

International Trade Alert

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Time to Check the Entity List: Eleven U.S. and Russian Companies and Individuals Charged in Illegal Export Scheme and 165 Added to BIS' Entity List

On Wednesday, October 3, 2012, a Department of Justice (DOJ) indictment was unsealed charging eleven U.S. and Russian companies and individuals for their alleged involvement in a scheme to illegally export high-tech microelectronics from the United States to Russian military and intelligence agencies. The scheme allegedly involved a systematic conspiracy to obtain cutting-edge microelectronics manufactured in the United States and export them for use by Russian military and intelligence government end-users without obtaining the required export authorizations from the Department of Commerce, Bureau of Industry and Security (BIS). Sound like the latest Bond movie?

The microelectronics, including analog-to-digital converters, static random access memory chips, microcontrollers, and microprocessors, were exported by Houston-based Arc Electronics, Inc., to a Russian-based procurement firm, Apex Systems, LLC. To evade the U.S. export licensing requirements, the defendants provided false end-user information in connection with the purchase of the goods, concealed the fact that the goods were intended for export, and falsely classified goods on export records submitted to BIS. For example, Arc reported to U.S. suppliers that it was a manufacturer of benign products such as traffic lights, rather than an exporter. Both firms, as well as certain of the firms' owners and employees, are charged with conspiring to violate and violating the International Emergency Economic Powers Act and the Arms Export Control Act, and with conspiring to commit wire fraud.

How Might this Clandestine Scheme Affect Your Business?

Concurrent with unsealing the indictment, BIS issued a final rule adding **165 foreign individuals and entities to the BIS Entity List** for their role in connection with the illegal export scheme. These newly listed individuals and companies are located in a number of countries, including those not typically identified as transshipment zones, including: Belize, Canada, Cyprus, Estonia, Finland, Germany, Greece, Hong Kong, Kazakhstan, Russia, Sweden, the United Kingdom and the British Virgin Islands.

For each new listing, a BIS license is now required to export, reexport, or transfer (in-country) all items "subject to the EAR," *including all EAR99 items*. And, no license exceptions may be applied. Moreover, BIS is enforcing a policy of "presumption of denial" in its license review. A full copy of the unpublished final rule is [available here](#). The new listings have not yet been updated in the "Entity List" on BIS' website (Supplement No. 4, Part 744 of the EAR).

Importantly, BIS includes a "Savings Clause," which states that exports or reexports carried out under a License Exception or without a license (NLR) that involve one of the newly listed entities may proceed, so long as the items were "**en route aboard a carrier to a port of export or reexport**" on the date of BIS' publication of the final rule. The export license requirement therefore goes into effect when the Entity List changes are formally published in the *Federal Register*, likely next week.

What Does this Mean for Your Company?

Comprehensive company-wide customer screening and due diligence practices for all potential export transactions are the best mechanism for protecting your company from engaging in unlawful conduct. The newly listed entities and persons involved here range from the actual foreign end-user to those involving the receiving, transshipping, and facilitating of the illegally exported controlled commodities. Thus, the new listings include end users as well as other logistics providers and supply chain members.

Remember, the BIS end-user and end-use requirements apply to *all* individuals and entities, U.S. and non-U.S. alike, who export, reexport, or transfer items *subject* to the EAR. Therefore, it is essential to closely monitor the BIS Entity List, as well as the other restricted end-user lists maintained by the U.S.

government, prior to engaging in any export transactions. Once again, this case highlights that companies must undertake “know your customer” reviews of new and existing accounts, and inquire about any “red flags” that arise during the course of a transaction and indicate that the items may be destined for a prohibited end-use, end-user, or destination.

Contact any attorneys in Venable's **International Trade and Customs Group** for additional details on how your company might enhance its customer screening practices, as well as due diligence steps to consider prior to engaging in exports, reexports or transfers of U.S. origin items.