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INTERNATIONAL TRADE & TECHNOLOGY TRANSFER (IT^3) UPDATE

Squire, Sanders & Dempsey L.L.P.

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ITAR HANDBOOK

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Export Controls on US Participation in China's Aerospace Industry

US-based companies may export their dual-use products and technologies to China to establish a joint venture in China to support the growing civil aerospace industry, but they may not export defense articles or defense services to China. The compliance challenge for the US-based partner arises when the joint venture has the opportunity to sell its "dual-use" products to a military agency in China or for use in the military or space industry in China.

The general rule is that exports, re-exports and transfers to and within China of dual-use goods and technologies on the Commerce Control List (CCL) of the Export Administration Regulations (EAR) are subject to licensing requirements as specified on the CCL. However, even if an item on the CCL does not require a license for export to China, a license may be required if the item is intended for a military end-use in China. Further, items that are specifically designed, modified or adapted for military application and are defined as defense articles under the International Traffic in Arms Regulations (ITAR) effectively are prohibited from export to China.

We previously reported that many of the global aerospace and defense contractors have established manufacturing joint ventures in China to address the future supply chain requirements of the two principal players in the aerospace industry in China, Aviation Industry Corporation of China (AVIC) and Commercial Aircraft Corporation of China (COMAC). AVIC, which is the largest aviation company in China, is principally engaged in the development and production of military and commercial aircraft and components. In 2008 China's government approved the formation of COMAC to design and produce commercial aircraft with the goal of reducing China's dependency on foreign-produced aircraft and to compete with Boeing and Airbus in the world's markets. COMAC has begun production of its regional aircraft ARJ21 and has plans for production of the larger C919 passenger aircraft. Lacking experience in the production of large commercial aircraft, China has invited other companies to participate in the design and manufacture of components and systems. For some components (e.g., engines and landing gear), COMAC will contract directly with foreign suppliers. For others, a China-foreign joint venture is preferred (e.g., cockpit panel components and systems, and electrical power distribution components and systems) or effectively required to qualify as a subcontractor (e.g., hydraulic and fuel systems).

Establishing a joint venture in China may involve ongoing delivery of components, technology and services. The ultimate end-use and end-user of these continuing exports are known or constructively known to the US partner, making the US partner accountable for end-use and end-user screening of the transfers by the joint venture – therein lie the export controls compliance concerns. Even assuming that the intended purpose of the joint venture was to support China's COMAC ARJ21 and C919 civil aircraft, the joint venture may identify other opportunities to sell its products. The following progressive cases are illustrative of the compliance concerns.

Case One. The joint venture intends to sell dual-use products to AVIC. Given AVIC's mission, it is likely that the US partner knows (or has reason to know) that the products ultimately will be used in a military application. In this case, the components and technology exported from the United States may require a license, even if the CCL indicates that no license is required. Section 744.21 of the EAR imposes a licensing requirement for certain CCL-listed items when they are exported for a military application in China. In addition, a US Bureau of Industry and Security (BIS) license may be required for the transfer of the joint venture product for a military application, if the US-controlled content is greater than 25 percent of the joint venture product value.

Some examples of items requiring a license to export to or transfer within China for a military application follow. Related software and technology may also require a license.

- 1C990 Limited to fibrous and filamentary materials other than glass, aramid or polyethylene not controlled by 1C010 or 1C210, for use in "composite" structures and with a specific modulus of 3.18 x 106m or greater and a specific tensile strength of 7.62 x 104m or greater.

