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To: Clients and Friends

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### DDTC Issues Guidance Concerning New Dual/Third-Country Nationals Rule

DDTC has posted guidance implementing the regulatory change announced in December 2007 concerning agreements that cover dual- and third-country foreign nationals. (See IRB No. 376 for information about the regulatory change.) Of particular note in the follow-up guidance is the new requirement for non-disclosure agreements (NDAs) to allow access to defense articles by, release technical data to or provide defense services to dual national employees of foreign licensees who are not from NATO, EU, Australia, New Zealand, Japan or Switzerland. The *prior* Agreement Guidelines published by DDTC stated the following:

For dual national employees of a foreign signatory, the dual countries to which these employees share citizenship must be listed in the transfer territory (ITAR 124.7(4)). In this case, the dual national will not be required to sign a Non-Disclosure Agreement as with the third-country foreign national. (Section 10.2, Emphasis added.)

However, the follow-up guidance indicates that NDAs are now needed for dual nationals (in addition to third-country foreign nationals) who do not qualify for 22 CFR §124.16, *i.e.*, who are not from NATO, EU, Australia, New Zealand, Japan and Switzerland, to the extent that you either (1) choose to amend your agreement to take advantage of 124.16 for those who do qualify, or (2) amend your agreement for any reason or submit a new agreement on or after February 1, 2008. Be sure to obtain NDAs from the foreign licensee for any non-124.16 dual nationals if you submit amendments to any existing agreements that cover dual nationals not from § 124.16 countries.

Consider whether it is worthwhile to amend existing agreements to take advantage of this new provision. Current agreements must be amended in order to release technical data, defense services or access to defense articles to dual- and third-country nationals of approved countries without an NDA. Such amendment will be treated as a minor amendment, so prior DDTC approval is not required. However, the amended agreement must be executed by all parties prior to submission to DDTC.

All new agreements and amendments to existing agreements submitted to DDTC for review on or after February 1, 2008, must include language related to § 124.16. Applicants will need to include an affirmative statement with respect to the agreement's coverage of dual/third-country foreign nationals and, if covered, whether they are from § 124.16 qualifying countries, non-qualifying countries, or both. In DDTC's guidance about submissions of agreements and amendments on or after February 1, 2008, DDTC indicates that NDAs are needed for the release of technical data, transfer of defense services or access to defense articles by dual nationals, in addition to third-country foreign nationals, of non-qualifying countries.

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