Sentinel

GLOBAL NEWS OF RELEVANCE TO ENTITIES & INDIVIDUALS ENGAGING IN EXPORT, CUSTOMS & TRADE – WINTER 2009, Vol. VI, No. 1

IN THIS ISSUE:

ReedSmith

CFIUS FINAL REGULATIONS IMPLEMENT FOREIGN INVESTMENT AND NATIONAL SECURITY ACT OF 2007

Introduction:

As reported in the May 29, 2008 *Sentinel*, on April 21, 2008 the Treasury Department ("Treasury") released proposed regulations to implement the Foreign Investment and National Security Act of 2007 ("FINSA"), which codified, defined, and expanded the role of the Committee on Foreign Investment in the United States ("CFIUS") in reviewing foreign direct investment in the United States. After receiving approximately 200 written and oral comments, Treasury promulgated Final Regulations Nov. 14, 2008. As discussed below, the Final Regulations are substantively very similar to the proposed regulations, and make formal many features that have long been a part of CFIUS practice.

Jason P. Matechak
Partner – Washington, D.C.
Global Regulatory Enforcement

The Exon-Florio/FINSA Regime

Under the Exon-Florio Amendment of the Defense Production Act of 1950, the president is authorized to suspend or prevent any acquisition or other transaction that poses a risk to national security. The president, originally by Executive Order, delegated to CFIUS the power to review potential foreign investment transactions for national security concerns. With the passage of FINSA in 2007, Congress codified CFIUS' role in the review and analysis of inbound investment. CFIUS is chaired by the Secretary of the Treasury and is currently composed of members from 12 executive agencies.

In order to promote a greater degree of certainty regarding potential acquisitions and other investment transactions by foreign entities, one or more parties to a proposed deal may voluntarily petition CFIUS for an advance determination regarding whether the proposed transaction may implicate national security concerns. The first step is for CFIUS to undertake a 30-day review to determine if a voluntary notice needs further investigation. If CFIUS believes that there is credible evidence to support the belief that a proposed acquisition may threaten national security, CFIUS may initiate a 45-day investigation. After completing the investigation, CFIUS submits a recommendation to the president, who then has 15 days to decide whether to allow the acquisition to move forward. The process must be completed within 90 days.

New Regulations

As required by FINSA, Treasury has now completed the process of providing revised implementing regulations. The new regulations reflect the major changes contained in FINSA and are discussed in detail in the context of the proposed regulations in *Sentinel* Vol. V, No. 2. Among the most significant changes are: (1) a formal expansion of CFIUS' review of "covered transactions" to include investment interests beyond mergers, acquisitions, and takeovers; (2) guidance regarding when a CFIUS investigation will be necessary because a proposed transaction could result in foreign control of "critical infrastructure" or "critical technologies"; (3) formalization of CFIUS' rights to initiate a review, re-open a review, and continue to monitor a transaction following voluntary withdrawal; (4) expansion of the factors considered by CFIUS in reviewing a transaction; and (5) the addition of civil penalties of up to $250,000 per violation for material misstatements, omissions, or false statements made in connection with a CFIUS filing. These provisions are largely designed to increase the level of transparency and predictability in the CFIUS review process.

Final Regulations

The Final Regulations retain these key features and add some additional details to the definitions of terms and concepts in the regulations. Some examples of these revisions are as follows:

- A more detailed definition of the important concept of "control," including examples of circumstances where the power to influence does not rise to the level of the power to control
- Expansion of the listed minority shareholder protections that do not constitute "control"
- Clarification of when parties without a distinct legal personality may constitute an "entity" for the purposes of the regulations
- Further detail regarding the definition of "foreign entity," including the clarification that an entity will not be a "foreign entity" if it can demonstrate that U.S. nationals own a majority of the equity interest in the entity (provided that no foreign person controls the entity)
- Addition of the word "passive" to clarify the meaning of the safe harbor for persons owning less than 10 percent of an entity "solely for the purposes of passive investment"
- Changes to the regulations governing the required content of a voluntary notice, including the way in which the value of the transaction is described
- Expansion of the confidentiality provisions to materials provided during pre-filing communications

Gregory S. Jacobs
Associate – Washington, D.C.
Global Regulatory Enforcement

Conclusion

The Final Regulations make official the expanded role of CFIUS in reviewing potential inbound investment. It will be important for parties to understand these detailed regulations in order to (1) determine whether the submission of a voluntary notice is advisable; and (2) predict and prepare for the CFIUS review process.

THE NUCLEAR REGULATORY COMMISSION: THE FORGOTTEN REGULATIONS

The Nuclear Regulatory Commission ("NRC") is an independent agency, created by Congress in 1974, tasked with regulating the use of radioactive materials for beneficial civilian purposes while ensuring that people and the environment are protected. In carrying out this responsibility, the NRC administers standards and regulations for the nuclear material industry, issues licenses for nuclear facilities and users of nuclear materials, and oversees the inspection of nuclear material facilities to ensure compliance with applicable standards and regulations. Agency functions are performed through standards-setting and rulemaking; technical reviews, studies and research; conduct of public hearings; issuance of authorizations, permits, and licenses; and inspection, investigation, and enforcement.

Brett D. Gerson
Associate – Washington, D.C.
Global Regulatory Enforcement

NRC Leadership and Organization

The NRC is led by five commissioners, each appointed by the president for a five-year term. The Executive Director for Operations carries out the policies and decisions of the NRC and directs the activities of the three primary program offices: (1) the *Office of Nuclear Reactor Regulation*, which regulates the construction and operation of nuclear reactors; (2) the *Office of Nuclear Material Safety and Safeguards*, which regulates the processing, transport and handling of nuclear materials, including the provision and maintenance of safeguards against threats, theft and sabotage of these materials; and (3) the *Office of Nuclear Regulatory Research*, which oversees, or contracts for, the research and development necessary for the NRC to perform its licensing and related regulatory functions.

