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INTERNATIONAL TRADE AND TECHNOLOGY TRANSFER REPORTER

A Semiannual Publication of the Squire Sanders
Global Import and Export Compliance Group

2011 Issue 2

Inside

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Upcoming Events:

FOREIGN CORRUPT PRACTICES ACT REFORM: A PATH TOWARD PRACTICAL COMPLIANCE

Please join Squire, Sanders & Dempsey on December 6 for "Foreign Corrupt Practices Act Reform: A Path Toward Practical Compliance." This briefing, for clients and other interested parties, covers proposed amendments to the Foreign Corrupt Practices Act (FCPA) including a discussion with Congressman Robert C. "Bobby" Scott, Ranking Member of the US House Judiciary Subcommittee on Crime, Terrorism and Homeland Security. Registration is available at ssd.com.

Global Import and Export Compliance Group

The *International Trade and Technology Transfer Reporter* is a semiannual publication of the Squire Sanders Global Import and Export Compliance Group. With 36 offices in 17 countries, Squire Sanders is the first choice for one-stop global import and export compliance advice. See the back page of this newsletter for a listing of our key import/export compliance lawyers. Our Global Import and Export Compliance Group focuses on:

- Export controls and trade sanctions
- Customs
- Anticorruption
- Global government contracting
- Cross-border transaction and investment compliance

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New Dual National/Third-Country National ITAR Rule May Not Obviate Conflicts With Foreign Employment and Privacy Laws as Intended

On August 15, 2011 a new "dual national/third-country national" rule took effect in the International Traffic in Arms Regulations (ITAR) under 22 CFR 126.18. Section 126.18 provides an option for non-US parties to State Department-approved agreements for example, foreign licensees and sub-licensees under technical assistance agreements (TAAs). The rule allows for non-US parties to vet their dual national and third-country national (DN/TCN) employees concerning the risk of diversion of the US Munitions List (USML) defense articles including technical data, as an alternative to having the State Department's Directorate of Defense Trade Controls (DDTC) undertake the vetting process. Subject to compliance with its requirements, Section 126.18 authorizes distribution within the non-US business entity of unclassified technical data received under a TAA or other approved agreement, export license or license exemption, including distribution to vetted DN/TCNs who are bona fide regular employees directly employed by the non-US entity.

The purpose of the vetting process, whether undertaken by non-US business entities under the new ITAR Section 126.18 or by DDTC under past procedures, is to authorize the non-US parties to approved agreements, and sub-licensees to TAAs, to retransfer technical data received from a US party under the agreement to those employees whose nationalities or countries of origin may be different from the country of their employer (e.g., the approved licensee(s) and sub-licensee(s) under a TAA). Until ITAR Section 126.18 took effect, a DN/TCN employee's nationality (country of origin or birth as well as citizenship) had to be established by the parties to the TAA, manufacturing license agreement or warehouse and distribution agreement and vetted by DDTC before ITAR-controlled technical data could be retransferred by a non-US party to that DN/TCN employee. Under this procedure, which remains available as an alternative to the use of the "foreign vetting" process under new ITAR Section 126.18, approval of DN/TCNs may be sought by the parties to a TAA in two ways:

- The US party in requesting DDTC approval of a proposed agreement can request DN/TCN authorization under ITAR Section 124.16. Section 124.16 authorizes DDTC to approve retransfers of technical data and defense services to DN/TCN employees of TAA licensees and sub-licensees provided (i) the DN/TCNs are nationals exclusively of NATO member countries, EU member countries, Australia, Japan, New Zealand or Switzerland (and their employer is a signatory to the TAA or has executed a non-disclosure agreement) and (ii) the retransfer takes place completely within the physical territories of these countries or the United States.
- Either as an alternative or in addition to requesting authorization under ITAR Section 124.16, the US party requesting DDTC approval of a proposed TAA or other agreement may request DN/TCN authorization under ITAR Section 124.8(5) for any DN/TCN nationality desired, which, if approved, is then specified in the agreement.

However, regardless of whether authorization is sought under Section 124.16 or Section 124.8(5), the nationality and country of origin of the DN/TCN employee must be ascertained under the DDTC vetting process. A primary reason for the adoption of the new foreign vetting DN/TCN option under ITAR Section 126.18 was to address concerns expressed by non-US companies that requesting nationality and country of origin information from employees violated national or regional employment or privacy laws to which they were subject. Unfortunately, certain requirements of the foreign vetting process, discussed below, may raise like concerns.

