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**Subject:** ALERT - DDTC ISSUES GUIDANCE FOR EXISTING, PENDING, AND FUTURE LICENSES INVOLVING RECENTLY DEBARRED FREIGHT FORWARDERS  
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## **ALERT - DDTC ISSUES GUIDANCE FOR EXISTING, PENDING, AND FUTURE LICENSES INVOLVING RECENTLY DEBARRED FREIGHT FORWARDERS**

On February 16, the following freight forwarders were added to the U.S. Government's Excluded Parties List System ("EPLS"): Bax Global, Inc.; Ceva Logistics LLC; EGL, Inc.; Kuhne and Nagel International AG; Panalpina, Inc.; and Schenker AG. These listings come in the wake of the freight forwarders pleading guilty to antitrust charges.

Today the State Department Directorate of Defense Trade Controls ("DDTC") posted guidance (full text is below) for existing, pending and future authorizations involving any of these freight forwarders. The reason for the guidance is that the State Department holds that because the entities are ineligible to contract with an agency of the U.S. Government (listed on EPLS), they are ineligible to participate in any transaction involving the export of defense articles, including acting as a freight forwarder.

DDTC will treat existing, pending and future requests for authorizations involving any of the freight forwarders as follows:

1. Existing authorizations: licenses and authorizations **already approved** are NOT AFFECTED. Exporters can continue to ship under these licenses, even if the license includes one of the freight forwarders, without having to obtain an amendment or other authorization from DDTC. This applies only to existing licenses (in other words, already in hand).
2. Pending authorization requests: requests that DDTC received prior to February 18, 2012 will be reviewed "in normal course." It is not clear what DDTC means by this phrase.

Requests received on February 18 or later that involve any of the freight forwarders will be Returned Without Action, unless the request includes a transaction exception request or a transaction exception request is submitted within 72 hours of the notice (by this Monday).

A transaction exception request is a written submission made to DDTC pursuant to ITAR Section 127.1(c) requesting approval to include an ineligible party in the proposed transaction.

3. Future Authorization Requests: applications received after today that involve any of the freight forwarders must include a transaction exception request or the application will be Returned Without Action.

Full text of DDTC's guidance follows. If you have any questions regarding this alert, please contact either Johanna Reeves (202.751.9941 or [jreeves@reevesdola.com](mailto:jreeves@reevesdola.com)) or Mark Dola (202.715.9942 or [mdola@reevesdola.com](mailto:mdola@reevesdola.com)).

\*\*\*\*Begin Text of DDTC Guidance\*\*\*\*

Effective immediately, DDTC provides guidance regarding authorizations that include the following freight forwarders debarred from government contracting by action of February 16, 2012:

1. BAX Global Inc.: 440 Exchange, Irvine, CA
2. Ceva Logistics LLC: 15350 Vickery Dr, Houston, TX, 77032
3. EGL Inc.: 15350 Vickery Dr, Houston, TX, 77032
4. Kuhne and Nagel International AG: PO Box 67, Schindellegi, Switzerland
5. Panalpina Welttransport (Holding) AG: Postfach, Basel, Switzerland, 4002
6. Panalpina Inc.: 1776 On the Green, 67 E Park Pl Fl 3, Morristown, NJ, 07960-7103
7. Schenker AG: Alfredstr. 81, Essen, Nordrhein-Westfalen, Deutschland, 45130

The seven entities listed above are ineligible to contract with an agency of the U.S. Government and are therefore generally ineligible in accordance with § 120.1 of the International Traffic in Arms Regulations (ITAR). In accordance with § 127.1(c) of the ITAR, written authorization from DDTC is required before a person with knowledge that another person is then ineligible pursuant to § 120.1(c) of the ITAR directly or indirectly applies for, obtains or uses an export control document for such ineligible person; or orders, buys, receives, uses, sells, delivers, stores, disposes of, forwards, transports, finances, otherwise services or participates in any transaction which may involve any defense article or the furnishing of any defense service for which a license or approval is required by the ITAR for export where such ineligible person may obtain any benefit there from or have any direct or indirect interest therein.

DDTC has determined to manage existing, pending, and future authorizations involving these seven entities as follows:

### **Existing Authorizations**

Existing authorizations (i.e., authorizations approved by DDTC prior to this notice) are not affected. Authorizations that include any individual entity, or combination of entities, listed above as intermediate consignee, consignor, or freight forwarder may continue to be utilized by the applicant without need to amend or obtain other written authorization from DDTC.

## **Pending Authorization Requests**

Authorization requests received by DDTC prior to February 18, 2012 (U.S. Air Force action was created February 16, 2012), will be reviewed by DDTC in the normal course, without the submission of a request for approval in accordance with § 127.1(c) of the ITAR to include an ineligible party in the transaction (commonly referred to as a "transaction exception request"). Authorization holders may utilize the named entity(ies) in their approved roles.

Authorization requests received by DDTC February 18, 2012, and after, and which are pending with the Department as of the date of this notice, involving any one or more of the parties above, but that do not include a transaction exception request will be Returned Without Action, unless a transaction exception request is submitted via DTrade2 within 72 hours from the date of this notice. Those that do include such a request will be reviewed.

## **Future Authorization Requests**

Authorization requests received by DDTC after the date of this notice involving any one or more of the parties above, must include a transaction exception request or they will be Returned Without Action. Those that do include such a request will be reviewed.

## **Transaction Exception Requests**

Transaction exception requests should include, at a minimum, an explanation of why the request should be considered, why the generally ineligible entity should be part of the transaction (i.e., why the applicant is unable to utilize a different freight forwarder), and how the inclusion of the ineligible entity is in the interests of U.S. foreign policy or national security.

This guidance is being issued due to the extraordinary number of current and pending authorizations involving one or more of the aforementioned entities. The responsibility remains with the applicant to vet all potential parties to a license prior to submission to DDTC.

\*\*\*\*End Text of DDTC Guidance\*\*\*\*

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