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INTERNATIONAL TRADE AND TECHNOLOGY TRANSFER (IT^3) UPDATE

Squire, Sanders & Dempsey L.L.P.

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Future of BIS' Validated End-User Program Remains Clouded

The future of the Bureau of Industry and Security's (BIS) Validated End-User (VEU) program remains uncertain in the wake of the Commerce Department's off-again, on-again actions related to the program in recent months, the continuing opposition to the program by some in Congress and the change in administrations. Authorization VEU permits exports of specific items, such as certain semiconductor manufacturing equipment and materials, to end-users who have been pre-approved or "validated" by BIS, without the need to apply for individual export licenses. Envisioned by BIS as a means for easing export licensing requirements for US companies for certain high-tech exports to end-users in the Peoples Republic of China and India, use of export authorization VEU to date has been limited, with no additional end-users having been added to the original list of five China-based VEU-approved companies since that list was adopted in October 2007. According to recent reports, only one of those five approved end-users actually has received exports under the VEU program.

Questions regarding the ability of the US government to monitor VEU end-users appear to have been the primary reason for the program's limited application to date, as well as the basis for opponents of the program to call for its abandonment. A key qualification for end-users seeking VEU approval is that they agree to onsite reviews by US government representatives to ensure adherence to the conditions of the VEU authorization. Controversy with regard to whether the US government would have onsite access to the five VEU-approved end-users in China, their agreement to such access notwithstanding, grew last year after China's government announced that the VEU program had been implemented without recognizing its authority to determine whether and how US officials would be permitted to visit and verify VEU end-user facilities in China. A GAO report released in October 2008 called for the program to be suspended because, without a VEU-specific inspection agreement with China, the United States could not ensure that goods exported to China under the VEU program were being used as intended, and not for military purposes. The inability of the United States and China to reach agreement formalizing procedures for onsite inspections led to an announcement by Undersecretary of Commerce Mario Mancuso in December that the United States might decide to suspend the VEU program.

Prospects for the VEU program appeared to brighten early this year after China, perhaps in response to the US threat that the program might be suspended, signed an agreement with the United States on January 12 to allow BIS representatives to conduct on-site audits of compliance records of VEU-approved end-users and to interview their employees. BIS announced that the agreement would allow BIS to approve five additional VEU applications that had been pending before BIS for more than a year. A BIS source reportedly estimated that these five additional companies, together with the five previously approved VEU users, would account for about 90 percent of exports subject to BIS licensing to China.

However, the future of the VEU program remains uncertain. The five additional VEU-approved end-users touted in BIS' announcement in January have yet to be formally designated, and the decision on whether to do so now rests with the Obama Administration. With no additional end-user applications in the offing, BIS reportedly has disbanded the staff assigned to review new VEU applications. There is also opposition to the VEU program among members of Congress. Rep. Ed Markey (D-Mass.), who views the VEU program as misguided, recently criticized the agreement's provisions that would give China's government 60-days advance notice before onsite reviews could be conducted, allowing in his view the VEU-approved end-users a 60-day head start on hiding improper transfers or other information from US inspectors.

Do Your EU Affiliates Need ITAR Training?
ITAR Workshops in the United Kingdom

The two-day workshops will take place on Tuesday and Wednesday, June 9-10, 2009. We are also offering an optional half-day International Traffic in Arms Regulations or ITAR basics introductory session on the afternoon of Monday, June 8, 2009, to ensure that attendees relatively new to the practicalities of US export control compliance possess the background necessary to obtain the maximum benefit from the two-day workshop.

Subjects to be covered over the two-day session may, amongst others, include:

- Commodity jurisdiction and ITAR contamination of EU products
- Effective use of ITAR export licenses, TAAs and distribution agreements
- Effective interaction with US suppliers and subsidiaries
- Dual and third country nationals
- Access to the US defense market – business and ITAR/regulatory challenges
- ITAR Compliance for intangible transfers via servers, laptops, PDAs, etc.
- Effective applications and interaction with US Department of State and Department of Defense from an EU perspective
- Re-exports and re-transfers
- Marketing at exhibitions (do's and don'ts).

The workshop will include video examples, group sessions, panel discussions and exercises.

Attendance will be limited to no more than 70 persons, to ensure all attendees benefit from the event. Those who sign up before April 22, 2009, and, therefore, can make use of our "early-bird" discount, will also have the opportunity to provide input to the organizers on the content and topics of the workshops that will take place.

