

the end of the financial year on making the necessary technical changes to SPIRE and the Reports and Statistics website, and in preparing guidance for exporters.'

The minister said that the government would aim to keep 'any additional administrative burden on exporters to a minimum'.

Taiwan loosens strategic high-tech commodities controls

By Wong Chian Voen, associate director of Bryan Cave International Consulting.
www.bryancaveconsulting.com

To balance control in the export of strategic high-tech commodities ('SHTC') with the interests of local exporters, the Bureau of Foreign Trade ('BOFT') of Taiwan introduced two reforms regarding the exportation of SHTCs.

In April 2012, the BOFT removed ten less sensitive items from the Sensitive Commodities List ('SCL'). The SCL lists items which are closely monitored for exports to North Korea and Iran.

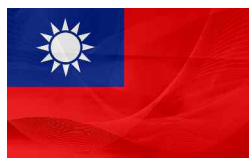
On 18 June 2012, the BOFT removed China from the list

of restricted areas for SHTC export control purposes with immediate effect. All SHTC commodities, except 12 types of semiconductor foundry equipment, can now be exported from Taiwan to China, subject to the relevant export licence.

A word of caution – while SHTC commodities require an export licence, in practice the issuance of these licences is up to the discretion of the BOFT. Export to restricted areas without a valid export licence is a criminal offence. Taiwanese businesses will be subjected to administrative penalties if they export SHTC commodities to China without the necessary licence.

SHTC export permit exemption is also now available for transit and transshipment of eligible SHTC commodities to China. A SHTC export permit is required when transshipping SHTC commodities to restricted areas.

<http://www.trade.gov.tw/Pages/List.aspx?nodeID=900>



OFAC settles with Great Western Malting Co. for alleged Cuba sanction violations

By David Hardin of the Washington DC office of Miller & Chevalier LLP.
www.milchev.com

On 10 July 2012, OFAC announced a \$1.35 million settlement with Great Western Malting Company for alleged violations of the Cuban Assets Control Regulations. According to the announcement, Great Western performed back-office functions for its foreign affiliate's sale of non-U.S. origin

barley malt to Cuba between 2006 and 2009. In reaching the settlement, OFAC considered, among other things, the company's lack of an OFAC compliance programme, the large number of violations involving specially designated nationals ('SDNs'), the company's substantial cooperation, and the absence of prior sanctions violations by the company.

http://www.treasury.gov/resource-center/sanctions/CivPen/Documents/07102012_great_western.pdf

OFAC settles with National Bank of Abu Dhabi for alleged Sudan sanctions violations

On 14 June 2012, OFAC announced a \$855,000 settlement

with National Bank of Abu Dhabi for alleged violations of the Sudanese Sanctions Regulations. According to the announcement, between 2004 and 2005, the bank's staff removed or omitted Sudan-related references in 45 payments that it processed through U.S.-based financial institutions on behalf of the bank's Sudan branch. OFAC considered the bank's substantial cooperation and prompt remedial action in reaching the settlement.

http://www.treasury.gov/resource-center/sanctions/CivPen/Documents/06142012_nbad.pdf

U.S. citizen sentenced for Iran sanctions violations uncovered by on-line sting

Richard Phillips, a 53-year-old U.S. citizen, was sentenced to 92 months in prison on 21 June 2012 for attempting to export high-tech carbon fibre to Iran in violation of the International Emergency Economic Powers Act. Authorities arrested Phillips as part of a sting set up by the U.S. Department of Homeland Security's Immigration and Customs Enforcement ('ICE'). According to court documents, ICE was tipped off to Phillips after he answered an on-line advertisement that sought help with an illegal shipment. ICE agents, who posted the ad, subsequently engaged in discussions for the sale and export of carbon fibre to Iran and prepared a shipment of the carbon fibre to Iran via the Philippines.

<http://www.justice.gov/usao/nye/pr/2012/2012jun21.html>



OFAC changes to the SDN List

OFAC has made numerous changes to its SDN list pursuant to the Global Terrorism Sanctions Regulations; Narcotics Trafficking Sanctions Regulations; Foreign Narcotics Kingpin Sanctions Regulations; Transnational Criminal Organizations Sanctions Regulations; Somalia Sanctions Regulations; Weapons of Mass Destruction Proliferators Sanctions Regulations; and Executive Order 13,599. Persons subject to U.S. jurisdiction are prohibited from engaging in dealings with anyone identified on the SDN list.

