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UPDATE ON INTERNATIONAL BUSINESS COMPLIANCE

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Export Control Reform Is Officially Launched

The Obama administration has issued a pair of major regulations to formally initiate the export control reform. After many months of proposals, comments and uncertainty, the reform effort is finally underway. This will have a wide impact on exporters on all levels over the next twelve months.

On April 16, 2013 the Bureau of Industry and Security (“BIS”) and Directorate of Defense Trade Controls (“DDTC”) issued a pair of regulations that provide the legal framework for the export control reform and officially kick off the reform effort. The regulations set forth a number of significant changes including: (i) providing amendments to the Export Administration Regulations (“EAR”) and International Traffic In Arms Regulations (“ITAR”) to establish the Series 600 control structure and other elements of the reform; (ii) providing a common definition of the term “Specially Designed” for use in designating certain parts, components, accessories and attachments for inclusion on the U.S. Munitions List (“USML”) and the Commerce Control List (“CCL”); and (iii) providing transition rules for licenses, agreements and other authorizations during the next twelve months. In the same regulations, the agencies issued the final version of the recently revised USML Category VIII (Aircraft and Related Articles) and Category XIX (Gas Turbine Engines and Associated Equipment) and the corresponding provisions of the CCL Series 600. The agencies are expected to issue final versions of the remaining Categories of

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products under the USML and the corresponding entries on the CCL 600 Series over the next six months to complete the implementation of the reform. The DDTC regulation can be found at: <http://www.pmdtc.state.gov/FR/2013/78FR22740.pdf>, and the BIS regulation can be found at: http://www.bis.doc.gov/federal_register/rules/2013/Commerce%20Rule.pdf.

Under the export control reform, the administration is revising the USML and transferring certain USML items to the CCL administered by BIS to a newly established Series 600. Once transferred to BIS, such items will still be subject to strict export licensing and other regulations by BIS, but subject to more flexible licensing rules than under ITAR. A major part of the reform is the transfer of jurisdiction for certain generic parts, components and accessories currently on the USML to the less restrictive CCL. The administration will also be transferring controls for commercial satellites and satellite systems to the CCL, which is expected to create significant international business opportunities for U.S. aerospace and electronics manufacturers.

While issued in final form on April 16, 2013, the regulations will become effective on a delayed basis on October 15, 2013, and the final versions of Categories VIII and XIX will also become effective on October 15, 2013. In addition, the agencies are expected to issue final versions of the other revised Categories of the USML beyond aircraft and gas turbine engines over the next six months, and once issued these individual Categories will become effective 180 days following their respective dates of publication. Consequently, the export reform amendments will become effective on a rolling basis from October 15, 2013 through mid-2014.

The reform represents the most significant set of amendments of the U.S. export control laws in over a decade. It is expected that thousands of products will be transferred from USML to CCL jurisdiction over the next year, with particular emphasis on parts, components, and accessories used in defense and aerospace systems. Once transferred, exporters will be able to take advantage of more flexible export license requirements, including license exceptions such as Strategic Trade Authorization (“STA”), the EAR de minimis rules and reduced regulation of defense services. Items regulated on the Series 600 CCL will still be subject to licensing requirements to all countries except Canada (unless license exceptions apply) and restriction on export to China and other countries subject to U.S. arms embargoes. While products transferred will be subject to more flexible licensing, companies will be required to amend their internal compliance procedures to adapt to the new sets of controls.

April 16, 2013 Final Rules. Under the April 16, 2013 final regulation issued by DDTC (the “DDTC Regulation”), the agency took the following steps:

- Amended various ITAR provisions to implement the export control reform, including amendments to 22 CFR §120.2 (Designation of Defense Articles and Defense Services), §120.3 (Policy on Designating Defense Articles), §120.4 (Commodity Jurisdiction), §120.5 (Regulations of Other Agencies) and §120.10 (Definition of Technical Data);
- Adopted the definition of the term “Specially Designed” in 22 CFR §120.41 and “Subject to the EAR” in 22 CFR §120.42;
- Issued revised, final versions of USML Category VIII (Aircraft and Related Articles) and Category XIX (Gas Turbine Engines and Associated Equipment), Category XVII (Classified Articles, Technical Data, and Defense Services Not Otherwise Enumerated)

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and Category XXI (Articles, Technical Data and Defense Services Not Otherwise Enumerated);

- Created a new licensing procedure for the export of items subject to the EAR that are exported in conjunction with defense articles controlled on the USML; and
- Set forth the DDTC Transition Plan which describes procedures for export licenses, TAA's and other agreements during the implementation period of the export control reform.

