

Insight

US Sanctions, Export Controls and Foreign Investment Controls

We would like to alert you to the following developments in US sanctions and export controls news:

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US Sanctions Update

Congress Extends Burmese Sanctions – In July, Congress renewed sanctions against Burma's military junta for one year. First put into place in 2003, the sanctions bar all US imports from Burma until its regime improves its record on human rights, moves toward a democratic government and complies with anti-drug treaties. Congress also enacted an additional law, the Block Burmese JADE Act, which specifically bars the importation to the United States of any gemstones extracted from Burma.

President Issues Executive Order Expanding Zimbabwe Sanctions – On July 25, 2008, President Bush issued an Executive Order expanding the scope of US sanctions to include senior officials of the Government of Zimbabwe and companies owned or controlled by, directly or indirectly, the Government of Zimbabwe or an official or officials of the Government of

Zimbabwe. As a result of the Executive Order, the Office of Foreign Assets Control (OFAC) designated several Zimbabwean parastatal and other entities owned or controlled by the Government of Zimbabwe.

Recent Penalty Notices

OFAC Reports Record Penalties in July – In its July 2008 monthly report of civil penalties, OFAC reported that it had settled nine cases involving corporations and ten cases against individuals. During that month, OFAC imposed nearly \$2,000,000 in penalties, including a \$1,198,000 penalty on Maryland-based Minxia Non-Ferrous Metals, Inc. for allegedly purchasing or otherwise dealing in Cuban metals. The total amount of penalties reported in the July report is more than the sum of the penalties imposed by OFAC during the first six months of 2008. Penalties in August were significantly lower, with a total of only \$19,148.

DDTC Imposes \$4 Million Penalty on Lockheed for Arms Export Control, ITAR Violations – The Directorate of Defense Trade Controls (DDTC) imposed a \$4 million civil penalty on the Lockheed Martin Company as a result of eight violations of the International Traffic in Arms Regulations (ITAR). The alleged violations included exporting classified and unclassified missile-related technical data to the United Arab Emirates Air Force. Lockheed Martin voluntarily disclosed the violations to DDTC.

Catering Company Pays ~\$600,000 to Settle Violations of Cuban Regulations – Gate Gourmet, Inc., an airline catering company, agreed to pay \$581,901.54 to settle allegations that it supplied catering services to Cubana Airlines, referred business with Air Cubana to other suppliers, and funded employee travel to Cuba without a license.



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This newsletter is prepared for the general information of our clients and other interested persons. It is not, and does not attempt to be, comprehensive in nature. Due to the general nature of its content, it should not be regarded as legal advice.

We will continue monitoring all these issues and will update you on any developments. Please let us know if you have any questions.

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Firm Ordered to Pay \$500,000 on Planned Exports to Iran – Allied Telesis Labs, Inc., a North Carolina based US subsidiary of Japan’s Allied Telesis K.K., was ordered to pay a \$500,000 criminal fine and placed on probation for two years after pleading guilty to one count of conspiracy to re-export advanced telecommunication products through the United Arab Emirates to Iran. The company was accused of planning to obtain a \$95 million contract with the Iranian Information Technology Company to overhaul the telecommunications systems of about 20 Iranian cities, including Tehran.

Financial Firm Pays ~\$100,000 to Settle Violations of SDN Procedures – A.G. Edwards and Sons Inc. remitted \$122,358.35 to settle allegations involving its failure to freeze investment accounts owned by Specially Designated Narcotics Traffickers.

Indonesian Citizen Sentenced for Conspiracy to Violate Arms Export Control Act – Doli Sharief Pulungan, an Indonesian citizen, was sentenced to four years in federal prison for conspiring to export ITAR-controlled rifle scopes to Indonesia. The 100 Leupold Mark 4 CQ/T Riflescopes were designed to attach to M-16 and AR-15 assault rifles.

Professor Faces Up to 15 Years for Transferring Plasma Technology to Students – University of Tennessee Professor J. Reece Roth was convicted on eighteen counts of export control violations for permitting foreign graduate students access to controlled plasma technologies. The students were assisting on an Air Force project involving unmanned aerial vehicles.

OFAC Issues New Penalty Guidance

In response to last year’s steep penalty increases for sanctions violations, OFAC has issued Enforcement Guidance on how it will apply civil fines that can now reach up to \$250,000 per violation. The new Guidance, which takes effect immediately, introduces several general factors the agency will take into consideration in determining penalties for violations, including the existence of a compliance program, the financial situation and business sophistication of the company, and whether the company voluntarily disclosed the violation. Based on these and other factors, OFAC will cap fines for non-egregious cases that are voluntarily disclosed at \$125,000 per violation.

BIS Amends “Entity List” Criteria

The Bureau of Industry and Security (BIS) published a final rule that expands the criteria used to place foreign entities on the Department of Commerce’s “Entity List.” The list currently includes entities whose activities could lead to the diversion of US-origin items to programs related to weapons of mass destruction (WMD). Among other things, the new rule now allows BIS to also list those entities that provide support for terrorism, enhance the military capability of State Sponsors of Terrorism, or engage in conventional weapons proliferation contrary to US security interests.