Licensing for the Export or Import of Nuclear Equipment or Material

The NRC authorizes exports of nuclear material in certain forms and/or as contained in consumer products, to any country not designated as an embargoed[1] or restricted destination.[2] Any entity in the United States that seeks to export or import nuclear equipment or material must first obtain a license from the NRC. The NRC issues two types of export and import licenses: general and specific.

General Licensing

NRC general licenses authorize selected exports and imports of nuclear material or equipment and are effective without the filing of a specific application with NRC, or the issuance of a licensing document by the NRC to a particular entity. However, a general license is not equivalent to an exemption from NRC regulations, and it does not relieve the general licensee from complying with other domestic regulatory requirements that may apply.

Specific Licensing

Exports or imports of nuclear commodities under NRC licensing authority that are not explicitly authorized under one of the general export or general import license provisions must first be approved by NRC through the issuance of a specific license. To obtain a specific license, an application must be filed with the NRC. Each application for an NRC-specific export or import license must provide certain details regarding the applicant, a description of the equipment or material, and information about the proposed export or import transaction.

Inspections and Site Visits

Inspections are an important element of the NRC's oversight of its licensees. The NRC conducts periodic inspections to ensure that licensees continue to meet NRC regulatory requirements. The NRC conducts inspections of licensed nuclear power plants, fuel cycle facilities, and radioactive material activities and operations. While such inspections vary in scope, inspectors are guided by the NRC Inspection Manual, which contains objectives and procedures to use for each type of inspection.

The NRC staff also conducts routine and reactive inspections of nuclear component suppliers. The staff performs routine supplier inspections to verify effective implementation of a supplier's quality assurance program used to furnish safety-related components and/or services to the nuclear industry. The NRC performs focused, reactive inspections of nuclear component suppliers after allegations of misconduct and under special circumstances to address operational events. Typical routine vendor inspections include approximately one week of direct inspection by a team of qualified inspectors. Vendor inspections responding to an allegation of misconduct may require additional time and resources.

The NRC Regulations and the Export Administration Regulations ("EAR")

The EAR provides a list of items that are not subject to the EAR because they are exclusively controlled for export or re-export by departments and agencies of the U.S. Government that regulate exports for national security or foreign policy purposes. This includes the NRC-administered regulations controlling the export and re-export of commodities related to nuclear reactor vessels. Thus, items controlled under the NRC regulations are not also subject to the EAR.

The NRC, China and India

Although the NRC has authority over the export and import of nuclear components and materials, cross-border cooperation between the NRC and its counterparts in China and India continues to increase.

China

In December 2006, China announced plans to construct four Westinghouse AP1000 nuclear reactors by 2013 and more than 40 nuclear power plants over the next 15–20 years, increasing its nuclear capacity from 9 gigawatts to more than 60 gigawatts. The NRC had already certified the AP1000 design, and some nuclear industry experts assert that the NRC certification may have led the Chinese to choose U.S.-based Westinghouse over foreign competitors such as France's Areva or Russia's Atomstroiexport.

The NRC approved a Memorandum of Cooperation on Nuclear Safety for the Westinghouse AP1000 with its Chinese counterpart, the National Nuclear Safety Administration ("NNSA"), which provides for the establishment of an NRC-NNSA

(continued)

The Nuclear Regulatory Commission: The Forgotten Regulations—continued from page 8

Steering Committee to oversee technical cooperation on the AP1000. This agreement is governed by the 2004 Protocol on "Cooperation in Science and Technology," which has provided the basis for cooperation in nuclear safety matters between the NRC and its regulatory counterparts in China. The Protocol was first signed Oct. 17, 1981, and has been renewed for five-year periods since then, with the most recent renewal signed April 23, 2004.

Teams of NRC staff have visited China to work with members of the NNSA and help train them on the U.S. review and certification process for the AP1000. The NNSA has invited the NRC to continue to observe construction of the AP1000 until its completion. The NRC Chairman has stated that when fabrication of specialized components begins, the NRC will send vendor inspectors to China to observe the fabrication process, and that he expects the NNSA to send inspectors to the United States to inspect components going to China.

India

In July 2007, the governments of the United States and India entered into the U.S.-India Civil Nuclear Cooperation Agreement ("123 Agreement"), reflecting the intentions of both countries to cooperate on research and development, nuclear safety, and commercial trade in nuclear reactors, components, technology and fuel. The 123 Agreement affirms fuel supply assurances that President Bush made to the Government of India in March 2006, and gives consent to India to pursue nuclear fuel cycle activities, provided that India adopt certain International Atomic Energy Agency safeguards. In addition to executive-level cooperation, a strong relationship exists between the NRC and its Indian counterpart, the Atomic Energy Regulation Board of India. The agencies' leadership meets several times each year, and the NRC Office of Nuclear Reactor Regulation and Office of Nuclear Regulatory Research have each hosted Indian nuclear scientists as temporary experts.

Conclusion

The NRC licensing, export/import and inspection regulations can be quite complex. Nevertheless, opportunities for U.S.-based companies in the nuclear industry continue to grow as the U.S. Government pursues its nuclear interests abroad through cooperative initiatives such as those currently on-going in China and India. Taking full advantage of these new opportunities requires a strong understanding of the NRC regulations, as well as the integration of an NRC compliance program into a company's overall U.S. regulatory compliance program.

