EIB World Trade Headlines

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BIS ISSUES NEW ENFORCEMENT INITIATIVES

Remarks of David W. Mills, Assistant Secretary for Export Enforcement September 1, 2010

You have heard in the last day or so about a change of focus on the export licensing side. We also are altering our approach on the enforcement side as well. We will continue encouraging voluntary self-disclosures, and we will minimize penalties in the VSD cases where appropriate.

Moreover, if a company had a good internal compliance program in place before the violation and the violation was inadvertent, those will be considered significant mitigating factors.

But, we will also be taking a harder line in other circumstances involving willful misconduct.

While we have typically sought penalties against companies more so than individual employees, as Under Secretary Hirschhorn pointed out yesterday, this is about to change.

*(*Story Continues On Following Page)*

Newsletter Notes:

Going forward, when a violation is a deliberate action of an individual, we will consider seeking penalties *against that individual* - including the denial of export privileges, fines and imprisonment. The same will hold true for a supervisor who is complicit in these deliberate violations by subordinates.

Additionally, we are going to focus increasingly on disrupting major illicit procurement networks.

Over the past decade, embargoed countries like Iran and North Korea have turned to foreign middle-men and front companies to acquire U.S.-origin goods.

As a result, we've increased our focus on these off-shore networks. In the last two years alone, we've placed 185 new foreign entities on our Entity List.

This Entity List strategy has proven particularly effective because the Entity List targets the illegal export activities of companies where it hurts – their bottom line.

Once an entity is placed on the List, it typically finds its access to U.S. goods curtailed, and its business opportunities are often diminished, which can lead to financial problems. Increasingly, suppliers perceive listed entities to be radioactive and accordingly are reluctant to do business with them out of fear that they themselves may end up on the same List.

The Entity List has been a real success story, and it must continue as such. Because we know if we don't keep deploying effective new tactics, the cost to America could be devastating.

As you know, the most rudimentary dual use items can be lethal. Off-the-shelf U.S.-made electronic components have been found in Improvised Explosive Devices, or IEDs, that were used against our troops and other Coalition forces deployed in Iraq and Afghanistan, as well as injuring local civilians: men, women and children.

While the diversion and criminal misuse of these commodities and technology is unfortunately not new – it *must* stop.

So let me be clear: When exporters put our national security at risk, or jeopardize our foreign policy objectives, we will take quick and firm action.

As always, we will aggressively bring to bear our wide-ranging enforcement powers, and utilize to its full advantage the flexible discretion these tools give us.

We will especially focus our criminal investigatory authority, our regulatory powers and our administrative enforcement authority to target companies and individuals that aide rogue regimes and terrorist groups.

For example, look at what Export Enforcement did against the Mayrow network – headquartered in Tehran - where we exercised our role as both regulator and enforcer.

We imposed new licensing requirements to thwart Mayrow's efforts to acquire U.S.-origin goods and technology, and we simultaneously worked to criminally prosecute Mayrow and its agents, thereby taking aim at one of Iran's most lethal procurement networks.

Export Enforcement utilizes this dual regulatory and enforcement role in numerous cases to disrupt and defeat these illicit procurement networks.

Take the recent case of Balli Aviation. This is a British-based multi-national company that illegally transferred U.S.-made Boeing 747s to Mahan Air of Iran. Had Balli applied for export licenses, its applications would have been denied. (*Continued on next page…)*

About two years ago, we learned that Balli was planning to complete the transfer of three additional planes to Iran.

We issued a Temporary Denial Order to stop that transfer, using this unique administrative authority to name the Balli Group, its involved subsidiaries and principal officers, and Mahan Air and its front company. Consequently, we were successful not only in interdicting the transfer of three additional aircraft from a third country to Iran, but also in effectively grounding the three aircraft already there.

In February of this year, Balli agreed to the largest civil penalty in the history of BIS. It was fined $15 million to settle administrative claims brought by us and the Treasury Department.