Under the companion April 16, 2013 BIS regulation (the "BIS Regulation"), BIS undertook the following:

- Added the Series 600 control structure to the CCL to regulate munitions items transferred from the USML to the CCL;
- Established a number of specific Series 600 Export Control Classification Numbers ("ECCN's") to control an initial group of items transferred from the USML for aircraft and gas turbine engines, related parts, components, accessories, attachments software and technology;
- Adopted various additional conforming amendments to the EAR to implement the export reform;
- Adopted a common definition of the term "Specially Designed" in conjunction with DDTC for the identification of certain parts, components, accessories and attachments on CCL Series 600 as set forth at 15 CFR §772.1;
- Adopted a number of transition rules for exporters set forth in BIS General Order 5 for use during the period from April 16, 2013 until final implementation of the reform in 2014.

Definition of "Specially Designed." While the reform effort initially was intended to reduce the regulation of parts, components, accessories and attachments related to controlled items, the revised USML and Series 600 ECCN's still continue to regulate many of these items. As part of this process, DDTC and BIS have adopted a unified definition of the term "Specially Designed" to designate parts, components, accessories and attachments that will be included on the USML and CCL; for certain items specifically enumerated on the USML and CCL, parts, components, accessories and attachments that have been "Specially Designed" to be used with or in such items will also be covered under such controls. The definition of "Specially Designed" was the subject of extensive comments and numerous revisions until its final adoption by DDTC and BIS in the April 16 regulations. The final version of the DDTC definition will be codified at 22 CFR §120.41, and the final BIS version (which contains minor technical differences from the DDTC version) will be codified at 15 CFR §772.1.

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The DDTC definition of “Specially Designed” is illustrative. The definition consists of two parts – dubbed the “Catch” and “Release” provisions. Under the first part of the definition (the “Catch” provision)¹, a commodity or software is included as “Specially Designed” if it:

- (1) As a result of development, has properties peculiarly responsible for achieving or exceeding the controlled performance levels, characteristics or functions described in the relevant USML paragraph; or
- (2) Is a part, component, accessory, attachment or software for use in or with a defense article.

Under the second part of the definition (the “Release” Part), a part, component, accessory, attachment, or software that is included in the first part of the definition is not controlled by the relevant USML “catch-all” or technical data control paragraph if it:

- (1) Is subject to the EAR pursuant to a commodity jurisdiction determination;
- (2) Is, regardless of form or fit, a fastener (e.g., screws, bolts, nuts, nut plates, studs, inserts, clips, rivets, pins), washer, spacer, insulator, grommet, bushing, spring, wire, or solder;
- (3) Has the same function, performance capabilities, and the same or “equivalent” form and fit as a commodity or software used in or with a commodity that: (i) is or was in production (i.e., not in development); and (ii) is not enumerated on the USML;
- (4) Was or is being developed with knowledge that it is or would be for use in or with both defense articles enumerated on the USML and also commodities not on the USML; or
- (5) Was or is being developed as a general purpose commodity or software, i.e., with no knowledge for use in or with a particular commodity (e.g., a F/A-18 or HMMWV) or type of commodity (e.g., an aircraft or machine tool).

Thus, despite initial intentions of regulators to move away from “design intent” in determining USML jurisdiction, many exporters will still be required to go through a detailed process of analyzing design history to determine if their parts, components, accessories and software are included in USML and CCL classifications. Parties reviewing the definition of “Specially Designed” are also advised to review the Notes provided in the implementing regulations and the explanatory text set forth in the Federal Register Notices in which each of the regulations was issued. Under the ITAR Regulation, DDTC reminds exporters of their obligation to maintain records of their considerations in making classification determinations: “Consistent with the recordkeeping requirements of the ITAR and the EAR, licensees and foreign persons subject to licenses must maintain records reflecting their assessments of the proper regulatory jurisdiction over their items. License holders unable to ascertain the proper jurisdiction of their items may request a CJ determination from DDTC through the established procedure.”²(Emphasis added.)

