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SQUIRE SANDERS

International Trade and Technology Transfer Reporter

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Download our free ITAR Handbook at squiresanders.com/international_trade. Available in full page and booklet forms. To receive a hard copy of our ITAR Handbook, please contact Jennifer Rivers (jennifer.rivers@squiresanders.com).

Upcoming Events

American Conference Institute's 7th National Export Controls Forum on International Technology Transfers & Deemed Export Compliance

Join George Grammas, partner and Global Chair of Global Import and Export Compliance Squire Sanders (US) LLP (Washington DC) January 28-29 at the 7th National Export Controls Forum on International Technology Transfers & Deemed Export Compliance. George will discuss what to do when you suspect or discover a technology transfer or deemed export violation as well as how to work with IT and HR to investigate and remedy wrongdoing.

3rd Annual Advanced ITAR Compliance Conference and Welcome to Squire Sanders Dinner for Kevin Hoppin

We have partnered with Marcus Evans for their 3rd Annual Advanced ITAR Compliance "Aligning Internal ITAR Compliance Processes to Meet Evolving Regulations For Improved Operational Efficiency" on February 11-14. In conjunction with this event, we will be hosting a dinner to welcome the newest member of our Squire Sanders export controls team – Kevin Hoppin. Over dinner, Kevin will comment on his experiences and lessons learned at DDTC as an agreements officer.

One day ITAR Workshop

Building on the success of the annual three-day workshop sessions, jointly organized by the Export Group for Aerospace & Defence (UK), Squire Sanders' Aerospace & Defense Industry Group and Strategic Shipping Company Limited (UK), a one-day workshop on US export control matters will be held in London on February 28th. Similar to the three-day workshop, this one-day program will use video examples, group work, panel sessions and exercises to give a better understanding of the ITAR.

Three-day ITAR Workshop

Please join us June 11-13 for our annual three-day workshop jointly organized by Squire Sanders, the Export Group for Aerospace and Defense of the UK and Strategic Shipping Company Limited of the UK. Principal presenters include George Grammas, partner in Squire Sanders' Washington DC office, and Allan Suchinsky of ITD Associates. The event will include video examples, panel sessions and exercises designed to give attendees a better understanding of the International Traffic in Arms Regulations (ITAR), access to leading experts in the field and opportunities to network with peers.

Further information on these and other upcoming events can be found on the International Trade and Export Controls Events Page.

SQUIRE SANDERS

International Trade & Export Controls Practice Group

The International Trade and Technology Transfer Reporter is a semi-annual publication of the Squire Sanders International Trade & Export Controls Practice Group. With 37 offices in 18 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 International Trade & Export Controls Practice Group focuses on:

- Export controls and trade sanctions
- Customs
- Anticorruption
- Global government contracting

Export Control Reform Update

> *"Export control reform is a lot like the story of the turtle that got mugged by a gang of snails. When the policeman asked the turtle what happened, he said, 'I don't know. It all happened so fast.' The point of this joke is that speed is relative. We've been talking about reforming the system for three years now and you, thus, may think we're moving at a snail's pace. Considering all the tasks that need to be completed and the massive amount of time and thought many dedicated public servants are putting into each effort to make even one change, we are, however, moving at breakneck speed."*[1]

"Breakneck speed" might be an overstatement, but it cannot be denied that achieving broad export control reform as envisioned by the Obama Administration requires a massive undertaking involving many complex issues that it will take considerable time to work through and finally resolve. A keystone of the Administration's export control reform program – the transfer of less sensitive items from the US Munitions List (USML) administered by the Department of State, Directorate of Defense Trade Controls (DDTC) under the International Traffic in Arms Regulations (ITAR) to a newly established 600 Series on the Commerce Control List (CCL) administered by the Department of Commerce, Bureau of Industry and Security (BIS) under the Export Administration Regulations (EAR) – has seen progress. To date, DDTC and BIS have issued and requested public comment on proposed amendments to several USML Categories: V (Explosives), VI (Naval Vessels), VII (Military Vehicles), VIII (Military Aircraft), IX (Simulators), X (Protective Equipment), XIII (Materials), XIX (Gas Turbine Engines) and XX (Submersibles). Seven other categories are at OMB and nearly ready for release. Two other categories are in working group review, and two more are in DDTC review. Category XV (Space) is on hold because legislation would be required for movement to the 600 series.

In addition to these draft revisions, both DDTC and BIS have issued proposed regulations intended to clear a path for the movement of items from the USML to the CCL, including a proposed definition of the term "specially designed" to be used in both the revised USML and CCL, and a draft transition rule providing, for example, a grace period for exporters to continue using DDTC licenses for two years after the effective date of the transition. BIS recently requested public comment on the proposed definition of "specially designed," as well as on the feasibility of enumerating "specially designed" components in a "positive" list so that the term might be eliminated altogether to avoid ambiguity. Public comments received in response to the BIS notice were mixed and it appears that both the definition and use of the term "specially designed" will be controversial and may prove difficult to resolve.

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[1] Remarks of Kevin J. Wolf, Assistant Secretary for Export Administration, US Department of Commerce, July 17, 2012.

Much else remains to be done. In summary form, the next steps in the process require that DDTC and BIS issue proposed revisions for the remaining USML Categories, request public comment on those revisions, provide notice to Congress under Section 38(f) of the Arms Export Control Act, obtain legislative authority for the transfer of satellite products from the USML to the CCL and, finally, issue all of the implementing regulations in final form (which may or may not resemble the proposed amendments issued to date). Earlier, BIS officials had stated that they intended to issue the remaining draft USML Category changes by Fall 2012 and to submit the 38(f) notification to Congress later in the year. The Administration's original target for the reform effort to be completed prior to the end of the year has been pushed back until sometime during 2013, and could well slip further based upon comments received from industry, reaction from Congress upon receipt of the 38(f) notification and changed priorities following the presidential election. While significant progress has been made toward adopting the reforms, there is still a long ways to go.