And a federal judge handed down a $2 million criminal fine and imposed a five-year probation against a Balli subsidiary for criminal violations charged by the Justice Department. We are currently pursuing indictments and penalties against the remaining companies and individuals involved in this activity, including those in Iran.

Another case we settled in the past year involved a Dutch firm named Aviation Services International, or ASI.

This is a small company owned and operated by a father, Robert Kraaipoel, and his son. But this was no ordinary family run operation. ASI ran a criminal conspiracy to sell parts for airplanes and Unmanned Aerial Vehicles to Iran. The Kraaipoels would order items from U.S. exporters, claim the parts were for legitimate end-users, and then transship the items to Iran.

As in the Balli case, we issued a Temporary Denial Order against ASI and its principals. The TDO shut down ASI's business activity and forced them to come to the table with the U.S. Government.

Last September, Robert Kraaipoel pleaded guilty to a criminal conspiracy charge, ASI was hit with a $100,000 criminal penalty, and we handed down a $250,000 fine, suspended the company's export privileges for seven years, and placed ASI on the Denied Party's list.

These cases are just a few examples of the outstanding work done by the agents and analysts in Export Enforcement at BIS.

Each of these cases involved companies and individuals who willfully violated our export control laws.

We caught them; we stopped them in their tracks. And every day, every one of us at Export Enforcement is committed to our mission to protect our national security in this dangerous and ever-changing world of proliferation and terrorist threats.

But we cannot do it alone, and we do not try to do it alone. We need your help.

For my part, I look forward to working with all of you to continue to enhance and expand this natural partnership with the exporting community.

DTAG Posts Information on Proposed Exemption for Certain ITAR Items

The Directorate of Defense Trade Controls (DDTC) posted the minutes of its July 2010 Defense Trade Advisory Group Plenary Session, which includes a proposed export license exemption under the International Traffic in Arms Regulations (ITAR) for defense articles incorporated into commodities subject to the Export Administration Regulations (EAR). The Working Group reported that the focus was to consider the problems of an ITAR part migrated to the EAR commercial side. The Working Group included four cases on how the proposed new rule would be interpreted specific to the former QRS-11 scenario, which pertained to a defense article in the civil supply chain that was integrated into the Integrated Standby Instrument System.

Two Alternatives Proposed for Exemption Language The Working Group offered two alternative proposals to implement the new exemption by adding a new 22 CFR 126.20 or 22 CFR 126.21.

The proposed language and presentation: http://www.pmddtc.state.gov/DTAG/documents/minutes0710_tab3.pdf

DDTC notice: http://www.pmddtc.state.gov/DTAG/documents/plenary_minutes_07_10.pdf

BIS Posts Information On Proposal for New License Exception on Exports to Allies and Partners

At the Annual Export Controls Update Conference, the Bureau of Industry and Security (BIS) recently announced that in cooperation with the Departments of Defense, State, and Energy, is developing a regulatory proposal that will provide more flexible licensing authorizations as one moves down the export control tiers. The Administration, as part of its export control reform efforts, will be splitting the Commerce Control List (CCL) and U.S. Munitions List (USML) into three tiers to distinguish the type of items should be subject to stricter or more permissive levels of control for different destinations, end-uses, and end-users. This approach will eliminate certain dual-use licensing requirements for allies and partner nations, consistent with U.S. statutory and international obligations. BIS will implement the new licensing policies in the Export Administration Regulations (EAR) by creating a new 15 CFR Part 740 License Exception that will authorize the export and re-export of EAR-controlled items to specified destinations without an individual validated license. The details of precisely which countries will be fixed to which of the tiers are still being worked out. BIS noted that the proposed rule could be issued as soon as fall 2010. BIS advised that the use of the new License Exception would impose a licensing requirement on the reexport from abroad, even by foreign persons, to most destinations outside the exception's applicable country group of items originally exported from the U.S. under the authority of the exception. According to BIS, the primary reason for adopting a License Exception as the method for implementing the new licensing policies is that the use of License Exceptions in the EAR can easily be made conditional. The new License Exception will likely impose as a condition for its use some combination of:

-end-use restrictions and assurances,

-destination control statements,

-reporting requirements that distinguish between end-users and distributors, and

-recordkeeping requirements.