Further Information
If you have any queries about this event, please contact: Miss Nicole Redfearn, at the DMA (Tel: +01428.602611; Fax: +01428.602628; Email: n.redfearn@the-dma.org.uk). Registration will be available at www.the-dma.org.uk.

State Department Announces Further Delay to Implementation of Electronic Notification of Initial Exports of Technical Data and Defense Services; Requires Paper Submissions

As of October 27, 2003 exporters were required to electronically file notice of their intention to begin exporting technical data or defense services under a Technical Assistance Agreement (TAA) or technical data under a DSP-5 license, and as of January 18, 2004, exporters were required to electronically file notice of their technical data exports under an exemption.[1] The US Department of State, Directorate of Defense Trade Controls (DDTC) intends such electronic reporting to occur through use of a DS-4071 form; however, the electronic mechanism to meet the requirement is still not available. In practice, DDTC has declined to accept email notifications, which arguably would be the only means of strictly complying with the regulation in the absence of the reporting system.

DDTC now advises that the electronic system is not yet available but asks exporters to submit paper copies. In a March 5, 2009, notice posted on its website, DDTC announced that until DS-4071 is available, exporters are required to provide notification through a paper submission. Per its March 5 notice, DDTC continues to work on the implementation of the DS-4071. We note that DDTC's final implementation of the DS-4071 and accompanying instructions will be provided by DDTC via a Federal Register notice.

Notwithstanding this March 5 notice, DDTC has not engaged in a formal rulemaking procedure to revise the ITAR to require notification of initial exports of technical data or defense services through a paper submission to DDTC until the electronic system is available. Therefore, until such time as the electronic means is available or the ITAR is revised pursuant to a rulemaking process, the paper notification of an initial export is advisory and not an enforceable requirement. Nonetheless, given the March 5 notice clarifying DDTC's position, it is advisable that companies submit the paper notices, if they are not doing so already.

Can Using Your BlackBerry Device Overseas Violate the ITAR?

Today, information is exchanged with greater efficiency than could have been imagined at the birth of the US arms export control regime. Increasing globalization coupled with the proliferation of email, the Internet and data servers that can be accessed from anywhere in the world raises new issues for regulating exports of technical data and information about controlled items. For the unwary, opportunities for unintentional export control violations abound.

A few examples demonstrate why those dealing in controlled technical data must exercise caution in this area. Consider that an email sent from one user in the United States to another user in the United States does not simply travel directly from the sender to the recipient. Rather, email traffic is commonly routed among servers – even servers located outside the United States – before it arrives at its destination. Usually the sender does not know the exact path that an email takes to its recipient, or what other countries it passes through. If an email containing protected technical data passes through a server in Canada, is there an export control violation? What about the US employee traveling in China who receives and opens an email containing technical data on a BlackBerry device or laptop computer? Are these export control violations? It is common in today's marketplace for companies to share information with offices and subsidiaries outside the United States. If a company maintains a data server in the United States that is accessible to non-US personnel, does it violate the International Traffic in Arms Regulations (ITAR) if the server contains technical data about a defense article?

[1] See 68 F.R. 61099 (Oct. 23, 2003); see also 22 C.F.R. §123.22(b)(3).

The foregoing examples demonstrate how those not familiar with the rules or without a plan for dealing with technical data in today's cyber environment might violate export controls. In any case, those subject to the arms control regulations must have at least a basic understanding of what technical data is and how export violations relating to technical data can occur.

What Is Technical Data?

Technical data is defined broadly under the ITAR as "information . . . which is required for the design, development, production, manufacture, assembly, operation, repair, testing, maintenance or modification of defense articles." It is defined by nearly identical terms in the Export Administration Regulations (EAR). Technical data includes information in the form of blueprints, drawings, photographs, plans, instructions or documentation, or models or mock-ups of defense articles or dual-use items.[2]

Given the broad scope of technical data covered by the ITAR and EAR, companies and individuals that deal in defense-related and high-tech articles are likely to have significant contact with electronically stored information subject to export controls.

Rules Governing Export and Re-Export of Technical Data

The ITAR and the EAR describe several ways in which the handling of technical data can constitute an "export" and thus a violation if performed without a license or other authorization. They include disclosing (either orally or visually) technical data to a non-US person whether inside or outside the United States, and sending or taking technical data outside the United States.[3] Note, it is not an export when a person whose personal knowledge includes technical data merely travels outside the United States. Thus, sending an email containing controlled technical data – even to an overseas employee with US citizenship – constitutes an export that requires a license under either the ITAR or the EAR, unless covered by a specific license exemption or exception. Were a US employee to then disclose the contents of such email to a non-US citizen, that act may constitute a separate export transaction – a re-export.

