

CLIENT ALERT

Analytical Methods, Inc. Fined \$500,000 For Failing to Register and Obtain DDTC Authorization For Exporting Its Analysis

Mar.18.2009

In announcing last week the January 2009 settlement with Analytical Methods, Inc., the Directorate of Defense Trade Controls (DDTC) once again sounded a warning to commercial companies that provide goods and services to defense and aerospace companies. Although the size of the fine was modest by DDTC standards (\$100,000 to DDTC and \$400,000 for compliance improvements), the matter provides some important lessons.

First, this appears to be the first time DDTC has actually charged as a violation the failure to register as a manufacturer or exporter of defense articles and services. While this settlement may herald DDTC's general impatience with the continued failure of many commercial companies to register after their activities cross over into the manufacture of defense articles, hopefully it reflects only Analytical Methods' somewhat unique circumstances. Analytical Methods had affirmatively discontinued its newly acquired registration after DDTC had issued a commodity jurisdiction (CJ) determination that certain software was ITAR controlled (see below). While Analytical Methods apparently did in fact discontinue sale of that product, it continued other activities (defense services) that resulted in a subsequent voluntary disclosure and led to this settlement.

Second, this settlement underscores another point that commercial companies often do not fully appreciate. As Analytical Methods' website attests, it provides consulting with respect to dynamic motion analysis of various equipment, including military aircraft and missiles. While the service is undoubtedly similar to analysis performed on civilian aircraft and other commercial products, when related to defense articles the consulting (and associated use of what DDTC acknowledged was dual use software) is a defense service. The draft Charging Letter includes 13 counts of providing defense services with respect to various Israeli UAV and aircraft projects as well as analysis of Singapore and UK submarine maneuvers.

Finally, and perhaps most significant, the settlement cautions against a strategy of submitting a CJ request and failing to disclose prior exports to DDTC if the CJ determination comes back adverse. Here, Analytical Methods had jointly developed (with IAI) certain dual use analytical software, but subsequently obtained development and marketing rights to sell a version that included additional functionality, apparently permitting dynamic motion analysis of pods and other such aircraft accessories. After numerous direct and indirect exports of this software to the People's Republic of China, Analytical Methods sought a CJ, only to learn in January 2004 that the item was ITAR controlled. DDTC charged each of the exports as violations, but also included a count under ITAR § 126.1(e) for failing to notify State immediately of the sale and transfer of defense articles to an embargoed country - a disclosure that did not occur until the subsequent 2007 voluntary disclosure.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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