In addition, based on the data derived from the reporting requirements, BIS would conduct outreach to U.S. companies with a history of exporting to destinations eligible for the License Exception on the enhanced compliance requirements. BIS notice: http://www.bis.doc.gov/news/2010/wolf_bis_update_remarks.htm

House Bill Introduced for Expanding US Export Promotion Activities

Representative Larsen (D) has introduced the Small Manufacturers Export Initiative Act (H.R. 5797), a bill to expand export promotion activities with respect to small- and medium-sized manufacturers (SMEs) in the U.S. It has been referred to the House Committee on Science and Technology's Subcommittee on Technology and Innovation, as well as the House Committee on Foreign Affairs. During the 24-month period beginning on the date of enactment, the Secretary of Commerce would be required to increase, by at least 80 persons, the number of employees whose primary responsibilities involve promoting or facilitating participation by U.S. businesses in the global marketplace and facilitating the entry into, or expansion of, such participation by U.S. businesses. The bill would authorize appropriations of $30 million to carry out these requirements for the 24 month period. The Secretary would also have to ensure that the Commerce Department's activities relating to promoting and facilitating participation by U.S. businesses in the global marketplace include promoting and facilitating such participation by SMEs. H.R. 5797

LAW Gives BIS Authority To Execute Warrants

The Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 which became Public Law 111-195 on 07/01/10, not only expanded the sanctions imposed against Iran, but also provided the Bureau of Industry and Security (BIS) certain permanent enforcement authority and authorized certain appropriations. The bill gives BIS export enforcement officers the authority to execute a warrant, make arrests without warrant, and carry firearms when the officer is carrying out activities to enforce the:

- Export Administration Act of 1979, (as in effect pursuant to the International Emergency Economic Powers Act, collectively, IEEPA);
- Prevention of Diversion of Certain Goods, Services, and Technologies to Iran (Title III of the Iran Sanctions Act);
- any other provision of law relating to export controls, with respect to which the Secretary of Commerce has enforcement responsibility; or
- any license, order, or regulation issued under IEEPA, the Iran Sanctions Act, or any other provision of law relating to export controls.

According to comments made by BIS Under Secretary Eric Hirshorn, this is the first time permanent law enforcement authority has been given to BIS export enforcement agents. The Iran Sanctions Act also authorized appropriations to BIS of $113 million for fiscal year 2011 and such sums as may be necessary for each of the fiscal years 2012 and 2013 to increase capacity for efforts to combat unlawful or terrorist financing.

FR Notice: http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_public_laws&docid=f%3Apubl195.111.pdfBIS notice: http://www.bis.doc.gov/news/2010/mills_bis_update_remarks.htm

BIS Issues Final Rule to Revise EAR, Implementing Latest Wassenaar Changes

The Bureau of Industry and Security (BIS) issued a final rule, effective 09/07/10, to revise the Export Administration Regulations (EAR) to implement most of the changes made to the Wassenaar Arrangement's List of Dual Use Goods and Technologies maintained and agreed to by governments participating in the Wassenaar Arrangement's December 2009 Plenary Meeting. The Wassenaar Arrangement advocates implementation of effective export controls on strategic items with the objective of improving regional and international security and stability. In order to harmonize with the changes made to the Wassenaar List at the Plenary, BIS' final rule revises the EAR by amending certain entries that are controlled for national security reasons in Categories 1, 2, 3, 4, 5 Part I (telecommunications), 6, 7, and 9; revising reporting requirements; and adding, removing and amending EAR definitions. According to BIS, the changes agreed to at the December 2009 Plenary that pertain to Export Control Classification Numbers (ECCNs) 5A002, 5D002, 6A002, 6A003, 8A002 and all related ECCNs will be implemented in a separate rule because of the sensitivity of the items and complexity of procedures and controls for these items. BIS also noted that the changes agreed to at the December 2009 Plenary that pertain to raising the Adjusted Peak Performance (APP) for digital computers in ECCN 4A003 will be implemented in a separate rule when the President's report for High Performance Computers has been sent to Congress that sets forth the new APP in accordance with the National Defense Authorization Act for FY1998.