¹ Using the ITAR version of the definition set forth in the DDTC Regulation and codified at 22 CFR §120.41.

² See DDTC Regulation p. 22750.

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Transition Procedures. BIS and DDTC have each adopted transition rules governing the issuance and use of licenses, agreements and other authorizations during the period in which the reform amendments will be implemented. The BIS transition procedures are set forth in a newly issued General Order 5, and the DDTC procedures are set forth in the DDTC Transition Plan. Under the DDTC Transition Plan:

- There will be a 180 day transition period for each USML Category from the date the final Category is published until the effective date of the newly published Category to allow exporters to review and prepare for the new license requirements.
- For licenses or authorizations where all of the items listed on a license or authorization have transitioned to the export jurisdiction of BIS, licenses issued by DDTC prior to the effective date of the relevant USML Category will remain valid until expired, returned by the license holder, or for a period of two years from the effective date of the final rule for the relevant Category – whichever occurs first (unless otherwise revoked, suspended or terminated).
- For licenses or authorizations where some items covered on such license have been transferred to BIS and some remain under the jurisdiction of DDTC, the license or authorization will remain valid until expired or returned by the license holder (unless otherwise revoked, suspended or terminated).
- Technical assistance agreements and other agreements containing transitioning and non-transitioning items issued prior to the effective date of the relevant USML Category will remain valid until they have expired (unless they require an amendment) or for a two year period from the effective date of the relevant USML Category, whichever occurs first (unless otherwise revoked, suspended or terminated).
- Agreements containing solely transitioning items issued prior to the effective date for the relevant USML Category will remain valid for two years from the effective date of the relevant USML Category (unless revoked, suspended or terminated). After this two year period all activities must be conducted under BIS authorization.
- DSP-61 and DSP-73 temporary licenses issued prior to the effective date of the relevant USML Category will remain valid until expired or returned by the license holder (unless otherwise revoked, suspended or terminated).
- Previously issued Commodity Jurisdiction Determinations for items determined to be subject to the EAR shall remain valid. Previously issued Commodity Jurisdiction Determinations for items that have been transitioned to the CCL will be superseded by the newly revised USML Categories.
- Any limitation, proviso or other requirement previously existing will remain in effect.

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- USML categories will have an (x) paragraph which will allow for ITAR licensing for commodities, software and technical data subject to the EAR, provided that these items will be used in or with defense articles controlled under the USML.

Under the BIS General Order 5, BIS will be accepting license applications for transferred Series 600 items prior to the effective date of the relevant CCL ECCN (called “pre-positioning”), but licenses for such items will not be issued by BIS until the effective date of the ECCN.

Steps To Prepare For Reform Amendments. October 15 is not far away, and companies should begin preparation now for the upcoming amendments. Companies should prepare a plan to manage their export reform changes over the next twelve months – steps to be included in the plan are as follows:

- Review the classifications of your company’s products, software and services to determine if the jurisdiction and classifications of such items have changed; this includes reviewing both the new USML Categories and companion CCL Series 600 entries;
- For parts, components, accessories and attachments apply the “Specially Designed” test for relevant products, if required;
- If the jurisdiction and/or classification of items are unclear based upon the language of the amended regulations, apply for commodity jurisdiction determinations from DDTC or commodity classification requests from BIS;
- If the jurisdiction/classifications of your products have changed, determine changes in your company’s licensing requirements related to such items, including:
 - Use of Strategic Trade Authorization or other BIS license exceptions?
 - Use of the BIS de minimis rule?
 - Reduced controls on the performance of services and use of TAA’s?
 - Impact on DDTC registration status?
- Plan licenses, TAA’s and other authorizations during the transition period in accordance with the DDTC Transition Plan and BIS General Order No. 5, including considering taking advantage of the two-year authorization periods and/or “pre-positioning” license applications with BIS;
- Amend your company’s export compliance procedures to reflect changes in the law and changes in your company’s export requirements;
- Conduct training of relevant company employees on changes in your company’s export obligations; and
- Coordinate with subcontractors, suppliers and other program partners on licensing requirements and export procedures to assure smooth transitions in your supply chain.

