



# LEGAL ALERT

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## Five Million Dollar Penalty May be for Real

Recent enforcement actions and a bill proposed by the Bush Administration show how serious government agencies consider violations of U.S. export controls and economic sanctions. These laws, which include the Arms Export Control Act and Export Administration Act, restrict the transfer of various domestic origin products, technology, software, and services to certain foreign nationals, foreign entities, and countries. They also prohibit certain financial transactions with various prohibited persons, entities, and countries, such as Cuba and Iran.

Violations of export controls and economic sanctions laws can result in substantial civil and criminal penalties, including crippling fines and imprisonment of responsible individuals. They can also result in the denial of export privileges, loss of government contracts, adverse publicity, interference with pending international transactions, and may trigger disclosures under the Sarbanes-Oxley Act.

Sanctions are being levied against persons and businesses, big and small. In one case reported this month, a person agreed to pay a \$485 settlement for allegedly renting space from a prohibited party on which to place a trailer. Contrast this action to the \$25,000,000 fine assessed against Chiquita Banana earlier this year for payments allegedly made to a prohibited party. While Chiquita's fine is historic enough, this April, ITT Corporation was fined \$100,000,000 for exporting controlled night vision technology to foreign countries that included China.



Similarly, Chi Mak, a U.S. citizen from China, was recently convicted for conspiring to export U.S. defense technology to China. He now faces up to 45 years in prison when sentenced later this year.

Amid all this enforcement activity, last month the Bush Administration proposed a bill that will substantially increase penalties for violations of the Export Administration Act. If passed, the bill will raise criminal penalties for corporations from \$50,000 per violation to the greater of \$5,000,000 or ten times the value of the exports involved. Also under the bill, civil penalties would increase from \$50,000 per violation to \$500,000 per violation.

Accordingly, companies at risk must be vigilant and establish clear compliance policies and procedures. Such policies and procedures can minimize the likelihood of inadvertent violations. Establishing and maintaining them requires commitment from top level management and the involvement of human resources, information technology, finance, engineering, and other company departments. This is a worthwhile effort that is often considered a mitigating factor in government enforcement decisions.

**For further information, please do not hesitate to contact:**

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