BIS notice (FR 09/07/10) http://edocket.access.gpo.gov/2010/pdf/2010-21688.pdf

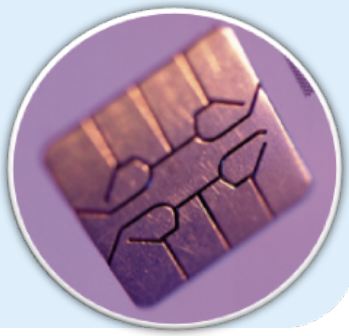
DDTC Posts Updated Guidance for Expedited Defense Exports to Iraq and Afghanistan

The Directorate of Defense Trade Controls (DDTC) updated its Guidance for Exports to Iraq and Afghanistan.

According to the DDTC, the following substantive revisions to its guidance have been made:

- removed references to Operation Iraqi Freedom (OIF) and replaced it with Operation New Dawn (OND),
- removed references to hard copy application submissions (as applications are now electronic), and
- added information on a political contribution certification requirement under 22 CFR Part 130 for re-export supporting documentation.

DDTC notice (09/01/10)
http://www.pmddtc.state.gov/licensing/documents/gl_OND-OEF.pdf



USTR Posts Notice on Filing of Two WTO Cases against China - Steel and Electronic Payment Services

U.S. Trade Representative (USTR) Kirk recently announced on that the U.S. has filed two cases against China at the World Trade Organization. The first case is a request for consultations on China's imposition of antidumping and countervailing (AD/CV) duties on imports of grain oriented flat-rolled electrical steel (GOES) from the U.S. The other is a request for consultations on China's discrimination against U.S. suppliers of electronic payment services. In June 2009, China's Ministry of Commerce (MOFCOM) initiated two investigations on grain-oriented flat-rolled electrical steel from the U.S. On 04/10/10, MOFCOM imposed AD & CV duties, listing that U.S. steel had been dumped into their market and subsidized. USTR believes that China's AD and subsidy determinations in the GOES investigations violate numerous WTO requirements. In particular, USTR reports that China initiated both investigations without sufficient evidence; failed to objectively examine the evidence; failed to disclose "essential facts" underlying its conclusions; failed to provide an adequate explanation of its calculations and legal conclusions; improperly used investigative procedures; failed to provide confidential summaries of Chinese submissions; and included U.S. federal and state programs that were not identified in the notice of initiation of the CV duties investigation. The U.S. is also disputing China's treatment of U.S. suppliers of electronic payment services, which are provided in connection with the operation of electronic networks that process payment transactions involving credit, debit, prepaid, and other payment cards. They also enable, facilitate and manage the flow of information and the transfer of funds from cardholders' banks to merchants' banks. According to USTR, China's regulator of electronic payment services, the People's Bank of China, has issued a series of measures – dating back to 2001 – that provide a Chinese domestic entity, China Union Pay (CUP), with a monopoly over the handling of domestic currency payment card transactions. In addition, with regard to payment card transactions in foreign currency, such as those involving Chinese tourists visiting other countries, China imposes requirements and restrictions that favor CUP over foreign suppliers. Consultations are the first step in a WTO dispute. Under WTO rules, parties that do not resolve a matter through consultations within 60 days may request the establishment of a WTO dispute settlement panel (DSP).

USTR notice: http://www.ustr.gov/about-us/press-office/press-releases/2010/september/united-states-files-two-wto-cases-against-china