

President signs executive order targeting foreign evaders of Iran and Syria sanctions

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On 1 May, President Obama issued executive order 13,608, 'Prohibiting Certain Transactions and Suspending Entry into the United States of Foreign Sanctions Evaders with Respect to Iran and Syria'. Among other things, the executive order authorizes the Treasury Secretary to prohibit a broad range of transactions involving foreign individuals and entities that have violated, attempted or conspired to violate, or caused a violation of the existing U.S. sanctions against Iran or Syria. The executive order also authorizes the Secretary to prohibit transactions involving foreign individuals and entities that have 'facilitated deceptive transactions' for or on behalf of any person subject to the Iran or Syria sanctions. Such transactions are defined as 'any transaction where the identity of any person subject to United States sanctions concerning Iran or Syria is withheld or obscured from other participants in the transaction or any relevant regulatory authorities'. Transactions involving individuals and entities owned or controlled by,

or acting or purporting to act on behalf of, any foreign individual or entity committing any of the acts described in the executive order.

http://www.treasury.gov/resource-center/sanctions/Programs/Documents/fse_eo.pdf

U.S.-U.K. defence treaty enters into force, creating a licence exemption for certain defence articles

On 13 April 2012, the U.S. and UK governments exchanged diplomatic notes that formally entered the U.S.-UK Defense Treaty into force and effectuated the treaty-related amendments to the International Traffic in Arms Regulations ('ITAR'). The entry into force follows the U.S. Senate's consent to the treaty in September 2010 and publication of the treaty-related amendments on 21 March 2012. Those changes include a licence exemption for exports of certain defence articles between approved U.S. and UK entities and for certain preapproved end uses. Private companies may apply to become approved entities. Use of the exemption is subject to other restrictions, including confirmation from the Directorate of Defense Trade Controls ('DDTC') that a particular project, programme, or operation is eligible.

<http://pmdtcc.state.gov/FR/2012/77FR23538.pdf>

OFAC settles with Sandhill Scientific for transshipments to Iran

On 25 April 2012, the Office of Foreign Assets Control ('OFAC') announced that it reached a \$126,000 settlement with U.S. medical equipment manufacturer Sandhill Scientific, Inc. relating to the company's alleged violations of the Iranian Transaction Regulations ('ITR') and the agency's Reporting, Procedures, and Penalties Regulations between

2007 and 2008. According to the announcement, Sandhill exported \$6,700 worth of medical equipment from the United States with knowledge or reason to know that the goods were intended for transshipment to the company's exclusive distributor in Iran. The company also subsequently failed to respond to two administrative subpoenas from OFAC during investigation of the transshipment. The agency found the alleged violations egregious based on, among other things, the willful and reckless nature of the violations, management's direct involvement, deliberate concealment of facts, and lack of full cooperation.

http://www.treasury.gov/resource-center/sanctions/CivPen/Documents/04245012_sandhill.pdf

DDTC settles with Alpine Aerospace and TS Trade Tech for unauthorized exports

On 28 March, DDTC entered a consent agreement with Alpine Aerospace Corporation and TS Trade Tech Incorporated. The two aerospace parts companies, which share common ownership, allegedly exported ITAR-controlled parts for a missile system and military aircraft without the required export licences and non-transfer and end-use certificates. According to DDTC, Alpine also falsely claimed the existence of licences on export control documents. As part of the consent agreement, the companies agreed to pay a combined penalty of \$50,000, which is suspended on the condition that they apply that amount to remedial compliance measures. The companies also agreed to DDTC on-site reviews and an external compliance audit.

http://www.pmdtcc.state.gov/compliance/consent_agreements/AlpineTSTrade.html

DDTC issues final rule eliminating DSP-53

On 17 April, DDTC published a final rule eliminating the DSP-53 form, which allowed exporters to request an International Import Certificate from DDTC. The certificate is typically required by foreign exporters to certify to their host country governments U.S. government approval of a temporary import. According to DDTC, a DSP-53 was often submitted by foreign exporters claiming the temporary import licensing exemption under Section 123.4 of the ITAR, which relieves exporters of filing a DSP-61 form for temporary imports. Under the final rule, the ITAR is amended to eliminate the DSP-53 and instead require foreign exporters requiring a certificate to submit a DSP-61. The rule is effective 17 May 2012.

<http://www.gpo.gov/fdsys/pkg/FR-2012-04-17/html/2012-9081.htm>

U.S. Department of Justice charges Taiwanese nationals with conspiracy

On 25 April 2012, the U.S. Department of Justice ('DOJ') announced charges against two Taiwanese nationals, Hui Sheng Shen and Huan Ling Chang, with conspiracy to violate the Arms Export Control Act by attempting to acquire and export sensitive military items to China. The items included a surveillance drone and stealth technology for the F-22 Raptor fighter jet. According to the announcement, Shen and



Chang were initially subject to an undercover investigation by U.S. authorities for their alleged role in a multi-million dollar international smuggling scheme involving drugs and counterfeit goods. During the investigation, the pair furnished to an undercover agent a list of sensitive of military items and technology they sought. They were arrested in February 2012, before any item or technology was exported.