An export of technical data also occurs where a non-US citizen accesses controlled information stored on US-based servers of companies operating in the United States. General Motors and General Dynamics learned this lesson painfully in 2004 when it entered into a consent decree with the US Department of State in which the companies agreed to pay US$20 million in civil penalties to settle charges for ITAR violations. Such violations resulted from the companies' failure to control access to technical data on their servers that related to ITAR-controlled light armored vehicles. The companies were charged with providing unauthorized access to technical data and disclosing such data without DDTC authorization. The resounding question, even after the action against General Motors and General Dynamics, is whether DDTC interprets the definition of "export" to include mere ability to access US technical data or whether an actual transfer must occur. In either case, US-based companies are advised to adopt data storage solutions that include measures to tightly control access to technical data by non-US employees and associates.

A murkier issue raised by the ITAR and EAR definitions of "export" is whether the act of sending an email that contains controlled technical data constitutes an export if the email travels to an overseas router before reaching its US recipient. Given the absence of guidance by either BIS or DDTC on this issue, one might assume that email traffic patterns are outside the scope of the regulations. Nevertheless, US companies should at least understand how their email traffic travels and, in particular, where electronic copies are stored. Failure to do so could lead to inadvertent exports.

[2] See ITAR Section 120.10; EAR Part 772, and 774 Supp. No. 2.
[3] See ITAR Section 120.17(a)(1); EAR Part 734(b).

License Requirements and Exceptions for Technical Data Relating to Defense Articles and Dual Use Items

Not all transmissions of technical data abroad require a license. In fact, license exceptions in the ITAR and EAR cover many common exchanges of technical data.

The ITAR and EAR license exemptions and exceptions that cover exports of technical data are narrow and should be considered carefully when applied to email and other electronic communications with US employees overseas. US employees should travel with laptop devices and mobile email devices that are at all times free of technical data unless exported under a license or specific license exemption or exception. In addition, an email system that allows the US-based employee to review email without creating an electronic copy on the host computer is advisable to avoid unintentional exports or disclosures to unauthorized individuals. Email messages that contain controlled technical data should be marked as such in the subject heading so that recipients can identify them without reading them, and move them to a segregated folder to minimize unnecessary or unintentional exports. This latter measure is important because to use an ITAR license exemption the exporter must certify in writing that the export is covered by an exception, mark the exported data as such and retain the certification document in its files for a period of five years – all of which would be avoided if there were no inadvertent export.[4]

Squire Sanders Partner Speaks at NASA

From March 1 to 6, 2009 the NASA Ames Research Center in Moffett Field, California hosted the CANEUS 2009 Workshop, a forum "dedicated to fostering international collaboration on the development of advanced micro and nano technologies (MNT) from concepts to ultimate infusion into next generation aerospace systems." The organizer of the conference, CANEUS International, coordinates efforts among private companies, government and research universities involved in the development and use of micro and nano technology for the aerospace industry into five consortia projects: small satellites, fly-by-wireless, aerospace reliability, devices and materials.

Squire Sanders partner George N. Grammas spoke at the CANEUS 2009 Workshop to discuss the ITAR and the government approval roadmap forward for the five consortia. If you or your organization is interested in learning more about the ITAR approvals for the international consortia, please contact Mr. Grammas [http://www.ssd.com/ggrammas/] at Squire Sanders.

US-Cuba Sanctions Policy Eased

The US sanctions policy toward Cuba has been eased through the combined effort of Congress and the Obama Administration. On March 11, 2009 President Obama signed the Omnibus Appropriations Act of 2009 (Spending Bill), which includes provisions to ease restrictions on trade and travel to Cuba, shortly after the Obama Administration announced that it would review the US policy toward Cuba. On January 12, 2009 Secretary of State Clinton not only affirmed President Barak Obama's campaign promise to review the Cuba sanctions policy but also stated that the Obama Administration intends to lift travel and remittance restrictions of Cuban-Americans to Cuba.

[4] See ITAR Section 125.6(a).