____

1 Cuba, Iran, Iraq, North Korea, Syria, and Sudan are embargoed destinations, and U.S. persons may not export nuclear equipment or material to these countries.

2 Afghanistan, Andorra, Angola, Burma (Myanmar), Djibouti, India, Israel, Libya, Oman, and Pakistan are not eligible recipients of equipment or material under NRC general licenses to export. Parties may seek a specific license for the export of certain approved items to the above countries.

WOULD YOU LIKE TO RECEIVE FUTURE ISSUES OF *SENTINEL* BY E-MAIL?

We would be happy to send *Export, Customs & Trade Sentinel* to you as an Adobe Acrobat® file. Please provide your e-mail address and any mailing updates below, and send the information to Leah March by mail, phone, fax or e-mail.

Leah March · Reed Smith LLP · 435 Sixth Avenue · Pittsburgh, PA 15219 · Phone: 412 288 5735 · Fax: 412 288 3063 · lmarch@reedsmith.com

Name

Company

Title

Address

City State Zip/Postal Code Country

Phone E-mail

ECONOMIC SANCTIONS OR EXPORT CONTROLS AND FOREIGN COMPANIES: WHAT TO DO WHEN THE U.S. CONGRESS COMES KNOCKING

When a foreign company seeks to enter the U.S. market, is already doing business in the United States, or employs U.S. persons, it needs to consider how U.S. economic sanctions may impact the business. An important, yet many times overlooked, consideration is the political risk of engaging in business with countries sanctioned by the United States, even when such trade is permitted under U.S. law, or is consistent with the laws of the home country of the parent corporation. The following overview also applies to restrictions imposed through U.S. export control laws and regulations.

The United States imposes economic sanctions on only 13 of the worlds' 194 independent states; it also targets thousands of foreign persons and entities for activities such as gross human rights violations, terrorism, illegal drug smuggling, or non-proliferation issues. With export controls, these same issues become somewhat more nuanced on a case-by-case basis, but the same advice applies. The intersection of law and public policy in this complex web of regulations is an increasing concern for foreign companies that do business in countries sanctioned by the United States. The political and business risk in the United States can be as critical to the business as are the more traditional legal problems that may arise from complex global business organizations.

Jason I. Poblete
Associate – Washington, D.C.
Global Regulatory Enforcement

In cases where the extraterritorial application of U.S. law may not be clear, the U.S. Congress will probe suspicious activities in sanctioned countries by foreign companies. Members of the U.S. Congress can, and routinely will, issue letters and other less formal communications to federal agencies, other Congressional Committees, or the White House, asking for additional information about activities in sanctioned countries. These inquiries are not limited to those companies located in a foreign nation. Foreign corporations and individuals are fair game. In some cases, these communications can form the basis for Congressional oversight hearings, or a referral to the Departments of Justice, Treasury, Commerce, or State, or a combination of these and other agencies, that could result in more formal investigations, as well as prosecutions.

As a recent example, during the past few months, several Congressional Committees have been investigating the whether U.S. national security interests are threatened by foreign participation in sovereign wealth funds that invested in the United States. "Sovereign Wealth Funds have been around for decades, but China's recent entry into this field, together with investments in large Wall Street firms by the funds of Middle Eastern countries, have raised questions about the power that these massive funds may have over U.S. national security interests," a senior member of Congress said during a May 2008 Congressional hearing. The Committee on Foreign Investments in the United States ("CFIUS") is empowered to review these forms of foreign investments in the United States, and the Congress has the authority to raise specific concerns about a given fund or activity. Additional hearings are planned on this matter for later this year.

During the past few years, members of Congress have also publicly called for investigations of foreign companies, including foreign petroleum and energy companies for alleged investments in Iran, pension funds that had allegedly invested in the Sudan, and several global insurance companies accused of failing to compensate World War II Holocaust survivors. Late last year, several members of Congress wrote letters to the U.S. Export-Import Bank ("Ex-Im Bank") requesting that the Ex-Im Bank cease granting a $900 million loan guarantee to Reliance Industries Limited ("Reliance"), an Indian company, until the company ceased selling to Iran. According to news reports published in early January 2009, Reliance appears to have stopped sales of gasoline to Iran in response to very public Congressional pressure.

Public statements in the form of letters and press releases, Congressional hearings, or unpublished requests for information from the U.S. Congress can form the basis for a more formal investigation by the U.S. Government. Even if the matter does not rise to a formal investigation, it still presents special challenges for companies. Working and managing such an issue is not the same as managing and executing a trial. The rules and culture are very different. In addition, many times these processes will also be, sometimes quite purposely, made public knowledge through the media.

What can foreign companies do to prevent, or mitigate, the chances of Congressional interest in your company for alleged economic sanctions or export control violations?

First, the most crucial step any company must take is to ensure that it has implemented a robust regulatory enforcement regime consistent with its business activities. There is no one-size-fits-all approach. Even if the parent company is foreign, if it has U.S. subsidiaries, it may be exposed to some legal liability. Any contact with U.S. persons, transactions with U.S. entities, or purchasing of certain U.S. goods or services, can potentially expose a foreign company to legal risk in the United States. A good compliance program should include personnel training as well as frequent notification about the new rules, regulations, and corporate best practices. A good culture of regulatory compliance goes a long way in keeping a business out of trouble and out of Congressional crosshairs.