US Strengthens Economic Sanctions Against Iran, Increases Exposure of Non-US Companies and US Parents of Non-US Subsidiaries

On August 10, 2012, President Obama signed into law the Iran Threat Reduction and Syria Human Rights Act of 2012, (Public Law 112-158) (ITRSHRA or the Act). The Act amends the Iran Sanctions Act of 1996 (Public Law 104-172, 50 USC. 1701 *et seq.*) (ISA), as amended by the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (Public Law 111-195) (CISADA) and expands the types of activities that are subject to US Government sanctions. More significantly, it increases the exposure and extent of potential penalties to non-US firms and US firms with non-US subsidiaries who do business with Iran.

Since the ITRSHRA's enactment, the Administration has implemented many of the Acts provisions. This includes the sanctions set forth in Executive Order 13628 of October 9, 2012, and through the Treasury Department's reissuance of the Iranian Transaction Regulations (reissued as the "Iranian Transaction and Sanctions Regulations") on October 22, 2012 (77 Fed. Reg. 64666). Following is an overview of the Acts salient provisions.

Closing the Foreign Subsidiaries Loophole

Section 218 of the Act directs the President, within 60 days of passage of the Act, to eliminate the long-standing loophole in US economic sanctions against Iran in OFAC's Iranian Transaction Regulations (31 CFR Part 560) for conduct by non-US subsidiaries of US firms. This extends the reach of the ITR to partnerships, associations, trusts, joint ventures, and corporations, owned or controlled by a US person and established or maintained outside the US. Ownership or control in this context is defined to include a 50 percent or more equity interest by vote or value, a majority of the seats of the Board of Directors, or effective controls of the actions, policies, or personnel decisions of the entity. Under the Act, the US parents may be held liable when their foreign subsidiaries knowingly engage in any transaction directly or indirectly with the Government of Iran or any person or entity subject to the jurisdiction of the Government of Iran if that transaction would be prohibited if performed by a US person or in the US.

The ITR impose a comprehensive embargo on dealings by US persons with Iran. Previously, this had applied to persons in the US, wherever located, and US firms and their non-US branches, but not their non-US subsidiaries. Although OFAC has increasingly found ways to apply sanctions under the ITR to the acts of non-US subsidiaries of US firms – principally through application to the parent of the prohibition on "facilitation" of transactions involving Iran – this marks a significant change. US firms now must to take account of Iran activities by its subsidiaries, whereas the threat of facilitation charges had previously strictly limited oversight of such activities.

The penalties prescribed to US parent companies under Section 218 of the Act are set forth in the International Emergency Economic Powers Act (50 USC. 1705(b)) and include civil monetary penalties of up to US$250,000 per violation. Such penalties will not apply, however, with respect to any transaction by an owned or controlled entity if the US person "divests or terminates its business with the entity" within 180 days of passage of the Act. It should be noted that Section 218 appears not to exempt the parent if its subsidiary terminates the transaction or transactions concerned, but only provides an exemption if the US parent divests or terminates its business with the subsidiary.

New SEC Disclosure Requirement for Issuers

The Act amends the SEC Act of 1934 to require securities issuers that file annual or quarterly reports to the US Securities and Exchange Commission to disclose certain Iran activities. Issuers must disclose, for the period covered by the report, if the issuer or an affiliate of the issuer, knowingly engaged in an activity prohibited by (i) Section 5 of the ISA, including making certain investment in or providing support to Iran's petroleum resources or refined petroleum sectors; (ii) Section 104 of CISADA, pertaining to financial services or support relating to Iran's acquisition of weapons of mass destruction or support of terrorism; (iii) Section 105A(b)(2) of CISADA, relating to the provision of goods, technology, or services for use in the commission of human rights abuses in Iran; (iv) Executive Order 13224 (blocking property and interests in property of designated terrorists and terrorist supporters); (v) Executive Order 13382 (blocking property and interests in property of weapons of mass destruction proliferators); or (vi) the Iranian Transaction Regulations' prohibition on certain transactions with the Government of Iran and entities owned or controlled by the Government of Iran.

Issuers triggering a disclosure under the Act must provide a detailed description of the activities. This includes a description of the nature and extent of the activity, the revenues or profits attributable to the activity, and whether the issuer (or its affiliate) intends to continue the activity. The issuer must also separately notify the SEC that its report includes disclosed Iran activities, and upon receipt of such notice, the President is required by the Act to investigate possible imposition of sanctions under either ISA or CISADA.

Expansion of Activities Subject to Sanctions

In addition to the above provisions, the Act expands the scope of activities that are subject to US Government sanctions by adding, among others, the following:

- Knowingly engaging in a joint venture with the Government of Iran involving the development of petroleum resources outside of Iran, if the Government of Iran could gain access to new technology or equipment to enhance its ability to develop its own petroleum resources, unless the person withdraws from the joint venture;
- Providing to Iran goods, services, technology, or support valued at greater than US$1 million (or totaling more than US$5 million over 12 months) that could assist Iran to develop petroleum resources or refined petroleum products, including infrastructure improvements, such as ports, railways, and roads intended primarily to support delivery of refined petroleum products;
- Providing to Iran goods, services, technology, or support valued at greater than US$250,000 (or totaling more than US$1 million over 12 months) that could assist Iran's domestic production of petrochemical products;
- Being a person who is a beneficial owner, or who operates, controls, or insures a vessel that is used to transport crude oil from Iran to another country, or that conceals the Iranian origin of crude oil or refined petroleum products transported on such vessel; and
- Engaging in a joint venture with the Government of Iran or an Iranian company that involves the mining, production, or transportation of uranium.

Other activities that are sanctionable under the Act include the provision of vessels or shipping services to Iran that relate to the proliferation of weapons of mass destruction; the provision of underwriting services or insurance or reinsurance for the National Iranian Oil Company or the National Iranian Tanker Company; and issuance of sovereign debt of the Government of Iran or any entity owned or controlled by the Government of Iran. The Act further expands sanctions under Section 104(c) of CISADA for non-US financial institutions that facilitate activities of persons subject to person subject to U.N. Security Council Resolutions relating to Iran or persons designated by OFAC for activities related to Iran's proliferation of WMDs.

