U.S. Export Control Laws

- ITAR - International Traffic In Arms Regulations
- Export Administration Regulations
- U.S. Sanctions Laws
Four U.S. Agencies Control Exports

<table>
<thead>
<tr>
<th>Agency</th>
<th>Controls</th>
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</thead>
<tbody>
<tr>
<td>State Dept’s Directorate of Defense Trade Controls (DDTC)</td>
<td>controls defense articles, defense services, and related technical data, including most space-related articles - ITAR.</td>
</tr>
<tr>
<td>Commerce Dept’s Bureau of Industry and Security (BIS)</td>
<td>controls “dual-use” items - EAR.</td>
</tr>
<tr>
<td>Treasury Dept’s Office of Foreign Assets Control (OFAC)</td>
<td>oversees embargo and sanction lists - OFAC regulations.</td>
</tr>
<tr>
<td>Homeland Security Dept’s U.S. Customs and Border Protection</td>
<td>enforces all exports at U.S. borders.</td>
</tr>
</tbody>
</table>
International Traffic In Arms Regulations (ITAR)

• Enabling statute: Arms Export Control Act

• Regulations - International Traffic In Arms Regulations (“ITAR”)

• Department of State – Directorate of Defense Trade Controls

• List of Controlled Products - U.S. Munitions List

• Controls Military Items (And Some “Dual-Use” Items) – Broad scope encompassing effectively all items originally developed for military use
U.S. Munitions List (USML)

- Category 1: Firearms, weapons
- Category 2: Guns and armaments
- Category 3: Ammunition, ordinance
- Category 4: Launch vehicles, missiles, rockets
- Category 5: Explosives, incendiary agents
- Category 6: Naval vessels
- Category 7: Military vehicles
- Category 8: Aircraft and equipment
- Category 9: Military training services, equipment
- Category 10: Protective personnel equipment and shelters
- Category 11: Military electronics
- Category 12: Optical and guidance control equipment
- Category 13: Auxiliary equipment (cameras, encryption, camouflage)
- Category 14: Toxicological, chemical, biological agents, protective equipment
- Category 15: Space systems and equipment
- Category 16: Nuclear weapons, technology
- Category 17: Classified technical data and services
- Category 18: Directed energy weapons
- Category 19: Reserved
- Category 20: Oceanographic equipment
- Category 21: Other items designed or adapted for military use
Export of Technology and Software

• Methods for exporting technology and software:
  – Send it abroad (e.g., send disk in the mail)
  – Go abroad and talk about it
  – Electronic transmissions, e-mail
  – Phone call, fax
  – Computer network
  – Foreign national comes to U.S. and has access to it
ITAR Controls – Defense Services

• Services related to USML items are controlled – “Defensive Services”

• Requires Technology Assistance Agreement (TAA)
  – Filed with and approved by DDTC
  – Signed by foreign recipient of the Defense Services
ITAR CONTROLS

• Items subject to ITAR Controls:
  – Articles (physical items)
  – Software
  – Technology
  – Services
USML Category 21

• Category XXI – Miscellaneous Articles

(a) Any article not specifically enumerated in the other categories of the U.S. Munitions List which has substantial military applicability and which has been specifically designed, developed, configured, adapted, or modified for military purposes.

(b) Technical data (as defined in §120.10 of this subchapter) and defense services (as defined in §120.9 of this subchapter) directly related to the defense articles enumerated in paragraph (a) of this category.
Criteria For Inclusion on USML

• Was product originally designed or developed for military use?

• Was product developed to military specifications?

• Was product developed with special military characteristics (e.g. radiation hardening, ballistic protection, hard points, thermal or infrared signature reduction capability, surveillance or intelligence gathering capabilities)?

• Was product modified for military purpose?

• Relevant question: Current use – military versus commercial (what it is used for, now what it can be used for)

• Relevant question: Was government funding used to develop product for military application?
Recent Developments – State Department

- Aggressive expansion of items covered under USML
  - Items specified on the U.S. Munitions List
  - Any item originally developed for military use
  - Civilian product adapted for military use
Commodity Jurisdiction Requests

- Procedure for DDTC to determine if items is on U.S. Munitions List
- Binding, written response
- Can also be used for removal of item from USML if predominant civil application
- Proceed with caution
DDTC Registration

- Parties that produce items on the U.S. Munitions List are required to register with the Directorate of Defense Trade Controls as a Munitions Manufacturer

- This is even if the company does not export any products

- And even if the company does not disclose any restricted technologies to foreign nationals