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Certain members of Congress were key to the passage of the Cuba provisions in the Spending Bill. On February 23, 2009 Sen. Richard Lugar (R-Ind.) issued a Minority Staff Report of the Senate Foreign Relations Committee on the US' Cuba sanctions policy (Lugar Report). The Lugar Report stated that "we must recognize the ineffectiveness of our current policy and deal with the Cuban regime in a way that enhances U.S. interests." Two days later, the House of Representatives passed the Spending Bill by a vote of 245-178. Sens. Robert Menendez (D-N.J.) and Bill Nelson (D-Fla.), who are stalwarts for the current Cuba policy, initially opposed the passage of the Spending Bill because of the provisions easing Cuba sanctions. These two Senators agreed to vote for the passage of the Spending Bill only after Secretary of the Treasury Geithner provided assurances to them that the provisions do not constitute a major reversal of the US policy towards Cuba. The Office of Foreign Assets Control (OFAC), which is housed in the Department of Treasury, administers US sanctions policies including the Cuba sanctions program.

The Spending Bill includes several changes with respect to the Cuba sanctions program. Most notably, family members would be permitted to visit Cuba once a year rather than the current policy of once every three years. Further, family members would be allowed to spend US$170 per day, up from the current restriction of US$50 per day, during their annual visit to Cuba. This bill also contains language that would amend the Trade Sanctions Reform Act of 2000 to permit persons to travel to Cuba to market and sell agricultural and medical products under a general license, which need not be obtained in advance, rather than pursuant to a specific license, which requires a case-by-case review. Secretary Geithner, however, explained to Sens. Menendez and Nelson that only a narrow class of businesses would be eligible for this new business-oriented general license and that travel would only be authorized for credible sales of food and medical products. Although Secretary Geithner assured Sens. Menendez and Nelson that the "payment of cash in advance" regulation would remain in place, the Spending Bill eases the current "payment of cash in advance" restriction for agricultural exports to Cuba by allowing the payments at the time of entry into Cuba or while in transit rather than before the export out of the United States.

To further the environment of change, on March 2, 2009 Cuba President Raul Castro took an unexpected step which confuses the delicate balance of signals between the United States and Cuba. He replaced Foreign Minister Felipe Perez Roque, the former chief of staff to Fidel Castro, with Bruno Rodriguez, who is a career diplomat who has served as the ambassador the United Nations, as Foreign Minister. This is the first time that the foreign ministerial position has gone to a career foreign officer and not a political appointee. While leaving him in the position of vice president of the Council of State, Raul Castro removed Carlos Lage as the secretary of the Council of Ministers and appointed instead a general who last served as chief of staff at the Defense Ministry. Further, Raul Castro has signaled that he is open to negotiations with the Obama Administration. Such actions by Cuba have created an environment for the United States to revisit its 47-year Cuba sanctions program.

The Cuba sanctions program is contained in the Cuban Assets Control Regulations, Title 31 Part 515 of the US Code of Regulations, under the authority of the Trading with the Enemy Act. Through enactment of the Cuban Democracy Act of 1992 and the Cuban Liberty and Democratic Solidarity (Libertad) Act of 1996 (also known as the Helms-Burton Act), Congress strengthened the existing network of Cuba sanctions. The Helms-Burton Act is sometimes misconstrued as limiting executive power in terms of changing Cuba policy. Although Congressional action is required to formally end the embargo, the Helms-Burton Act actually allows the executive branch wide discretion to make changes to Cuba policy through executive order.

President Obama has the authority to make significant changes to Cuba policy by means of regulations, rulings, instructions, licensing or otherwise. He could exercise his discretion and utilize this regulatory tool by permitting travel to Cuba by all eligible persons via a general license, which provides blanket approval for certain exceptions to a sanctions program, rather than requiring a specific license, which must be considered and approved on a case-by-case basis. Past presidents have shaped Cuba sanctions by changing these regulations to reflect various policy priorities of their administrations. For example, President Clinton eased some remittance restrictions, increased the travel scope, and expanded agricultural exports to Cuba through licensing requirement changes. President George W. Bush, however, reversed President Clinton's easing of sanctions by restricting the licensing requirements during his eight years in office. This Congress has indicated that it is reluctant to spearhead reform regarding US policy towards Cuba and signaled that major changes in the Cuba sanctions policy should come from the executive branch. Through its control over licensing authority, the Obama Administration has the power to further ease the embargo against Cuba.