Enhancement to ISA/CISADA Penalties

The Act enhances penalties for violations of the US Iran sanctions set forth in the ISA and CISADA. It adds three new sanctions to the menu of nine sanctions previously authorized under those laws, while increasing the number of sanctions required to be applied from three to five. The new sanctions, which focus on officers and directors and officers of offending firms, include:

1 Prohibition on US persons investing in or purchasing significant amounts of equity or debt instructions of the sanctioned person;

2 Denial of visas to and entry into the US by corporate officers, principals, or shareholders of the sanctioned person; and

3 Imposition of any of now 11 other types of sanctions against the principal officers of the sanctioned person.

In view of the expanded scope of sanctions under ITRSHRA and the potentially crippling effect of US Government sanctions, US and non-US firms are advised to carefully review business activities that potentially could involve Iran.

Intra-EU Transfer Directive 2009/43/EC Being Implemented Within EU Member States

The Intra-EU Transfer Directive of 6 May 2009 aims to simplify licensing systems and procedures in relation to the intra-EU transfer of defense-related products and, in turn, to improve efficiency and competitiveness of trade. The Directive was triggered by inconsistent regulation of defense products within the EU that had resulted in a distorting effect on competition.

The aim of the Directive is to reduce burdens caused by Member States' administrative differences in the defense markets. To achieve this Member States should replace systems of predominantly single individual licenses through general and global licenses, in particular where the recipients of military items are either national armed forces or certified companies that fulfill specific compliance criteria. Member States must also introduce general licenses for intra-EU transfers of military items for demonstration, exhibition, evaluation, maintenance and repair.

Member States were given until 30 June 2011 to implement the respective national legislations and until 30 June 2012 to apply the new rules. This article looks at what steps the UK, Germany and France have taken to achieve compliance.

United Kingdom

Existing Open General Licenses (OGELs) were updated by adding Cyprus and Bulgaria in the list of authorised countries.

Additionally, the UK introduced a new OGEL for intra-EU transfers to companies certified in other Member States. A copy of the new OGEL can be accessed from the BIS website.

Under the license, exporters in the UK are permitted to export items specified in Schedule 1 to the license to certified EU companies who may use UK items received for incorporation in their own production of final defence equipment. Items can also be used by these certified companies for use as spares or replacement parts. Re-export or further sale of the item is however not permitted under the license unless for use in maintenance or repair of previously supplied main equipment. There is no need for a UK company to be certified itself to be eligible to use this license.

Vice versa, the UK also introduced a voluntary certification process for UK companies. In order for a company to become certified, it must undergo a detailed audit by their ECO compliance inspector, often even in circumstances where the company has recently passed an ECO audit.

Germany

On 20 June 2012, Germany introduced General Licenses No. 26 and 27 aimed at implementing the Transfer Directive. The new General Licenses favour the transfer of selected defence-related products listed in Part I Section A of the Export Control List, if the recipient of the goods is either part of the armed forces of a Member State (General License No. 26), or is a company that was certified under Article 9 of the Intra-EU Directive by the state in which it is established (General License No. 27).

The certification pursuant to Art. 9 of the Intra-EU Transfer Directive as required under the General License No. 27 shall establish the reliability of the recipient company, in particular as regards its capacity to observe export limitations of defence-related products. Certification criteria, inter alia, include proven experience in defence activities, capacity for system integration, and the appointment of a senior executive as the dedicated officer personally responsible for transfers and exports. Note that a transferor cannot use the new licenses No. 26 and No. 27 if they know at the time of transfer that the ultimate country of destination of the respective defence-related products lies outside of the EU.

Companies can only use the new licenses if they register as users with the Federal Office of Economics and Export Control (BAFA) prior to or within 30 days after the first transfer. Electronic registration is available at the BAFA website. In addition, past transfers must be reported twice a year.

For further information on German General Licenses please refer to the BAFA website.

France

The Transfer Directive was implemented into French law by Law n° 2011-702 of 22 June 2011. The amendments entered into force in June 2012. Additional changes will take effect in June 2013.

In June 2012 the authorities (i) removed the requirement for import licenses for defense-related products from other EU Member States, and for intra-EU transit[2], (ii) created six new General Transfer Licenses (GTLs) and (iii) introduced a system of certified companies. The new system also involves “a posteriori” controls by French authorities including on-site inspections.

The six new GTLs for intra-EU transfers of defense-related products cover transfers of defense-related products (i) to armed forces and contracting authorities in the field of defense, (ii) to certified recipients, (iii) for the demonstration and evaluation during international trade fairs or exhibitions, (iv) in order to test and demonstrate to armed forces of an EU Member State or contracting authorities in the field of defense, (v) in order to test and demonstrate to private undertakings, (vi) to the Police,

[2] By way of example, since June 2012, where a defense-related product must be transferred from France to another EU Member State, the French supplier shall only obtain one licence. It will not have to request “*passage authorisations*” until the recipient country. In addition, the client located in this recipient EU Member State will not have to request an import authorization from French authorities.

Moreover, companies importing this type of products in France will not need to obtain import authorization either.

customs, border-guards and coast-guards of an EU Member State for the exclusive use by those recipients.

In order to use the GTL, companies must register with 30 days prior to the first use and are subject to regular reporting requirements and controls.

As in all other Member States, French companies can become certified as to be eligible to receive defense-related products transferred from other Member States on the basis of special general licenses for certified companies. Therefore they are required to undergo an initial certification process that must be renewed every three years and shall inform the authorities of any evolution regarding the company. Moreover, "a person in charge" must be nominated within the members of the management board. This person will be personally liable for the internal compliance program of the company.

In the framework of the modernization process, the French authorities also introduced further simplifications of French export controls. They removed the requirement for a transit certificate ("*attestation de passage*") for intra-EU transfers and exports outside-EU. As of June 2013, the authorities will further introduce a new online license filing system and the current dual licensing system, consisting of a prior authorization (*Agrément Préalable*) and a separate export authorization (*Autorisation d'exportation de matériel de guerre* "AEMG") will be replaced by a unique license (*licence dite "Unique").* We expect in particular the latter change to bring significant facilitations for French companies and an increase in their competitiveness.