- 2A991 Limited to bearings and bearing systems not controlled by 2A001 and with operating temperatures above 573K (300 [deg]C).
- 2B991 Limited to "numerically-controlled" machine tools having "positioning accuracies", with all compensations available, less (better) than 9[mu] along any linear axis; and machine tools controlled under 2B991.d.1.a.
- 2B992 Non-"numerically controlled" machine tools for generating optical quality surfaces and specially designed components therefor.
- 3A292.d Limited to digital oscilloscopes and transient recorders, using analog-to-digital conversion techniques, capable of storing transients by sequentially sampling single-shot inputs at greater than 2.5 giga-samples per second.
- 3A999.c All flash x-ray machines, and components of pulsed power systems designed thereof, including Marx generators, high power pulse shaping networks, high voltage capacitors and triggers.
- 7A994 Other navigation equipment, airborne communication equipment, all aircraft inertial navigation systems not controlled under 7A003 or 7A103, and other avionic equipment, including parts and components, n.e.s.
- 7B994 Other equipment for the test, inspection or "production" of navigation and avionics equipment.
- 9A991 Limited to "aircraft", n.e.s., and gas turbine engines not controlled by 9A001 or 9A101.

Case Two. The joint venture intends to modify the dual-use products for a military application. The modifications may cause the dual-use product to become a defense article. However, the joint venture is not subject to the ITAR. It is not a US person under the ITAR, and the defense article does not contain any US-origin ITAR-controlled content. The dual-use components from the United States do not make the foreign-made defense article subject to the ITAR. Thus, the joint venture may be permitted to proceed with this transaction if it were to operate independently of the US partner receiving only dual-use components from the United States.

However, the US partner must be mindful of its obligations under the ITAR. The ongoing support of technology and services from the US partner may constitute defense services under the ITAR. A defense service is defined as "[t]he furnishing of assistance (including training) to foreign persons, whether in the United States or abroad in the design, development, engineering, manufacture, production, assembly, testing, repair, maintenance, modification, operation, demilitarization, destruction, processing or use of defense articles." Thus, the US partner may not provide assistance to the joint venture that would be specific to a defense article manufactured in China, as proposed by the joint venture.

Examples of assistance that may constitute defense services include:

- Assisting in the selection of options or features or advising on trade-offs of choices for a dual-use item to address a specific military or space application; and
- Assisting in the design modifications to a dual-use item to achieve a desired result for a specific military or space application.

It is not a defense service to:

- Assist in the selection of options or features of a dual-use item to meet a customer's requirements when the end application is not known and normally would not be known (no duty to investigate end-use); or
- Assist or train a customer in the use of a dual-use item to achieve the best results, without reference to a particular application.

If the China-based joint venture is permitted to pursue sales to China's military organizations or in military or space applications, it may be advisable to establish procedures or guidelines to protect against any violation of the ITAR attributable to the US-based partner.

Commerce Implements Export Control Revisions While Gearing Up for Reforms

President Barack Obama delivered a pre-recorded opening address to attendees at the Department of Commerce, Bureau of Industry and Security (BIS) annual Update Conference on Export Controls and Policy. The President's unprecedented role in the event was to reiterate the Obama Administration's commitment to broad export control reforms, which include unifying the current trifurcated system for export controls administration, licensing, and enforcement, and consolidating lists of controlled items to a single, three-tiered, "positive" list. According to the president, these reforms will bring "clarity and consistency" to US export controls, and allow the United States to "build higher walls around the export of our most sensitive items while allowing the export of less critical ones under less restrictive conditions."

While personnel from both Commerce and the State Department have been engaged in initial planning for the Obama Administration's proposed reforms, Commerce has meanwhile implemented numerous enhancements to controls of dual-use items under the EAR. Most important among these measures are various revisions to the CCL, clarification of the jurisdictional scope of BIS Commodity Classifications and Advisory Opinions, and the overhaul of controls on exports of encryptions items. The following is a brief overview of each of these initiatives.

