

Trade & Customs - USA

DHL Settles Export Controls Case for \$9.4 Million

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On August 6 2009 the Commerce Department's Bureau of Industry and Security and the Treasury Department's Office of Foreign Assets Control announced a joint settlement agreement regarding allegations that DHL (i) unlawfully aided and abetted the unauthorized exportation of goods to Syria, Iran and Sudan in 2004, and (ii) failed to comply with applicable record-keeping requirements with respect to hundreds of exports. Under the agreement, DHL agreed to pay a civil penalty of \$9.4 million. It also agreed to conduct external audits of its exports to Iran, Syria and Sudan from March 2007 to December 2011.

It appears that the Office of Foreign Assets Control and the Bureau of Industry and Security are now issuing administrative subpoenas to the exporters responsible for the shipments at issue in the settlement with DHL. The subpoenas typically require exporters to identify the authorization, if any, for particular exports made to Syria, Iran or Sudan during the past five years. Exporters that are unable to identify such authorizations (eg, an export licence or licence exemption) are likely to be penalized by the Office of Foreign Assets Control and/or the Bureau of Industry and Security.

This enforcement action appears to be part of a larger effort by export control authorities to mine the data in export declarations to detect violations of US export controls. US export declarations are now filed electronically via the Automated Export System, greatly enhancing the government's investigative powers.

In addition, US Customs and Border Protection is developing the International Trade Data System, which will permit 46 agencies to view electronic import and export documentation through a single interface in nearly real time. Legislation has also been proposed that would require a link between the Bureau of Industry and Security's licence database and the Automated Export System, thereby allowing immediate confirmation of licensing details. Therefore, exporters should prepare export documentation carefully so as to avoid inquiries – and administrative subpoenas – from export control authorities.

The enforcement action by the Office of Foreign Assets Control and the Bureau of Industry and Security also highlights the dangers to exporters of relying heavily on freight forwarders for export compliance. Some exporters do not screen their shipments against the list of US-embargoed countries on the assumption that the freight forwarders will catch and halt any such shipments. The enforcement action against DHL demonstrates that relying on a freight forwarder to perform destination screening has its risks. Similarly, many exporters rely on their freight forwarders to maintain export documentation, rather than maintaining such documentation at their own facilities. Here again, the DHL enforcement action demonstrates that there is significant risk in relying on freight forwarders to perform this critical record-keeping function. Exporters should ensure that their screening and record-keeping controls are adequate instead of relying on their freight forwarders.

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