



FD ASSOCIATES, INC.

1950 Old Gallows Road
Suite 350
Vienna, VA 22182
Phone 703-847-5801
Fax 703-847-1523

Advisors in Export
Compliance and Licensing

LATEST EXPORT CONTROLS AND COMPLIANCE UPDATE
November 2011

This newsletter is a listing of the latest changes in US export control regulations through November 30, 2011. The newsletter is provided as a complimentary service to assist readers with their ITAR and EAR export compliance responsibilities. It provides a summary of recent changes to US export control regulations or other regulatory matters of interest that may impact your company's international trade and export compliance functions. Call us at 703-847-5801 or email info@fdassociates.net with questions or comments.

See also our "Latest Sanctions Fines & Penalties" section below for an update on companies and persons denied export privileges by the United States Government.

REGULATORY UPDATES

The President

Nov. 23, 2011 – 76 Fed. Reg. 72609: President Obama issued Executive Order 13590 of Nov. 20, 2011, authorizing the Secretary of State to impose sanctions on persons that knowingly engage in activities in Iran's energy sector including –

- The sale, lease, or provision of goods, services, technology, or support to Iran that could directly and significantly contribute to the enhancement of Iran's ability to develop its petroleum resources, with:
 - Fair market value of \$1 million or more; or
 - Aggregate fair market value of \$5 million or more in a 12-month period; and
- The sale, lease, or provision of goods, services, technology, or support to Iran that could directly and significantly facilitate the maintenance or expansion of its domestic production of petrochemical products, with:
 - Fair market value of \$250,000 or more; or
 - Aggregate fair market value of \$1 million or more in a 12-month period.

Persons who engage in these activities can be subjected to any of nine sanctions, including a prohibition on the issuance of licenses for exports.

Department of Commerce

Nov. 7, 2011 – 76 Fed. Reg. 68675: In an announcement coordinated with the Department of State (*see below*), the Bureau of Industry and Security (BIS) took a further step in the Administration's export control reform initiative by issuing a proposed rule describing how it would deal with the consequences of a plan to shift from the U.S. Military List (USML) to the Commerce Control List (CCL) items that the Administration has determined no longer warrant control under USML Category VIII (Aircraft and Associated Equipment). In addition to covering the classification of the transferred items under the CCL, the announcement also proposes changes in the classification of certain items currently on the CCL and revisions of License Exceptions "STA" and "GOV" (*see description of License Exception STA in June 2011 Update*) and describes licensing policies and license exception eligibility for items affected by the proposal. Comments are due by Dec. 22, 2011.

This newsletter is provided as a service to our clients and is not intended to replace the ITAR or EAR as a reference source. If you have questions concerning the correct interpretation of the regulations please call us at (703) 847-5801 or email us at info@fdassociates.net.

FD ASSOCIATES, INC. - EXPORT CONTROLS & COMPLIANCE UPDATE

Nov. 9, 2011 – *76 Fed. Reg. 69609*: BIS amended Part 748 of the Export Administration Regulations (EAR) to remove National Semiconductor Corporation from the list of Validated End-Users and to remove the Semiconductor Manufacturing International (Chengdu) Corporation, Assembly and Testing (AT2) Facility (SMIC AT2 facility) from the list of Eligible Destinations. Both changes are the result of material changes in ownership or control, not of any activities of concern.

Nov. 14, 2011 – *76 Fed. Reg. 70337*: BIS amended the EAR to align all licensing requirements and policies that apply to the Principality of Liechtenstein with those that apply to Switzerland. The change recognizes the facts that Liechtenstein and Switzerland have a customs union making them a single territory for customs and export purposes and Switzerland administers and enforces these export controls within the territory of Liechtenstein.

Nov. 21, 2011 – *76 Fed. Reg. 71867*: BIS added 14 persons to the Entity List (Supplement No. 4 to EAR Part 744). Thirteen (13) are in Afghanistan and Pakistan. These individuals provided material support to persons engaged in activities against U.S. and coalition forces in Afghanistan. The BIS also added one person in China and one in Hong Kong who obtained items subject to the EAR without the required authorizations. An export license will be required to export any item subject to the EAR to these persons, and exports and reexports to them are not eligible for any license exceptions. License requests will be subject to a presumption of denial. See http://www.bis.doc.gov/policiesandregulations/ear/744_supp4.pdf for the complete entity list.

