



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

June 5, 2006

Dear _____ :

This letter is in response to your January 5, 2006 advisory opinion request on behalf of _____. The request concerns a proposed transaction involving the sale of certain communications equipment, related software, and technical data to the Ministry of Foreign Affairs of _____ for use in _____ and in its embassies and consulates in several other countries (referred to in this letter as "host countries"), including some host countries subject to more stringent U.S. export control licensing requirements.

In providing this opinion, we are relying on the following information supplied either in your January 5, 2006 letter or its attachments, including a letter from _____ dated January 6, 2006. As we understand it from such correspondence, _____, or its subcontractor _____, a firm located in Germany, will export or reexport certain equipment, software and technical data to the _____ Ministry of Foreign Affairs in _____, with the knowledge and understanding that the _____ Ministry of Foreign Affairs will ship some or all of these items from _____ to various _____ embassies and consulates via diplomatic pouch. The _____ January 6 letter states (page 3) that all of the items that are subject to the Export Administration Regulations (EAR) that will be exported or reexported under the proposed agreement with the _____ Ministry of Foreign Affairs are classified as either EAR99 or under Export Control Classification Numbers ("ECCNs") 5A991, 5B991, 5D991 or 5E991.

Export or Reexport of Specified Items to the _____ Ministry of Foreign Affairs in _____

Items subject to the EAR, but classified as either EAR99 or under ECCNs 5A991, 5B991, 5D991 or 5E991, do not require a license for export or reexport to _____, including to the Ministry of Foreign Affairs, unless, at the time of the export or reexport, the exporter or reexporter knows that the items will be used for a restricted end-use set forth in part 744 of the EAR. The description provided in your correspondence does not suggest that a system to be used by the _____ Ministry of Foreign Affairs for general communications purposes would constitute such a use.



Shipment of the Items from

to Other Countries via Diplomatic Pouch

BIS does not treat the shipment of items from [redacted] via official diplomatic pouch to a [redacted] embassy or consulate in a third country (host country) as a transaction covered by the destination-based licensing requirements set forth in the EAR. So long as the items remain within the ownership and control of the [redacted] embassy or consulate in the host country, no license is required under the EAR. The items may also be returned to [redacted] via diplomatic pouch or shipped to other [redacted] embassies and consulates via diplomatic pouch without authorization from BIS. However, if the [redacted] Ministry of Foreign Affairs or any of its embassies or consulates resells or disposes of the items locally in the host country, licensing requirements set forth in the EAR for exports to the host country would be implicated. Similarly, reselling or disposing of the items to end users outside of the host country would implicate reexport licensing requirements set forth in the EAR, to the extent the items are not shipped via diplomatic pouch.

Under the EAR, the export or reexport of items that will transit through a country or countries to a new country or are intended for reexport to the new country are deemed to be exports to the new country and any license requirements for export or reexport to that new country would apply. However, since BIS does not treat the shipment of items via diplomatic pouch as transactions covered by the destination-based licensing requirements set forth in the EAR, knowledge at the time of export that items will later be shipped by diplomatic pouch does not implicate licensing requirements associated with an export to the host country. Given the representations in the January 5 and January 6 letters that any and all items subject to the EAR that are exported or reexported to the [redacted] Ministry of Foreign Affairs will only be shipped to its foreign embassies or consulates via diplomatic pouch, a license is not required for the initial exports or reexports to [redacted]. If [redacted] believes that certain items may not be shipped via diplomatic pouch, depending on the relevant host country, a BIS license may be required.

Note Regarding Technology Transfers

In its January 6 letter, [redacted] states that it will subcontract the operations of two Network Operations Centers in [redacted] and the installation, maintenance, repair and training services to third party contractors. The nationalities of these contractors or their employees are not stated in the letter. Your letter does not make clear whether the subcontracting of operation, installation, maintenance, repair and training services will include training of contractor personnel by [redacted]. If [redacted] provides such training, the technology provisions of the EAR would apply and could, under some circumstances, impose a license requirement. Under the deemed export rule in the EAR, a license is required to transfer technology to a foreign national if a license would be required to transfer that technology to that foreign national's country of nationality. This rule also applies to deemed reexports, where the transfer of technology subject to the EAR to a foreign national occurs outside of the United States and the foreign national's country of nationality.

Under the EAR, a BIS license would be required to transfer ECCN 5E991 technology to nationals of Cuba, Iran, Sudan, North Korea, Libya and Syria. In addition, deemed exports of EAR99 technology to Cuban nationals require a license. In addition, technology classified under ECCN 5E991 that is the minimum technology necessary for the installation, operation, maintenance (checking), and repair of the items may be eligible for the "operation technology" provision of License Exception TSU. That provision could be used to transfer eligible ECCN 5E991 technology to nationals of any country other than Iran.

I hope that this letter provides the information that you need. In rendering this opinion regarding proposed transactions involving your client, _____, BIS has relied upon information and representations included in your January 5, 2006 letter and upon any and all other oral or written representations regarding this matter. Any change in the factual background of this matter may alter the opinion of the agency with respect to the described transactions and may result in different regulatory obligations, including possible licensing requirements, for your client. If you have additional questions feel free to contact us again.



Hillary Hess
Director, Regulatory Policy Division
Office of Exporter Services