New Study Finds That Voluntary Disclosure of FCPA Violations Does Not Measurably Reduce Penalties

The Department of Justice (DOJ) and Securities & Exchange Commission (SEC) have long promised that companies will receive a tangible benefit for voluntarily disclosing violations of the Foreign Corrupt Practices Act (FCPA). Not so, says a recent draft study by New York University (NYU) School of Law professors Stephen J. Choi and Kevin E. Davis, which examined FCPA enforcement actions from 2004 through 2011. Their study found no discernible evidence that voluntary disclosure of FCPA violations resulted in lesser penalties.

The study's authors restricted their data set to cases by the DOJ and SEC involving alleged violations of the FCPA's anti-bribery provisions by corporate defendants from 2004 to 2011; fines imposed against individual defendants were not considered. They then applied statistical models to the data to measure whether the total monetary penalty imposed (including fines and disgorgement of profits) was affected by engaging in activities consistent with the United States Sentencing Guidelines' mitigating factors, e.g., remediation, cooperation and voluntary disclosure. The results showed no evidence that engaging in mitigation activities correlated with a reduced penalty for FCPA defendants.

The scope of the study notably did not include any effect on the FCPA defendant's business activities or share prices. Nor did it attempt to quantify whether engaging in mitigating activities, such as remediation, cooperation or voluntary disclosure, had an impact on the level of scrutiny and control by the DOJ and SEC over the company's internal investigation.

The study's authors acknowledged that there may be other benefits to voluntary disclosure which they did not address. When asked about the results of the study, co-author Kevin E. Davis reportedly commented that "[w]e cannot rule out the possibility that disclosure does result in some form of leniency, but the fact that we could not find any evidence of the benefits of voluntary disclosure suggests that current enforcement practices are not creating clear incentives."

Enforcement Update

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

ING Bank to Pay US$619 Million Fine for Processing Transactions with Iran and Cuba

On June 12, 2012, ING Bank, N.V., a global bank based in Amsterdam, agreed to forfeit US$619 million to the DOJ and the New York County District Attorney's Office for conspiring to violate US sanctions on Iran and Cuba as well as New York state laws by illegally moving more than US$2 billion (via more than 20,000 transactions) through the US financial system on behalf of sanctioned entities in Iran and Cuba. This conduct caused unaffiliated US banks to unwittingly process transactions that should have been blocked or stopped pursuant to Treasury Department regulations. ING Bank was charged with one count of conspiring to violate the International Emergency Economic Powers Act and the Trading with the Enemy Act. ING Bank accepted responsibility for its criminal conduct and that of its employees, and agreed to enter a deferred prosecution agreement. The fine represented the largest against a financial institution in connection with an investigation into US sanctions and related offenses. The Justice Department's case against ING Bank arose out of ongoing investigations whereby ING Bank processed payments on behalf of one customer, Aviation Services International B.V. (ASI), a Dutch aviation company which was the subject of a US Commerce Department-initiated criminal investigation relating to the procurement by ASI of dual-use US aviation parts for ASI's Iranian clients. The ING Bank investigation also resulted in part from a criminal referral from OFAC, which was conducting its own probe of ING Bank. The ING Bank investigation was conducted by the FBI, IRS, with assistance from OFAC and the Commerce Department.

United Technologies and its Subsidiaries Pay US$75 Million to Settle Violations of the AECA and ITAR in Connection with the Unauthorized Export and Transfer of Defense Articles

On June 28, 2012, Connecticut-based defense contractor United Technologies Corporation (UTC) entered into a consent agreement to settle violations of the Arms Export Control Act (AECA) (22 USC §§2778-2780) and the International Traffic in Arms Regulations (ITAR) (22 C.F.R. Parts 120-130). Pratt & Whitney Canada Corp. (PWC), a Canadian subsidiary of UTC, pleaded guilty to violating the Arms Export Control Act and making false statements in connection with its illegal export to China of US-origin military software that was used in the development of China's first modern military attack helicopter, the Z-10. UTC, its US-based subsidiary Hamilton Sundstrand Corporation (HSC), and PWC all agreed to pay more than US$75 million as part of a global settlement with the DOJ and the State Department in connection with various export violations, including those related to the Z-10, and for making false and belated disclosures to the US government about the illegal exports for the Z-10. A three-count criminal information was filed against UTC, HSC, and PWC. Count one charged PWC with violating the Arms Export Control Act for the illegal export of defense articles to China for the Z-10 helicopter. In 2002 and 2003 PWC knowingly and willfully caused HSC military software, used to test and operate PWC engines, to be exported to China for the Z-10 without any US export license. PWC knew from the start of the Z-10 project in 2000 that the Chinese were developing an attack helicopter and that supplying it with US-origin components would be illegal. According to court documents, PWC's illegal conduct was driven by profit. PWC anticipated that its work on the Z-10 attack helicopter in China would open the door to a far more lucrative civilian helicopter market in China potentially worth as much as US$2 billion. Count two of the information charged PWC, UTC, and HSC with making false statements about these illegal exports to the State Department in their belated disclosures, which did not begin until 2006. Count three charged PWC and HSC for their failure to timely inform the State Department of the unlawful export of defense articles to China, an embargoed nation, as required by US export regulations. This is the

first case in which the provisions in count three have been enforced criminally. While PWC pleaded guilty to counts one and two, prosecution of PWC, UTC, and HSC on the other charges is deferred for two years, provided that the companies abide by the terms of a deferred prosecution agreement with the DOJ. In addition to the resolution of the criminal charges, as part of a global settlement, UTC also resolved over 500 additional administrative charges with the State Department. Those charges involved more than 800 exports in violation of the Arms Export Control Act from the mid-1990s to 2011. In connection with the global settlement PWC, UTC, and HSC agreed to subject themselves to independent monitoring for several years, and be required to comply with an extensive training and remedial action program to strengthen their export compliance. This investigation was conducted by ICE, DCIS, FBI, Commerce and the State Department.