Recent Enforcement Actions Highlight Importance of Checking Prohibited Party Lists

Companies that produce or export low-tech or other commercial items that are commonly available in the global marketplace may not think that they have a high risk of export violations. However the U.S. Commerce Department's Bureau of Industry and Security ("BIS") has imposed significant penalties on such companies in several recent enforcement actions.

For example, the University of Massachusetts at Lowell was charged in March 2013 with violating the Export Administration Regulations ("EAR") for exporting an atmospheric testing device and related cables and antennae to the Space and Upper Atmosphere Research Commission ("Suparco") in Pakistan. The items exported were classified as EAR99, the lowest level of export control under the EAR, and did not require an export license to any destination except for prohibited end-users or end-uses. During the time of the exports, Suparco was listed on the BIS Entity List, and, as such, exporters were required to obtain export licenses for all exports to this party. The University did not obtain a license for the exports as required by Sec. 744.11. BIS charged the University with a violation of Sec. 764.2(a) of the EAR. The University entered into a Settlement Agreement and was assessed a civil penalty of \$100,000 that has been suspended for two years.³

Vantec World Transport (USA), Inc. ("Vantec"), which acted as the freight forwarder for the export to SUPARCO, was also charged with a violation of Sec. 764.2 of the EAR⁴ for entering into the transaction with the prohibited party without obtaining a license.

In a similar case, another freight forwarder recently entered into a settlement agreement with BIS related to exports of EAR99 items. Aeroships, Inc., an Illinois company, arranged for the export of a 125 kilowatt generator to Prime International, an entity in Pakistan listed on BIS's Entity List because it was "determined to be involved in nuclear or missile activities."⁵

Other examples include a Settlement Agreement by Capintec, Inc., a New Jersey based manufacturer of radiation measuring and monitoring instruments, related to the export of a dose calibrator to the Pakistan Atomic Energy Commission,⁶ and Muscle Gauge Nutrition, LLC, which was assessed a civil penalty for exporting protein supplements to a UAE-based logistics company with knowledge that the intended end-user of the items was in Iran.⁷

These cases highlight the fact that, although EAR99 items are very lightly controlled, those items are still subject to certain basic export compliance requirements. They cannot be exported to entities on any U.S. Government prohibited parties lists unless the requisite license is obtained (and often these licenses are subject to a policy of denial). The U.S. Government has been placing an increasing emphasis on controls and sanctions programs targeting specific individuals and entities rather than country-based or product-based controls, and, hence, list checking has become of particular importance.

As a result, it is imperative for exporters to conduct prohibited party screening for each export transaction as a routine part of their export compliance function. A Consolidated Screening List is available at www.export.gov. Screening should include all parties involved in

³ Settlement Agreement available at <http://efoia.bis.doc.gov/exportcontrolviolations/E2306.PDF>.

⁴ Settlement Agreement available at <http://efoia.bis.doc.gov/exportcontrolviolations/E2304.PDF>.

⁵ Settlement Agreement available at <http://efoia.bis.doc.gov/exportcontrolviolations/E2307.PDF>.

⁶ Settlement Agreement available at <http://efoia.bis.doc.gov/exportcontrolviolations/e2293.pdf>.

⁷ Settlement Agreement available at <http://efoia.bis.doc.gov/exportcontrolviolations/e2285.pdf>.

an export, including foreign and intermediate consignees, end-users, agents, brokers and other intermediaries, joint venture partners and freight forwarders and other transportation parties. Records of screening should be maintained along with other export records as required under the export recordkeeping requirements at 15 CFR Part 762 and 22 CFR § 122.5.

DDTC Proposes Revision of Definition of Defense Services; Specifically Addresses Assistance for Certain Spacecraft Related Activities

As a part of its overall effort to reform U.S. export controls, the U.S. State Department's Directorate of Defense Trade Controls ("DDTC") has published a proposed revision to the definition of "Defense Services" that are subject to control under the International Traffic in Arms Regulations ("ITAR").⁸ This notice is a follow-on to an earlier proposed revision, published in April 2011, in which DDTC explained that "the current definition of defense services in § 120.9 is overly broad, capturing certain forms of assistance or services that do not warrant ITAR control."⁹

Under the existing regulations, authorization is required for the provision of assistance related to defense articles "whether or not technical data is to be disclosed or used in the performance of the defense services . . . (e.g., all the information relied upon by the U.S. person in performing the defense service is in the public domain or is otherwise exempt from licensing requirements . . .)."¹⁰ Authorization is also required for "military training,"¹¹ but that term is not defined in the ITAR. This has led to substantial uncertainty regarding the reach of the defense services definition, particularly regarding the integration of commercial articles into defense articles, training related to commercial articles provided to foreign military organizations, and the performance of fundamental research.