Department of State

Nov. 7, 8, 16, and 29, 2011: The Directorate of Defense Trade Controls (DDTC) announced the following name and/or address changes on its home page, www.pmdrtc.state.gov:

- National Space Agency of Ukraine changing to State Space Agency of Ukraine;
- Thales Defence Deutschland GmbH of Germany to Thales Defence & Security Systems GmbH;
- ITT Corporation separated into three companies: Exelis, Inc., Xylem Inc., and ITT Corporation;
- Spaceworks Engineering, Inc., changing to Spaceworks Enterprise, Inc.;
- Tadiran Electronic Systems Ltd. of Israel changing to Elbit Systems BMD and Land EW-Elisra Ltd.;
- RUAG Electronics AG and RUAG Land Systems AG of Switzerland changing to RUAG Schweiz AG;
- Global Headquarters of Arrow Electronics address change; and
- Steen Armament Research Co. address change.

Each announcement includes a link to a notice specifying the effects of the change on pending and currently approved authorizations involving the listed entity.

Nov. 4, 2011 – *76 Fed. Reg. 68311*: DDTC amended International Traffic in Arms Regulations (ITAR) Sec. 123.21(b) and Sec. 123.22(c), effective immediately, to eliminate the requirement that applicants return DSP-5 hardware export licenses to DDTC upon their expiration, provided that the license was issued electronically and decremented electronically through the Automated Export System (AES). All other licenses and authorizations, and the DSP-5 license if it has been decremented physically in one or more instances, must be returned to DDTC by the applicant or the government agency with which they were filed.

FD ASSOCIATES, INC. - EXPORT CONTROLS & COMPLIANCE UPDATE

Nov. 4, 2011 – *76 Fed. Reg. 68313*: DDTC amended ITAR Sec. 126.1 to update the policy regarding Libya to reflect modifications to the arms embargo of Libya that were adopted by the United Nations Security Council (UNSC) in September 2011. The liberalization authorizes the issuance of licenses for the supply, sale, or transfer to Libya of arms, related materiel, and technical assistance intended solely for security or disarmament assistance to the Libyan authorities, and of small arms, light weapons, and related materiel for the sole use of UN personnel, media representatives, and humanitarian and development workers and associated personnel. Applications for these licenses must be notified to a committee of the UNSC; they may be approved in the absence of a negative decision by that committee within 5 working days following the notification.

Nov. 6, 2011: DDTC announced that it had updated its master country names and country codes list and published revised versions of all PureEdge forms. Earlier versions of these forms will be rejected upon submission, effective Nov. 21, 2011. The new versions of the forms are at www.pmdtcc.state.gov/dtrade2_forms_110511.html.

Nov. 7, 2011 – *76 Fed. Reg. 68694*: Simultaneously with the Commerce Department announcement described above, DDTC issued a proposed rule that would significantly narrow the coverage of USML Category VIII (Aircraft and Associated Equipment). While continuing to control specified types of aircraft, the revised Category VIII would generally control parts, components, accessories, and attachments only if they are included in a positive list. The remaining parts, components, accessories, and attachments would migrate to the CCL. The major exception would be parts, components, etc. that are specially designed for planes that have low-observable features or characteristics (i.e., the B-1B, B-2, F-15SE, F/A18E/R/G, F-22, F-35 and variants, and F-117 aircraft and U.S. Government technology demonstrators), all of which would remain in Category VIII. Also, some items currently included in Category VIII may migrate to other categories of the USML (e.g. inertial navigation systems for aircraft formerly controlled under Category VIII(e) will likely be moved to control in Category XII or the CCL and gas turbine engines will likely be included in a proposed category XIX). Comments are due by Dec. 22, 2011.

Nov. 9, 2011 – *76 Fed. Reg. 69612*: DDTC amended ITAR Sec. 126.1 to include the Republic of the Sudan as a proscribed destination, and to clarify that this policy does not apply to the Republic of South Sudan. The amendment also describes the limited circumstances – related to peacekeeping and humanitarian purposes – under which license applications for exports to the Republic of the Sudan will be considered on a case-by-case basis.