Second, know your customer and asses your legal risk, as well as the potential political exposure in the United States. In the case of the county-based sanctions, since there are just 13 countries to review, the process may not take as long as most companies think. No matter, review each transaction on a case-by-case basis and, if there is any doubt about a potential transaction or person, you should probably seek legal counsel for further review. This is an especially sensitive area for foreign companies that conduct business in the United States. A foreign company with U.S. connections is an especially high-priority target for Congressional investigators. Iran, Cuba, North Korea, and Burma are very closely monitored by Capitol Hill.

(continued)

What To Do When the U.S. Congress Comes Knocking—continued from page 5

Why bother with foreign companies? The usual Congressional rationale is that if foreign companies are availing themselves of the U.S. market and tax laws, then they should abide by, or pay some deference to, U.S. sanctions, even if they are abiding by U.S. laws and regulations in this area. By and large, U.S. companies are also closely monitored by oversight committees. All companies should conduct a risk assessment of their businesses, but foreign companies should always be aware that foreign companies make easy political targets for the U.S. Congress. A business and political risk assessment goes hand-in-hand with a robust corporate regulatory regime.

Third, if your company is contacted by the U.S. Congress, or is the target of a Congressional inquiry, take affirmative steps and develop a plan before engaging in any formal discussions or formal responses. While preferable to maintaining relations on an ongoing basis with key Congressional offices that may impact your business, this may not always be a cost-effective or necessary option for your business. Take note that any information shared with the Congress could form the basis for a more formal oversight committee investigation or referral to an agency of the federal government. You need a plan.

Unlike traditional litigation that includes formal discovery and timelines, this is not the case with the Congress. Quite the opposite. It is a blend of rules, procedures, traditions, and politics. Unfortunately, these matters have a way of usually ending up in the media as well. It is not uncommon for a company to first learn of Congressional interest in its business activities from a media source or an actual story. If your company is initially contacted by the media, not the Congress, about a matter involving your company, fight the urge to respond immediately. Consult Washington, D.C. counsel.

The Washington, D.C. attorneys of the Global Regulatory Enforcement Group that focus on counseling clients on export controls and economic sanctions have noted an increased interest in the past few years by the U.S. Congress undertaking very targeted inquiries or investigations in this field. With growing emphasis on economic sanctions in the years to come, we expect this trend to continue.

TAIWAN ACCEDES TO THE WTO GOVERNMENT PROCUREMENT AGREEMENT

On December 9, 2008, the World Trade Organization ("WTO") Committee on Government Procurement formally invited Taiwan (often referred to as "Chinese Taipei") to join the plurilateral Government Procurement Agreement ("GPA") after more than 13 years of negotiations. Adopted in 1981, the aim of the GPA is to ensure fairness of competition between domestic and multinational enterprises bidding on government procurement, tender and construction projects. The GPA implements regulations and procedures to encourage transparency, to reduce favoritism for domestic contractors, and to eliminate discrimination against foreign contractors. As a GPA member, Taiwan will open its market to foreign firms, and Taiwanese firms will have greater access to foreign markets, including the United States.

Jason P. Matechak
Partner – Washington, D.C.
Global Regulatory Enforcement

Opportunities for U.S. Procurement

Taiwan's accession to the GPA is a major step in opening up U.S. procurement markets to products from Taiwan. Currently, only those products from the United States or certain "designated countries" are eligible for sale in the U.S. procurement marketplace under the U.S. Trade Agreements Act ("TAA"). Currently, Taiwan is not a designated country and as such its products are not eligible for sale under U.S. Government contracts. However, under U.S. law and regulation, the term "desingated countries" includes WTO GPA member counties. With Taiwan's accession to the WTO GPA, it is expected that the U.S. Federal Acquisition Regulations ("FAR") will be modified to include Taiwan as an eligible product going forward. U.S. contractors and Taiwanese suppliers should be on the lookout for this important change.

Brett D. Gerson
Associate – Washington, D.C.
Global Regulatory Enforcement

Opportunities for Taiwanese Procurement

Reflecting the immediate impact of his country's accession to the GPA, Taiwanese President Ma Ying-jeou reportedly called for foreign firms to bid on projects in Taiwan's major "i-Taiwan" infrastructure initiative, which aims to generate $121 billion worth of investment over the next eight years. President Ma pointed out that the investment environment for foreign firms has improved in Taiwan as a result of its recent accession to the GPA. The United States Trade Representative has welcomed Taiwan's accession to the GPA, saying it would assure U.S. suppliers access to the Taiwanese market, worth approximately $20 billion annually. While there will certainly be opportunities for U.S. and other GPA member companies to participate in the Taiwanese procurement market, U.S. companies seeking to take advantage of procurement opportunities in Taiwan must continue to comply with U.S. export controls.

ENFORCEMENT HIGHLIGHTS: OCTOBER 16, 2008 – JANUARY 5, 2009

Anti-boycott Enforcement

On Oct. 20, 2008, Department of Commerce, Bureau of Industry and Security ("BIS") entered a settlement agreement with American Rice, Inc. ("ARI"), pursuant to which ARI agreed to pay a $30,000 civil penalty to settle allegations that ARI violated the anti-boycott provisions of the Export Administration Regulations ("EAR") between 2002 and 2006 by failing to report to the Department of Commerce receipt of requests to engage in a restrictive trade practice or boycott, as required by the EAR, in connection with the sale or transfer of goods to the United Arab Emirates. The 15 requests were for certificates stating that relevant ships were allowed by Arab authorities to call at Arabian ports.

