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To: Clients and Friends

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PATRIOT Act Amendment Expands Government's Authority To Impose Heavy Criminal Penalties For Otherwise Uncontrolled Exports

A little-noticed provision tucked away in last year's amendments to the PATRIOT Act gives the Government the authority to impose criminal penalties for "knowing" violations of "any" regulation pertaining to an export or potential export – even when an export license is not required for the export or when the regulation is not an export control regulation. The new law is at 18 U.S.C. § 554(a) and is as follows:

Whoever fraudulently or knowingly exports or sends from the United States, or attempts to export or send from the United States, any merchandise, article, or object **contrary to any law or regulation** of the United States, or receives, conceals, buys, sells, or in any manner facilitates the transportation, concealment, or sale of such merchandise, article or object, prior to exportation, knowing the same to be intended for exportation contrary to any law or regulation of the United States, **shall be fined under this title, imprisoned not more than 10 years, or both.**

The maximum possible monetary fines for violating section 554 are the higher of either \$250,000 per violation for individuals (\$500,000 for corporations) or twice the gain (or loss) from the violation. 18 U.S.C. § 3571.

According to a senior Immigration and Customs Enforcement (ICE) official, ICE, working with federal prosecutors, will use this new authority whenever they believe that an exporter should be prosecuted but are unable to determine whether the item exported required a license under the export control regulations administered by the Departments of Commerce, State, or Treasury. Failure to file a Shippers Export Declaration (SED) in connection with the export of otherwise uncontrolled items or technology could be the basis for such an action, for example. Proving to a jury that an individual or a company "knew" SEDs were required for such shipments could be as simple as demonstrating that the exporter had filed the forms in the past.

To avoid potentially significant criminal exposure under section 554, exporters must be perfect in abiding by "**all** laws and regulations" for **all** shipments, even when the items exported and the applicable ministerial or paperwork-related regulations have no obvious bearing on national security, foreign policy, or anti-terrorism efforts.

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