

PUBLICATION

The U.S. Government is Increasing its Prosecution of U.S. and Foreign Companies that Violate Export Laws

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This alert summarizes three types of export transactions that have or will lead to significant fines for the exporting parties. The first case involves a foreign company's sales of U.S. product to Iran in violation of the U.S. sanctions against Iran. The second case involves a voluntary disclosure by a U.S. company of information it discovered during a due diligence review for a merger/acquisition. Even with the voluntary disclosure, the fine was \$15 million. The third case involves disclosure of information to a Chinese student in the U.S. (a deemed export). Additionally, the last paragraph reminds companies that the Commerce Department continually adds foreign entities to the Entity List and that companies must always review the government's list before exporting.

Foreign Company Pleads Guilty to Charges in Export Case

French company Cryostar pleaded guilty to criminal charges earlier this year in connection with its actions to help sell cryogenic submersible pumps from the U.S. to Iran through France and Canada. Cryostar was involved in a three-way deal between Ebara International Corporation (EIC), a U.S. company, and an unnamed French company, referred to as "TN". Cryostar would purchase the pumps from EIC, indicating in the seller's documents that the pumps would ultimately be purchased by a French company for installation in France. The pumps were then sold to TN, which forwarded them to Iran. To conduct this deal, the three companies generated a "matrix" that listed how the companies would operate to evade U.S. law enforcement. These actions included falsifying paperwork, removing stamps and labels to conceal the true source of the pumps, importing as many non-U.S. parts as possible to build the pumps to avoid questions from U.S. suppliers about the end product, and shipping through third countries. EIC had previously pleaded guilty for its involvement in the transactions and received \$6.3 million in criminal fines, three years of probation and a \$121,000 civil fine. The President of EIC paid a \$10,000 criminal fine and a \$99,000 civil fine and received three years of criminal probation. Cryostar received a \$500,000 criminal fine, a \$66,000 civil fine and two years of corporate probation.

Northrop Grumman Receives \$15 Million Fine for Export Violations

Northrop Grumman was recently fined \$10 million in civil penalties and \$5 million for remedial actions in connection with export violations committed by Litton Industries, Inc, a company that it acquired in 2001. The violations occurred primarily prior to the acquisition and were voluntarily disclosed by Northrop to the State Department in 2004. The company was charged with some 110 violations of the State Department's Directorate of Defense Trade Controls' regulations. The violations stem from actions such as exporting portions of the source code of the navigation system of Air Force One and exporting activities to around a dozen countries without the necessary export licenses. The State Department noted that Northrop's voluntary disclosure of these actions was considered a "significant mitigating factor" in determining the resulting charges.

Chinese Student had Access to Controlled Technology at UT

Knoxville-based company Atmospheric Glow Technologies, Inc. (AGT) and University of Tennessee (UT) Professor John Reese Roth were indicted in connection with violations of the Arms Export Control Act. AGT had two contracts with the U.S. Air Force to conduct research and hired Professor Roth in connection with the contracts. The technology under development is controlled by the Department of State. Any act that results in

exporting the technology or providing any access to a foreign national is a crime. The contract with the U.S. Air Force specifically stated that no foreign nationals were allowed to work on the project. The violations occurred because one of Roth's graduate students, a Chinese national studying at UT on a student visa, worked on the project. One of Roth's associates at AGT has already pled guilty in connection to the incident. Violations of the Arms Export Control Act carry a maximum possible sentence of 10 years in prison and \$1million fine. Roth and AGT were further charged with conspiracy and wire fraud in connection to the events.

Commerce Department Adding to Entity List

The Commerce Department's Bureau of Industry and Security is expected to publish a final rule that will expand the criteria used to add foreign entities to its Entity List. Currently, an entity can only be put on the list if its activities could lead to the diversion of U.S. exports or re-exports to programs related to the development of weapons of mass destruction. The rule would expand the criteria to include entities that engage in terrorist supporting activities, enhance the military capability of a designated state sponsor of terrorism, engage in conventional weapons proliferation, fail to comply with U.S. requests for "end-use" checks of exporters and engage in conduct that poses an "imminent risk" of violating U.S. export-control regulations. This rule has been criticized by exporters and industry leaders as vague and confusing.