Leigh T. Hansson
Partner – Washington, D.C.
Global Regulatory Enforcement

BIS Enforcement

On Sept. 26, 2008, BIS entered into a settlement agreement with Marysol Technologies, Inc. ("Marysol"), pursuant to which Marysol agreed to pay a $180,000 civil penalty to settle allegations that it committed nine violations of the EAR in connection with exporting laser equipment to the PRC, India, Belarus, and Russia between 2003 and 2006 without the required export licenses.

On Oct. 16, 2008, BIS ordered that NEAZ Trading Corporation ("NEAZ"), its representatives, agents, assigns, and employees may not participate in any transaction involving the export of an item subject to the EAR for seven years after a default order pursuant to a charging letter, including a charge based on NEAZ exporting items subject to the EAR to a Pakistani organization listed on BIS's Entity List.

On Oct. 16, 2008, BIS ordered that Yasmin Ahmed may not participate in any transaction involving the export of an item subject to the EAR for seven years after a default order pursuant to a charging letter, including four violations of the EAR, based on his actions as a sales representative of Advance Technical Systems of Dubai, U.A.E., in connection with unlawful shipments of U.S.-origin radar parts made to Pakistan through the U.A.E. Ahmed was the Chief Operating Officer of NEAZ.

On Oct. 31, 2008, BIS entered into a settlement agreement with Cabela's Incorporated ("Cabela's"), pursuant to which Cabela's agreed to pay a $680,000 civil penalty to settle allegations that it committed 152 violations of the EAR in connection with exporting optical sighting devices without the required licenses to Argentina, Brazil, Canada, Chile, Mexico, Finland, India, Ireland, Malaysia, Malta, Pakistan, Philippines, South Africa, Sweden, and Taiwan, between 2004 and 2005.

On Nov. 4, 2008, BIS determined that Michelle Geslin and Peter Goldsmith were each guilty of one violation of the EAR by aiding and abetting the unlicensed export of a vessel to Cuba during a regatta they helped to organize in 2003. Each was assessed an $11,000 civil penalty, and both are prohibited from participating in any transaction involving the export of an item subject to the EAR for three years.

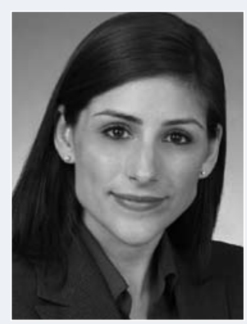
On Nov. 28, 2008, BIS entered into a settlement agreement with PC Universe ("PCU"), pursuant to which PCU agreed to pay a $37,500 civil penalty to settle allegations that it committed one violation of the EAR in connection with selling, transporting, and forwarding digital audio tape drives to Iran without authorization in 2006.

On Dec. 3, 2008, BIS ordered an extension of a temporary denial order prohibiting Galaxy Aviation Trade Company Ltd., Hooshange Seddigh, Hamid Shakeri Hendi, Hossein Jahan Peyma, Iran Air, and Ankair from participating in any transaction involving the export of an item controlled under the EAR. BIS further ordered the denial of related parties Yavuz Cizmeci, Sam David Mahjoobi, and Intelligent Aviation Services Ltd. from participating in any transaction involving the export of an item controlled under the EAR. The orders are intended to prevent imminent violation of the EAR based on previous unlicensed re-exports of U.S.-origin aircraft parts to Iran.

On Dec. 11, 2008, BIS entered into a settlement agreement with Beuhler Limited ("Buehler"), pursuant to which Buehler agreed to pay a $200,000 civil penalty to settle allegations that it committed 81 violations of the EAR in connection with the unlicensed export and re-export of chemical mixtures to Taiwan, Israel, Thailand, and Iran between 2001 and 2006.

On Dec. 11, 2008, BIS entered into a settlement agreement with Gunnar Petzel Medizintechnik, pursuant to which Gunnar Petzel Medizintechnik agreed to pay a $50,000 civil penalty to settle allegations that it committed three violations of the EAR in connection with the export of station microplate processing conveyor systems and power supply units to Cuba via Germany without authorization, between 2003 and 2006.

On Dec. 11, 2008, BIS entered into a settlement agreement with Engineering Physics Software, Inc. ("EPS"), pursuant to which EPS agreed to pay a $130,000 civil penalty to settle allegations that it committed 22 violations of the EAR in connection with the export of software programs to Iran and end-users in India and Pakistan listed on BIS's Entity List without authorization, between 2003 and 2006.



Anne E. Borkovic
Associate – Washington, D.C.
Global Regulatory Enforcement

On Dec. 16, 2008, BIS entered into a settlement agreement with Interpoint Corporation ("Interpoint"), pursuant to which Interpoint agreed to pay a $200,000 civil penalty to settle allegations that it committed 39 violations of the EAR in connection with the export of DC-to-DC converters and/or electromagnetic interference filters to an entity on BIS's Entity List in the PRC without authorization, between 2003 and 2005.

(continued)

Enforcement Highlights—continued from page 8

On Dec. 16, 2008, BIS entered into a settlement agreement with Electronics For Imaging, Inc. ("EFI"), pursuant to which EFI agreed to pay a $32,000 civil penalty to settle allegations that it committed four violations of the EAR in connection with the export of printer parts and components to Syria without authorization in 2004.

On Dec. 22, 2008, BIS entered into a settlement agreement with Syrvet, Inc. ("Syrvet"), pursuant to which Syrvet agreed to pay a $250,000 civil penalty to settle allegations that it committed 38 violations of the EAR in connection with the export of electronic cattle prods to end-users for whom export licenses had expired prior to export, between 2003 and 2006.