- Form DS-2032
ITAR Submissions

• Export License – DSP-5

• Technology Assistance Agreement (TAA)

• Manufacturing License Agreement (MLA)

• Warehouse And Distribution Agreements (WDA)

• Registration – Form DS-2032
Recordkeeping Requirements

- Mandatory requirement to maintain records of all export transactions for 5 year period
- Covers paper, electronic and other media
ITAR – Other Issues

- Temporary imports
- Significant Military Equipment (SME)
- Broker registration and regulation
- Political contributions
- Debarred Party List
- Recordkeeping requirements
Penalties For Violations

• Criminal Sanctions – up to 10 years imprisonment
• Fines: $1,000,000 per violation
• Press release
• Debarment
• For criminal cases Justice Department can prosecute
  – Company
  – Officers and Directors
  – Employees in their individual capacities
Major Export Compliance Cases

- ITT Corporation - $128,000,000 combined civil and criminal penalties for ITAR violations related to night-vision products and technology

- Analytical Methods, Inc. - $500,000

- General Motors/General Dynamics - $20,000,000 penalties for export control violations
January 23, 2009
UNITED STATES DEPARTMENT OF STATE
BUREAU OF POLITICAL MILITARY AFFAIRS
WASHINGTON, D.C. 20520

In the Matter of:

Analytical Methods, Inc

A Washington Corporation

Respondent

CONSENT AGREEMENT

WHEREAS, the Office of the Directorate of Defense Trade Controls, Bureau of Political-Military Affairs, U.S. Department of State ("Department") has notified Analytical Methods, Inc., ("Respondent") of its intent to institute an administrative proceeding pursuant to section 38 of the Arms Export Control Act, as amended ("AECA") (22 U.S.C. § 2778), and its implementing regulations, the International Traffic in Arms Regulations ("ITAR") (22 C.F.R. pts. 120-130);

WHEREAS, the Department acknowledges that the Respondent described these matters in a voluntary disclosure submitted to the Department, and cooperated with the Department's investigation of this matter;
SENTENCING OF COMPANY FOR EFFORTS TO TRADE WITH IRAN

For Immediate Release: July 31, 2008
Contact - BIS Public Affairs 202-482-2721

Raleigh, North Carolina - United States Attorney George E.B. Holding announced today that on Monday July 28, 2008, Allied Telesis Labs, Inc. (ATL), was sentenced in United States District Court in Elizabeth City to a $500,000 criminal fine and was placed on probation for two years for violating United States law regarding conducting business with Iran.

ATL was successfully engaged in the design of telecommunication equipment and systems including high capacity Multiservice Access Platforms (iMAPs) and related items capable of routing a large volume of messages/information/data. ATL’s guilty plea acknowledged that the corporation conspired with another to trade with the Islamic Republic of Iran in violation of the law. Specifically, ATL and its related corporate entities conspired to land and execute a $95,000,000 contract with the Iranian Information Technology Company (IRITCO) to rebuild and upgrade the telecommunications systems of approximately 20 Iranian cities, including Tehran. The iMAPS developed here in the Triangle were to be a central component of this system. Preparation for the execution of the contract went as far as the manufacture of approximately $2 million worth of iMAPS at ATKK facilities in Singapore. The contract negotiations eventually collapsed, the telecommunications system was not installed and the iMAPs were sold elsewhere at a loss.

Mr. Holding noted the importance of the case: “Every American is aware of the sensitive nature of the United States’ relationship with Iran. That relationship is a central focus of our foreign policy and the work of our Government. The International Emergency Economic Powers Act allows the President to regulate the conduct of business internationally under certain circumstances, a step which was taken with regard to Iran. When the President imposes these types of authorized restrictions, it is incumbent on all citizens, including our corporate citizens, to adhere to those regulations and to follow the strict letter of the law. Only then can we be confident that our country speaks with one voice in our relationships with our international friends and foes. The plea of guilty and the sentence in this case should act as a reminder to our business community of the seriousness with which the Department of Justice takes this issue.”

The case was investigated by the United States Department of Commerce. Assistant United States Attorney John Bowler represented the United States in federal court.
WASHINGTON, D.C. - The Commerce Department's Bureau of Industry and Security (BIS) announced today that B.J. Services Company, a provider of specialty products and services to the oil and gas industries, has agreed to pay an $800,000 civil penalty to settle allegations that it exported certain butterfly and check valves in violation of the Export Administration Regulations. B.J. Services Company is headquartered in Houston, Texas.