As stated in DDTC Guidance, the foreign vetting option "places the ultimate responsibility for vetting DN/TCNs with the foreign parties," permitting them to "make the determination on applicability of § 124.16 and/or vet their own DN/TCNs pursuant to § 126.18." Of course, to make a determination on the applicability of ITAR Section 124.16 (the provision covering the NATO, EU and the list of approved nationalities), a licensee or sub-licensee to a TAA must inquire as to employees' nationalities as well as countries of origin just as is done under the DDTC vetting process, thereby subjecting non-US companies to potential exposure under their home nation's non-discrimination laws. However, non-US parties to agreements are not required to make a determination of applicability of ITAR Section 124.16 and may choose instead to vet their DN/TCN employees solely under ITAR Section 126.18. In this regard, DDTC Guidance provides that "[w]hen foreign licensees/sublicensees make determination of employee pursuant to § 126.18, country of origin is not a determining factor – substantive contact with risk of diversion is the determining factor." And, Section 126.18 provides that "[a]though nationality does not, in and of itself, prohibit access to defense articles, an employee who has substantive contacts with persons from countries listed in §126.1(a) shall be presumed to raise a risk of diversion, unless DDTC determines otherwise."

While nationality and country of origin are not determining factors under the foreign vetting option, questions remain as to the legality under other countries' laws of employee screening requirements related to assessing "substantive contact with risk of diversion." A condition of ITAR Section 126.18 is that the non-US party to the agreement implement "effective procedures to prevent diversion." This requirement is satisfied by:

- The procedures required for a security clearance approved by the host nation government for its employees; or
- Having in place a process for screening employees for "substantive contacts" with restricted or prohibited countries listed in ITAR Section 126.1 and for employees to execute a Non-Disclosure Agreement in the form prescribed by DDTC.
- "Substantive contacts" with ITAR Section 126.1 countries is defined under ITAR Section 126.18 to include "regular travel to such countries, recent or continuing contact with agents, brokers, and nationals of such countries, continued demonstrated allegiance to such countries, maintenance of business relationships with persons from such countries, maintenance of a residence in such countries, receiving salary or other continuing monetary compensation from such countries, or acts otherwise indicating a risk of diversion." To satisfy the screening requirement, non-US parties "must maintain a technology security/clearance plan that includes procedures for screening employees for such substantive contacts and maintain records of such screening for five years."

Consider the following list of sample questions published in DDTC Guidance for use in the screening of DN/TCNs as part of the technology security/clearance plan required for retransfer of ITAR-controlled technical data to DN/TCN employees who do not have security clearances approved by the host nation's government.

a) How often and where do you travel outside (country of employment) for purposes other than employment with this company?

b) Do you hold/use a passport from another country?

c) Do you maintain a residence in another country?

d) Do you have business contacts, business partners, business contracts, brokers or any other relationship with a business in another country or other countries subject to a US or UN embargo?

e) Do you have contact with family members who work for or with the government of another country? If so, what is their relationship with the government?

f) Do you have contacts with any other individuals or groups involved in acquiring controlled defense articles, including technical data, illegally or otherwise circumventing export control laws? Please explain the nature of that contact.

g) Do you hold any office, position, appointment or any other relationship with the government of another country?

h) Do you receive a salary, compensation, or any payment from any source (e.g., government, business, other organization or individual) in another country?

i) Do you have contacts with agents from another country or another country's government?

j) Have you ever served in or provided information to the government of another country (e.g., military, foreign ministry, intelligence agency or law enforcement)?

k) Is there any aspect of your overall relationship to another country that would cause you to violate company rules or release ITAR-controlled defense articles including technical data without authorization?

l) Have you ever been approached or asked, directly or indirectly, to provide any ITAR-controlled defense article including technical data without authorization?

m) Have you ever sold or been provided any ITAR-controlled defense articles including technical data of the company or any former employer without authority?

n) Have you fully and completely disclosed all contacts with foreign persons, groups, associations, businesses and governments?

o) Have you provided fully and truthfully all your contact information to the company, including any addresses, cellular telephone numbers, electronic mail addresses and social networking addresses?

p) Will you report promptly to the company security officer inquiries or efforts by others in any manner to acquire export-controlled defense articles including technical data without a license or other authorization?

q) Have you answered all questions above fully, honestly and faithfully?

