

UNDER SCRUTINY:
**SHB's Government Enforcement
& Compliance Update**



**GOVERNMENT ENFORCEMENT
& COMPLIANCE**

Our clients face unprecedented enforcement scrutiny and novel legal theories. Today, government enforcement actions can include civil as well as criminal investigations and litigation. They can involve a host of independent actors including federal and state prosecutors, regulators, whistleblowers and their counsel, and class-action attorneys. These cases must be defended under the watchful eye of investors and the public.

Our Government Enforcement & Compliance Practice consists of former prosecutors – including a former U.S. Attorney, former Justice Department officials and even former corporate executives – who counsel and defend companies, their executives and employees in the full range of criminal, civil and regulatory government enforcement actions at the state and federal level. We counsel clients on how to avoid enforcement scrutiny. When investigations do arise, however, we work with our clients to resolve them as efficiently, cost-effectively and quietly as possible.

**DDTC ISSUES NEW GUIDANCE FOR LICENSE
REQUESTS UNDER “MISCELLANEOUS ARTICLES”**

The Directorate of Defense Trade Controls (DDTC) recently issued a policy change affecting those who submit International Traffic in Arms Regulations (ITAR) license applications under United States Munitions List (USML) Category XXI—Miscellaneous Articles.¹ Category XXI covers those items that are not specifically designated on the USML, but which have “substantial military applicability and which have been specifically designed, developed, configured, adapted, or modified for military purposes.” This category also includes all technical data and defense services directly related to the defense articles covered by this category.

In recent months, the DDTC has seen a significant increase in the use of Category XXI in licensing applications when the items to be licensed should have been categorized under other more well-defined USML categories. The unfortunate result has been that applications have been staffed by the wrong licensing teams at DDTC and the Defense Technology Security Administration, significantly slowing the licensing process.

To force those submitting licenses to make a more concerted effort to properly classify their items, the DDTC has adopted a new policy under which all license applications that identify Category XXI must include a copy of one of the following, or the application will be subject to Return Without Action:

A copy of a DDTC Commodity Jurisdiction determination letter identifying the commodity as controlled under the USML at Category XXI; or

An official letter from the Director, Office of Defense Trade Controls Policy, granting permission to use Category XXI.

This new policy will require exporters to more carefully review the other USML categories and attempt to properly classify an item under another category. If the item still cannot be classified under any other USML category, the only alternatives

¹ A copy of this policy, issued September 8, 2009, is available at: http://www.pmdtdc.state.gov/licensing/documents/WebNotice_CatXXI.doc.

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under this new policy are to either submit a time-consuming Commodity Jurisdiction Request or seek DDTC's permission to submit using Category XXI. Either scenario is not likely to lead to quick results.

The important take-away from this new policy is that before submitting a license application, one must carefully analyze which USML category a particular item falls under. The DDTC will no longer allow companies to submit a Category XXI application without making an effort to properly categorize an item. ■

Analysis prepared by Jonathan Rosen and Matthew Benov.

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