The proposed definition attempts to address this uncertainty by controlling the provision of assistance related to defense articles to foreign persons "using other than public domain information,"¹² except in certain limited circumstances. Technical assistance provided using only public domain information would still be controlled if the assistance relates to any of the following:

- Furnishing assistance to a foreign person for the integration of any ITAR- or Export Administration Regulations ("EAR")-controlled item into an ITAR-controlled end item or component.¹³

⁸ Amendment to the International Traffic in Arms Regulations: Revision of U.S. Munitions List Category XV and Definition of "Defense Service," 78 Fed. Reg. 31,444 (May 24, 2013), available at <http://www.pmdtc.state.gov/FR/2013/78FR31444.pdf>.

⁹ International Traffic in Arms Regulations: Defense Services, 76 Fed. Reg. 20,590 (April 13, 2011), available at <http://www.pmdtc.state.gov/FR/2011/76FR20590.pdf>.

¹⁰ 22 C.F.R. § 124.1(a).

¹¹ *Id.* § 120.9(a)(3).

¹² 78 Fed. Reg. at 31,448-49.

¹³ The proposed rule distinguishes between "integration" and "installation." Under that rule, integration would mean "the systems engineering design process of uniting two or more items in order to form, coordinate, or blend into a functioning or unified whole, including introduction of software to enable proper operation of the article. This includes determining where to integrate an item (e.g., integration of a civil engine into a destroyer which requires changes or modifications to the destroyer in order for the civil engine to operate properly; not plug and play)." By contrast, installation would mean "the act of putting something in its place and does not require changes or

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- Furnishing assistance (including training) in the integration of a satellite or spacecraft to a launch vehicle, including both planning and onsite support, regardless of the jurisdiction of, the ownership of, or the origin of the satellite or spacecraft, or whether technical data is used.
- Furnishing assistance (including training) in the launch failure analysis of a satellite, spacecraft, or launch vehicle, regardless of the jurisdiction of, the ownership of, or the origin of the satellite, spacecraft, or launch vehicle, or whether technical data is used.
- Furnishing assistance to a foreign person in the tactical employment of a defense article.
- Conducting direct combat operations for a foreign person.

In addition, the proposed rule specifically states that the following would not be considered defense services:

- Training in basic maintenance training for defense articles lawfully exported or re-exported (unless otherwise proscribed in § 126.1 or otherwise ineligible);
- Mere employment of a natural U.S. person by a foreign person;
- Servicing an EAR-controlled item integrated or installed in a defense article;
- Providing law enforcement, physical security, or personal protective services (including training and advice) to or for a foreign person using only public domain information; or
- Services performed, to include direct combat operations, as a member of the regular military forces of a foreign nation by a U.S. person who has been drafted into such forces.

The May 24, 2013 Federal Register notice also included a proposed revision to Category XV of the U.S. Munitions List, which would move certain “Spacecraft Systems and Associated Equipment” that are currently subject to ITAR control to control under the EAR.¹⁴ As noted above, the proposed definition of defense services nevertheless continues to control all launch failure analysis, as well as any assistance or training related to the integration any satellite or spacecraft into a launch vehicle, regardless of whether the technologies involved in providing the assistance would be controlled on the EAR or in the public domain.

Public comments on the proposed rule are due not later than July 8, 2013. DDTC generally welcomes both constructive criticism and supporting comments. Supporting comments may be particularly helpful when the changes are presented to Congress.