Recent Enforcement Actions and Updates

Directorate of Defense Trade Controls (DDTC) – US Department of State

- **Qioptiq Agrees to US$25 Million Civil Penalty to Settle Charges of 163 ITAR Violations.** Qioptiq S.a.r.l., a Luxembourg-based optics company, entered into a consent agreement with the DDTC to pay US$25 million in fines and remedial compliance measures to settle 163 alleged violations of the ITAR. The violations involved unauthorized exports and re-exports of military-grade night vision components and technical data without required licenses from the DDTC, which were committed by certain Thales High Technology Optic Group companies and their predecessors prior to Qioptiq's acquisition from Thales France in December 2005. The DDTC will hold an acquiring company strictly liable for ITAR violations committed by the acquired company. The DDTC has long said that it considers an acquiring company to be strictly liable for export violations committed by the acquired company.

  Some of the unauthorized transfers and retransfers of technical data arose in connection with a technical assistance agreement (TAA) between Thales Optem Inc. (US) and Thales Electro-Optics Pte Limited (Singapore). First, the US company started exporting technical data to the Singapore company prior to the execution of the TAA. Second, the US company exported enhanced night vision goggle (ENVG) technical data of ITT Night Vision, which was outside the scope of technical data to be transferred under the TAA. Moreover, the US company concealed the ENVG exports by marking the technical data as SNVG (special night vision goggle). An email to the Singapore company uncovered by the DDTC stating that the SNVG label was a "decoy" bolstered the DDTC's charge of misrepresentation and omission of facts regarding these transactions allegedly made under the TAA.

Office of Foreign Assets Control (OFAC) – US Department of Treasury

- **Lloyds TSB Bank Agrees to Record US$350 Million Penalty for Violations of Iranian Transactions and Sudanese Sanctions Regulations.** Under deferred prosecution agreements (DPA) with the US Department of Justice and the New York District Attorney's Office, Lloyds TSB Bank plc agreed to forfeit US$175 million to each entity for engaging in transactions in violation of the Iranian Transactions Regulations (ITR) and Sudanese Sanctions Regulations (SSR) and for violating New York's falsifying business records statute. The US$350 million is the largest penalty imposed for a violation of US sanctions law and is roughly equal to the total dollar volume of the prohibited transactions.

Lloyds implemented a procedure to remove material information – such as customer names, bank names, and address – from payment messages received from UK subsidiaries of banks in Iran to avoid detection of the sanctioned parties by filters at nonaffiliated US financial institutions. By preventing US banks from detecting and rejecting these transactions, Lloyds caused US banks to provide prohibited services to Iran, a sanctioned country. Lloyds branches in Dubai and Tokyo also removed references to Iran from payment messages. The total value of the "stripping" transactions by Lloyds on behalf of the banks in Iran amounted to roughly US$300 million. Lloyds performed similar services, although on a smaller scale, for Sudan-based banks, which amounted to roughly US$20 million. Lloyds also engaged in US dollar trade finance transactions, such as letters of credit and guarantees, involving banks from countries subject to OFAC sanctions, principally, Iran and Sudan.

In addition to the record penalty, the DPAs are noteworthy because the court permitted the application of US sanctions law to a non-US person, whose prohibited activities occurred entirely outside the United States. Therefore, the basis for finding jurisdiction in this case must rest in the concept that Lloyds has a sufficient nexus with the US due to the fact that its conduct caused nonaffiliated US persons to commit OFAC violations.

OFAC did not take part in the DPAs. However, discussions are underway regarding these violations with OFAC, which agreed to credit the US$350 million payment toward any penalty it may decide to impose. Moreover, there is a broader investigation into the accessibility of the US financial system by sanctioned parties, with nine other internationally active banks reportedly under investigation.