"An effective compliance program requires continuous oversight and revision," said Kevin Delli-Colli, the Acting Assistant Secretary of Commerce for Export Enforcement. "Failing to keep pace with changing business practices can result in numerous violations and degrade our system of export controls."

The allegations involved 63 unlicensed exports to a variety of countries of various service parts controlled under Export Commodity Classification Number 2B350 for reasons of chemical and biological weapons proliferation, specifically, Teflon-coated valves. The violations occurred between 2003 and 2007. The company voluntarily disclosed the violations, and cooperated fully with the investigation.

Acting Assistant Secretary Delli-Colli praised the BIS Dallas Field Office for its outstanding work on this case.

BIS controls exports and re-exports of dual-use commodities, technology, and software for reasons of national security, missile technology, nuclear non-proliferation, chemical and biological weapons non-proliferation, crime control, regional stability and foreign policy. Criminal penalties and administrative sanctions can be imposed for violations of the Export Administration Regulations. For more information, please visit www.bis.doc.gov.
Summary

• Determine if your product is on the U.S. Munitions List

• If yes, must obtain an export license to export the product

• If product is on the USML, software and technology related to the product is also on the list
  – Must obtain export license to export the software and technology
  – Cannot disclose software and technology to foreign nationals in the U.S. without license

• If your product is on the USML, services related to the product are controlled
  – Cannot perform services overseas without a license authority (TAA)
Summary (cont.)

• If product on USML, must register with DDTC
  – Even if you will not export the product

• If obtain export license, must comply with the terms, conditions and provisos on the license

• Must comply with other ITAR requirements: brokering, registration, political contributions, recordkeeping, other
Export Administration Regulations


- Regulations: Export Administration Regulations (EAR)

- Department of Commerce – Bureau of Industry and Security

- List of Controlled Products – Commerce Control List

- Controls “Dual-Use” Items
Commerce Control List – Examples of Products Covered

- encryption
- aerospace
- lasers
- chemicals
- power generation
- police equipment
- electronics
- sensors
- electronics
- machine tools
- computers, networking devices
- high performance materials
- telecom equipment
- high strength fibers
- nuclear industry product
- high performance pumps, generators, processing equipment
- fingerprint/biometrics
- others
Commerce Control List Categories

• Category 0  Nuclear Materials, Facilities and Equipment, Miscellaneous Items
• Category 1  Materials, Chemicals, Microorganisms and Toxins
• Category 2  Materials Processing
• Category 3  Electronics
• Category 4  Computers
• Category 5  Telecommunications And Information Security
• Category 6  Sensors And Lasers
• Category 7  Navigation And Avionics
• Category 8  Marine
• Category 9  Propulsion Systems, Space Vehicles And Related Equipment
• Supplement  General Technology And Software Note
• Supplement  Statement of Understanding
EAR Controls – Technology and Software

- Software and technology related to defense articles are also controlled
- Require export license, re-export authority, etc.
- Deemed export rule applies, even to U.S. company employees
Requirements for all exports (even if product is not on CCL):

- Recordkeeping requirements – 15 CFR § 762
- Denied persons list – 15 CFR § 764
- Shipment documentation – 15 CFR § 758
U.S. Sanctions Programs

• Office of Foreign Assets Control (Department of the Treasury)

• Prohibition against dealing with targeted list of countries

• Prohibition against dealing with targeted list of entities and parties
Sanctions Programs - Summary

**OFAC Country Programs**
- Balkans
- Belarus
- Burma
- Cote D’Ivoire (Ivory Coast)
- Cuba
- Democratic Republic of the Congo
- Iran
- Iraq
- Liberia (Former Liberian Regime of Charles Taylor)
- North Korea
- Sudan
- Syria
- Zimbabwe

**OFAC Non-Country-Specific Programs**
- Anti-terrorism Sanctions Program
- Non-Proliferation Sanctions Program
- Narcotics Trafficking Sanctions Program
- Diamond Trading Sanctions Program
- Persons Undermining the Sovereignty of Lebanon or Its Democratic Processes and Institutions
U.S. Sanctions Programs – SDN’s

• Prohibition against dealing with Specially Designated Nationals anywhere in the world
  – 3,000 Parties
  – 15 CFR Chapter 5, App. A-C
The OFAC SDN List
Can I sell something to Osama?
Exports to Affiliates

• U.S. export laws also apply in exports to:
  – Foreign subsidiaries
  – Joint venture partners
  – Distributors
  – Suppliers and subcontractors
  – Inter-company transferees in foreign offices
  – Supply chain partners
Electronic Communications

• Intra-company communications with foreign offices
• Communications with foreign national employees in the U.S.
• Communications with foreign customers, distributors, subcontractors, suppliers, joint venture partners
Outsourcing

• Are you sending controlled technologies to foreign parties:
  – specifications for components to be manufactured abroad?
  – object code for software to be developed abroad?