BIS – US Department of Commerce

Ericsson de Panama S.A. of Panama City, Panama, Has Agreed to Pay a Civil Penalty of US$1.753 Million to Settle Violations of the EAR

BIS alleged that Ericsson de Panama S.A. of Panama City, Panama, a subsidiary of the Swedish telecommunications company, violated the Export Administration Regulations (EAR) on multiple occasions between 2004 and 2007, and that Ericsson de Panama knowingly implemented a scheme to route items from Cuba through Panama, repackaging the items to conceal their Cuban markings, forwarding the items to the US for repair and replacement and then returning the items to Cuba. The items were classified under Export Control Classification Numbers 5A002, 4A994, 5A991, 5B991 or designated EAR99, and as such, the items' distribution to Cuba were controlled for national security, antiterrorism, encryption, and sanctions reasons. While the conduct in this case was egregious, Ericsson de Panama avoided possible criminal prosecution and heavier fines by voluntarily disclosing the violations to BIS and cooperating with the investigation. In addition to the monetary penalty, the settlement also requires a company-wide export audit conducted by an independent third party of all transactions connected with Cuban customers.

PhibroChem Pays US$31,000 to Settle BIS Charge of Exporting Chemical to Mexico

On September 28, 2012, PhibroChem, a New Jersey based Corporation, and a supplier of specialty chemicals for the paint and coatings, agreed to pay a US$31,000 civil penalty to settle one BIS charge of acting with knowledge of a violation of the Export Administration Regulations (EAR). In January 2008, PhibroChem allegedly exported to Mexico sodium fluoride valued at approximately US$14,000. Sodium fluoride is classified under Export Control Classification Number (ECCN) 1C350 and is controlled for chemical and biological weapons proliferation. PhibroChem had a license to export the product, but it expired in December 2007 – only three weeks before the shipment. Because of the prior license, BIS determined that PhibroChem had knowledge that the export of sodium fluoride to Mexico required authorization, and still exported sodium fluoride to Mexico with knowledge that a violation of the Regulations would occur. No remediation measures were imposed by BIS in the settlement.

WW Grainger Pays US$12,000 to Settle 12 BIS Antiboycott Charges Tied to Kuwait Sales

On September 25, 2012, WW Grainger, an industrial supply company based in Illinois, agreed to pay a US$12,000 civil fine to settle 12 Bureau of Industry and Security (BIS) charges of violating the antiboycott regulations. BIS charged the firm with failing to report the receipt of a request to engage in a restrictive trade practice or foreign boycott against a country friendly to the US Allegedly, from 2008 through 2009, Grainger engaged in 12 transactions to Kuwait whereby purchase orders included language that said Israeli goods were not acceptable. Grainger conducted a thorough internal review and voluntarily self-disclosed to BIS.

OFAC – US Department of the Treasury

Brasseler USA Settles Potential Civil Liability for Alleged Violations of the Iranian Transactions Regulations for US$18,900

On October 19, 2012, Brasseler USA (Brasseler), Savannah, GA, a US medical supply company, agreed to pay US$18,900 to settle potential civil liability for alleged violations of the Iranian Transactions Regulations, 31 C.F.R. part 560 (ITR) from 2006 to 2009. OFAC alleged that on or about February 24, 2006, January 21, 2009, and March 20, 2009, Brasseler exported goods or services to a person in a third country with knowledge or reason to know that such goods or services were intended specifically for transshipment to Iran, without authorization from OFAC. The alleged violations involved three transactions valued at US$5,241. Brasseler did not voluntarily self-disclose the matter. OFAC found that the alleged violations constituted a non-egregious case. The base penalty amount was US$21,000. The settlement amount reflects OFAC's considerations that Brasseler's conduct demonstrated reckless disregard for US sanctions requirements; Brasseler's conduct involved a pattern of concealment whereby the company masked the identities of its Iranian customers; management level staff at Brasseler were involved with, and/or were aware of, both the reckless conduct and the fact that the goods or services were destined for Iran; Brasseler did not have a compliance program in place at the time of these alleged violations; the exports at issue likely would have been licensed by OFAC under existing licensing policy; Brasseler has not been the subject of prior OFAC enforcement action; and finally, that Brasseler cooperated with OFAC, including by agreeing to toll the statute of limitations.

Grand Resources USA, Inc. Assessed a Penalty of US$402,000 for Violating the Iranian Transactions Regulations and the Weapons of Mass Destruction Proliferators Sanctions Regulations

On August 22, 2012, Grand Resources USA, Inc. ("GR-Duratech"), Houston, TX, was assessed a penalty of US$402,000 for violating the Iranian Transactions Regulations (ITR), 31 C.F.R. part 560, in 2005 and 2009, and for violating the Weapons of Mass Destruction Proliferators Sanctions Regulations (WMDPSR), 31 C.F.R. part 544, in 2009. In 2005, GR-Duratech negotiated a sale of graphitized petroleum coke to a company in the United Arab Emirates, with knowledge that the goods were for delivery to Bandar Abbas, Iran. From July 2009 to August 2009, GR-Duratech dealt in property in which the Islamic Republic of Iran Shipping Lines (IRISL) had an interest and engaged in transactions or dealings in or related to services of Iranian origin. GR-Duratech was involved in the shipment of cargo aboard the blocked vessel "Sabalan," a vessel in which IRISL had an interest, and presented trade documents related to the shipment to its bank for payment pursuant to a letter of credit referencing the blocked vessel. GR-Duratech also engaged in transactions that resulted in the removal of references to Iran and an Iranian entity from the trade documents associated with the shipment. In September 2009, GR-Duratech dealt in property in which IRISL had an interest by transferring the trade documents related to the shipment to its customer in Turkey without OFAC's authorization. GR-Duratech did not voluntarily self-disclose the violations. OFAC concluded that the 2005 ITR violation was a non-egregious case, but that the 2009 violations of the ITR and WMDPSR were an egregious case, in light of the company's willful concealment and evasion involving GR-Duratech's senior-level management. The base penalty amount for the violations totaled US$670,000 The settlement amount reflects OFAC's considerations that GR-Duratech demonstrated reckless disregard for sanctions regulations at the time of the 2005 ITR violation; GR-Duratech knew, prior to the conduct leading to the 2009 violations, that dealings with Iran were prohibited; GR-Duratech willfully attempted to evade US sanctions laws in 2009 by concealing the transactions' relationship to Iran in documents that GR-Duratech presented for payment; senior-level management had knowledge of the conduct that gave rise to the violations in 2009. Mitigating considerations include the fact that GR-Duratech cooperated with OFAC's investigation, including agreeing to toll

the statute of limitations; and GR-Duratech has not been the subject of an OFAC enforcement action in the five years preceding the transactions at issue.

