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## ***Export News In-Brief***

### **Record Number of Export Convictions; Most Involving Iran and China**

During the past fiscal year, a multi-agency federal initiative to combat the export of military and dual-use technologies from the United States resulted in criminal charges against nearly 150 defendants. According to the Department of Justice, 43 percent of the defendants were charged in connection with alleged export violations involving Iran or China. Iran was the leading destination and included in the illegal exports directed to Iran were military aircraft parts. Set forth below are but a few of the convictions that resulted from these investigations:

–On March 13, 2009, Laura Wang-Woodford, a U.S. citizen who served as a director of Monarch Aviation Pte, Ltd., a Singapore company, pled guilty in Brooklyn federal court to conspiring to violate the U.S. trade embargo by exporting controlled aircraft components to Iran. Her husband, who served as chairman and managing director of Monarach, was also charged in the indictment, but he remains a fugitive. Between 1998 and 2007, Wang-Woodford exported controlled U.S. aircraft parts from the United States to Monarch in Singapore and Malaysia and then re-exported the items to Iran without obtaining U.S. licenses. The indictment further charged that the defendants falsely listed Monarch as the ultimate recipient of the parts on export documents that were filed with the U.S. government. As a result of the guilt plea, Wang-Woodford faces a maximum sentence of 5 years in prison and a monetary fine up to \$250,000. As part of her plea, she has already agreed to a forfeiture to the U.S. Treasury in the amount of \$500,000. The investigation was conducted by Immigration and Customs Enforcement (“ICE”) and the Department of Commerce’s Bureau of Industry & Security (“BIS”).

–As a result of an ICE investigation, George Frank Myles pleaded guilty to conspiring to illegally export military aviation F-14 parts without obtaining the permission of the Department of State. Myles furnished the F-14 parts to an Iranian national who allegedly picked up the parts in Dubai, United Arab Emirates and Bangkok and Thailand. (September 2008.)

–In August 2008, Malaysian citizen Desmond Dinesh Frank, the operator of Asian Sky Support, Sdn., was sentenced to 23 months in prison by a U.S. Court in connection with a plot to illegally export military aircraft parts to China and Iran.

–Following an investigation conducted by ICE and the Defense Criminal Investigative Service (“DCIS”), Reza Tabib was sentenced in the Central District of California for his part in illegally exporting military aircraft parts to Iran. Federal agents had intercepted F-14 maintenance kits that Tabib and his wife had sent to Iran. A search of their California home discovered more than 13,000 aircraft parts as well as an aircraft parts “shopping list” that the Iranian government had provided to them.

–After Defendant Ernest Koh (doing business as Chong Tek) was found guilty, the Eastern District of New York Federal Court sentenced him to jail for diverting C-130 and P-3 military aircraft parts to Malaysia for ultimate transshipment to Iran. The total dollar value of the parts diverted to Iran by Koh was \$2.6 million. The investigation was conducted by ICE and BIS.

For further information, visit <http://www.usdoj.gov/opa/pr/2008/October/08-nsd-958.html> and <http://www.usdoj.gov/opa/pr/2008/October/08-nsd-959.html>

## **ITAR Change**

During the past year, the Department of State issued a change to the International Traffic in Arms Regulations (“ITAR”), Part 121, that most significantly provided that the export of the following parts are subject to the Export Administration Regulations (“EAR”) (and not the ITAR) so long as the part or component:

“(a) is standard equipment;

(b) is covered by a civil aircraft type certificate (including amended type certificate and supplemental type certificates) issued by the Federal Aviation Administration for civil, non-military aircraft (this expressly excluded military aircraft certified as restricted and any type certification of Military Commercial Derivative Aircraft ... and

(c) is an integral part of such civil aircraft, is subject to the jurisdiction of the EAR.”

73 Fed. Reg. 47523.

## **DDTC’s New Increased Registration Fees**

The Department of State (“DoS”) increased the cost of registration to apply for export licenses. Previously, the fee was \$1,750 to be register for one year, and \$3,500 to register for two years. Now, you may register for only a one year period at a time, and at the following increased three-tiered fee structured rates:

- Tier one (\$2,250 registration fee) is for any new registrant, or for those already registered who have not submitted any applications to export in the entire preceding year. In essence, a \$500 increase over the current registration fee for those who have never exported or those who, in the past year, have done no exporting in this regard;
- Tier two (\$2,750 registration fee) are for those businesses that have submitted ten or fewer applications in the previous year. In other words, those who have attempted to expand and seek opportunities to ensure the survival of their small business. However, in doing so, they would be subject to an additional \$500 fee, or \$1,000

above the current fee. This takes no account for the fact that while this small business may have obtained some business overseas, it's domestic business may be suffering. Hence the need to seek opportunities elsewhere;

- Tier three (\$2,750 plus additional fees - \$250 for each application over the first 10 applications) are for those businesses that have submitted and had reviewed by DoS more than ten applications in the previous year. They are charged an additional \$250 for each application submitted over the initial ten. In other words, for example, if Company A submits 20 applications for the year, it's registration fees practically double. Again, seemingly a company is penalized for maximizing opportunities.

## **Understanding the Framework of DDTC**

The Department of State ("DoS") has been responsible for defense trade since 1935. Recently, DoS stated that "exports of small arms or helicopter spare parts can contribute to instability as easily as attack aircraft or missiles." It is the goal of the DoS' Directorate of Defense Trade Controls ("DDTC") to deny the United States' enemies access to technology and defense hardware. The legal authorities upon which these decisions are made are the Arms Export Control Act and the Foreign Assistance Act of 1961, as implemented by the International Traffic in Arms Regulations ("ITAR").

What does DDTC do? DDTC is responsible for regulating the temporary import and the permanent and temporary export of defense articles and services. Before you can engage in exporting activities, you must first apply for "registration" with the DDTC. Once you are registered, a party next applies to DDTC for an export license in order to export. Interestingly, there are currently more than 5,000 companies that are registered with DDTC, yet less than half of the more the 5,000 registered companies will apply for licenses in any given year.

To ensure that the law is complied with, DoS' Office of Defense Trade Controls Compliance ("DTCC") regulates transactions to ensure that regulations are complied with. DTCC works along with Customs and Border Protection ("CBP") and Immigration and Customs Enforcement ("ICE"). In fact, an ICE officer as well as an agent from the Federal Bureau of Investigation ("FBI") is assigned to work with DTCC.

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The Law Offices of Fausti & Associates regularly assists its clients in registering at the Department of States' Directorate of Defense Trade Controls and in applying for and obtaining export licenses. In addition, we routinely represent clients that have been debarred and suspended before DDTC in order to reinstate their ability to engage in international trade.