DDTC Proposes Revisions to Controls On Satellites

The State and Commerce Departments have issued a pair of proposed rules to revise U.S. Munitions List (“USML”) Category XV and move certain satellites and related equipment from the USML to the Commerce Control List (“CCL”). This proposal is pursuant to the President’s Export Control Reform effort and authority granted to the president as a result of an assessment by the Departments of State and Defense of the risk of removing certain satellites and related components from the USML. The goal is to avoid controlling items on the International Traffic in Arms Regulations (“ITAR”) that are in normal commercial use, while recognizing the competing interest in controlling satellites and related items, even if they are in

modifications to the item in which it is being installed (e.g., installing a dashboard radio into a military vehicle where no changes or modifications to the vehicle are required).” *See id.* At 31,449.

¹⁴ 78 Fed. Reg. at 31, 450.

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normal commercial use, if they, for example, provide the U.S. with a critical military or intelligence advantage.

The revisions involve adding greater specificity to the articles described in the USML to cover a more narrowly defined list of satellites and related ground systems, components, parts, software and technical data. Articles left on the USML are those that are either (i) inherently military, or (ii) if common to non-military space applications, possess parameters or characteristics that provide a critical military or intelligence advantage to the United States and are almost exclusively available from the United States.

In addition, it is proposed that certain Global Positioning System receiving equipment previously covered under paragraph (c) be moved to Category XII; however, until a revised Category XII is implemented, it will continue to be covered in Category XV(c). Further, certain radiation-hardened microelectronic circuits previously covered under paragraph (d) will be moved to the CCL in Export Control Classification Number ("ECCN") 9A515.d. Also, a new paragraph "(x)" will be added, which will allow ITAR licensing for commodities, software and technical data subject to the EAR, provided that those commodities, software and technical data are: (1) to be used in or with defense articles controlled in Category XV, and (2) described in the purchase documentation submitted with the application. Articles found on both the Missile Technology Control Regime Annex and the USML will be identified on the USML, following their description with the parenthetical "(MT)". Articles moved to the CCL will be controlled by new Export Control Classification Numbers ("ECCNs") proposed by this rule 9A515, 9B515, 9D515 and 9E515, as well as existing ECCNs.

Comments on the proposed revisions are due by July 8, 2013. DDTC generally welcomes both constructive criticism and supporting comments. Supporting comments may be particularly helpful when the changes are presented to Congress.

OFAC Issues General License for Personal Communications to Iran

The Department of Treasury's Office of Foreign Assets Control ("OFAC") issued a new general license related to the exchange of personal communications with Iran. Previously, US companies could export free Internet services and related software to Iran, and could only export fee-based services and related software pursuant to a specific license. General License D, effective May 30, 2013, authorizes some of these fee-based services and related software, specifically:

1. Fee-based services incident to the exchange of personal communications over the Internet, such as instant messaging, chat and email, social networking, sharing of photos and movies, web browsing and blogging.
2. Fee-based software subject to the Export Administration Regulations ("EAR") that is necessary to enable the services described in item 1, provided that such software is either EAR99 or is classified under ECCN 5D992.c.
3. Certain software and hardware specified in the Annex to this license, such as mobile phones (including smart phones), Virtual Private Networks and modems, provided that they meet certain specified requirements.

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4. Consumer-grade Internet connectivity services and the provision, sale, or leasing of capacity on telecommunications transmission facilities (such as satellite or terrestrial network connectivity) incident to personal communications.

These authorizations apply to the export or re-export, directly or indirectly, from the United States or by U.S. persons, wherever located, to persons of Iran. They also extend to entities owned or controlled by a US person and established or maintained outside the US, subject to the conditions set forth in 31 CFR 560.556. In addition, the general license allows for transfers of funds from Iran or for or on behalf of a person in Iran in furtherance of a transaction authorized by the license to be processed by a U.S. depository institution and U.S. registered brokers and dealers, provided they are consistent with 31 CFR 560.516. Note that this does not authorize any transaction prohibited by any part of Chapter V of 31 CFR other than part 560. Accordingly, the transfer of funds may not be by, to or through: (1) a person whose property and interests in property are blocked pursuant to the Weapons of Mass Destruction Proliferators Sanctions Regulations or the Global Terrorism Sanctions Regulations; or (2) a person whose property and interests in property are blocked pursuant to any other part of 31 CFR Chapter V, or any Executive Order, except an Iranian financial institution whose property and interests in property are blocked solely pursuant to 31 CFR part 560.

