



UNITED STATES DEPARTMENT OF COMMERCE
Bureau of Industry and Security
 Washington, D.C. 20230

August 26, 2004

Dear []:

This letter responds on behalf of the Bureau of Industry and Security ("BIS") to your February 11, 2004 request for an advisory opinion concerning the activities of your client, []. Our opinion is based on the facts described in this letter as represented in your letter of February 11 and in your subsequent telephone conversations with Mr. William Arvin of BIS's Regulatory Policy Division on March 17 and June 25 of this year.

Factual Representations

[] is a U.S. citizen and a member of the board of directors of a French company, []. [] is not organized under the laws of the United States or of any political jurisdiction within the United States and is, therefore, not a U.S. person as defined in §744.6(c) of the Export Administration Regulations (the "EAR"). [] is 100% owned by [] employer, [] which is a U.S. person. [] had a business relationship with the [] prior to its acquisition by []. Recently, [] has asked [] to supply radiation-hardened, application-specific integrated circuits ("RAD-hardened ASICs"). These RAD-hardened ASICs would be manufactured in France, would not contain any U.S. origin components, and would not be the product of any U.S. origin technology. These products would either be designed by [] specifications or would be designed by []. In either case, the products would be manufactured by [].

[] duties as a director do not include responsibility for day-to-day business operations or decisions to accept or approve customer contracts. [] is a lawyer by training and does not have the technical background to participate in integrated circuit design. [] is an officer of [] carrying the title of Vice President & General Counsel & Assistant Secretary. The board of [] has five members, at least one of whom, in addition to [], is a U.S. person. [] is listed on the Entity List (Supplement No. 4 to part 744 of the EAR) and has engaged in the proliferation of missile technology. India is in Country Group D:4 (Supplement No. 1 to part 740 of the EAR). Radiation-hardened integrated circuits are used in a limited number of situations, most of which involve missiles or space applications.



Page Two

Applicable Law and Analysis

Section 744.6(a)(2)(i) of the EAR provides that: "No U.S. person shall, without a license from BIS: (i) Perform any contract, service, or employment that the U.S. person knows will directly assist in the design, development, production, or use of missiles in or by a country listed in Country Group D:4 (see Supplement No. 1 to part 740 of the EAR)" India is in Country Group D:4, and [] engages in the design and production of missiles.

The word "know" in § 744.6(a)(2)(i) is defined in Section 772.1 of the EAR, which reads, in pertinent part:

Knowledge of a circumstance (the term may be a variant, such as "know," "reason to know," or "reason to believe") includes not only positive knowledge that the circumstance exists or is substantially certain to occur, but also an awareness of a high probability of its existence or future occurrence. Such awareness is inferred from evidence of the conscious disregard of facts known to a person and is also inferred from a person's willful avoidance of facts

The question presented is whether BIS would consider [] position as a director of [] and his knowledge that [] has been asked to supply RAD-hardened ASICs to [] to mean that [] knows that he will perform employment that will directly assist in the design, development or production of missiles in India.

[] service as a director of [] and his awareness regarding [] sales of RAD-hardened ASICs, do not alone result in a license requirement under Section 744.6(a)(2)(i). Participation in company management as a director and the exercise of general oversight do not, in the absence of other actions, necessarily constitute the performance of acts that will "directly assist" in missile design, development, production, or use, as restricted by Section 744.6(a)(2)(i).

Nevertheless, certain specific actions by a director such as [] could constitute direct assistance that would result in a license requirement under Section 744.6(a)(2)(i). Those actions include, but are not limited to, reviewing and approving a contract with [] or with other missile end-users) that indicates a missile end use, supervising or approving personnel assignments or other actions supporting a missile end use, authorizing transmission of technology or provision of services or resources for a missile end use, or approving a business plan designed to attract customers engaged in missile production or to meet the needs of such customers.

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August 26, 2004

Page Three

This is limited to the facts presented and does not address the obligation of [] or other directors of [] who may be directors, officers or employees of [] or of any U.S. affiliates of []

Sincerely,



Eileen Albanese
Director, Office of Exporter Services