1. CCL Revisions

In 2010 the CCL has undergone numerous revisions, some to implement controls from multilateral arrangements including the Wassenaar Arrangement, Missile Technology Control Regime (MTCR) and Australia Group. The most notable among these revisions include:

- The addition of Export Control Classification Number (ECCN) 6A981, which controls passive infrasound sensors (capable of detecting sound from 0.01 to 16 Hertz), which can be used to detect natural or man-made infrasound sources such as earthquakes, volcanic eruptions, rocket launches, nuclear explosions or other events. See 75 Fed. Reg. 37742 (June 30, 2010).
- The addition of three new ECCNs to enhance US homeland security and the security of key US allies by controlling certain concealed object detection equipment operating in the frequency range from 30 GHz to 3000 GHz and related software and technology (2A984, 2D984 and 2E984), which are subject to Regional Stability and Anti-Terrorism controls. Commerce amended the EAR to incorporate also a presumption of approval of requests to

export concealed object detection equipment to governments or government-approved end-users in certain cooperating countries. See 75 Fed. Reg. 14435 (March 25, 2010).

- The amendment to ECCN 1C117 to add new controls for solid tungsten and tungsten alloy billets for the fabrication of missile components, as agreed to by members of the MTCR at the November 2009 Plenary. Other CCL revisions from the MTCR Plenary include clarification that "production equipment" is within the scope of controls of "production facilities" and the removal of controls of "turbo-compound engines," which were deemed not to be a missile proliferation concern. See 75 Fed. Reg. 20520 (April 20, 2010).
- To implement Wassenaar Arrangement 2009 Plenary Meeting agreements: the amendment to CCL entries for certain items that are controlled for national security reasons in CCL Categories 1, 2, 3, 4, 5 Part I (telecommunications), 6, 7 and 9, revising reporting requirements for certain Sensitivity List items covered by ECCNs 4D001, 4E001 and 6A003.b.3, and adding, removing and amending certain EAR definitions. *See* 75 Fed. Reg. 54271 (September 7, 2010).

2. Clarification of the Jurisdictional Scope of BIS Commodity Classifications and Advisory Opinions

BIS has revised Section 748.3 of the EAR to clarify the jurisdictional scope of the agency's commodity classifications and advisory opinions. While not a sweeping reform, the rulemaking nevertheless includes an important message to those seeking and relying on BIS advice. That is, a BIS commodity classification or other BIS advice cannot be relied on as a US government determination that an item is subject to the EAR.

In its notice announcing the rulemaking, BIS stressed that it does not have authority (as the State Department does) to issue commodity jurisdiction determinations. Accordingly, a commodity classification by BIS only reflects whether the subject item is described in the CCL, not whether the item is or is not subject to the EAR. Before requesting a commodity classification or advisory opinion, parties are advised to first determine that the item is not subject to the exclusive export control jurisdiction of another US government agency. The commodity classification or advice does not serve this purpose. See 75 Fed. Reg. 45052 (August 2, 2010).

3. Encryption Export Controls Overhaul

On June 25, 2010, BIS published in the Federal Register an interim final rule implementing sweeping revisions to the EAR's encryption export controls. See 75 Fed. Reg. 36482. Cited as the first step in the Obama Administration's initiative to streamline the regulations governing the export and reexport of encryption items, the reforms deliver on the president's pledge to relax controls on the least sensitive encryption commodities, software and technology.

The most significant changes under the new encryption rules apply to less sensitive encryption items and most mass-market encryption items. Previously, exporters were required to submit these items to BIS for 30-day technical review on a product-by-product basis before seeking export authorization. The new rules eliminate BIS technical review for encryption items of lesser national security concern. Instead, exporters that register with BIS are permitted to self-classify certain mass-market encryption items and use License Exception ENC, "Encryption Commodities, Software and Technology," to immediately export certain non-mass-market encryption items without BIS review. The new rules also eliminate burdensome, semi-annual post-export reporting requirements for most items exported under License Exception ENC, requiring registrants instead to file annual reports to BIS that identify the encryption items that the registrant has self-classified.