OFAC Enforcement

On Oct. 3, 2008, the Department of Treasury, Office of Foreign Assets Control ("OFAC") announced that Myers Industries, Inc. ("Myers"), of Akron, Ohio, remitted $16,250 to settle allegations of a violation of the Cuban Assets Control Regulations. OFAC alleged that in April 2004, a foreign subsidiary of Myers made an unlicensed sale of goods in which Cuba or a Cuban national had an interest.

On Oct. 3, 2008, OFAC announced that Center for Cross Cultural Study, Inc. ("CC-CS"), of Amherst, Mass., remitted $15,000 to settle allegations of violations of the Cuban Assets Control Regulations in connection with its operation of semester-abroad programs on behalf of various licensed U.S. colleges and universities during March 2003 – January 2004.

On Oct. 3, 2008, OFAC announced that Priceline.com, Incorporated ("Priceline"), of Norwalk, Conn., remitted $12,250 to settle allegations of violations of the Cuban Assets Control Regulations in connection with foreign subsidiaries' provision of travel-related services in which Cuba or Cuban nationals had an interest, between September 2004 and November 2007.

On Nov. 7, 2008, OFAC announced that Iridex Corporation ("Iridex") remitted $7,500 to settle allegations of violations of the Sudanese Sanctions Regulations in connection with the export of goods without a license between 2004 and 2005 to an entity located in Sudan.

In Nov. 7, 2008, OFAC announced that Cotech, Inc. ("Cotech"), of Tuxedo Park, N.Y., remitted $6,000 to settle allegations of violations of the Sudanese Sanctions Regulations by attempting to facilitate the shipment of goods from Sudan to Bangladesh in 2004.

On Nov. 7, 2008, OFAC announced that International Golden Foods, Inc. ("IGF"), of Bensenville, Ill., remitted $3,150 to settle allegations of violations of the Iranian Transactions Regulations by attempting to import goods of Iranian origin without a license in 2003.

On Dec. 5, 2008, OFAC announced that Eni Petroleum Co. Inc. ("Eni"), of Houston, remitted $6,562.70 to settle allegations of violations of the Iranian Transactions Regulations by facilitating the exportation of goods or services to Iran without a license in 2003.

On Dec. 5, 2008, OFAC announced that Premier Agency Inc. ("Premier"), of Jamaica Queens, N.Y., was assessed a $7,500 civil money penalty for a violation of the Burmese Sanctions Regulations when Premier did not respond to a Requirement to Furnish Information regarding a funds transfer in 2005 and 2006.

On Dec. 5, 2008, OFAC announced that one individual was assessed a penalty of $7,500 for violation of the Burmese Sanctions Regulations for failure to respond to a Requirement to Furnish Information letter regarding a funds transfer in 2006 and 2007.

DOJ Enforcement

On Nov. 17, 2008, the Department of Justice ("DOJ") announced that Shu Quan-Sheng ("Shu") pleaded guilty to a three-count criminal information relating to violations of the Arms Export Control Act by willfully exporting space launch data to China, and the Foreign Corrupt Practices Act ("FCPA") by offering money to PRC officials to secure a related contract. Shu faces a possible maximum sentence of 10 years in prison and a fine of $1 million for each violation of the Arms Export Control Act, and a possible maximum sentence of five years in prison and a fine of $250,000 or twice the gross gain for violating the FCPA.

On Nov. 21, 2008, the DOJ announced that Aibel Group Ltd. ("Aibel Group"), a United Kingdom corporation, pleaded guilty to a two-count information charging a conspiracy to violate the antibribery provisions of the FCPA, and a violation of the FCPA. Aibel Group admitted that it was not in compliance with a deferred prosecution agreement it entered into with the DOJ in February 2007 regarding the same underlying conduct. Beginning in 2001, Aibel Group's predecessor company and affiliated companies conspired with others to make at least 378 corrupt payments totaling approximately $2.1 million to Nigerian customs service officials in an effort to induce those officials to give preferential treatment during the customs process related to a deepwater oil drilling operation. Aibel Group is a wholly owned subsidiary of Vetco International Ltd., and various other Vetco entities have agreed to pay a combined $26 million criminal fine for FCPA violations. Aibel Group agreed to pay a $4.2 million criminal fine, and is ordered to serve a two-year term of organizational probation that requires, among other things, that it submit periodic reports regarding its progress in implementing antibribery compliance measures.

On Dec. 10, 2008, the DOJ announced that Misao Hioki, a Japanese national and former general manager of his company's International Engineered Products Department, pleaded guilty to felony charges relating to a conspiracy to rig bids, fix prices, and allocate market shares of marine hose in the United States and elsewhere, as well for his role in a conspiracy to violate the FCPA by making corrupt payments to government officials in Latin America and elsewhere to obtain and retain business between 2004 and 2007. Hioki is the ninth individual to plead guilty in the marine hose bid-rigging investigation, and the first to plead guilty in the FCPA conspiracy. Hioki agreed to pay an $80,000 criminal fine for participating in both conspiracies.