Great Western Malting Co. Settles Apparent Violations of Cuban Assets Control Regulations for US$1,347,750.

On July 10, 2012, Great Western Malting Co. (Great Western), of Vancouver, Washington, agreed to pay US$1,347,750 to settle apparent violations of the Cuban Assets Control Regulations. The apparent violations by Great Western occurred between August 2006 and March 2009, when it performed various back-office functions for sales by a foreign affiliate of non-US origin barley malt to Cuba. This matter was not the subject of a voluntary disclosure to OFAC, but OFAC determined the apparent violations constituted a non-egregious case. The base penalty amount for the apparent violations was US$5,990,000. The lower settlement amount reflects OFAC's considerations that, pursuant to the General Factors under OFAC's Economic Sanctions Enforcement Guidelines, 31 C.F.R. part 501, App. A, Great Western is a large, sophisticated entity; Great Western did not have an adequate OFAC compliance program in place at the time of the violations; a number of the violations involved transactions with Specially Designated Nationals (SDNs) in Cuba; some of the violations involved transactions which involved an SDN vessel; Great Western has no history of prior OFAC violations; Great Western substantially cooperated with OFAC, including entering into a statute of limitations tolling agreement; and, if the subject goods had been shipped from the United States, they would have been eligible for an OFAC license.

National Bank of Abu Dhabi Agrees to Fine of US$855,000 to Settle Potential Liability for Apparent Violations of the Sudanese Sanctions Regulations.

On June 14, 2012, National Bank of Abu Dhabi (NBAD) agreed to remit US$855,000 to settle potential civil liability for 45 transactions that appear to have violated the Sudanese Sanctions Regulations, 31 C.F.R. part 538. The violations occurred from on or about November 11, 2004, to on or about December 27, 2005. In response to inquiries made by OFAC related to certain transactions, NBAD provided information to OFAC revealing that certain of its clerical staff removed or omitted Sudan-related references in payment instructions processed on behalf of its Sudan branch for payments routed through financial institutions located in the United States in violation of the prohibition against the “exportation or re-exportation, directly or indirectly, to Sudan . . . of services from the United States,” 31 C.F.R. § 538.205. The combined value of the 45 electronic funds transfers was US$4,389,235.42. While NBAD did not voluntarily self-disclose the apparent violations, NBAD extended substantial cooperation throughout OFAC’s review of these matters. OFAC determined that the apparent violations constituted a non-egregious case. The base penalty was US$4,276,000, but the amount was mitigated in consideration of NBAD's prompt and appropriate remedial action, NBAD's substantial cooperation, and the fact that NBAD has not received a penalty notice or finding of violation in the five years preceding the transactions at issue.

Genesis Asset Managers, LLP, Agrees to Fine of US$112,500 to Settle an Apparent Violation of the Iranian Transactions Regulations

On May 21, 2012, Genesis Asset Managers, LLP (“GAM US”) agreed to remit $112,500 to settle potential civil liability for an apparent violation of the Iranian Transactions Regulations (ITR), 31 C.F.R. part 560 that occurred on or about August 1, 2007. GAM US is the investment manager of Genesis Emerging Markets Fund (GEMF), a Guernsey-organized investment fund. GAM US contracts with its London-based subsidiary, Genesis Investment Management LLP (“GIM UK”) through an Investment Advisory Agreement, which authorizes GIM UK to carry out transactions as an agent of GAM US in accordance with stated investment policies and strategies. In 2007, pursuant to this delegated authority, GIM UK purchased approximately US$3 million shares for GEMF in the First Persian Equity Fund (FPEF), a Cayman Islands company that invests exclusively in Iranian securities. OFAC considered aggravating factors in this case to be that GAM US failed to exercise a minimal degree of

caution or care in the conduct, that officers of GAM US were aware of the conduct giving, that substantial economic benefit was conferred to Iran, and that GAM US did not have an OFAC compliance program in place at the time of the apparent violation. Still, OFAC determined that this violation was not egregious because GAM US has not received a penalty notice or Finding of Violation from OFAC for substantially similar violations, GAM US substantially cooperated with OFAC's investigation and voluntarily self-disclosed the apparent violation, and by agreeing to settle this matter without the issuance of a Prepenalty Notice. In addition, GAM US took appropriate remedial action and GAM US may not have fully understood its OFAC obligations under US law.

Sandhill Scientific, Inc., Settles Violations of the Iranian Transactions Regulations for US$126,000

On April 25, 2012, Sandhill Scientific, Inc. (Sandhill), Highlands Ranch, CO, a US manufacturer of medical equipment, agreed to remit US$126,000 to settle allegations that it violated the Iranian Transactions Regulations, 31 C.F.R. part 560 (ITR) in May 2007, and OFAC's Reporting, Procedures and Penalties Regulations, 31 C.F.R. part 501 (RPPR), on separate occasions in May and July 2008. OFAC alleged that, on or about May 4, 2007, Sandhill exported medical equipment valued at approximately US$6,700 to Dubai, United Arab Emirates, with knowledge or reason to know that the goods were intended for transshipment or supply to a company in Iran with which Sandhill had an exclusive distributor agreement. OFAC also alleged that Sandhill failed to provide documents responsive to two administrative subpoenas issued by OFAC during its investigation. This matter was not voluntarily disclosed and OFAC determined that the alleged ITR violation was an egregious case resulting from its willful and reckless conduct, its attempt to conceal the fact that the goods were destined for Iran, and it's lack of full cooperation with the investigation. The base penalty was US$250,000, however, it was mitigated in part because the export may have been eligible for an OFAC license pursuant to §560.530 of the ITR and OFAC has no record of any prior sanctions enforcement actions involving Sandhill. Still, Sandhill's lack of any compliance program, and its disregard for compliance measures and remedial actions may have contributed to the large fine in comparison to the violation.