The new encryption rules include numerous other significant reforms. For example, they expand the scope of License Exception ENC eligibility for encryption technology classified under ECCN 5E002 (except technology for "cryptanalytic items," "non-standard cryptography" or "open cryptographic interfaces") to allow exports and reexports under the license exception to nongovernment end-users in countries not listed in country group D:1 or E:1. The rules also remove "ancillary cryptography" items – items that are not used for computing, communications, networking or information security – from CCL Category 5. Finally, in addition to limiting the scope of encryption items subject to encryption review requests, the new rules eliminate the requirement to submit such requests to both BIS and the National Security Agency. Encryption review requests are now submitted only to BIS.

US Defense Trade Cooperation Treaties With the UK and Australia Ratified by the US Senate

More than three years after they were originally signed in 2007 during the Bush administration, the Defense Trade Cooperation Treaties negotiated by the United States with the UK and Australia have finally been ratified by the US Senate. The following recent sequence of events has led to the successful conclusion of this process –

September 21	Treaties approved by unanimous consent of the Senate Foreign Relations Committee
September 27	Implementing legislation (Security Cooperation Act of 2010, S. 3847) passed by the Senate
September 28	Security Cooperation Act of 2010 passed by the House
September 29	Treaties ratified by the full Senate
October 8	Security Cooperation Act of 2010 signed into law by President Obama

The US-UK Defense Trade Cooperation Treaty and the US-Australia Defense Trade Cooperation Treaty allow for the export of certain defense articles (hardware and technical data) and furnishing of defense services controlled pursuant to the ITAR between "approved communities" of government and private sector entities in the United States, the UK and Australia without the need for export licenses or other ITAR authorizations from the State Department's DDTC. To qualify for membership in these communities, private entities must meet specific requirements which, for UK- and Australia-based private entities, include approval for inclusion by the USG as well as their respective governments. Under the treaties, it will be possible for most US defense articles to be exported into, and within, these communities without prior licenses or other authorizations pursuant to the ITAR as long as the exports are in support of certain combined military and counterterrorism operations, certain cooperative security and defense research programs and certain development, production and support programs, certain mutually agreed upon security and defense projects where the end-user is the government of the UK or Australia, or certain US government end-uses. Retransfer or re-exports of items originally exported pursuant to either treaty to a person outside the respective approved communities will require US government approval and UK or Australian authorization as appropriate.

The long delay in Senate ratification of the treaties stemmed from demands by the US Congress that it approve implementing legislation. Despite objections to such a requirement voiced by the UK and Australia, the Obama Administration ultimately accepted the fact that the Senate would not ratify the treaties as self-executing and agreed to passage of implementing legislation that would define the regulations necessary to give effect to the ratified treaties. Thus, President Obama's enactment of the Security Cooperation Act of 2010 on October 8 was necessary to implement the Senate's September 29 ratification of the treaties. The implementing legislation modifies the Arms

Export Control Act to allow for the enforcement of the treaties by the executive branch and provides for congressional notification of exports under their provisions. It also allows the president to issue regulations that implement and enforce the treaties. Finally, the Security Cooperation Act of 2010 excludes certain "crown jewels" of US defense technology from being exported without licenses pursuant to the treaties. These items excepted from export under the treaties by the implementing legislation are relatively narrowly focused and include:

- Complete rocket systems (including ballistic missile systems, space launch vehicles and sounding rockets) or complete unmanned aerial vehicle systems (including cruise missile systems, target drones and reconnaissance drones) capable of delivering at least a 500 kilogram payload to a range of 300 kilometers, and associated production facilities, software or technology for these systems, as defined in the Missile Technology Control Regime Annex Category I, Item 1;
- Individual rocket stages, re-entry vehicles and equipment, solid or liquid propellant motors or engines, guidance sets, thrust vector control systems, and associated production facilities, software, and technology, as defined in the Missile Technology Control Regime Annex Category I, Item 2;
- Defense articles and defense services listed in the Missile Technology Control Regime Annex Category II that are for use in rocket systems, as that term is used in such Annex, including associated production facilities, software or technology;
- Toxicological agents, biological agents and associated equipment, as listed in the United States Munitions List (part 121.1 of Chapter I of Title 22, Code of Federal Regulations), Category XIV, Subcategories (a), (b), (f)(1), (i), (j) as it pertains to (f)(1), (l) as it pertains to (f)(1), and (m) as it pertains to all of the subcategories cited in this paragraph; and
- Defense articles and defense services specific to the design and testing of nuclear weapons which are controlled under United States Munitions List Category XVI(a) and (b), along with associated defense articles in Category XVI(d) and technology in Category XVI(e).