On Dec. 15, 2008, the DOJ announced that Siemens Aktiengesellschaft ("Siemens AG"), a German corporation, and three of its subsidiaries, pleaded guilty to violations of and charges relating to violations of the books and records provisions of the FCPA. Beginning in the mid-1990s, Siemens AG engaged in systematic efforts to falsify its corporate books and records, and circumvented and knowingly failed to implement existing internal controls. As a result, Siemens AG made payments totaling approximately $1.36 billion. Approximately $554.5 million was paid for unknown purposes, $341 million was in direct payments to business consultants for unknown purposes, and the remaining $805.5 million was intended in whole or in part as corrupt payments to foreign officials in connection with the U.N. Oil for Food Program, Argentine business, Venezualan business, and Bangladeshi business. Siemens AG agreed to pay a $448.5 million criminal fine, and Siemens Argentina, Venezuela, and Bangladesh each agreed to pay a $500,000 criminal fine. Siemens AG additionally agreed to retain an independent compliance monitor for a four-year period. In a related civil matter with the SEC, Siemens AG agreed to pay $350 million in disgorgement of profits. Finally, in a related matter with the Munich Public Prosecutor's Office, Siemens AG agreed to pay approximately $569 million in a fine and disgorgement.

On Dec. 19, 2008, the DOJ announced that James K. Tillery, a former executive, and Paul G. Novak, a consultant of Willbros International Inc. ("WII"), a subsidiary of Willbros Group Inc. ("Willbros"), were charged in conspiring the make more than $6 million in corrupt payments to Nigerian and Ecuadorian government officials in violation of the FCPA. The bribes were allegedly paid in order to obtain and retain gas pipeline construction and rehabilitation business from state-owned oil companies between 2003 and 2005. Tillery and Novak each face sentences up to 35 years in prison and fines of $250,000, or twice the pecuniary gain or loss from the offense, whichever is greater, for conspiring to violate the FCPA and for each violation of the FCPA, as well as $500,000, or twice the value of the funds involved in the transfer, whichever is greater, for a related money laundering conspiracy. Willbros and WII entered into a deferred prosecution agreement with the DOJ and agreed to pay a $22 million criminal penalty in connection with the corrupt payments in March 2008.

On Dec. 22, 2008, the DOJ announced that Fiat S.p.A. ("Fiat"), an Italian corporation, agreed to pay a $7 million penalty for illegal kickbacks paid to officials of the former Iraqi government by three of its subsidiaries in connection with the U.N. Oil for Food program. Fiat acknowledged responsibility for the actions of its three subsidiaries. Subsidiaries Iveco S.p.A. and CNH Italia S.p.A. were each charged with one count of conspiracy to commit wire fraud and to violate the books and records provisions of the FCPA, and subsidiary CNH France S.A. was charged with conspiracy to commit wire fraud in connection with payments made between 2000 and 2002 totaling approximately $4.4 million to the Iraqi government by inflating the price of contracts by 10 percent before submitting the contracts to the U.N. for approval, and concealing from the U.N. the fact that the price contained a kickback to the Iraqi government. In recognition of Fiat's thorough review of the illicit payments and its implementation of enhanced compliance policies and procedures, the DOJ has agreed to enter into a deferred prosecution agreement of criminal charges against Fiat and its three subsidiaries for a period of three years. In a related matter, Fiat reached a settlement agreement with the SEC and agreed to pay a $3.6 million civil penalty and $7,209,142 in disgorgement of profits in connection with the contracts for which its subsidiaries paid kickbacks to the Iraqi government.

DEPARTMENT OF LABOR PROGRAM ASSISTS WORKERS AFFECTED BY INTERNATIONAL TRADE

In this time of deepening economic troubles globally, and in the United States particularly, there are calls in the capitals around the world for economic stimulus and assistance. While new spending and new programming may come on line in the United States in the not too distant future, certain Trade Act programs fostered by the U.S. Department of Labor may provide an avenue for more immediate relief for employees affected by trade conditions, such as increased imports from, or shifts in production to, foreign countries that complicate the present economic downturn.

Overview of Trade Assistance Program

The Trade Act programs, Trade Adjustment Assistance ("TAA") and Alternative Trade Adjustment Assistance ("ATAA"), assist individuals who have lost their jobs as a direct result of increased imports from, or shifts in production to, foreign countries. The goal of the Trade Act programs is to help trade-affected workers return to suitable employment as quickly as possible. To facilitate this goal, TAA-certified workers may access a menu of services that include income support, relocation allowances, job search allowances, and a health coverage tax credit. TAA participants that require retraining in order to obtain suitable employment may receive occupational training through the program. The ATAA program for older workers provides an alternative to the benefits offered under the regular TAA program.

Steven D. Tibbets
Associate – Washington, D.C.
Global Regulatory Enforcement

Eligibility

To receive Trade Act program benefits, a petition must be filed by a group of three or more workers, by a company official, by a "One-Stop Career Center"* operator, by a partner (*e.g.*, state employment security agencies and dislocated worker units), or by a union or other duly authorized representative of a group of workers. The workers on whose behalf a petition is filed must be, or must have been, employed by the company identified in the petition.

Applicants must meet the following criteria to be eligible for assistance:

- Their company, or former company, produces a product
- A required minimum of the workforce has been laid off, or threatened with layoffs, in the 12 months preceding the date of the petition (the relevant minimums are three workers in groups of fewer than 50, or 5 percent of the workforce in groups of 50 or more)
- One of the following conditions is met:
  - Increased imports "contributed importantly" both to an actual decline in sales or production and to a layoff or threat of a layoff
  - There has been a shift in production to certain countres outside the United States and/or there has been or is likely to be an increase in the import of like or similar articles
  - A loss of business as a supplier of component parts, a final assembler, or a finisher for a TAA-certified firm "contributed importantly" to an actual decline in sales or production, and to a layoff or threat of a layoff

Application Process

To obtain TAA or ATAA reemployment services and benefits, a group of workers must first file a petition with the U.S. Department of Labor's Division of Trade Adjustment Assistance requesting certification as workers adversely affected by foreign trade. An application for a job search allowance must be submitted before a job search begins. Applications may be submitted prior to certification, but will only be approved if the worker group is certified. An application for a job search allowance must be submitted before the 365th day after the layoff or certification, whichever is later, or 182 days after the conclusion of training.