Thus, while use of the foreign vetting procedure under ITAR Section 126.18 would seem at first blush to obviate the concerns of non-US companies that inquiries regarding their employees' nationality and country of origin may lead to liability under domestic laws, the process required for screening employees for substantive contacts with ITAR Section 126.1 proscribed countries appears to raise similar problems.

EU and US Economic Sanctions Against Libya and Syria Continue to Evolve

As the political landscapes in both Libya and Syria continue to evolve, so too have the EU and US economic sanctions programs against those countries, but in opposite directions. The ouster of Muammar Gadhafi in Libya and

the country's continued steps toward stability have been recognized in both the EU and US, which have responded with measures to ease sanctions and support reforms. In Syria, on the other hand, escalating violence and growing disapproval by EU and US the Syria's leadership have led to the imposition of greater economic sanctions.

The following is an overview of the sanctions programs maintained against Libya and Syria on both sides of the Atlantic and recent changes to those programs.

Sanctions Against Libya

EU Council Decision 2001/137 and Regulation 204/2011 imposed restrictive measures in view of the situation in Libya in March 2011. The sanctions have been amended several times since. Prohibited is the export of military items and equipment for internal repression as well as the provision of related technical assistance, brokering services or financing. Furthermore, the EU imposed a flight ban in Libya's airspace and on flights of Libyan aircraft in EU airspace, as well as pre-arrival and pre-departure information and reporting requirements. Listed individuals, including members of the Gadhafi family, are prohibited from travelling to the EU, and the funds of those listed have been frozen. EU citizens are prohibited from providing any funds or economic resources to those listed natural or legal persons.

In view of the recent developments the EU is in the process of successively lifting the sanctions. Decisions 2011/521 and 2011/543 implemented by Regulations 872/2011 and 925/2011 delisted certain Libya-based banks, oil companies and port authorities in September.

Subsequent Decision 2011/625 and Regulations 941/2011 and 965/2011, implementing UN Security Council Resolution 2009(2011), further lift the sanctions. They provide for certain exemptions to the arms embargo if notified and not opposed by the sanction committee within five days – notably the supply, sale or transfer of (i) arms and related materiel of all types, including technical assistance, training, financial and other assistance, if intended for security or disarmament assistance to Libya's authorities; and (b) small arms, light weapons and related materiel, temporarily exported to Libya for the sole use of UN personnel, representatives of the media, and humanitarian and development workers and associated personnel.

Furthermore, the Libyan National Oil Corporation (NOC), the Zueitina Oil Company as well as the Central Bank of Libya, the Libyan Arab Foreign Bank, the Libyan Investment Authority and the Libyan Africa Investment Portfolio were delisted. However, all funds, financial assets and other economic resources owned or controlled by these financial institutions that were frozen as of September 16, 2011 remain frozen.

US economic sanctions targeted Libya's government and its former leadership, but recent carve-outs to the sanctions program have eased most restriction. As described in greater detail in the *International Trade and Technology Transfer Reporter* 2011, Issue 1, the US adopted, in February of this year, blocking measures that apply to property and interests in property held by Muammar Gadhafi, his regime and family, as well as to Libya's government, its agencies, instrumentalities and controlled entities, and the Central Bank of Libya. In addition, the US Department of State implemented the United Nations Security Council arms embargo against Libya by adopting a policy of denial for all requests for licenses or other approvals to export or otherwise transfer defense articles and services to Libya, except where in furtherance of the national security and foreign policy of the US. Both the Department of State and the Department of Commerce suspended licenses for all exports to Libya.

Since February, the White House has implemented several important measures to ease sanctions against Libya in the form of general licenses issued by the Department of the Treasury's Office of Foreign Assets Control (OFAC).

General License 6, effective July 15, 2011, authorizes all transactions with the Transitional National Council of Libya, except those that involve previously blocked persons or property. In September, OFAC issued General Licenses 7A and 8A following the United Nations Security Council's decision to lift most multilateral sanctions against Libya's government. General License 7A authorizes US persons to engage in transactions with the NOC, including entities owned or controlled by the NOC, and unblocks property and interests in property of the NOC and its subsidiaries. General License 8A authorizes US persons to engage in transactions involving the government of Libya, its agencies, instrumentalities and controlled entities, and the Central Bank of Libya. Importantly, General License 8A does not unblock any blocked property or authorize transactions involving listed person or entities. These OFAC actions do not affect export license requirements or policies imposed by the Department of Commerce or Department of State, which still remain in effect.

