

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:

- US Sanctions Update
- Recent Penalty Notices
- Treasury Department Releases Final CFIUS Regulations
- BIS Issues Proposed Rule for Intra-Company Transfers
- GAO Recommends Suspension of VEU Program for China
- House Passes Iran Sanctions Bill, but Senate Fails to Act
- Japan Considers New Deemed Export Rules
- ETRAC Holds First Meeting

US Sanctions Update

President Bush Implements New Burmese Sanctions – President Bush recently issued a proclamation to enact amendments to the Burmese Freedom and Democracy Act of 2003 under the Block Burmese Jade Act of 2008. The new sanctions block the importation of Burmese jadeite and rubies and all articles of jewelry that contain jadeite or rubies mined in Burma. In the proclamation, the President directed the Departments of Treasury, State and Homeland Security to take necessary actions to prohibit imports of these items.

Tightening of Iran Sanctions Regime – The Office of Foreign Assets Control (OFAC) has added several significant entities to its list of Specially Designated Nationals (SDNs), including the Islamic Republic of Iran Shipping Lines, and the Export Development Bank of Iran (EDBI). OFAC alleges that these and other entities have been assisting the Iranian Government with its nuclear proliferation activities; as a result, the sanctions are imposed

to freeze all assets of the designated entities, both current and future, in the United States. OFAC has also eliminated the so-called “U-Turn” exception for transactions involving Iranian banks. Previously, OFAC had permitted US banks to perform certain limited dollar-clearing services for transactions between an Iranian entity and a non-US entity denominated in US dollars.

Arms Embargo Imposed on Eritrea – The Directorate of Defense Trade Controls (DDTC) has imposed an arms embargo on Eritrea. The new embargo comes as a result of a May determination made by the State Department declaring that Eritrea was not fully cooperating with antiterrorism efforts made by the United States. The embargo became effective as of October 1, 2008.

State Department’s North Korea Announcements Do Not Affect Export Rules – President Bush announced in late June that the United States Government is lifting North Korea’s designation as a State Sponsor of Terrorism. According to the Bureau of Industry and Security (BIS), the announcement will have no immediate effects on US exports to North Korea, and that agency will continue to require licenses for exporting or reexporting items to North Korea that are subject to the Export Administration Regulations (EAR).

Recent Penalty Notices

Justice Announces Increase in Year’s Export Enforcement Cases – The Department of Justice and several partner agencies have announced the results over the past year of the National Export Enforcement Initiative. The initiative, a multi-agency task force instituted to combat illegal exports of restricted military and dual-use technology from the United States,



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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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stated that it leveled criminal charges against more than 145 defendants. Approximately 43% of those cases involved instances of munitions or other restricted technology bound for Iran or China. One of the most recent cases brought forward by the initiative included the indictment of three individuals accused of conspiring to illegally export to the People's Republic of China controlled carbon fiber material. The initiative alleges that the material had applications in rockets, satellites, spacecrafts and uranium enrichment processes. The intended recipient was the China Academy of Space Technology. The initiative has also resulted in the creation of the Counter-Proliferation Task Force located in various judicial districts country-wide.

Freight Forwarder Pays \$108,000 for Violation of Antiboycott Regulations – Rohde and Liesenfeld, Inc., a German-based freight forwarder with operations in Houston, TX, agreed to pay \$108,000 to settle allegations that it violated the EAR's antiboycott provisions. BIS's Office of Antiboycott Compliance alleges that on 36 occasions in 2002 and 2003 the firm furnished prohibited information regarding business relationships with or in a boycotted country in connection with the sale and transfer of goods from the United States to Syria. Under the EAR's antiboycott rules, no US entity may participate in a boycott against US allies, including the Arab League boycott of Israel.

Three Companies Receive Only Warning Letters for Antiboycott Violations – BIS has released three warning letters it sent in September and October of 2008. Two of the letters stated that certain language in an Agent Certification was reportable under antiboycott regulations where it pertained to certifying that a ship was eligible to enter a certain port. The third letter stated that the company had failed to report its receipt of a request for information regarding its or another person's business relationships with or in a boycotted country.

Maxim Fined for Continuing to Make Deemed Exports While License Application Was Pending – Maxim Integrated Products, a designer and manufacturer of semiconductor circuits and other analog and digital electronics, agreed to a \$192,000 settlement with BIS on 34 counts of alleged export violations. The majority of the alleged violations related to the export of technical data to various countries without the required license.

Electronics Company Settles Export Violations Allegations for \$170,000 – The electronics wholesaler America II Electronics, Inc., based in St. Petersburg, Florida, paid \$170,000 to settle allegations that it violated the EAR. BIS alleged that the company transferred analog-to-digital converters from the United States to Russia without the proper authorization on four separate occasions. The settlement covers four separate violations, each of which could have cost the company up to \$250,000 under the increased penalties instituted a year ago.