Nov. 22, 2011 – *76 Fed. Reg. 72246*: In a 23-page announcement, DDTC proposed to amend the ITAR to implement the Defense Trade Cooperation Treaties with Australia and the United Kingdom. The proposal describes the exporters, recipients, and end-uses that would be eligible for the new exemptions and includes a new supplement to ITAR Part 126 listing the defense articles and defense services that would be excluded from coverage under the new exemptions. It also includes a conforming amendment in the Canadian Exemption (ITAR Sec. 126.5). Finally, regarding Israel, it proposes to increase the dollar-value thresholds and shorten the certification period for congressional notification of sales of major defense equipment and to eliminate the requirement of a brokering license under certain circumstances.

FD ASSOCIATES, INC. - EXPORT CONTROLS & COMPLIANCE UPDATE

Comments on this proposal are due by Dec. 22, 2011. This complex proposal amends many sections of the ITAR. Contact us for details.

Nov. 25, 2011: DDTC updated its guidance on commercial satellites. Included in the update is a revised list of programs approved for exports of commercial satellites that are eligible for the special licensing regime prescribed in ITAR Sec. 123.27. This guidance is on the DDTC website at www.pmdtc.state.gov/licensing/commercial_satellites.html.

Nov. 30, 2011: DDTC announced on its home page, www.pmdtc.state.gov, that the new DSP DTRADE forms with the expiration date of Nov. 30, 2011, will remain valid until the Office of Management and Budget notifies DDTC of the revised expiration date.

Department of the Treasury

Nov. 2, 2011 – 76 Fed. Reg. 67791: The Treasury Department published a current list of Countries Requiring Cooperation With an International Boycott – in effect, countries engaging in a secondary boycott of trade with Israel. The list, unchanged from recent prior lists, includes Kuwait, Lebanon, Libya, Qatar, Saudi Arabia, Syria, United Arab Emirates, and Yemen, with the note that while the Republic of Iraq is not on the list, its status with respect to future lists remains under review.

LATEST SANCTIONS FINES & PENALTIES

*This section of our newsletter provides information on the latest sanctions, fines and penalties for export violations or matters of non-compliance with the ITAR or EAR issued by the US government enforcement agencies. It is provided as a service to clients and associates of FD Associates to remind them of the importance of extreme due diligence in all international trade and export compliance matters, particularly those involving exports subject to the ITAR or the EAR. **Don't let this happen to you or your company!** Call us with questions or concerns at 703-847-5801 or email info@fdassociates.net.*

Sanctions

Department of State

Nov. 15, 2011 – 76 Fed. Reg. 70805: The Department of State imposed statutory debarment – a prohibition from direct or indirect participation in exports of defense articles, including technical data, or furnishing of defense services for which a license or other approval is required – on 47 persons and entities. ITAR Sec. 127.7 requires statutory debarment for anyone who has been convicted of violating or attempting to violate the Arms Export Control Act, subject to possible reinstatement upon request by the debarred person and careful interagency consideration, usually after a period of at least 3 years. See <http://www.pmdtc.state.gov/compliance/debar.html> for a complete list State Department debarred parties.

Fines and Penalties

Nov. 3, 2011: Rexnord Industries LLC of Milwaukee, WI agreed to pay a civil penalty of \$8,000 to settle charges by BIS of one violation involving furnishing information about business relationships with boycotted countries or blacklisted persons and four violations involving failure to report the receipt of a

FD ASSOCIATES, INC. - EXPORT CONTROLS & COMPLIANCE UPDATE

boycott request. The violations occurred in connection with transactions with Qatar, Pakistan, and Bangladesh.

Nov. 3, 2011: Viktor Bout, a Russian citizen who was extradited from Thailand to the U.S. in November 2010 (*see November 2010 Update*), was found guilty in federal district court in New York City of conspiring to kill U.S. nationals; conspiring to kill U.S. officers and employees; conspiring to acquire and use anti-aircraft missiles; and conspiring to sell weapons to a designated foreign terrorist organization (the Fuerzas Armadas Revolucionarias de Colombia (FARC)). Although Bout gained notoriety as an arms dealer, the charges against him in this case did not include export control violations.