- **Stena Bulk Settles Allegations of Violating Sudanese Sanctions for US$426,486.** Houston-based Stena Bulk Llc, a subsidiary of the Sweden-based oil tanker company, agreed to pay a civil penalty of US$426,486 to settle allegations that it violated the Sudanese Sanctions Regulations for assisting in the transportation of oil to Sudan and for exporting oil from Sudan without an OFAC license. Stena Bulk voluntarily disclosed these activities to OFAC.
- **Priceline Settles Charges of Violating Cuban Assets Control Regulations.** Priceline.com, Incorporated remitted US$12,250 to OFAC to settle allegations that it violated the Cuban Assets Control Regulations when its non-US subsidiaries arranged hotel reservations for Cuban nationals without an OFAC license. OFAC considers US-owned or controlled firms subject to these sanctions. Priceline submitted a voluntary disclosure regarding this matter to OFAC.
- **Vonberg Valve Settles Allegations of Violating Iranian Transactions Regulations.** Vonberg Valve, Inc., a manufacturer of hydraulic valves used in mobile and industrial hydraulic equipment, agreed to remit US$11,050 to settle allegations that it violated the Iranian Transaction Regulations by exporting goods to Iran without an OFAC license. Vonberg Valve failed to disclose this matter to OFAC voluntarily but has implemented improvements to its US sanctions compliance program.
- **Cotech Settles Charges of Sudanese Sanctions.** Cotech Inc. an exporter of US cotton located in New York, remitted US$6,000 for allegedly attempting to facilitate the shipment of goods from Sudan to Bangladesh in violation of the Sudanese Sanctions Regulations. Cotech did not voluntary disclose its actions to OFAC.

Bureau of Industry and Security (BIS) – US Department of Commerce

- **Cabela's Incorporated Assessed a Civil Penalty for Export Violations.** Cabela's Incorporated has agreed to pay US$680,000 to settle charges for several export violations. Cabela exported optical sighting devices without the required Department of Commerce license (59 instances on exports to Argentina, Brazil, Canada, Chile and Mexico from or about May 25, 2004, to May 6, 2005, and in 17 occasions to Finland, India, Ireland, Malaysia, Malta, Pakistan, South Africa, Sweden and Taiwan from May 12, 2004 to May 17, 2005). In these 76 instances, Cabela also failed to file Export Shipper's Declarations with the US government.
- **Pc Universe Inc. Settlement for Acting with Knowledge of a Violation.** On December 4, 2008 Pc Universe Inc. agreed to pay US$37,500 to settle allegations that it violated EAR by selling, transporting and forwarding digital audio tape drives to Iran without authorization for this transaction and with knowledge of the US embargo to Iran.
- **Buehler Limited Agrees to Pay US$200,000 for Export Without a License of Chemical Mixture Containing Chemical Precursor.** Buehler and Buehler GmbH, an affiliate, exported and re-exported a product called Coolmet, a chemical mixture subject to EAR regulations in which Schedule 3 chemical precursor Triethanolamine must constitute at least 30 percent of the weight. This product was exported without a license to Israel, Thailand, Taiwan and to several other countries, and without the required authorizations and license to Iran.
- **Engineering Physics Software Settles for Export Violations.** On December 15, 2008 Engineering Physics Software was assessed a civil penalty of US$130,000 for engaging in prohibited conduct by exporting engineering software programs from the United States to Iran via the United Arab Emirates without the required OFAC authorization. Furthermore, Engineering Physics Software also exported to India and Pakistan to end-users listed in the BIS Entity List without the required license.
- **Syrvet, Inc Settles for US$250,000 Civil Penalty.** Syrvet, Inc agreed to pay US$250,000 to settle charges for 38 violations of the EAR. BIS alleged that Syrvet engaged in prohibited conduct by exporting electric cattle prods without the required license to end-users or to end-users that had an expired license, acting with knowledge of violation and false statements in the Shipper's Export Declaration.
- **Well-Being Enterprise Co Ltd Assessed Civil Penalty for Conspiracy to Export Without Required License.** Well-Being Enterprise Co Ltd has settled 25 charges for a civil penalty of US$250,000. Well Being was charged with conspiracy to export items from the United States to Taiwan without the required export license, instructing a US affiliate (i) not to tell US suppliers that the items were to be exported to Taiwan and (ii) to refrain from mentioning the US affiliate's name to the US supplier because it likely knew of the affiliate's relationship with Well-Being. The company was charged with 22 counts of commanding or inducing an act by instructing the US affiliate to procure and export to Taiwan certain chemicals, metals and electronic components without the required license. Such metals included nickel powder, hafnium, zirconium and bismuth. These chemicals and metals are controlled under the EAR for nuclear proliferation reasons and require a license for export to Taiwan. In three related cases, a San Francisco-based company and two individuals have been barred from exporting items on the Commerce Control List for a period ranging from two to 20 years. Also, there was one count of exporting sodium fluoride to Taiwan without an export license.