Patent Office Warns on Export Controls

The US Patent and Trademark Office (USPTO) issued an official warning reminding US companies that patent prosecution occurring abroad for US inventions could violate US export control regulations. The notice clarified that a USPTO-issued foreign filing license does not provide a license to generally export US technology abroad. Without an export license, a US company’s transmission of controlled data for purposes of obtaining a foreign patent, including transfer within the company, may violate regulations if the transfer occurs prior to the issuance of a foreign filing license or the data exceeds the scope of the license. Export control regulations do not require licenses for publicly available data, including data published in patent applications.

BIS Plans for President Bush’s Final Months

Under Secretary of Commerce Mario Mancuso announced the BIS agenda for the final months of the Bush Administration. According to Under Secretary Mancuso, BIS will give “extra attention and care” to: (i) areas of highest enforcement concern, including nations of illicit transshipment concern, proliferators and terrorists; (ii) regulatory issues including the intra-company transfer license exception, deemed exports, encryption, and foreign availability regulation; (iii) crime control regulations; and (iv) international engagement, including formal bilateral talks with Israel, China, Hong Kong, and India.

BIS Receives VEU Applications for India

According to BIS Under Secretary Mario Mancuso, BIS has received several VEU applications from Indian firms that are eligible for the program. Mancuso stated that BIS is currently reviewing those companies, and noted that the interagency review will “take time.” Decisions on the applications are likely to be made “over the next several months.” He also reported that the first Chinese firms to receive VEU status have now begun to receive exports under the exception.

Intra-Company Transfer Rule Delayed

According to BIS Under Secretary Mario Mancuso, objections from the State and Defense Departments have delayed BIS plans for the creation of a new Intra-Company Transfer (ICT) license exception. Mancuso noted that at least two iterations of the draft regulation “have been worked through the interagency, and [BIS is] still waiting final comments from partners in the interagency.” The ICT rule would cover only the transfer of technology between US-based companies and overseas affiliates and not goods or equipment.

DDTC to Significantly Increase Fees

DDTC published a proposed rule to implement part of President Bush's January 2008 Export Control Directive that requires initiation of a self-financing mechanism so that up to 75 percent of the DDTC will pay for itself. DDTC proposes a three-tier annual registration fee schedule based on the number of applications submitted during the 12 month period ending 90 days prior to expiration of the current registration, as follows:

- **Tier 1.** \$2,250 for new registrants or registrants who have not submitted any applications during the relevant period;
- **Tier 2.** \$2,750 for registrants who have submitted ten or fewer applications during the relevant period; and
- **Tier 3.** \$2,750 for registrants who have submitted more than ten applications plus an additional fee of \$250 for every application submitted over ten during the relevant period.

The current DDTC registration fee is \$1750 per year for all registrants, regardless of the number of licenses submitted.

BIS Proposes Regulations for IAEA Protocol

BIS has proposed implementing regulations for the Protocol Additional to the US-International Atomic Energy Agency (IAEA) Safeguards Agreement, which expands safeguards to the entire nuclear fuel-cycle. Under the proposed regulations, companies engaged in subject activities would be required to provide BIS with annual reports, and allow IAEA inspectors access to their facilities. Subject activities include uranium mining, certain nuclear-related equipment manufacturing, exports and imports of nuclear-related equipment and material, and civil nuclear fuel cycle-related research and development activities not involving nuclear material.

DOD Issues DFARS Rule on Export Controls

The Department of Defense (DoD) issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) recognizing contractor responsibilities to comply with existing Department of Commerce and Department of State export control regulations. The rule adds two new clauses to be included in defense contracts when export-controlled items, including information or technology, are expected to be involved in the performance of the contract. Defense agencies will have to inform contractors in the contract solicitation if any controlled items will be involved in the work. The rule will also require the contractor to consult with DDTC and BIS on any issues related to export control regulations.

House Bill to Track Sensitive Exports

Chairman of the House Foreign Affairs Subcommittee on Terrorism, Nonproliferation and Trade Brad Sherman (D-CA) introduced legislation (H.R. 6828) that would mandate improved US government tracking of global shipments of potentially dangerous goods, including weapons and nuclear materials. If passed, the law would permanently reauthorize the law enforcement authority of the Department of Commerce and would require the Administration to work more closely with Malaysia and the United Arab Emirates, two countries of concern in the resale and transshipment of sensitive US technologies. The law would also require temporary suspension and review of the Administration's VEU program in China.

Exporters are increasingly vulnerable to the proliferation of export control and sanction laws imposed for security and policy reasons. US export controls and sanctions rules can restrict and/or impose prior authorization requirements on exports, reexports, technology transfers, investments and financial transactions by both US and non-US entities.

Our lawyers have developed extensive experience applying complex US export controls, sanctions and national security regulations to sophisticated client transactions and problems under relevant laws and regulations, including:

- The Export Administration Act
- Export Administration Regulations
- Arms Export Control Act
- International Traffic in Arms Regulations
- Trading With the Enemy Act
- International Emergency Economic Powers Act
- The Various OFAC Sanctions Regulations
- Cuban Liberty and Democratic Solidarity Act (or Helms-Burton Act)
- The Iran and Libya Sanctions Act
- The Exon-Florio Regulations
- The National Industrial Security Program Regulations

The International Trade Group of White & Case has significant experience advising clients on how to comply with US export controls, sanctions and national security restrictions; controls administered by Japan, China and the European Union; as well as controls imposed by international regimes.

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