Foreign Corrupt Practices Act (FCPA) – DOJ and SEC

Subsidiary of Tyco International Ltd. Pleads Guilty for Conspiracy to Violate Foreign Corrupt Practices Act, Tyco Entities Agree to More Than $26 Million in Penalties

On September 24, 2012, Switzerland based Tyco International Ltd. (Tyco), a company that manufactures and sells products related to security, fire protection and energy, together with a subsidiary, pleaded guilty to a criminal charge for conspiring to violate the Foreign Corrupt Practices Act (FCPA), and agreed to pay more than US$26 million to resolve the conspiracy charge with the DOJ and the SEC. As part of the settlement, the DOJ entered into a non-prosecution agreement with Tyco whereby Tyco agreed to pay a US$13.68 million penalty for falsifying books and records in connection with payments by its subsidiaries to government officials in various countries to obtain and retain business. Tyco Valves & Controls Middle East Inc. (TVC ME), an indirect, wholly owned subsidiary of Tyco that sold and marketed valves and other industrial equipment throughout the Middle East for the oil, gas, petrochemical, commercial construction, water treatment and desalination industries, pleaded guilty for conspiring to violate the anti-bribery provisions of the FCPA. According to the criminal information to which TVC ME pleaded guilty, the company paid bribes to officials employed by Saudi Aramco, an oil and gas company controlled and managed by the government of the Kingdom of Saudi Arabia, to obtain contracts with Saudi Aramco. At the conclusion of the plea proceeding, the court sentenced TVC ME to pay a US$2.1 million fine (part of the US$13.68 million penalty). In addition to the monetary penalty, Tyco and TVC ME also agreed to cooperate with the department, to report periodically to the department concerning the companies'

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compliance efforts, and to continue to implement an enhanced compliance program and internal controls designed to prevent and detect FCPA violations. Tyco voluntary disclosed and is cooperating with the government. Its cooperation included a global internal investigation concerning bribery and related misconduct and extensive remediation - including the termination of employees responsible for the improper payments and falsification of books and records. In the parallel civil proceedings, Tyco consented with the SEC to a proposed final judgment that orders the company to pay US$10,564,992 in disgorgement and US$2,566,517 in prejudgment interest – which, together with the Department of Justice penalty, totals the more than US$26 million in payments.

Former Morgan Stanley Managing Director Pleads Guilty for Violating the FCPA; DOJ Declines to Bring any Enforcement Action Against Morgan Stanley

On August 16, 2012, A former managing director for Morgan Stanley's real estate business in China, Garth Peterson, was sentenced to nine months in prison (DOJ recommended 51 to 60 months) and required to relinquish US$3.4 million in real estate holdings, after pleading guilty to a one-count criminal information charging him with conspiring to evade internal accounting controls that Morgan Stanley maintained to comply with the Foreign Corrupt Practices Act (FCPA). Mr. Peterson actively sought to evade Morgan Stanley's internal controls in an effort to enrich himself and a Chinese government official. The DOJ declined to bring any enforcement action against Morgan Stanley related to Mr. Peterson's conduct, citing Morgan Stanley's efforts to maintain a system of internal controls meant to ensure accountability for its assets and to prevent employees from offering, promising or paying anything of value to foreign government officials. Morgan Stanley's internal policies, which were updated regularly to reflect regulatory developments and specific risks, prohibited bribery and addressed corruption risks associated with the giving of gifts, business entertainment, travel, lodging, meals, charitable contributions and employment. Morgan Stanley frequently trained its employees on its internal policies, the FCPA, and other anti-corruption laws. Between 2002 and 2008, Morgan Stanley trained various groups of Asia-based personnel on anti-corruption policies 54 times. During the same period, Morgan Stanley trained Mr. Peterson on the FCPA seven times and reminded him to comply with the FCPA at least 35 times. Morgan Stanley's compliance personnel regularly monitored transactions, randomly audited particular employees, transactions and business units, and tested to identify illicit payments. Moreover, Morgan Stanley conducted extensive due diligence on all new business partners and imposed stringent controls on payments made to business partners. Nonetheless, Mr. Peterson conspired with others to circumvent Morgan Stanley's internal controls in furtherance of a corruption scheme concerning a Shanghai real-estate deal with Shanghai Yongye Enterprise (Group) Co. Ltd., a state-owned and state-controlled entity through which Shanghai's Luwan District managed its own property and facilitated outside investment in the district. Mr. Peterson falsely represented to others within Morgan Stanley that Yongye was purchasing the real-estate interest, when in fact Mr. Peterson knew the interest would be conveyed to a shell company controlled by him, a Chinese public official associated with Yongye, and a Canadian attorney. After Mr. Peterson and his co-conspirators falsely represented to Morgan Stanley that Yongye owned the shell company, Morgan Stanley sold the real-estate interest in 2006 to the shell company at a discount to the interest's actual 2006 market value. As a result, the conspirators realized an immediate paper profit of more than US$2.5 million.

Pfizer H.C.P. Corp. Agrees to Pay US$15 Million Penalty to Resolve Foreign Bribery Investigation, and Agrees to Civil Disgorgement of US$45 Million

On August 7, 2012, Pfizer H.C.P. Corporation, an indirect wholly owned subsidiary of Pfizer Inc., agreed to pay a US$15 million penalty to resolve an investigation of Foreign Corrupt Practices Act (FCPA) violations. In a related civil matter, Pfizer Inc. and Wyeth LLC entered a settlement with the SEC under which Pfizer Inc. agreed to pay more than US$26.3 million in disgorgement of profits to resolve concerns involving the conduct of its subsidiaries. Wyeth, which had been acquired by Pfizer Inc. in 2009, agreed to pay US$18.8 million in disgorgement of profits to resolve concerns involving