• Are foreign firms performing IT integration services for systems subject to export restrictions?

• Do foreign nationals have electronic access to your IT system?
Electronic Commerce

• Are items transferred subject to export restriction?
• Are recipients in an embargoed country?
• Are recipients listed on Denied Persons List or Specially Designated Nationals List?
• Controls on subsequent re-transfer?
Computer Networks

• Certain foreign national employees not permitted to have access to controlled software and technologies
  – Access to electronic engineering drawings, CAD/CAM
  – Proprietary technologies stored in Word files
  – Software, source code
  – Training materials, instruction manuals
Mergers and Acquisitions

• In the Matter of: Sigma-Aldrich Business Holdings, Inc.
  (Case No. 01-BXA-06)

  – If U.S. company acquires target company through purchase of assets, acquirer can still be liable for target company’s export control violations.
Compliance Strategy

• Classification – review all of your company’s products to see if they are listed on:
  – U.S. Munitions List
  – Commerce Control List
  – End Use Based Control (15 CFR Part 744)

• Application – Apply as required for
  – DDTC export licenses (DSP 5)
  – BIS export licenses
  – TAA’s, MLA’s
  – Warehouse Distribution Agreements
  – Re-export authority

• Compliance Program – internal company compliance procedures
Export Compliance Programs
Major Components

1. Adopted At Senior Company Level
2. Export Compliance Official
3. Written Policy and Procedures
4. Training
5. List Screening
6. Compliance Audit Procedure
7. Recordkeeping
8. Internal System For Reporting Violations
9. Periodic Updating
10. Penalties for Employees Who Violate Program
Specific ITAR Compliance Program Components

• Must provide specifics of organizational structure – steps in the compliance process and reporting responsibilities
• Corporate commitment at the highest level of the organization
• Identification, receipt and tracking of ITAR controlled items and technical data
• Procedures for re-exports and retransfers of articles, software and technologies
• Restricted or prohibited exports, re-exports and transfers
• Recordkeeping
• Internal auditing, supervision and reporting
• Training
• Procedures if violations are discovered
Export Compliance Programs
Advanced Components

• Export compliance website

• Compliance hotline

• Training videos

• Interactive training software with records of user activity

• Automated list tracking

• Automated recordkeeping
Export Compliance Programs
McVey’s High Priority Recommendations

• Specifics – names of responsible persons, titles, organization charts, flow charts specific to your organization

• Evidence of compliance activities – training records, list search results, results of Red Flag due diligence, etc.

• Risk-based analysis – concentrate resources in areas of highest risk

• Adopted at the highest level of corporate organization
## Mitigation Criteria Checklist

<table>
<thead>
<tr>
<th>Criteria</th>
<th>Relevant Evidence for Compliance Program Mitigation</th>
</tr>
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<tbody>
<tr>
<td>1. Whether the Company has Performed a Meaningful Risk Analysis</td>
<td>Design</td>
</tr>
<tr>
<td></td>
<td>Implementation</td>
</tr>
<tr>
<td>2. The Existence of a Formal Written Compliance Program</td>
<td>Design</td>
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<tr>
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<td>Implementation</td>
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<tr>
<td>3. Whether Appropriate Senior Organizational Officials Are Responsible for Overseeing the Export Compliance Program</td>
<td>Design</td>
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<td>Implementation</td>
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<td>4. Whether Adequate Training is Provided to Employees</td>
<td>Design</td>
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<td></td>
<td>Implementation</td>
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<tr>
<td>5. Whether the Company Adequately Screens its Customers and Transactions</td>
<td>Design</td>
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<td></td>
<td>Implementation</td>
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<tr>
<td>6. Whether the Company Meets Recordkeeping Requirements</td>
<td>Design</td>
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<td></td>
<td>Implementation</td>
</tr>
<tr>
<td>7. The Existence and Operation of an Internal System for Reporting Export Violations</td>
<td>Design</td>
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<td></td>
<td>Implementation</td>
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<tr>
<td>8. The Existence and Results of Internal/External Review or Audits</td>
<td>Design</td>
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<tr>
<td></td>
<td>Implementation</td>
</tr>
<tr>
<td>9. Whether Remedial Activity Has Been Taken in Response to Export Violations</td>
<td>Design</td>
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<td></td>
<td>Implementation</td>
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