Sanctions Against Syria

EU Council Decision 2011/273 and Council Regulation 442/2011 form the basis of the Syria embargo that came into effect on May 10, 2011 (and has been amended several times since). The Syria sanctions initially comprised an export ban for military items, internal repression equipment and related technical assistance, brokering and financial services. Furthermore, as is the case for Libya, listed individuals are prohibited from travelling to the EU, their funds are frozen and EU citizens are prohibited from providing any funds or economic resources to those listed persons.

Increasing worries about Syria's internal situation led the EU to strengthen the existing measures. Council Decision 2011/522 and Council Regulation 878/2011 imposed an additional ban on the purchase, import or transport of crude oil or petroleum products if the products originate in Syria or are exported from Syria. Also prohibited is the provision of financing, financial assistance, insurance or reinsurance in relation to these prohibitions. An exception exists for contracts concluded before September 2, 2011 if executed prior to or on November 15, 2011. Purchase of a crude oil or petroleum product that had been exported from Syria prior to September 2, 2011 or in accordance with the previous sentence before or on November 15, 2011 will remain permitted. The Council Decision and Regulation further subject additional individuals and companies to the sanctions.

Most recently, Decision 2011/628/GASP and Regulation 950/2011 imposed a prohibition on the financing, acquisition or extension of a participation, or the creation of a joint venture, with any Syrian person engaged in the exploration, production or refining of crude oil. Exceptions exist for the execution of an obligation arising from contracts or agreements concluded before September 23, 2011 and extension of a participation, if such extension is an obligation under an agreement concluded before September 23, 2011. Note that the term Syrian person is very broad and includes (i) the state of Syria or any public authority thereof; (ii) any natural person in, or resident in, Syria; (iii) any legal person, entity or body having its registered office in Syria; and most notably (iv) any legal person, entity or body, inside or outside Syria, owned or controlled directly or indirectly by one or more of the aforementioned persons. Decision 2011/628/GASP and Regulation 950/2011 also prohibit the sale, supply purchase or export, directly or indirectly, of new Syrian denominated banknotes and coinage, printed or minted in the EU, to the Central Bank of Syria. They also further extend the list of controlled individuals. The EU is currently preparing the listing of additional entities (together with a derogation permitting, for a limited period, the use of frozen funds subsequently received by the entity in connection with the financing of trade with nondesignated persons).

US economic sanctions against Syria have until recently consisted of measures blocking property and interests in property of various government officials in Syria as well as restrictions on exports of defense articles and services, items on the Commerce Control List and other items subject to the EAR list (other than EAR99 food and medicine).

Two executive orders issued within the last few months significantly expanded US sanctions against Syria. Executive Order 13573 issued May 18, 2011 added to the list of Syria blocked parties senior officials of Syria's government and any person or entity determined by OFAC to be an agency or instrumentality of the government. Then, on August 17, 2011, Executive Order 13582 blocked property and interests in property of Syria's government and prohibited US persons from new investments in Syria, from providing services to Syria, or from importing or otherwise being involved in transactions relating to petroleum products of Syrian origin.

To implement Executive Order 13582, OFAC recently issued numerous general licenses related to transactions with Syria. These general licenses set forth certain narrow authorizations relating to the following types of transactions: transactions necessary to wind down contracts involving Syria's government; transactions relating to US persons residing in Syria; transactions associated with the United Nations and related programs and funds; transactions by banks operating accounts for nonblocked persons in Syria; transactions involving certain services provided by nongovernmental organizations; third-country diplomatic and consular funds transfers; payments for overflights of Syrian airspace; and certain telecommunications transactions.

The recent EU and US responses to events in Libya and Syria demonstrate the fluidity and complexity of these sanctions programs. Companies are advised to consider carefully any proposed dealings with these countries and to ensure that decisions account for the most recent modifications to the sanctions programs.

UK Export Control Organisation to Charge for Export Licences

The UK export licensing body, the Export Control Organisation (ECO), has announced that it intends to introduce a charging regime for export licenses from April 6, 2012. Licenses were previously available to exporters at no cost.

The ECO made the announcement at the bi-annual joint Government and Industry Export Control Advisory Committee meeting on May 11, 2011. It had been intended that a formal public consultation on the proposal would take place in September 2011, with final responses due by November 2011. However, the ECO has yet to commence any such consultation process so it seems likely that this timetable will slip back.