- **Thomas J. Diner and Amerisource Settle Allegations for Causing, Aiding and Abetting.** On February 6, 2009, Thomas J. Diner and Amerisource Inc. settled alleged BIS charges. Both were charged with causing, aiding, adding and abetting to permit false representations in a Shipper's Export Declaration to falsely represent that the item being exported from the United States was "UCAR-GRAPHITE." Thomas J. Diner and Amerisource agreed to pay US$11,500 on civil penalties.
- **Aircraft Parts to Iran.** On January 26, 2009 Kesh Air International and its founder Hassan Saied Keshari pleaded guilty before a Florida court to conspiracy for their role in the illegal export of military and commercial aircraft parts to Iran. Kesh Air International purchased aircraft parts on behalf of purchasers in Iran and exported the aircraft parts to Iran by way of freight forwarders in Dubai, United Arab Emirates.
- **Interpoint Corporation Agrees to Pay US$200,000 in Civil Penalties.** Interpoint Corporation was charged with a total of 39 counts, seven of which were violations of export regulations after it exported DC to DC converters or electromagnetic interference filters to the People's Republic of China with knowledge that they would be used in the design, development, production and use of rocket systems capable of a range of 300 kilometers. In addition to having knowledge of the violations, which added to the number of charges, Interpoint exported these products to a company on the BIS Entity List.

FCPA – US Department of Justice and Securities and Exchange Commission

- **Mario Covino and Richard Morlok Plead Guilty to FCPA Violations:** Covino and Morlok, former executives of a California-based valve company, each pled guilty to one count of conspiring to violate the FCPA. Each admitted to causing company employees and agents to pay more than US$600,000 to officials of a state-owned enterprise who had the authority to award contracts or influence projects' technical specifications to favor the valve company. Sentencing for both individuals is scheduled for later this year. Each faces a maximum of five years in prison, three years supervised release and a US$250,000 fine, or twice the pecuniary gain or loss resulting from the offense, whichever is greater.
- **ITT Corporation Settles Securities and Exchange Commission FCPA Action:** The Securities and Exchange Commission (SEC) filed a settled civil action that alleged ITT Corporation (ITT) violated the FCPA's books and records and internal controls provisions as a result of improper payments to officials in China by employees or agents of ITT's wholly-owned China- based subsidiary, Nanjing Goulds Pumps Ltd. (NGP). The SEC's complaint alleged that NGP employees or agents paid officials of China's state-owned enterprises to influence the design of infrastructure projects to require NGP's pumps. Without admitting or denying the SEC's allegations, ITT consented to the entry of a final judgment permanently enjoining it from future books and records and internal controls violations. ITT will disgorge US$1,041,112 in profits and pay a US$250,000 penalty.
- **KBR LLC, KBR, Inc., Albert Stanley and the Halliburton Company Agree to Pay More Than US$589 Million:** Related actions were brought against Kellogg Brown & Root LLC (KBR LLC), Albert Stanley, KBR, Inc. and the Halliburton Company.[5] The underlying conduct concerned a decade-long scheme to bribe Nigeria's government officials to obtain natural gas facilities contracts. Stanley admitted to meeting with the officials to ask them to designate representatives with whom the officials' bribes should be negotiated. Stanley and KBR LLC admitted to authorizing a joint venture, to which KBR LLC was a

[5] Halliburton is the former parent company of KBR LLC and KBR LLC's predecessors. KBR, Inc. is the current parent company of KBR LLC. Stanley is a former CEO of KBR LLC.

party, to hire the officials' designated "cultural advisors." The joint venture paid "consulting fees" of more than US$182 million to the "cultural advisors," who in turn made payments to the officials. The plea agreement entered into by Stanley and the DOJ provides for seven years in prison and US$10.8 million in restitution.[6] KBR LLC agreed to pay a US$402 million criminal fine, retain a FCPA compliance monitor and undergo organizational probation for three years. To settle the SEC's charges, KBR, Inc. and Halliburton agreed to pay US$177 million in disgorgement. KBR, Inc. must retain an FCPA compliance monitor for three years, and Halliburton must retain an independent FCPA compliance consultant. Stanley settled the SEC action against him by agreeing to permanent enjoinment of violating the FCPA. The combined US$579 million in penalties represents the largest penalties ever paid by a US company in the FCPA's history.