The treaties provide that the parties may designate items that are excepted from coverage. Two publicly available lists produced in 2008 may be found on the State Department website It has been reported that the US defense industry is dissatisfied with the lists on grounds that too many items would be excluded. Nonetheless, in a statement issued on September 30, 2010, the Aerospace Industries Association stated that it "welcomes passage of the US-UK and US-Australia Defense Trade Cooperation Treaties by the full Senate [and that] ratifying these treaties will provide important benefits to both our national security and our economy." In a news release of the same date, A|D|S, the UK's AeroSpace, Defence and Security trade organization "welcomed confirmation that the US-UK Defense Trade Cooperation Treaty has passed its final hurdle towards ratification on both sides of the Atlantic with approval coming from the United States Senate and House of Representatives."

The Obama Administration is expected to continue its dialogue with the US defense industry in the process of defining the scope of excluded items and securing effective implementation of the treaties. The three nations also must jointly agree on which projects and operations qualify for exports under the treaties. When fully implemented, the treaties can be expected to boost international collaboration and competition in the defense industry and increase the efficiency of defense procurement.

The State Department Lessens the Licensing Burden on Exporters

In 2010, we observed two important changes in the ITAR that help exporters and proposed changes to lessen the burden on foreign licensees to technical assistance and manufacturing license agreements.

Clarification of Exemption for Export of Technical Data by US Employees

The license exemption under ITAR § 125.4(b)(9) permits certain exported technical data to be "sent by a US corporation," but no regulations – until now – specifically addressed hand-carried technical data, including exports of technical data stored on laptops. On August 27, 2010, DDTC issued its final rule, which was nearly identical to the November 2009 proposed rule.[1] The amended rule finally clarifies that the export exemption for technical data, regardless of format or media, covers data sent or taken by a US person who is employed by a US corporation or Government agency to a US person employed by that US corporation or agency outside the United States. It should be noted that the preamble to the final rule explicitly excludes accredited institutions of higher education or universities from this exemption. The exemption applies only when: (i) the technical data that will be used outside the United States solely by the US person; (ii) the US person is employed by the US government or a US corporation, not by a foreign subsidiary; and (iii) any classified information is sent outside the United States subject to the Defense Department's National Industrial Security Program Operating Manual (NISPOM).

Elimination of Approvals for Proposals

In August 2010, DDTC eliminated its duplicative requirement for prior approval or notification for certain proposals to foreign persons relating to significant military equipment under ITAR § 126.8.[2] The amendment removes the requirement for effectively reviewing the export transaction twice. DDTC reasoned that the requirement imposes an unnecessary administrative burden with effectively no advanced notice, especially given that the State Department's more expeditious processing time for licenses (e.g., manufacturing licensing agreements) is now only about 15 days on average.

Proposal to Relax Requirements for Employment of Dual and Third-Country Nationals

One result of the president's Export Control Reform Initiative effort (discussed in detail above) is that DDTC recently published a proposed rule to lessen the requirements for approved end-users to employ dual-nationals and third-country nationals who have access to ITAR-controlled technical data or defense articles.[3] According to the preamble to the proposed regulations, the State Department recognizes that its prior policy created large administrative burdens on approved end-users and raised human rights implications with primary US allies.