<http://www.justice.gov/usao/nj/Press/files/Shen,%20Hui%20Sheng%20O&%20Chang,%20Huan%20Ling%20Amended%20Complaint%20News%20Release.html>

New OFAC kingpin designations

OFAC has added individuals to its Specially Designated National List, pursuant to the Foreign Narcotics Kingpin Designation Act sanctions.

<http://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/Pages/20120412.aspx>

<http://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/Pages/20120410.aspx>

Proposed removal of certain energetic materials and related articles from the ITAR

On 4 May, the Bureau of Industry and Security ('BIS') and DDTC concurrently published proposed rules for the removal of certain energetic materials and related articles from the ITAR. Certain energetic materials and related articles are controlled under Category V of the ITAR's munitions list ('USML'). The proposed removal is part of the U.S. government's effort to reform the U.S. export control regime and follows similar proposed rules for other USML

categories. Under the proposal, removed energetic materials and related articles would be shifted to Export Administration Regulations ('EAR') controls within the CCL, under new export control classification numbers ('ECCN's) 1B608, 1C608, 1D608, and 1E608. Comments to the proposed rule are due 18 June 2012.

http://www.bis.doc.gov/federal_register/rules/2012/77fr25932.pdf

http://www.bis.doc.gov/federal_register/rules/2012/77fr25944.pdf

BIS settles with Ping Cheng and Prime Technology Corporation for conspiracy

On 17 April 2012, BIS announced that it entered a settlement with Ping Cheng and Prime Technology Corporation relating to charges that they conspired to export carbon fibre to China through Hong Kong and Singapore without the required export licences. The charging letters allege that Cheng, a director for Prime Technology, complied with instructions from a representative of the Chinese Academy of Science and Technology, the intended ultimate recipient of the exports, to inspect the carbon fibre. The carbon fibre were classified under ECCNs 1C010.b and 1C210.a and valued around \$315,000. The charging letters further allege that Cheng arranged for the items to be exported to Hong Kong and Singapore without the required licences, despite being informed of a licence requirement. The items were stopped before export. As part of the settlement, each party agreed to a \$125,000 penalty, a two-year denial of export

privileges, and participation in export control compliance training, with \$75,000 and the denial suspended on the condition that payment and training are completed within the specified time frame and neither party commits an export control violation during the denial period.

<http://efoia.bis.doc.gov/exportcontrolviolations/e2257.pdf>

<http://efoia.bis.doc.gov/exportcontrolviolations/e2256.pdf>

BIS issues proposed rule amending validated end-user provisions

On 17 April, BIS published a proposed rule amending the validated end-user ('VEU') provisions of the EAR. The VEU provisions, which were enacted in 2007 and are codified in EAR Section 748.15, allow certain items to be exported, re-exported, or transferred under a general authorization applicable to the end-user instead of requiring exporters to obtain a licence for each item. The proposed rule would require persons exporting, re-exporting, or transferring an item pursuant to VEU to notify the recipient, within seven days, of the description and quantity of items shipped pursuant to the authorization, as well as the applicable ECCN. As stated by BIS, the purpose of this 'requirement is to enhance the ability of VEU's to comply with the requirements of the VEU program'.

The rule also clarifies that recipients are no longer subject to post-shipment VEU conditions if the item at issue no longer requires a licence for export or re-export or becomes eligible for a licence exception. Comments on the proposed rule are due 18 June 2012.

http://www.bis.doc.gov/federal_register/rules/2012/77fr22689.pdf

BIS issues final rule establishing classification for items that warrant control but are not elsewhere specified

On 13 April, BIS published a final rule creating a new classification, series ECCN 0Y521, for emerging technology and other types of items warranting control but not identified in other ECCNs. Referred to as a 'holding classification' and 'temporary control category' and equivalent to Category XXI of the USML, ECCN 0Y521 would allow BIS to control items while determining the appropriate long-term control, in consultation with multilateral export regime partners. Consistent with BIS's current classification system, the series establishes a classification for each of the following: systems, equipment, and components (ECCN 0A521); test, inspections, and production equipment (ECCN 0B521); material (ECCN 0C521); software (ECCN 0D521); and technology (ECCN 0E521). BIS will classify an item under the new series if the item 'provides a significant military or intelligence advantage to the United States or because foreign policy reasons justify such control'. Application of the new classification to an item, which would be announced through publication of a final rule, would result in a licence requirement for that item for all destinations worldwide (except Canada) and unavailability of any licence exception (except GOV, which is available for items for official use by personnel and agencies of the U.S. Government). The rule became effective 13 April 2012.

http://www.bis.doc.gov/news/2012/final_77fr22191.pdf



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BIS settles with Mattson Technology Inc.