Although the level of fees has yet to be determined, the ECO has indicated that once the charging regime comes into force then the cost of applying for a standard individual export license (SIEL) is likely to be in the region of £100-200 each. The ECO has also confirmed that a fixed fee will be payable for applying for open individual export licenses (OIELs) and an annual fee will be payable by an exporter for registering each open general export license (OGEL) that it uses.

It is proposed that the charges will be applied at the license application stage rather than when licenses are granted. As a result, applications that are subsequently refused or withdrawn will still incur a charge.

Concerns for Industry

The impact of the charging proposals is likely to be of concern to all UK exporters of controlled goods, but based on the current proposals it appears likely that small and medium enterprises will be hit hardest by the requirement to pay the new charges. The financial impact on UK exporters may discourage businesses from exporting from the UK in favor of jurisdictions that do not impose an equivalent financial levy. This would clearly be damaging for the UK export industry as a whole.

There are also fears that the imposition of charges will result in increased instances of noncompliance with the UK export control regime. The introduction of charges is expected to increase levels of prosecutions and penalties for breaches of UK export control laws as a section of exporters attempt to avoid the new charges by evading licensing requirements.

Another concern for the industry relates to the reasoning behind the decision to implement the charging regime. The ECO has been informed by the UK government that from financial year 2012/13 it will have to be completely self-funding. The decision to begin charging for licenses is clearly a direct response to this challenge as all income from the fees charged will be retained by the ECO.

It remains to be seen whether the charging regime will generate sufficient income for the ECO to operate efficiently once all government funding is cut or whether the organization will be forced to reduce its own resources which, will inevitably have a negative impact on the response times and enforcement activities of what is acknowledged as an already overburdened licensing authority.

When the ECO does begin the consultation process over the coming months, businesses operating in the controlled export industry are advised to respond to the ECO, highlighting any particular concerns in relation to the proposed charging regime. Details of when the consultation will begin will be published by the Department for Business Innovation & Skills on its website at www.bis.gov.uk.

Recent US Enforcement Actions

DDTC – US Department of State

BAE Systems, plc Enters Into a US$79 Million Settlement Agreement With DDTC for Alleged AECA and ITAR Violations

BAE Systems plc, a provider of private defense services headquartered in the UK and a foreign person under US law, entered into a consent agreement with the DDTC to settle 2,591 alleged violations of the Arms Export Control Act (AECA) and ITAR involving the unauthorized brokering by its European subsidiaries of defense articles and provision of defense services to foreign end-users in multiple countries between the 1990s and 2007. Other violations included the failure to: (a) register as a broker, (b) file annual broker reports, (c) report the payment of fees or commissions and (d) maintain records involving ITAR-controlled transactions. BAE agreed to pay a US$79 million civil penalty in fines and remedial payments, which includes US$10 million that will be suspended if BAE employs pre- and post-consent agreement remedial measures. BAE has replaced senior management, established an independent export compliance committee to oversee its ITAR compliance efforts, improved its ITAR compliance resources and procedures, provided various ITAR training, and conducted a targeted ITAR tracking system and audits to ensure the effectiveness of its compliance measures.

When determining the charges to pursue, the DDTC considered mitigating factors, including the change in BAE's senior management and members of the board of directors, and remedial compliance measures implemented after 2007. At the same time, the DDTC considered aggravating factors in determining what charges to pursue, including BAE's failure to cooperate fully in the DDTC's investigation; its incomplete responses to the DDTC's requests for information; and its failure to maintain or produce relevant records. Originally, the DDTC decided to apply an

administrative debarment and rescinded the general policy of denial on license applications with respect to BAE. However, after further cooperation in the investigation, the DDTC reinstated some of BAE's privileges. Certain BAE subsidiaries will still be treated by the DDTC under a policy of denial and are prohibited from exporting or re-exporting defense articles.

BAE's civil settlement with the DDTC comes just after its US$400 million fines in criminal penalties that BAE incurred after pleading guilty in February 2010 to making false statements to the US government and conspiracy.

BIS – US Department of Commerce

Five Companies Settle Antiboycott Charges Paying More Than US$100,000 in Penalties Under EAR

Five companies – Bank of New York Mellon (Shanghai), Smith International Inc., Lynden Air Freight d/b/a Lynden International, Chemguard, Inc. and Applied Technology Inc. – agreed to pay a total of US$102,900 in civil penalties to settle allegations that each violated the antiboycott provisions of the EAR.