Phillip Andro Jamison, a former Gunner's Mate Petty Officer First Class in the U.S. Navy, was sentenced in San Diego, CA federal court to serve 30 months in prison following his guilty plea of exporting night vision equipment to Hong Kong without the required license from the Department of State. While working in the armory of his Naval unit, Jamison stole items including rifle scopes, laser aiming devices, and the night vision equipment that was exported to Hong Kong, and then sold them through eBay. In addition to the prison sentence, Jamison was also required to pay the U.S. Navy more than \$170,000 in restitution and to serve 3 years of supervised release following the prison term.

Nov. 9, 2011: Henson Chua of Manila, Philippines, was fined \$13,000 in federal court in Tampa, FL and sentenced to 3 years of supervised release for knowingly and willfully causing the temporary import into the U.S. of an item on the U.S. Military List – an RQ-11B “Raven” military drone – without the required authorization. The violation was discovered after Chua listed the vehicle for sale on E-bay and then engaged in communications with undercover agents from Homeland Security Investigations, which culminated in the recovery of the drone by U.S. officials. (*See earlier reports of this case in March 2011 and July 2011 Updates.*)

Nov. 9, 2011: The Treasury Department Office of Foreign Assets Control (OFAC) announced that Wilson Tool International, Inc., of White Bear Lake, MN, had agreed to remit \$15,000 to settle a charge that it had sold and exported punch press tooling equipment to an entity in Iran without obtaining the required license from OFAC. The value of the transaction was \$10,304.

Nov. 9, 2011: OFAC announced that ASF, Inc. of Mobile, AL had agreed to remit \$5,400 to settle allegations that it had facilitated the exportation of goods from a third country to Iran by a foreign person.

Nov. 10, 2011: A federal judge in Cleveland, OH sentenced Kue Sang Chun of Avon Lake, OH to 14 months in prison followed by 2 years' probation following his plea of guilty to exporting ITAR-controlled night vision rifle scope equipment without the required authorization and making a false income tax return. (*See report on this case in January 2011 Update.*)

Nov. 15, 2011: Swiss Technology Inc., a defense contractor in Clifton, NJ, was sentenced to 2 years' probation and ordered to pay \$1.1 million in restitution to the U.S. Department of Defense after admitting that it had sent ITAR-controlled military drawings and specifications to China without the required

FD ASSOCIATES, INC. - EXPORT CONTROLS & COMPLIANCE UPDATE

authorization. The drawings and specifications were for items including parts for the M4 and M16 rifles and M249 machine guns that Swiss Technology had contracted to manufacture for DOD in the U.S., and had then illegally farmed out to a company in China. (*Swiss Technology's guilty plea was reported in the July 2011 Update.*)

Nov. 15, 2011: Xun Wang of Shanghai, China and Hillsborough, CA, a former Managing Director of PPG Paints Trading (Shanghai) Co., Ltd., a wholly-owned Chinese subsidiary of PPG Industries, Inc. of Pittsburgh, PA, pleaded guilty in federal court in Washington, DC to conspiring to violate the International Emergency Economic Powers Act by exporting, reexporting, and transshipping epoxy paint thinner classified under EAR99 to a Pakistani nuclear power plant whose operator, the Pakistan Atomic Energy Commission, is on the Entity List (Supplement No. 4 to EAR Part 744). Wang agreed to cooperate with law enforcement as part of the plea agreement. Concurrently, Wang settled an administrative proceeding brought by BIS based on the same facts as the criminal case. Under the administrative settlement she will pay a civil penalty of \$250,000, of which \$50,000 will be suspended and waived if she has not committed any further violations during the following 5 years, and she will be placed on BIS' Denied Persons List for 5 years, with a further 5 years suspended. The cases against Wang are related to civil and criminal cases against PPG Paints Trading and PPG Industries that resulted in criminal and administrative fines totaling \$3.75 million and restitution payments of \$32,000. (*See report of these cases in December 2010 Update.*)

Nov. 17, 2011: Fu-Tain Lu, formerly of Cupertino, CA, pleaded guilty in federal court in San Jose, CA to exporting controlled microwave amplifiers to China without the required Commerce Department authorization. As part of the plea agreement, Lu agreed to forfeit 36 additional microwave amplifiers that had been seized by the U.S. Government.