General License D also lists certain exports and re-exports (whether direct or indirect) that are specifically not authorized, such as to any person or entity on the Specially Designated Nationals list, or if there is knowledge or reason to know that the export is intended for the Government of Iran. In addition, the export or re-export (whether direct or indirect) of commercial-grade Internet connectivity services or telecommunications transmission facilities (such as dedicated satellite links or dedicated lines that include quality of service guarantees), and web-hosting services that are for purposes other than personal communications (e.g., web-hosting services for commercial endeavors) or of domain name registration services are specifically not authorized.

Note that specific licenses may be issued on a case-by-case basis for the exportation and re-exportation of services, software and hardware incident to personal communication not authorized under this general license.

Treasury Publishes List of Countries that May Impose International Boycott Requirements

Treasury published the current list of countries that require or may require participation in or cooperation with an international boycott. The countries are:

- Iraq
- Kuwait
- Lebanon
- Libya
- Qatar
- Saudi Arabia
- Syria
- United Arab Emirates
- Yemen

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When engaging in contracting, subcontracting, purchasing or entering into other agreements with a foreign government, foreign company or a U.S. company with foreign locations or foreign person employees, it is important to ensure that the contract does not contain any clauses that have the effect of furthering or supporting a restrictive trade practice or boycott fostered or imposed by a foreign country against a country friendly to the U.S., such as the Arab League boycott of Israel. Treasury believes the countries listed above may have such restrictive trade practices or boycotts. Examples of clauses that cause concern include:

- Making agreements to refuse to do business with Israel or with blacklisted companies.
- Making agreements to discriminate against other persons based on race, religion, sex, national origin or nationality.
- Furnishing information about business relationships with Israel or with blacklisted companies.
- Furnishing information about the race, religion, sex, or national origin of another person.
- Paying or implementing letters of credit that include requirements to take boycott-related actions prohibited by the anti-boycott regulations.

Justice Department Publishes Summary of Major Export Enforcement Cases

The Department of Justice has posted a summary of major U.S. export control and embargo-related criminal cases. The report discusses 276 cases that have recently been resolved. The list includes cases from the Department of Homeland Security's ICE Homeland Security Investigations, the Federal Bureau of Investigation, the Department of Commerce's Bureau of Industry and Security and the Pentagon's Defense Criminal Investigative Service. Note that the 86-page document is not a comprehensive list of cases. A link to the document is provided here:

<http://www.pmdtc.state.gov/compliance/documents/OngoingExportCaseFactSheet022013.pdf>.

DDTC Updates Guidance on Direct Commercial Sales of Defense Articles and Services to Libya

DDTC has updated its guidelines on direct commercial sales of defense articles and services to Libya. In March of this year, the U.N. Security Council ("UNSC") modified the notification requirements and the list of exceptions for certain defense sales to the Government of Libya for the purpose of security or disarmament assistance and other similar types of sales.

The arms embargo will no longer apply to the sale, supply or transfer to Libya of:

1. Arms and related material intended solely for security or disarmament assistance to the Libyan government, notified to the Committee of the Security Council concerning Libya in advance and in absence of a negative decision by the Committee within five working days of such a notification;
2. Non-lethal military equipment when intended solely for security or disarmament assistance to the Libyan government;

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3. The provision of any technical assistance or training when intended solely for security or disarmament assistance to the Libyan government;
4. Small arms, light weapons, and related material temporarily exported to Libya for the sole use of United Nations personnel, representatives of the media, and humanitarian and development workers and associated personnel, notified to the Committee of the Security Council concerning Libya in advance and in the absence of a negative decision by the Committee within five working days of such a notification;
5. Non-lethal military equipment intended solely for humanitarian or protective use, and related technical assistance or training; or
6. Other sales or supply of arms and related material, or provision of assistance or personnel, as approved in advance by the Committee of the Security Council concerning Libya.

Note that only exports of hardware or defense services require UNSC notification. Assuming the Committee of the Security Council concerning Libya does not issue a negative decision, license applications notified to the UNSC are eligible for approval within five working days of the notification; however, the process can take longer. Also keep in mind the requirements under ITAR 126.1(e), including obtaining prior written approval of the DDTC before any proposals or presentations for the sale of defense articles or the provision of defense services may be made to Libya. License applications submitted pursuant to these exceptions must be specific as to how the proposed export meets the exception, should provide detail on the intended end-users and should be accompanied by supporting documentation.