In short, the proposed regulations would permit approved end-users to transfer defense articles and technical data without DDTC approval, if the transfer is within the foreign business or government entity or international organization that is an approved end-user. This includes transfers to dual-nationals and third-country nationals employed by the foreign entity as *bona fide,* regular employees, as long as the transfer occurs within the physical location of the end-user and within the scope of the approved export license or exemption. The rule shifts the responsibility of compliance to the end-user by requiring screening processes to ensure the employees do not retransfer the ITAR-controlled defense articles or technical data to prohibited countries.

[1] *Amendment to the International Traffic in Arms Regulations: Export Exemption for Technical Data*, 75 Fed. Reg. 52,625 (Aug. 27, 2010).
[2] *Amendment to the International Traffic in Arms Regulations: Removing Requirement for Prior Approval for Certain Proposals to Foreign Persons Relating to Significant Military Equipment*, 75 Fed. Reg. 52,622 (Aug. 27, 2010).
[3] *Amendment to the International Traffic in Arms Regulations: Dual Nationals and Third-Country Nationals Employed by End-Users*, 75 Fed. Reg. 48,625 (Aug. 11, 2010).

Recent Enforcement Actions and Updates

DDTC – US Department of State

Xe Services, LLC Enters into a US$42 Million Settlement Agreement With DDTC for Alleged AECA and ITAR Violations. Xe Services, LLC (also known as Blackwater Worldwide), a provider of private security services, entered into a consent agreement with the DDTC to settle allegations of 288 violations of the ITAR involving the unauthorized export of defense articles and provision of defense services to foreign end-users in multiple countries between 2003 and 2009. Xe Services agreed to pay a US$42 million civil penalty, US$12 million of which will be suspended if applied to pre- and post-consent agreement remedial measures. Xe Services has replaced senior management, established an independent export compliance committee to oversee its ITAR compliance efforts, improved its ITAR compliance procedures, provided various ITAR training and conducted a targeted ITAR audit to ensure the effectiveness of its compliance measures. Xe Services also agreed to resolve any outstanding allegations, institute external oversight of its compliance measures, and continue to improve its compliance measures. For these and other reasons, the DDTC decided not to pursue administrative debarment and rescinded the general policy of denial on license applications with respect to Xe Services. However, the DDTC did note in its proposed charging letter that it likely would have proposed more significant charges against and penalties upon Xe Services if the DDTC had "not taken into consideration Respondent's Voluntary Disclosures, remedial compliance measures, cooperation in the latter part of the investigation, change in management, support of US government programs, and the absence of disclosure of sensitive technologies or actual harm to national security as significant mitigating factors."

BIS – US Department of Commerce

Oyster Bay Pump Works, Inc. and Its President Settle With BIS for EAR Violations. BIS charged Oyster Bay Pump Works, Inc. and its owner and president, Patrick Gaillard, with six violations of the EAR. According to BIS, Oyster Bay made one export in 2003 and two exports in 2006 of automated liquid-dispensing laboratory equipment to Cuba via Germany without the required licenses from BIS. In 2006 Gaillard ordered his staff to remove references to Cuba from his company's files and destroy documents relating to exports to Cuba. In 2006 Oyster Bay attempted to export equipment to Iran via the United Arab Emirates without the required authorization from OFAC in violation of the EAR. After learning that the US government confiscated the items destined for Iran, Gaillard ordered his staff to remove references to Iran from his company's files and destroy documents relating to the exports to Iran and the name of the importer in Iran. Oyster Bay and Gaillard each agreed to a three-year denial order and a US$300,000 civil penalty. In 2007, Gaillard pleaded guilty to criminal charges arising out of the unauthorized Iranian exports and was sentenced in 2008 to 30 days in prison, a US$25,000 criminal fine, three years of probation and a US$300 special assessment.

Tyco Valves & Controls LP Reaches US$218,000 Settlement With BIS for Unlicensed Exports. In July 2010 Tyco Valves & Controls LP agreed to pay a US$218,000 civil penalty to settle charges of 26 unauthorized exports of controlled butterfly valves, ball valves and valve assemblies to Brazil, Chile, China, El Salvador, India, Israel, Jordan, Mexico, Singapore and the United Arab Emirates. The valves are classified under ECCN 2B350 and controlled for reasons of chemical and biological weapons proliferation. Tyco voluntarily notified BIS of these unlicensed exports.