<http://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/Pages/20120601.aspx>

<http://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/Pages/20120606.aspx>

<http://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/Pages/20120607.aspx>

http://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/Pages/20120612_33.aspx

<http://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/Pages/20120620.aspx>

<http://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/Pages/20120621.aspx>

<http://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/Pages/20120627.aspx>

<http://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/Pages/20120629.aspx>

<http://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/Pages/20120705.aspx>

<http://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/Pages/20120712.aspx>

Commerce considers changes to shipping tolerance rules

A 10 July 2012 notice from the U.S. Department of Commerce, Bureau of Industry and Security ('BIS') announces the agency's review of its policy on 'tolerances', which allow exporters to enter additional quantities or monetary values in the automated export system ('AES') than the amount established on the BIS licence for the export. In an effort to harmonize its practice with U.S. Department of State, Directorate of Defense Trade Controls ('DDTC') as part of the Administration's reform effort, BIS is assessing,

among other things, whether its current tolerance rules should be maintained or should be consistent with that of DDTC and the feasibility of adding a feature to AES that automatically calculates the allowable tolerance. Comments to the notice are due 20 August 2012.

<http://www.gpo.gov/fdsys/pkg/FR-2012-07-05/html/2012-16401.htm>

BIS incorporates multilateral changes to CCL

On 2 July 2012, BIS implemented changes to the Commerce Control List ('CCL') to reflect modifications agreed among the United States and its multilateral partners in the Wassenaar Arrangement and the Australia Group. Changes made in the context of the Wassenaar Arrangement include revisions to CCL entries controlled for national security reasons, including increases in control parameters. Changes were also made to reporting requirements and definitions in the EAR. Changes made in the context of the Australia Group include revisions to ECCNs 1C351 (human and zoonotic pathogens and toxins), 1C353 (genetic elements and

genetically modified organisms), 2B350 (chemical-manufacturing facilities and equipment), and 2B352 (equipment capable of use in handling biological material).
http://www.bis.doc.gov/federal_register/rules/2012/77fr39353.pdf
http://www.bis.doc.gov/federal_register/rules/2012/77fr39162.pdf

Parties fined \$300,000 and denied export privileges for China export conspiracy

On 11 June 2012, BIS entered a settlement with York Yuan Chang, Leping Huang, and General Technology Systems Integration Corp. to resolve charges that they conspired to export technology controlled under ECCN 3E001 and valued at about \$1 million to China without the required licence. According to the settlement documents, Chang and Huang, through their company General Technology, sought to export development, production and use technology for eight- and 14-bit analog to digital converters ('ADCs') to the China Electronics Technology Corporation's 24th Research Institute. In furtherance of the conspiracy, Chang and Huang, among other things, sought to exchange information with the institute, arranged for two engineering consultants to exchange information with the institute, and informed the consultants on ways to avoid raising the attention of the U.S. government. As part of the settlement, each party agreed to pay a \$300,000 fine, with \$250,000 of that amount waived if they do not commit further violations during a two-year probationary period. Each party is also denied export privileges for 12 years and must attend export control compliance training.

<http://efoia.bis.doc.gov/exportcontrolviolations/e2273.pdf>

<http://efoia.bis.doc.gov/exportcontrolviolations/e2272.pdf>

<http://efoia.bis.doc.gov/exportcontrolviolations/e2271.pdf>

U.S. company fined for unlawful exports of crime-controlled goods

On 11 July 2010, BIS publicly announced a settlement with Humane Restraint, Inc. for exporting restraint devices without the required licences. According to the settlement documents, Humane Restraint shipped items such as straightjackets, bed restraints, and wrist and ankle restraints – items classified under ECCN 0A982 and controlled for crime-control reasons – to various countries in Europe and Asia between 2006 and 2008, even after being notified of a licence requirement. As part of the settlement, Humane Restraint agreed to pay \$465,000, with \$415,000 suspended provided that no violations are committed within a two-year period, and export debarment for two years.

<http://efoia.bis.doc.gov/exportcontrolviolations/e2274.pdf>

DDTC and BIS propose transition plan for export control reform

DDTC and BIS each published a proposed plan on 12 June 2012 for the future administration of items transitioned from the ITAR's U.S. Munitions List ('USML') to the Export Administration Regulations' ('EAR') CCL. The plans, issued as part of the Administration's export control reform effort and necessitated by the proposed amendments to each category of the USML, publicize the agencies' proposed treatment of transitioned items. DDTC's proposed plan addresses, for instance, the validity of previously issued licences and other authorizations, continued reporting requirements under those authorizations, and the validity of previously issued commodity jurisdiction determinations.



BIS's proposed plan, among other things, calls for a general order that keeps previously issued DDTC authorizations valid for transitioned items, harmonizes several EAR exceptions with ITAR exemptions, establishes a 10% *de minimis* U.S. content threshold for re-exports of new '600 series' items to countries subject to a U.S. arms embargo and a 25% *de minimis* threshold for re-exports of 600 series items to all other countries, and a general policy of denial for 600 series exports to countries subject to a U.S. arms embargo. Comments to the proposed plans are due 6 August 2012.