The Shanghai branch of Bank of New York Mellon agreed to pay a civil penalty of US$30,000 to settle 15 alleged antiboycott provisions violations. In 2007, the bank conducted transactions selling goods and services from the US to Oman with the intent to support an unsanctioned foreign boycott and provide information concerning business relationships in a boycotted country. Timely payment will restore the bank's export privileges.

Smith International Inc., located in Houston, paid a civil penalty of US$20,500 to settle 11 alleged antiboycott provision violations. In 2006 through 2008, in connection with transactions involving the sale of goods or services from the US to Libya and the United Arab Emirates (UAE), Smith refused to do business with another person pursuant to a request from a boycotting country, certified that no materials were of Israeli origin nor had Israeli content and, on nine occasions, failed to report a request to engage in a restrictive trade practice or boycott, as required by the EAR.

Lynden Air Freight *d*/*b*/*a* Lynden International paid a civil penalty of US$20,400 to settle three alleged violations of the antiboycott provisions of the EAR. On three occasions in 2006, Lynden's Houston office allegedly provided prohibited information while engaging in transactions involving the sale of goods or services (including information) from the US to Libya.

Chemguard, Inc., a Texas company, agreed to pay a civil penalty of US$22,000 to settle seven alleged violations of the antiboycott provisions of the EAR. In 2005 through 2007, Chemguard conducted transactions involving the sale of goods from the US to the UAE with the intent to support an unsanctioned foreign boycott. Chemguard provided information concerning a person's business relationships with a boycotting country and failed to report the restrictive trade practice. Chemguard's export privilege will be denied for a year, if it fails to pay the penalty.

Applied Technology Inc. (ATI), located in Kenansville, NC, agreed to pay a civil penalty of US$10,000 to settle two alleged violations of the antiboycott provisions of the EAR. In 2006, ATI allegedly stated falsely that certain goods did not contain any components of Israeli origin and failed to report to BIS the request to engage in a restrictive trade practice or boycott, as required by the EAR in connection with a transaction involving the sale and transfer of goods or services (including information) from the United States to Libya. If ATI fails to pay the penalty, its export privilege will be denied for a year.

Applied Technology's CEO Fined US$340,000 for Exports to Libya

The president and CEO of ATI, Moe Zayed El-Gamal, located in Kenansville, NC, agreed to pay a civil penalty of US$340,000 and permit BIS to conduct a compliance audit of ATI's exports one year after settlement or four alleged violations of the EAR in connection with the export of controlled networking equipment to Libya without the requisite licenses. Allegedly, on three occasions from June to July 2006, El-Gamal sent networking equipment, which is controlled for anti-terrorism reasons, to the General Electric Company of Libya, without export licenses. Related to these shipments, an ATI employee was found by airport security to be flying from Detroit to Libya with three computer cards hidden in his carry-on luggage. BIS alleges that El-Gamal made false or misleading statements during the course of the government's investigation. Earlier in 2011, El-Gamal pled guilty to one count of material false statement and was sentenced to pay a US$5,000 fine, perform community service and serve two years of probation.

US Freight Forwarder Settles BIS Allegations of Aiding and Abetting Unlicensed Exports

Ram International, Inc., of St. Louis, MO, agreed to pay US$40,000 to settle BIS allegations that it aided and abetted unlicensed exports to a listed Pakistan entity. In 2006, Ram's Elk Grove Village, IL office allegedly assisted an export of scrap electrolytic tin plate steel to Allied Trading Company in Karachi, Pakistan without the required BIS license. Allied is an entity included on BIS' Entity List that names certain foreign persons, businesses and entities that require a license for export, re-export or transfer in-country of specific items.

Former Freight Forwarding Official Charged With Conspiracy to Export Goods to Iran

Federal agents arrested a Netherlands-based freight forwarding company's former official for conspiring with others to violate the International Emergecy Economic Powers Act (IEEPA) and the Iran Transactions Regulations with exports of aircraft parts, peroxide, adhesive primer, aerosols and other items to Iran. According to the unsealed criminal complaint, Ulrich Davis sent prohibited shipments to Iran, hiding the nature of the sensitive items being exported to Iran's military. He was the sales and business development manager for the Netherlands freight forwarding company in 2007 and 2008. If convicted, Davis' maximum penalty will be 20 years in a prison and a US$1 million fine.