Other Export Control Developments

BIS

- Bureau of Industry and Security Announces SYRIA: Additional Items Eligible for Export/Reexport under License:
http://www.bis.doc.gov/news/2013/bis_press061213.htm
- BIS publishes Rule: Implementation of the Understandings Reached at the 2012 Australia Group (AG) Plenary Meeting and the 2012 AG Intersessional Decisions; Changes to Select Agent Controls:
http://www.bis.doc.gov/federal_register/rules/2013/78FR33692.pdf
- BIS publishes Rule: Addition, Removals, and Revisions to the List of Validated End-Users in the People's Republic of China:
http://www.bis.doc.gov/federal_register/rules/2013/78fr32981%20.pdf
- BIS rolls out two new web-based decision tools: <http://beta-www.bis.doc.gov/index.php/decision-tree-tools>
- Testimony by Assistant Secretary of Commerce for Export Administration Kevin J. Wolf Before the House Foreign Affairs Committee on "Advancing Export Control Reform: The Agenda Ahead":
http://www.bis.doc.gov/news/2013/FINAL_BIS_HFAC_Testimony_for_April_24_Hearing.pdf

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- BIS publishes a Final Rule: Amendments to Existing Validated End-User Authorizations: CSMC Technologies Corporation in the People's Republic of China (PRC): http://www.bis.doc.gov/federal_register/rules/2013/78fr23472.pdf
- Departments of Commerce and State publish final rules: Initial Implementation of Export Control Reform. Both rules become effective October 15, 2013: http://www.bis.doc.gov/federal_register/rules/2013/Commerce%20Rule.pdf; http://www.bis.doc.gov/federal_register/rules/2013/State%20Rule.pdf

DDTC

- Implementation of the Defense Trade Cooperation Treaty Between the United States and Australia; Announcement of Effective Date for Regulations: <http://www.pmdtc.state.gov/FR/2013/78FR32362.pdf>
- The Guidelines for Preparing Electronic Agreements have been revised and posted: <http://www.pmdtc.state.gov/licensing/documents/agreement-ElectronicGuidelinesv4.pdf>
- "Initial Implementation of Export Control Reform" has been published in the Federal Register: <http://www.pmdtc.state.gov/FR/2013/78FR22740.pdf>

OFAC

- Syria Statements of Licensing Policy and Syria General License 11A Issued: http://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/Pages/20130612_44.aspx
- OFAC issues Guidance Relating to an Executive Order Authorizing the Implementation of Certain Sanctions Set Forth in the Iran Freedom and Counter-Proliferation Act of 2012 And Additional Sanctions With Respect To Iran: <http://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/Pages/20130603.aspx>
- Publication of 2012 Terrorist Assets Report: <http://www.treasury.gov/resource-center/sanctions/Programs/Documents/tar2012.pdf>
- General License 7a Issued Clarifying the Definition of the Term "Palestinian Authority" in Response to Announced Resignation of Palestinian Authority Prime Minister Salam Fayyad: http://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/Pages/20130514_33.aspx
- 1st Quarter FY2013 Licensing Activities Undertaken Pursuant to the Trade Sanctions Reform and Export Enhancement Act of 2000 (TSRA): http://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/Pages/20130510_33.aspx
- Release of OFAC Civil Penalties Information: <http://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/Pages/20130425.aspx>
- Zimbabwe General License No. 1: <http://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/Pages/20130424.aspx>
- Submitting OFAC License Applications Electronically: http://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/Pages/20130418_33.aspx
- Sudan General License Issued: <http://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/Pages/20130415.aspx>
- Release of OFAC Civil Penalties Information: http://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/Pages/20130412_33.aspx
- Magnitsky Sanctions Listings: <http://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/Pages/20130412.aspx>

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Please note:

This newsletter contains general, condensed summaries of actual legal matters, statutes and opinions for information purposes. It is not meant to be and should not be construed as legal advice. For more information, please visit our website at www.williamsmullen.com or contact Thomas B. McVey, 202.293.8118 or tmcvey@williamsmullen.com.

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