<http://www.gpo.gov/fdsys/pkg/FR-2012-06-21/html/2012-15070.htm>
http://www.bis.doc.gov/federal_register/rules/2012/77fr37524.pdf

DDTC and BIS issue proposed definition for 'specially designed'

On 19 June 2012, DDTC and BIS each published a proposed definition for the term 'specially designed,' which will be used upon transition of USML items to the CCL. BIS's proposed definition, which essentially mirrors DDTC's proposed definition, is as follows:

(a) Except for items described in (b) of this definition, an 'item' is 'specially designed' if, as a result of 'development,' it: (1) Has properties peculiarly responsible for achieving or exceeding the performance levels, characteristics, or functions in the relevant ECCN or U.S. Munitions List (USML) paragraph; (2) Is a part or component necessary for an enumerated or referenced commodity or defense article to function as designed; or (3) Is an accessory or attachment used with an enumerated or referenced commodity or defense article to enhance its usefulness or effectiveness.

(b) A 'part,' 'component,' 'accessory,' or 'attachment' that would be controlled by paragraph (a) of this paragraph is not 'specially designed' if it: (1) Is enumerated in a USML paragraph; (2) Is a single unassembled 'part' that is of a type commonly used in multiple types of commodities not enumerated on the CCL or the USML, such as threaded fasteners (e.g., screws, bolts, nuts, nut plates, studs, inserts), other fasteners (e.g., clips, rivets, pins), basic hardware (e.g., washers, spacers, insulators, grommets, bushings, springs), wire, and solder; (3) Has the same form, fit, and performance capabilities as a part, component, accessory, or attachment used in or with a commodity that: (i) Is or was in 'production' (i.e., not in 'development'); and (ii) Is either not enumerated on the CCL or USML, or is enumerated in an ECCN controlled only for Anti-Terrorism (AT) reasons; (4) Was or is being developed with a reasonable expectation of: (i) Use in or with commodities described on the CCL and commodities not enumerated on the CCL or the USML; or (ii) Use in or with commodities not enumerated on the CCL or the USML; or (5) Was or is being developed with no reasonable expectation of use for a particular application.

Characterized as a 'catch' and 'release' model because

subsection (a) catches an item that is specially designed but subsection (b) may release that item from the scope of the definition, the definition is intended to provide a common meaning of 'specially designed' that is clear and objective – a paramount goal of the Administration's reform effort – and to ensure consistency with multilateral export control regimes. Comments to the proposals are due 3 August 2012.

In conjunction with those proposals, BIS also issued an advanced notice of proposed rule-making on 19 June 2012 on the feasibility of enumerating specially designed components on the CCL. Comments to that notice are due 17 September 2012.

<http://www.pmdtc.state.gov/FR/2012/77FR36428.pdf>

http://www.bis.doc.gov/federal_register/rules/2012/77fr36409.pdf

http://www.bis.doc.gov/federal_register/rules/2012/77fr36419.pdf

Former Venezuelan military officers charged with AECA violations

On 26 June 2011, the U.S. government announced criminal charges against four individuals for exporting and attempting to export defence articles to Venezuela, in violation of the AECA. Two of the individuals, Alberto Pichardo and Freddy Arguelles, are former officers of the Venezuelan air force. According to the indictment, the individuals sought to acquire certain U.S.-origin defence articles on behalf of the Venezuelan air force, including various aircraft parts for the F-16. The other individuals, Victor Brown and Kirk Drellich, were U.S.-based aircraft parts traders involved in the conspiracy.

<http://www.fbi.gov/miami/press-releases/2012/four-charged-with-shipping-defense-articles-to-venezuela>

DDTC Federal Appeals Court upholds China export conviction

On 21 June 2012, the Ninth Circuit Court of Appeals upheld the 2007 conviction of Chi Mak for attempting to export classified naval warship technology to China in violation of the AECA. The court rejected Mak's constitutional arguments for overturning the conviction, including his claim that the conviction violated his First Amendment right to free speech. Mak was previously sentenced to over 24 years in jail and fined \$50,000.

<http://www.ca9.uscourts.gov/datastore/opinions/2012/06/21/08-50148.pdf>

Rescinds general arms embargo against Yemen

Effective 3 July 2012, DDTC removed the general arms embargo against Yemen. The country was previously subject to a general policy of denial for defence articles and services destined for or originating in Yemen, except for certain non-lethal defense articles and services. With the removal, DDTC will now review all requests for exports and temporary imports of defence articles and services on a case-by-case basis.

According to the agency, the policy change was warranted by, among other things, the country's political stabilization and continuing efforts against terrorism.

<http://www.pmdtc.state.gov/FR/2012/77FR39392.pdf>



WorldECR welcomes your News and Bulletins.
 Email the editor: tom.blass@worldocr.com