OFAC – US Department of the Treasury

Shipping Company Pays US$3.1 Million Settlement to OFAC for Alleged Violations of Iran and Sudan Sanctions Programs. Maersk Line, Limited and its wholly owned subsidiaries, Farrell Lines Incorporated and E-Ships, Inc. (collectively, Maersk) settled allegations of violations of the Iranian Transactions Regulations and Sudanese Sanctions Regulations with OFAC for US$3.1 million. Between January 2003 and October 2007, Maersk provided services for 4,714 unlicensed shipments of cargo originating in or destined to Iran or Sudan. Although Maersk did not voluntary disclose its conduct, OFAC significantly mitigated the penalty – from a base penalty of US$61.8 million – for the following reasons: (i) Maersk had no other OFAC violations in the past five years; (ii) Maersk and its parent engaged in remediation measures throughout the entire corporate group to ensure future compliance with US sanctions; and (iii) Maersk cooperated fully with OFAC's investigation by providing large amounts of well-organized data regarding its shipments involving Iran and Sudan as well as detailed information not specifically requested by OFAC.

Oklahoma Company Settles With OFAC and BIS for Unlicensed Transactions With Iran. 3M Imtec Corporation entered into a US$125,000 joint settlement with OFAC and BIS for violations of the Iranian Transactions Regulations and EAR. Between 2004 and 2007, Imtec Corporation, the predecessor to 3M Imtec, made multiple unlicensed sales of dental implants and related equipment, valued at more than US$81,000, to Iran via the United Arab Emirates. Imtec had previously obtained licenses from OFAC for the sale of dental equipment to Iran. However, these licenses lapsed due to Imtec's failure to implement a trade compliance program and resulted in Imtec's unlicensed sales to Iran. These unlicensed transactions were discovered and disclosed to BIS and OFAC during a due diligence review conducted prior to the acquisition of Imtec by 3M.

Agar Corporation Reaches US$2 Million Settlement With OFAC and DOJ for Alleged Violations of the Sudan Sanctions Regulations and International Emergency Economic Powers Act (IEEPA). Agar Corporation, a US-based manufacturer of specialized flow metering equipment for the petroleum industry, allegedly made seven shipments of metering equipment to its affiliate in Venezuela with knowledge that the equipment would be incorporated into products destined for Sudan. Agar settled with OFAC for US$860,000 for violations of the Sudanese Sanctions Regulations, which were promulgated pursuant to the IEEPA. Agar also entered into a plea agreement with the US Department of Justice (DOJ) where it will pay a US$760,000 criminal penalty and forfeit US$380,000 for violating the IEEPA. Agar did not voluntary disclose these transactions to OFAC.

Innospec Inc. Agrees to US$2.2 Million Settlement for Alleged Conduct in Cuba. Innospec Inc.,entered into a US$2.2 million settlement with OFAC for alleged violations of the Cuban Assets Control Regulations. Innospec's settlement with OFAC is part of a US$40.2 million comprehensive criminal and civil settlement with the DOJ, Securities and Exchange Commission (SEC), and UK's Serious Fraud Office (SFO). After acquiring a foreign company that maintained a sales office in Cuba, Innospec allegedly continued to maintain the sales office and engaged in transactions with the Cuba and Cuban nationals. The following factors were taken into account in OFAC's mitigation of the US$4.4 million base penalty amount for the alleged violations: (i) OFAC first learned of the alleged violations of the Cuba sanctions when Innospec voluntarily disclosed this information to OFAC; (ii) Innospec cooperated not only with the OFAC investigation but also with the investigations by the DOJ, SEC, and SFO; (iii) Innospec sold the foreign subsidiary with operations in Cuba to a non-US third party; and (iv) and Innospec made significant improvements to its trade compliance program.