the conduct of Wyeth subsidiaries. The DOJ charged Pfizer H.C.P. with conspiracy and violations of the FCPA in connection with improper payments made to government officials, including publicly-employed regulators and health care professionals in Bulgaria, Croatia, Kazakhstan and Russia. The DOJ and Pfizer H.C.P. agreed to resolve the investigation by entering into a deferred prosecution agreement (DPA). According to court documents, Pfizer H.C.P. made a broad range of improper payments to numerous government officials in Bulgaria, Croatia, Kazakhstan and Russia – including hospital administrators, members of regulatory and purchasing committees and other health care professionals – and sought to improperly influence government decisions in these countries regarding the approval and registration of Pfizer Inc. products, the award of pharmaceutical tenders and the level of sales of Pfizer Inc. products. Pfizer H.C.P. allegedly used numerous mechanisms to improperly influence government officials, including sham consulting contracts, an exclusive distributorship, and improper travel and cash payments. Pfizer H.C.P. admitted that between 1997 and 2006, it paid more than US$2 million of bribes to government officials in Bulgaria, Croatia, Kazakhstan and Russia. Pfizer H.C.P. also admitted that it made more than US$7 million in profits as a result of the bribes. The DPA recognizes the timely voluntary disclosure by Pfizer H.C.P.'s parent company, Pfizer Inc.; the thorough and wide-reaching self-investigation of the underlying and related conduct; the significant cooperation provided by the company to the department and the SEC; and the early and extensive remedial efforts, and the substantial and continuing improvements Pfizer Inc. has made to its global anti-corruption compliance procedures. Due to Pfizer Inc.'s extensive remediation, Pfizer H.C.P. is not required to retain a corporate monitor, but Pfizer Inc. must periodically report to the department on implementation of its remediation and enhanced compliance efforts for the duration of the agreement.

The Nordam Group Inc. Resolves Foreign Corrupt Practices Act Violations and Agrees to Pay US$2 Million Penalty

On July 17, 2012, the NORDAM Group Inc., a provider of aircraft maintenance, repair, and overhaul services based in Tulsa, Oklahoma, entered into a non-prosecution agreement (NPA) with the DOJ, agreeing to pay a US$2 million penalty to resolve violations of the Foreign Corrupt Practices Act (FCPA). According to the agreement, NORDAM, along with its subsidiaries and affiliates, paid bribes to employees of airlines created, controlled, and exclusively owned by the People's Republic of China to secure contracts to perform services for those airlines. The bribes were paid both directly and indirectly to the airline employees. In an effort to disguise the bribes, three employees of NORDAM's affiliate entered into sales representation agreements with fictitious entities and then used the money paid by NORDAM to those entities to pay bribes to the airline employees. NORDAM agreed to cooperate with the department for the three-year term of the agreement, to report periodically to the department concerning compliance efforts, and to continue to implement an enhanced compliance program and internal controls designed to prevent and detect FCPA violations. The DOJ entered into an NPA with NORDAM as a result of NORDAM's timely, voluntary, and complete disclosure of the conduct, its cooperation with the department, and its remedial efforts. The NPA states that a fine below the standard range is appropriate because NORDAM fully demonstrated to the DOJ, and an independent accounting expert retained by the DOJ verified, that a fine exceeding US$2 million would substantially jeopardize the company's continued viability.

Orthofix International N.V. Agreed to Resolve DOJ and SEC FCPA Enforcement Actions for Approximately US$7.4 Million.

On July 10, 2012, Orthofix International N.V. (Orthofix), a limited liability orthopedic medical device company formed under the law of Netherlands Antilles with administrative offices in Lewisville, Texas, and common stock traded on Nasdaq, agreed to resolve DOJ and SEC FCPA enforcement actions for approximately US$7.4 million, of which US$2.2 million arises from a DOJ deferred prosecution agreement (DPA), and US$5.2 million arises from a civil settlement with the SEC. The conduct at issue concerns Promeca S.A. de C.V., a wholly-owned subsidiary of Orthofix, headquartered in

Mexico City. Orthofix's Mexican subsidiary Promeca is alleged to have bribed officials at Mexico's government-owned health care and social services institution Instituto Mexicano del Seguro Social (IMSS) in the form of cash, laptop computers, televisions, and appliances that were provided directly to Mexican government officials or indirectly through front companies that the officials owned. The bribery scheme lasted for several years and yielded nearly US$5 million in illegal profits for the Orthofix subsidiary. From this, Orthofix agreed to pay US$5.2 million to settle the SEC's charges. The DOJ found that Orthofix made a timely and voluntary disclosure to the DOJ and SEC about potential misconduct and that Orthofix conducted an internal investigation concerning the misconduct and reported its findings to the agencies. The DPA also recognized that Orthofix undertook remedial measures, including the implementation of an enhanced compliance program, and agreed to undertake further remedial measures, as may be necessary under the DPA. As part of the terms of the DPA, Orthofix agreed to continue to cooperate with the Department in any ongoing investigation of the conduct of Orthofix's current and former employees, agents, consultants, contractors, subcontractors, and subsidiaries relating to violations of the FCPA. Although a compliance monitor was not required pursuant to the DPA, Orthofix agreed that it will report to the DOJ annually during the term of the DPA regarding remediation and implementation of the compliance measures required under the DPA.

Data Systems & Solutions LLC Resolves Foreign Corrupt Practices Act Violations and Agrees to Pay a US$8.82 Million Criminal Penalty

On June 18, 2012, Data Systems & Solutions LLC (DS&S), a company based in Reston, Virginia, that provides design, installation, maintenance and other services at nuclear and fossil fuel power plants, agreed to pay an US$8.82 million criminal penalty to resolve violations of the Foreign Corrupt Practices Act (FCPA). The DOJ filed a two-count criminal information charging DS&S with conspiring to violate, and violating, the FCPA's anti-bribery provisions. According to court documents, DS&S paid bribes to officials employed by the Ignalina Nuclear Power Plant, a state-owned nuclear power plant in Lithuania, to secure contracts to perform services for the plant. To disguise the scheme, the bribes were funneled through several subcontractors located in the United States and abroad. The subcontractors, in turn, made repeated payments to high-level officials at Ignalina via check or wire transfer. The DOJ entered into a deferred prosecution agreement (DPA) with DS&S, deferring prosecution for two years, and in exchange DS&S is required to pay the fine, cooperate with the DOJ, report periodically to the DOJ concerning DS&S's compliance efforts, and continue to implement an enhanced compliance program and internal controls designed to prevent and detect FCPA violations. If DS&S abides by the terms of the DPA, the DOJ will dismiss the criminal information when the agreement's term expires. The DPA acknowledges DS&S's extraordinary cooperation and extensive remediation efforts, such as conducting an extensive, thorough and swift internal investigation, terminating the officers and employees responsible for the corrupt payments, instituting a more rigorous compliance program, and enhancing its due diligence protocol for third-party agents and subcontractors.

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