On 1 May 2012, BIS announced that it entered a settlement with Mattson Technology, Inc. relating to charges that the company sold and exported pressure transducers with knowledge that such activities were a violation. According to the charging letter, Mattson exported the transducers, which were classified under ECCN 2B230 and collectively valued at \$78,000, on 47 occasions to customers in Israel, Malaysia, China, Singapore and Taiwan without the required licences. The company allegedly continued with the unlicensed exports even after it learned from one of its supply chain partners of a licence requirement. Mattson voluntarily disclosed the violations. As part of the settlement, Mattson agreed to an \$850,000 penalty, with \$600,000 suspended provided that it commits no violation for a year.

<http://efoia.bis.doc.gov/exportcontrolviolations/e2263.pdf>



BIS releases compliance tool for Strategic Trade Authorization Licence Exception

On 4 April 2012, BIS announced the release of an on-line compliance tool to help exporters determine whether an export is eligible for the Strategic Trade Authorization (‘STA’) licence exception. The exception was implemented in 2011 and authorizes the unlicensed export, re-export, or transfer of items or technology classified under one of 60 ECCNs to 36 countries viewed as close U.S. allies and destinations of low diversion risk. The tool takes the user through numerous questions and determines whether the user is eligible for the STA licence exception. BIS has emphasized that the tool is voluntary and its use does not guarantee eligibility for the licence exception.

<http://www.bis.doc.gov/seminarsandtraining/stacompliancetool.html>

BIS adds to Entity List

BIS has added individuals and companies to its Entity List, including 16 companies and individuals accused of furnishing materials for improvised explosive devices used against U.S., UK and other coalition forces in Iran and Afghanistan. The Entity List is intended to notify the public that certain exports, re-exports, and transfers to identified entities require a BIS licence and that availability of a licence exception for such transactions is limited.

http://www.bis.doc.gov/federal_register/rules/2012/77fr25055.pdf

http://www.bis.doc.gov/federal_register/rules/2012/77fr24587.pdf

http://www.bis.doc.gov/federal_register/rules/2012/77fr23114.pdf

BIS adds Davoud Baniameri to denied persons list

On 4 May 2012, BIS announced the addition of Davoud Baniameri to the BIS denied persons list (‘DPL’) (as well as

aliases and similar names). The DPL identifies individuals and entities that have been denied export privileges by BIS; any dealing with such parties that violates the terms of the corresponding denial order is prohibited.

<http://www.bis.doc.gov/dpl/recentchanges.asp>

U.S. government issues key reports on export controls

In the wake of export control reform efforts in the United States, the U.S. government has issued a number of key reports relating to export controls. On 27 March 2012, the U.S. Government Accountability Office (‘GAO’) – a non-partisan congressional research agency – issued a report entitled *Proposed Reforms Create Opportunities to Address Enforcement Challenges* (GAO-12-246), which examined the U.S. export control enforcement landscape and the impact of potential reforms.

The report observed that agencies involved in export control enforcement face challenges in the form of licence determination delays, limited secure communications, limited staff with necessary security clearances, lack of trend data on illicit transshipments, and lack of effectiveness measure unique to export controls. According to the report, some of those challenges may be addressed through the current reform effort.

<http://www.gao.gov/products/GAO-12-246>

On 23 April 2012, the GAO issued another report, entitled *U.S. Agencies Need to Assess Control List Reform’s Impact on Compliance Activities*, (GAO-12-613), which examined the compliance mechanisms available to U.S. export control agencies and the impact of potential reforms. The report observed that the agencies have not fully assessed the impact.

<http://www.gao.gov/products/GAO-12-613>

Finally, in April 2012, the U.S. departments of Defense and State publicly released their report to Congress on risk assessment for U.S. space export control policy, as required by section 1248 of the 2010 National Defense Authorization Act. Loosely referred to as the ‘1248 report’, among its highlights is a recommendation that Congress shift certain commercial and remote sensing satellites and related items from the ITAR to the EAR. According to the report, those satellites are neither unique to the U.S. military industrial base nor critical to U.S. national security. Although loosening of controls presents security risks, the report states that such risks may be adequately mitigated by EAR controls. The report also discusses controls for other types of satellites and launch activities.

http://www.defense.gov/home/features/2011/0111_nsss/docs/1248%20Report%20Space%20Export%20Control.pdf

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How best to respond to an OFAC administrative subpoena



Peter Quinter outlines process and good practice when responding to an administrative subpoena issued by the Office of Foreign Assets Control ‘OFAC’.

the letter. The response is always mailed to that person at the U.S. Department of the Treasury, Office of Foreign Assets Control, Office of Enforcement, 1500 Pennsylvania Ave., N.W., Washington, D.C. This author’s practice is to communicate often with the assigned OFAC officer, and to also provide the written response in PDF via e-mail. Not only does the administrative subpoena restate the

The government of the United States has declared a ‘war on terrorism’. One of the primary

31 CFR Sec. 501.602 Every person is required to furnish.

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