- **Con-Way, Inc. Settles SEC FCPA Allegations:** The SEC alleged that Con-Way, Inc., an international freight transportation and logistics company, violated the FCPA's internal controls and books and records provisions when a subsidiary outside the United States controlled by Con-Way made hundreds of payments to government officials. The improper payments were not accurately reflected in Con-Way's books and records. Con-Way also knowingly failed to implement a system of internal controls that would ensure compliance with the books and records and internal control provisions of the FCPA. The SEC issued a cease-and-desist order against Con-Way and ordered it to pay a US$300,000 civil penalty.
- **Shu Quan-Sheng Pleads Guilty to Bribing Chinese Government Officials:** Quan-Sheng, a US citizen and executive of AMAC International, a Virginia-based company, pled guilty to offering, promising, paying and authorizing the payment of bribes to government officials in China. The bribes were to induce and influence government officials' decisions and to secure an improper advantage by awarding a hydrogen liquefier project to a France-based company that had retained Quan-Sheng as its representative. Quan-Sheng also pled guilty to two counts of violating the Arms Export Control Act. Sentencing is scheduled for April 2009. Quan-Sheng faces a maximum sentence of 10 years in prison and a US$1 million fine for each Arms Export Control Act violation and a maximum of five years in prison and a fine of US$250,000, or twice the gross gain or loss, for violating the FCPA.
- **Aibel Group Ltd. Pleads Guilty to FCPA Violations and Will Pay US$4.2 Million:** Aibel Group Ltd., a UK corporation, pled guilty to one count of conspiring to violate and one count of violating the FCPA. The 2008 prosecution arose out of Aibel's breach of a Deferred Prosecution Agreement previously entered into with the DOJ. The original allegations concerned nearly 400 illegal payments to customs officials in Nigeria made by Aibel's international freight forwarder. The freight forwarder made the bribe payments to gain preferential treatment for clearing Aibel's goods through customs. In addition to the US$4.2 million fine, Aibel will serve two years of organizational probation.
- **Misao Hioki Pleads Guilty to Conspiring to Violate the FCPA's Anti-Bribery Provisions:** Hioki pled guilty to conspiring to bribe officials in Latin America to obtain and retain business for his company and its US subsidiary. Hioki negotiated illegal payments with employees of state-owned enterprises and approved making the payments through local sales agents. Hioki concealed the payments within the agents' commissions. Hioki also pled guilty to conspiring to rig bids, fix prices and allocate market shares. Hioki will serve two years in prison and pay a fine of US$80,000.

[6] The DOJ also charged Stanley with conspiracy to commit mail and wire fraud as part of a separate kickback scheme.

- **Siemens AG and Subsidiaries Agree to Pay a Record US$800 Million:** Siemens AG pled guilty to books and records and internal controls charges brought by the DOJ and consented to the SEC's filing of a complaint that charged anti-bribery, books and records and internal control violations. Three Siemens AG subsidiaries also pled guilty to conspiring to violate provisions of the FCPA. At least 4,283 corrupt payments, totaling roughly US$1.4 billion, were used to bribe officials in return for business in nearly a dozen countries. An additional 1,185 payments to third parties, totaling approximately US$391 million, were used, at least in part, for illicit purposes. These systematic payments were not recorded properly, and Siemens AG failed to devise and maintain an adequate system of internal controls to prevent such payments. Siemens AG and its subsidiaries will pay US$800 million to US authorities in fines and disgorged profits. Siemens AG must also retain an internal monitor for four years. On the same day that Siemens AG settled FCPA allegations, it also settled with authorities in Germany for approximately US$569 million. Including the approximately US$287 million that Siemens previously paid to Germany in a related investigation and the reported US$850 million Siemens has paid in professional fees and compliance costs, the total cost more than US$2.5 billion.
- **Fiat S.p.A. and Subsidiaries To Pay More Than US$17 Million:** The DOJ and SEC alleged that Fiat S.p.A., CNH Global N.V., and subsidiaries controlled by both entities committed illegal acts arising out of the U.N. Oil for Food Program. Specifically, the DOJ charged two Fiat subsidiaries with one count of conspiracy to commit wire fraud and to violate the books and records provisions of the FCPA. The DOJ also charged a third Fiat subsidiary solely with conspiracy to commit wire fraud. The SEC alleged that Fiat and CNH Global, a majority-owned subsidiary of Fiat, as well as subsidiaries controlled by both Fiat and CNH Global, violated the books and records and internal controls provisions of the FCPA. The underlying conduct concerned the alleged bribery of officials in Iraq, the improper recording of these bribes as "after sales service fees" and the failure of Fiat and CNH Global to design and maintain adequate systems of internal controls to detect and prevent such illegal payments. Fiat will pay more than US$17 million in penalties, disgorgement and prejudgment interest.

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