Physicist Charged with Arms Control Violations – The President of AMAC International, Shu Quan-Sheng, has been arrested and charged with violating the International Traffic in Arms Regulations (ITAR) and the Foreign Corrupt Practices Act (FCPA). AMAC is a research and development firm involved in superconducting technologies, magnetic levitation and cryogenics in space. The complaint alleges that Shu paid bribes and provided technical assistance and controlled space technology to Chinese government officials in connection with the development a Chinese space launch facility.

Cabela's Fined \$ 680,000 for Exporting Unlicensed Rifle Scopes – The Outdoor equipment and gun retailer Cabela's, based in Sidney, Nebraska, has agreed to pay a \$ 680,000 civil penalty to settle over 150 allegations that it violated the EAR. BIS alleges that the company exported 76 optical sighting devices for firearms to 14 countries without approved licenses and without filing required Shipper's Export Declarations. As part of the settlement, Cabela's must also conduct an audit of its internal compliance program within 12 months and submit a copy of the audit report to the Office of Export Enforcement.

Treasury Department Releases Final CFIUS Regulations

The US Treasury Department has issued final regulations governing the policy and procedures of the Committee on Foreign Investment in the United States (CFIUS). The regulations will go into effect on or about December 18, 2008. The final regulations largely codify procedures that CFIUS already has been following for some time or that were introduced by FINSAs. Of particular note is the removal of a controversial discussion of CFIUS's power to reopen transactions previously cleared by CFIUS. The final regulations allow CFIUS to exercise this power only in extraordinary circumstances, and this revision appears to be intended to assuage the concerns of foreign investors that CFIUS planned to increase its scrutiny of transactions previously cleared by CFIUS. For a full discussion of the new regulations, please see our client alert of November 17, 2008.

BIS Issues Proposed Rule for Intra-Company Transfers

BIS recently issued a proposed rule for a new "ICT" license exception that would allow approved parent companies and subsidiaries to export, reexport or transfer controlled items among themselves. The exemption would require prior approval and would not cover all controlled items. To qualify for ICT, companies would be required to implement an ICT control plan that would include physical and information security plans, personnel screening procedures, training programs, self-audits, and non-disclosure agreements, among other things. ICT authorizations would never expire, but could be deemed invalid because of changed circumstances, such as a change in control of a parent company.

GAO Recommends Suspension of VEU Program for China

In October, the Government Accountability Office (GAO) issued a report recommending that the Department of Commerce (DOC) suspend the Validated End User (VEU) program for China until an agreement is reached regarding onsite inspections of Chinese facilities. As part of the report, GAO officials visited Chinese companies authorized under the VEU program to receive semiconductor equipment and materials without an export license. Under the program, Commerce may conduct post-export verifications to ensure items are being used in the correct location and for the approved purposes. In addition, DOC may also authorize discretionary on-site reviews. The GAO found that DOC has not reached an agreement with the Chinese government for conducting such reviews, nor has it

developed specific procedures for selecting and conducting the reviews. Until such an agreement and procedures are in place, the GAO recommends suspension of the program.

House Passes Iran Sanctions Bill, but Senate Fails to Act

In September, the House passed by voice vote the Comprehensive Iran Sanctions, Accountability and Divestment Act (H.R. 7112). If passed by both chambers of Congress, the act would make U.S. parent companies liable for violations of Iran sanctions by their foreign subsidiaries. It would also prohibit the direct or indirect import of goods of Iranian origin and the direct or indirect export of most U.S. goods to Iran. Further, U.S. held assets of Iranian persons with close ties to the Iranian government would be frozen. The Act would also tighten the Administration's reporting requirements on large foreign investments in Iran's energy sector and increase in financing through 2011 for the Treasury Department's Office of Terrorism and Financial Intelligence, which includes OFAC. The Senate failed to pass the Act in an October vote, but could reconsider the proposed legislation during the lame duck session that began on November 17.

Japan Considers New Deemed Export Rules

The Japanese government is reportedly considering amendments to export control laws to further limit transfers of dual use

technologies. The proposed amendments would seek to prevent the transfer abroad of controlled technology, including data on various digital media and on laptop computers. Further controls could also be placed on the transfer of such technology to non-residents inside Japan, possibly based on nationality, employment history, or relationship to companies in possession of these technologies. The amendments might also physically restrict access to weapons-related technology at companies, universities and research laboratories. Although some details, such as which countries and which nationalities any new controls would apply to, remain uncertain, the Japanese parliament could approve the amendments as early as next January.

ETRAC Holds First Meeting

In September the Emerging Technology and Research Advisory Committee (ETRAC) met for the first time with DOC officials to discuss a work plan for the upcoming year. BIS established ETRAC in May to identify and track emerging technologies and research and development activities with potential dual-use applications and provide recommendations to BIS on whether the CCL should be updated to include such items. ETRAC will also advise BIS on potential national security threats from the release of dual-use technology to foreign nationals under deemed export licensing requirements. ETRAC comprises 25 members from universities, research labs and high-tech firms.

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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