

## INTERNATIONAL TRADE ALERT

### BIS REVIVES VEU EXPORT PROGRAM FOR CHINA AND INDIA

The Department of Commerce's Validated End-User (VEU) export authorization program, administered by the Bureau of Industry of Security (BIS), has gained momentum recently, with the approval of a sixth Chinese end-user under the program in April 2009, followed by the approval of the first Indian end-user on July 1, 2009. Since the program began in 2007, it has grown slowly and often unsteadily, with BIS dedicating resources both to educate the public and potential VEU candidates on the merits of the program and to deflect criticism largely centered on insufficient safeguards associated with the vetting process for end-users. In recent months, BIS has expressed its commitment to, and confidence in, the VEU program by launching a "full implementation" of the China program and signaling a desire to recruit Indian companies for participation in the program.

#### BACKGROUND

**General Background.** In June 2007, the Department of Commerce's BIS created a new authorization for VEUs to facilitate trade with civilian end-users.<sup>1</sup> The authorization allows the export, reexport and transfer of eligible items to specified end-users in eligible destinations. Initially, the VEU program was limited to China. Subsequently, in October 2007, BIS expanded it to include India as an eligible destination.<sup>2</sup> Companies granted VEU status must pass a rigorous interagency national security review, including an on-site verification prior to approval, and agree to strict ongoing compliance obligations, end-use restrictions, and recordkeeping and reporting requirements. Items controlled for missile technology or crime control reasons are not eligible for export under the program.

**The China VEU Program.** During its two years of existence, the China VEU program has faced criticism from industry, the trade community and Capitol Hill. After BIS approved the first Chinese end-users under the VEU authorization in October 2007, government watchdog groups and lawmakers raised concerns that two of the five companies granted VEU status had links to the Chinese military or to companies associated with proliferation activities. Following a September 2008 report in which the U.S. Government Accountability Office (GAO) urged BIS to suspend its VEU program based on concerns about the strength of on-site reviews in China, reports circulated that BIS might terminate the program. At the time, BIS refuted allegations that it had been unable to conduct formal security checks of facilities in China and emphasized

<sup>1</sup> See 72 Fed. Reg. 33646 (June 19, 2007).

<sup>2</sup> See 72 Fed. Reg. 56010 (Oct. 2, 2007).

the importance of expanding commercial high technology trade with China, consistent with U.S. national security interests.

**The India VEU Program.** Unlike the China VEU program, which has seen both activity and controversy over the past two years, the India VEU program has progressed at a slower and quieter pace. In March 2008, the apparent lack of interest in the program on the part of Indian companies led the Department of Commerce to pledge an outreach effort to educate Indian firms on the benefits of VEU authorization and to encourage them to apply for VEU status.

## RECENT DEVELOPMENTS

In January 2009, BIS announced the “full implementation” of the VEU program for China after agreeing on procedures with the Chinese government to ensure the program’s secure and efficient operation. In April 2009, BIS approved the sixth Chinese end-user under the VEU program.<sup>3</sup> The agency is now considering three to five additional Chinese companies for inclusion in the program.

In a significant development, there are signs that the India VEU program is gaining momentum. On July 2, 2009, BIS approved the first VEU for India—General Electric India—and reported that another application for an Indian company to participate in the VEU program was under consideration.<sup>4</sup> In a powerful signal about the potential growth of the program for India, the Department of Commerce has taken steps to attract Indian firms to the VEU program, expressing hope that more Indian companies will apply to participate.

## CONCLUSION

Recent activity in the VEU program suggests that it is moving forward with the prospect for expansion under the Obama administration. This development is particularly noteworthy, given the absence of a confirmed under secretary at BIS, and reflects the strong institutional support for the program among senior career personnel. As BIS continues to signal its commitment to the growth of the VEU program, Chinese and Indian companies should weigh the benefits (and burdens) of obtaining VEU status to expand and expedite their trade with the United States.

## CONTACT INFORMATION

If we can assist you to better understand the requirements and process for gaining VEU status, please contact any of the lawyers listed below—

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<sup>3</sup> See 74 Fed. Reg. 19382 (April 29, 2009).

<sup>4</sup> See 74 Fed. Reg. 31620 (July 2, 2009).