

CLIENT ALERT

Export Controls: Commodity Jurisdiction Requests

Aug.09.2010

While we await the President's promise to reform the export control system and specifically to address (and perhaps abandon) the outmoded "specifically designed for military use" criteria for determining commodity jurisdiction, the Department of State has taken a baby step to streamlining and making more transparent the current process.

On August 4, 2010, the Directorate of Defense Trade Controls ("DDTC") published ([75 Fed. Reg. 46843](#)) a final rule formally adopting the DS-4076 Commodity Jurisdiction ("CJ") Determination Request Form, revised from the earlier draft version available through D-TRADE. The new rule requires electronic submission of CJ requests (after a 30-day transition period). While the new form is similar to the earlier version, there are some differences that suggest DDTC is continuing its efforts to address more appropriately commercial products that may have been modestly modified for use in a military platform or system. Perhaps most importantly, the form (and introductory statement of the new rule) indicate that DDTC has decided to return to its mid-1990s practice of publishing some information about the CJ determination, including make and model number and ultimate disposition (withholding only that which is expressly identified as proprietary by the submitter).

Meanwhile, in an apparent reaction to reported instances where prosecution for unlicensed export of a defense article has been undermined because the exporter had obtained a commodity classification ("CCATS") from the Bureau of Industry and Security ("BIS") indicating that a particular product was covered by a specific Export Control Classification Number, BIS published an interim final rule ([75 Fed. Reg. 45052](#) (August 2, 2010)) to add language to EAR § 748.3 clarifying that neither a CCATS nor an advisory opinion establishes, or can be relied upon to establish, that a particular product is "subject to the EAR." Moreover, BIS will include a similar cautionary statement on each CCATS it issues. While not directly advancing the President's goal of a single licensing system, it does serve to educate the uninformed and to defeat those who may have sought previously to game the commodity jurisdiction system.

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

Alan W. H. Gourley

Partner – Washington, D.C.

Phone: +1 202.624.2561

Email: agourley@crowell.com