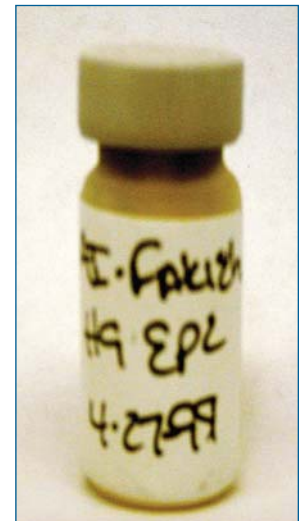
Maine Biological Labs

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: In 2005, 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 civil penalty for the antiboycott violations and a \$100,000 civil penalty for the related illegal export violations.



Vial of Avian Influenza

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 2000 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 civil 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 civil 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, both in its own capacity, and as successor to a prior entity also named 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 civil penalty.