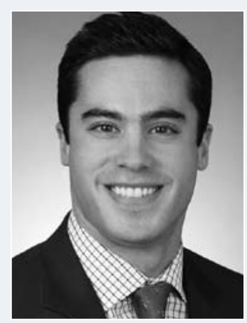
If the worker group meets the necessary group eligibility criteria, a certification will be issued. After a group certification is issued, each worker in the group may apply for individual services and benefits through the local "One-Stop Career Center" to determine individual eligibility for TAA and ATAA services and benefits. Workers age 50 and older may be eligible to receive benefits under either the TAA program or the ATAA program. All other workers may only apply for TAA benefits.

Services And Benefits Offered

Rapid Response Assistance – Rapid Response assistance is provided to every group of workers on whose behalf a petition is filed. Rapid Response staff educate employees regarding services available to workers after a layoff is announced.

Reemployment Services – These services will help identify appropriate training programs, and help workers obtain reemployment at the conclusion of the training program.

Job Search Allowances – Allowances may be payable to cover expenses incurred in seeking employment outside a certified worker's normal commuting area, if a suitable job is not available in the area. Job search allowances reimburse 90 percent of the total costs of allowable travel and subsistence, up to a total of $1,250.



Brett D. Gerson
Associate – Washington, D.C.
Global Regulatory Enforcement

Relocation Allowances – Allowances may be available to reimburse approved expenses when certified workers must move to a new area of employment outside their normal commuting area. Relocation allowances may include: (1) up to 90 percent of the reasonable and necessary expenses of moving workers who have secured employment outside of their normal commuting area, their families and their household goods; and (2) a lump sum payment equal to three times workers' average weekly wages (but no more than $1,250) to help them settle in new locations.

Training – The Department of Labor provides training to certified workers who do not have the skills to secure suitable employment in the existing labor market. Training is targeted to a specific occupation and provided to help certified workers secure employment at a skill level similar to or higher than their layoff employment. In order for an individual to receive training, certain approval criteria must be met.

Income Support – Trade Readjustment Allowances ("TRA") are available to provide income support to individuals while they are participating in full-time training. Under certain circumstances, TRA is also available to certified workers for whom training is not feasible or appropriate.

Health Coverage Tax Credit – Workers who are eligible to receive income support under the TAA program may be eligible to receive tax credits for 65 percent of the monthly health insurance premium they pay.

How The Program Can Help Businesses Affected By Changes In Trade Conditions

Businesses that must lay off workers because of trade-related conditions may apply for TAA and ATAA assistance on their employees' behalf or educate their employees regarding how to take advantage of benefits available under the program. In addition, Trade Act program assistance may augment, or provide an alternative to, laid off employees' severance packages. Proactive use of the Trade Assistance program can assist businesses in maintaining favorable public relations and remaining in good standing with the U.S. communities in which they operate, even as they engage in the unpleasant business of terminating workers.

Pending Legislation

According to a Jan. 9, 2009, report by Inside U.S. Trade, reauthorization and expansion of TAA is likely to become part of the economic stimulus legislation being promoted by the incoming Obama administration. The report contains speculation that TAA legislation would extend coverage to services workers and would increase the scope of benefits available under Trade Act programs.

Attorneys in Reed Smith's Global Regulatory Enforcement and Labor & Employment Groups are actively monitoring legislative developments concerning Trade Act assistance programs, and are available to provide companies with advice and guidance in obtaining TAA and ATAA certification and making trade adjustment benefits available to their employees.

____

* The One-Stop Career Center System, established under the Workforce Investment Act, Pub. L. 105-220 (Aug. 7, 1998), is coordinated by the Department of Labor's Employment and Training Administration ("ETA"). One-Stop Career Centers are designed to provide a full range of assistance to job seekers, including: training referrals, career counseling, job listings, and similar employment-related services.

CONTRIBUTORS TO THIS ISSUE

Anne E. Borkovic
Washington, D.C.
+1 202 414 9448
aborkovic@reedsmith.com

Brett D. Gerson
Washington, D.C.
+1 202 414 9440
bgerson@reedsmith.com

Leigh T. Hansson
Washington, D.C.
+1 202 414 9394
lhansson@reedsmith.com

Gregory S. Jacobs
Washington, D.C.
+1 202 414 9480
gjacobs@reedsmith.com

Jason P. Matechak
Washington, D.C.
+1 202 414 9224
jmatechak@reedsmith.com

Jason I. Poblete
Washington, D.C.
+1 202 414 9205
jpoblete@reedsmith.com

Steven D. Tibbets
Washington, D.C.
+1 202 414 9242
stibbets@reedsmith.com

ReedSmith

The business of relationships.℠

NEW YORK
LONDON
HONG KONG
CHICAGO
WASHINGTON, D.C.
BEIJING
PARIS
LOS ANGELES
SAN FRANCISCO
PHILADELPHIA
PITTSBURGH
OAKLAND
MUNICH
ABU DHABI
PRINCETON
N. VIRGINIA
WILMINGTON
SILICON VALLEY
DUBAI
CENTURY CITY
RICHMOND
GREECE

Export, Customs & Trade Sentinel is published by Reed Smith to keep others informed of developments in the law. It is not intended to provide legal advice to be used in a specific fact situation; the contents are for informational purposes only.

reedsmith.com