

Legislative Update

New Law Increases Penalties for Export Violations

On October 16, President Bush signed legislation that significantly increases the penalties for export violations involving “dual-use” items under the International Emergency Economic Powers Act (“IEEPA”). Exports of dual-use items (articles with commercial and military applications) are controlled by the Commerce Department.

The statute increases maximum civil penalties for export violations from \$50,000 to \$250,000 or twice the amount of the illegal transaction, whichever is greater. In addition, any person convicted of violating IEEPA now faces a maximum fine of \$1 million—up from \$50,000—as well as up to 20 years in prison. The new law’s civil penalties apply to cases pending at the time of enactment, as well as to new cases. By contrast, the increased criminal sanctions only apply to cases that begin on or after October 16, 2007.

The increased penalties reflect the government’s heightened focus on export controls. The Bush Administration strongly supported this legislation—and initially sought even tougher penalties. Nevertheless, responding to Congressional pressure, the Commerce Department made clear during consideration of the new legislation that an exporter’s size and the inadvertent or accidental nature of the violation will be taken into account when assessing penalties.

As part of its focus on export compliance, the Commerce Department strongly encourages voluntary disclosures of known or suspected export violations. Mitigating factors, including voluntary disclosure, can significantly reduce—or eliminate—penalties, especially when an exporter can demonstrate that its errors were unintentional and presented no threat to national security. In 2006, the Commerce Department’s Bureau of Industry and Security announced that roughly 95% of voluntary disclosures resulted in no monetary penalties and that none yielded criminal sanctions. For these reasons, exporters are well advised to establish and maintain vigorous export compliance programs, including voluntary disclosure of errors and omissions when they are discovered.

For more information, please contact Ronald K. Henry at 202.682.3590 or rhenry@kayescholer.com, or Christopher R. Brewster at 202.682.3535 or cbrewster@kayescholer.com

Copyright ©2007 by Kaye Scholer LLP. All Rights Reserved. This publication is intended as a general guide only. It does not contain a general legal analysis or constitute an opinion of Kaye Scholer LLP or any member of the firm on the legal issues described. It is recommended that readers not rely on this general guide in structuring individual transactions but that professional advice be sought in connection with individual transactions. References herein to “Kaye Scholer LLP & Affiliates,” “Kaye Scholer,” “Kaye Scholer LLP,” “the firm” and terms of similar import refer to Kaye Scholer LLP and its affiliates operating in various jurisdictions.