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To: Clients and Friends

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Commerce Says It's Illegal to Service Items Covered by Voluntary Disclosure Without Commerce Approval

New Commerce Department letters acknowledging receipt of voluntary disclosures about questionable exports now tell exporters as a “reminder” that they may not provide spare parts or otherwise service items covered by the disclosure without Commerce Department permission. Says Commerce, this is because the Export Administration Regulations prohibit anyone from servicing an item exported from the United States “with knowledge that a violation ... has occurred.” (Emphasis supplied.)

The Voluntary Disclosure provisions of the Regulations, however, provide only that anyone who has made a voluntary disclosure “knows a violation may have occurred.” (Emphasis supplied.) They also “strongly encourage[] disclosure ... if you believe you may have violated the [Regulations].” (Emphasis supplied.) Commerce, nonetheless, apparently equates a belief about a possible violation with knowledge of a certainty that a violation has occurred.

For those considering making a voluntary disclosure of something whose legality is uncertain, this is a consequence that might weigh in the balance of considerations if there is need of a continuing involvement with the export. The extra effort required to determine the legality of the export before tossing the matter into the Commerce cauldron of voluntary disclosure certitude might pay dividends.

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