Singapore Citizen Settles Conspiracy Charges for US$100,000 and a 25-year Denial Order

BIS announced that Jianwei Ding, of Singapore, who is currently in federal prison, agreed to pay a US$100,000 civil penalty and lose his export privileges for 25 years to settle allegations that he conspired to violate the EAR by knowingly and willfully attempting to export carbon fiber to China for use by the Chinese Academy of Space Technology (CAST) without the requisite export authorization. Carbon fiber materials are controlled by BIS for nuclear nonproliferation and national security reasons. In this case, they were valued at US$315,000. Ding was the manager of several Singapore-based companies that purchased goods for CAST, and he directed the exports. Before settling the administrative actions with BIS, Ding pled guilty to criminal charges and was sentenced to nearly four years in prison.

OFAC – US Department of the Treasury

Global Shipping Company Pays US$374,400 Settlement to OFAC for Alleged Violations of Cuba, Iran and Sudan Sanctions Programs

CMA CGM (America) LLC (CCA), of Norfolk, VA, settled alleged violations of the Cuban Assets Control Regulations, Iranian Transactions Regulations and Sudanese Sanctions Regulations with OFAC for US$374,400. Between

December 2004 and April 2008, CCA provided shipping services for 28 separate transactions with cargo valued at more than US$402,000 that was shipped between third countries and Cuba, Iran or Sudan. Although CCA did not voluntarily disclose its conduct, OFAC significantly mitigated the penalty – from a base penalty of US$640,000 – since CCA's OFAC violations occurred in a pattern of behavior conducted over three years; CCA and its parent engaged in remediation measures company-wide to ensure future compliance with US sanctions; no other OFAC violations occurred in the past five years; some CCA goods exported from third countries to Cuba and Iran may have qualified as agricultural/medical products under the Trade Sanctions Reform and Export Enhancement Act of 2000; and CCA cooperated fully with OFAC's investigation by providing all requested information; large amounts of well-organized data regarding its shipments involving Iran and Sudan; as well as detailed information not specifically requested by OFAC.

Société Générale, New York Settles Alleged Violations of Iran Sanctions

Société Générale, New York Branch (SGNY) paid more than US$111,000 to settle violations of the Iranian Transactions Regulations that occurred from December 2006 to May 2007. SGNY allegedly conducted business with Iran-origin services and facilitated transactions by a foreign person, when a US person's transactions would be prohibited. In particular, SGNY issued bank letters of credit between two nonsanctioned parties and processed the payments under those letters involving the shipment of cargo transported on vessels owned and managed by the Islamic Republic of Iran Shipping Lines of Tehran, Iran, an Iranian entity. The value of the transaction totalled US$329,954. SGNY voluntarily self-disclosed the alleged violation, and OFAC determined it was a non-egregious violation. The base penalty for the violation was US$164,977, but the following mitigating factors lowered the settlement amount: SGNY implemented an improved compliance program by enhancing screening and training; SGNY cooperated with OFAC's investigation; and SGNY had no prior violations within the five years preceding the transaction under investigation.

Foreign Corrupt Practices Act (FCPA) – DOJ and SEC

Diageo Pays US$16 Million to Settle SEC Charges of FCPA Violations

Diageo plc, a leading global producer of premium alcoholic beverages, settled with the SEC by agreeing to pay US$16 million in disgorgements, interest and civil penalties for charges of FCPA violations. Diageo allegedly made improper payments to government officials in India, Thailand and South Korea for more than six years totaling US$2.7 million to obtain "lucrative sales and tax benefits" in connection with its Johnnie Walker and Windsor Scotch whiskeys. Diageo also employed several deceptive business means to disguise the real nature of the payments in its books and records. The settlement order noted that Diageo's rapid global growth through mergers and acquisitions contributed to its FCPA compliance violations.

Weatherford Reports Pending FCPA Investigations and Millions Spent

Weatherford International, an oilfield services and equipment company, reported in its quarterly SEC filing that it spent nearly US$120 million in legal fees for pending investigations into its trade practices related to activities in West Africa. Its 10-Q filing indicated that both the DOJ and SEC are investigating its compliance with FCPA and other laws worldwide. Weatherford stated that it retained legal counsel to investigate these matters and cooperate with the US government. Weatherford has directed its foreign subsidiaries to cease business with countries subject to comprehensive economic sanctions, including Cuba, Iran, Sudan and Syria, which has cost the company nearly US$50 million for such actions.

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