From: "Amit K. Maitra" <Advisor@Business-Strategy.us>
To: PublicComments@bis.doc.gov
Date: Mon, Feb 7, 2011 7:50 AM
Subject: Refer to RIN 0694-AF03 in the subject line

Opinion on STA License Exemption

The Strategic Trade Authorization (STA) proposed by the Department of Commerce's Bureau of Industry and Security (BIS), as part of the export reform initiative, is a good move toward a single license agency, single IT system, single enforcement agency, and a single set of regulations. Several preceding administrations have attempted export control reform in one form or another. This is by far the most comprehensive attempt at reform. The current undertaking will not be complete until it finalizes, among other things, the most sensitive items on the Export Administration Regulations (EAR) Commerce Control List (CCL), the Tier 1 Items, many of which will not be eligible for the new exception being proposed.

An important element of the STA License Exception is that it would authorize, with conditions, the unlicensed export, re-export, and transfer of many items on the CCL to a group of 37 allied and regime partner countries. The proposed new license exception would also permit the unlicensed export, re-export, and transfer of less sensitive CCL items for civil end uses to 125 countries. This new license exception eliminates the licensing burden, while adding conditions that non-US parties must accept. This approach suggests that BIS has determined that the countries identified for STA License Exception pose little risk of unauthorized use or diversion, if exporters and non-US recipients adhere to compliance requirements. Thus, the STA is a new approach in that it mandates non-US parties to commit to the procedural requirements implied by the STA. Those parties must ensure that items exported or re-exported pursuant to the STA are not re-exported outside of STA countries (or transferred to other non-US -parties within those countries), unless prior BIS authorizations in compliance with the STA exist. Also, non-US parties must use special destination control statements, as the goods move within the STA territory.

This new approach will support US interests in certain country situations, while in other instances, STA License Exception would warrant significant new procedural enhancements by the exporters, re-exporters, and transferors. For instance, following the President Obama's trip to India in November 2010, BIS has "realigned" India in the EAR to reflect its status as a strategic Partner. BIS will treat India as a close ally and partner, thereby removing it from categories within EAR that connote it as a country of concern (Refer to: http://www.bis.doc.gov/news/2011/fr_01252011.pdf <https://mailinglist.bis.doc.gov/r.html?uid=1.2u.1e0.rq.m5ji7v6h8b>).

India, in turn, has undertaken an effort to harmonize national control list with multilateral regimes and impose re-export controls on certain US-origin items. (Refer to:
http://www.whitehouse.gov/the-press-office/2010/11/08/us-india-partnership-f act-sheets).

With strong US support for India's membership in the Nuclear Supplier Group, Missile Technology Control Regime, Australia Group, and Wassenaar Agreement, which constitute the four multilateral export control regimes, India is readily adopting the multilateral regimes' export control requirements. All indications point to India imposing export controls over all items on the four multilateral export control regimes' control lists and complying with new STA License Exception requirements. This may not necessarily be the case in other instances. (Refer to:

http://www.globaltradeexpertise.com/news_files/561c847a0df20999d25d4098603fc 6dc-419.php).

In 2010, Motorola alleged that its long-term Chinese vendor, Huawei Telecommunications, conspired with its own engineers to acquire confidential technology secrets for a period of nearly ten years. According to Motorola, one of Huawei Telecommunications' former engineers shared details of new technological developments directly with Huawei founder Ren Zhengfei. The founder and other officers of Huawei Telecommunications knew they were receiving stolen Motorola proprietary trade secrets and confidential information without proper authorization and consent. This case follows a prior suit filed by Motorola involving Huawei Telecommunications' reseller Lemko, in which Motorola sued five of its own former employees for allegedly exposing trade secrets to Lemko. (Refer to: http://www.information-age.com/channels/comms-and-networking/news/1269998/hu awei-accused-of-stealing-trade-secrets.thtml).

In today's globalized Supply Change Management, the above situation could be an ongoing challenge for global trade compliance professionals, particularly those who focus on regulatory compliance matters. The STA License Exception is an invitation to change the business orientation and thought processes of the export control and trade compliance profession, the trade community, and the government.

Given the new STA License Exemption, the key component of today's requirements is Informed Compliance, which advocates shared responsibility between government and the trade community. The government communicates its requirements to those dealing with trade and export issues, who then will establish internal controls and exercise reasonable care in their export operations consistent with the STA License Exemption. As referenced above, many country governments, such as India, are making great strides to establish supply chain and export compliance program for trade facilitation. (Refer to:

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act-sheets). Each country's export and supply chain compliance program is unique. Likewise, private industry in each country will have its own export and supply chain compliance program. All Informed Compliance must share certain features in terms of commitment, function, policy, record-keeping, internal auditing, training, efficient process management, information automation, quality service, advocacy, and other considerations. This is a good segue to the observations I want to make about the significant new requirements being made by the STA License Exemption on exporters, re-exporters and transferors. On one hand, many exporters have been waiting for the liberalization of US export controls that this STA License Exemption would make. On the other hand, they will have to report to the BIS whenever they invoke STA exemption, which is different from most license exemptions. A new wrinkle in terms of license exemption is that exporters will have to go back and forth with the consignees regarding some information. STA will also require exporters to attach a special Destination Control Statement on their export documents. The exporters will inform their consignees of certain information, including the Export Control Classification Number (ECCN). The exporters can ship after their consignees provide a written commitment to comply with the EAR, including a promise to furnish information about transactions if the US Government asks. From a practice standpoint, these requirements warrant the BIS to undertake a communications and educational awareness campaign through BIS sponsored seminars and other public media outreach programs. In these public media outreach programs, BIS should be ready to address questions such as: What are the most important export control challenges facing US companies and their overseas affiliates from the STA License Exemption perspective? How should the companies address them? What are the ramifications of inaction or slow action? What are the best practices? More precisely, how can the companies improve the overall outcome of international trade, customs, export control and supply chain activities? What are the basics that need to be addressed almost every day in the workplace?

My official signature with my seal

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OPINION ON STRATEGIC TRADE AUTHORIZATION (STA) LICENSE EXEMPTION

DR. AMIT K. MAITRA

FEBRUARY 2011

REF: RIN 0694-AF03

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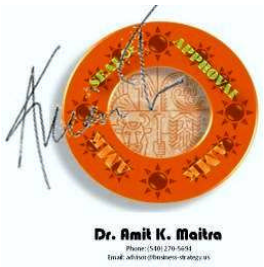
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