Foreign Corrupt Practices Act (FCPA) – DOJ and SEC

Innospec Inc. Resolves Corruption Actions Brought by DOJ, SEC and SFO. Innospec Inc. agreed to pay a US$14.1 million criminal fine to resolve charges brought by the DOJ for wire fraud in connection with kickback payments to Iraq under the United Nations Oil for Food Program (OFFP) and for FCPA violations in connection with bribes made to officials in the Iraq's Ministry of Oil and the government of Indonesia. Innospec admitted that its subsidiary, Alcor, paid or promised to pay at least US$4 million in kickbacks to the Iraq's former government to obtain five OFFP contracts from 2000-2003 valued at more than €40 million to sell tetraethyl lead (TEL), a compound used in leaded gasoline, to refineries run by Iraq's Ministry of Oil. Innospec falsely characterized the payments on the company's books and records as "commissions" paid to its agent in Iraq. Innospec further admitted to paying and promising to pay more than US$1.5 million in bribes in the form of cash, lavish travel and high tech products to officials of the Ministry of Oil to secure TEL contracts in Iraq from 2004-2008, as well as paying US$150,000 to Ministry of Oil officials to ensure that a product that competed with TEL, was not approved for use in Iraq's refineries. Innospec also admitted that it paid approximately US$2.9 million in bribes (referred to as "special commissions") to officials in Indonesia to secure sales.

Innospec agreed to disgorge US$11.2 million in profits to settle a civil complaint filed by the SEC for violations of the FCPA's anti-bribery, internal controls, and books and records provisions in connection with the payments made to government officials in Iraq and Indonesia to obtain and retain business.

In a related action brought by the SFO, Innospec's British subsidiary, Innospec Ltd., pleaded guilty in connection with the payments made to government officials in Indonesia. As a result of the plea, Innospec Ltd. will pay a criminal penalty of US$12.7 million. The SFO action developed out of a referral from the DOJ in 2007.

ABB Ltd and Subsidiaries Agree to US$58 Million Settlement for Alleged FCPA Violations. ABB Ltd, a Switzerland-based corporation that provides power and automation products and services globally, and two of its subsidiaries, ABB Inc. and ABB Ltd – Jordan, resolved allegations of FCPA violations with the DOJ and SEC. ABB Ltd and its subsidiaries will pay more than US$58 million in criminal and civil penalties, disgorgement and interest.

With respect to the DOJ action, ABB Inc. admitted that one of its business units, ABB Network Management, paid bribes from 1997 to 2004 that totaled approximately US$1.9 million to officials at the Comisión Federal de Electricidad (CFE), Mexico's state-owned utility company. The bribes were paid through various intermediaries, including a Mexican company that served as ABB Network Management's sales representative in Mexico. ABB Ltd admitted that its subsidiary, ABB Ltd – Jordan, made payments to former Iraqi government officials in connection with contracts to sell vehicles to Iraq under the OFFP. From 2000 to 2004, ABB Ltd – Jordan paid or caused to be paid more than US$300,000 to former officials in Iraq to secure contracts with regional companies of the Iraq's Electricity Commission, a government agency.

The SEC alleged that ABB Ltd failed to conduct due diligence on the sales agent used to bribe government officials in Mexico. With respect to the OFFP kickback scheme, the SEC alleged that ABB Ltd – Jordan acted as a conduit for ABB subsidiaries and made kickback payments on their behalf. Examples of the alleged payments include check and wire transfers to foreign officials' relatives, cash to foreign officials, payment of a cruise for foreign officials and their spouses, and bank guarantees. According to the SEC, the bribes were improperly recorded as "commissions" and "service fees" on ABB Ltd's books and records, and ABB Ltd lacked adequate internal controls to prevent and detect such payments.

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INTERNATIONAL TRADE & TECHNOLOGY TRANSFER (IT^3) UPDATE

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