

Locke Lord QuickStudy: BIS Releases Updated “Don’t Let This Happen to You!” Guidance

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On July 1, 2024, the U.S. Department of Commerce’s Bureau of Industry and Security (“BIS”) released an updated version of Don’t Let This Happen To You!, which contains summaries of actual investigations of Export Control and Antiboycott violations, and the investigation outcomes. This guidance offers insight into the BIS’s foci as well as its processes to protect national security. Don’t Let This Happen To You! was last updated in March 2024.

Export Controls

Don’t Let This Happen To You! is organized by country, starting with China, then Russia, Iran, and the Rest of the World, which in itself is telling of BIS’s priorities and work volume. Assistant Secretary for Export Enforcement, Matthew S. Axelrod introduces the publication with “Export Enforcement has taken decisive action to prioritize its enforcement efforts in collaboration with interagency and international partners. These efforts were exemplified by [BIS]’ establishment in February 2023 of the Disruptive Technology Strike Force with the Department of Justice. The Strike Force, which includes partners from the Federal Bureau of Investigation, Homeland Security Investigations, and, as of February 2024, the Defense Criminal Investigative Service, aims to vigorously protect advanced technologies – like AI, quantum computing, and biotechnology – from being unlawfully acquired by foreign adversaries. Together, Strike Force agencies have taken an all-tools approach to aggressively pursue criminal and administrative enforcement, along with regulatory actions, against illegal procurement networks and to prevent nation-state actors from illicitly acquiring our most sensitive technology.”

Anti-Boycott Compliance

While the primary focus appears to be export controls, the publication includes several reminders regarding compliance with anti-boycott provisions of the Export Administration Regulations (“EAR”), which are set forth in Part 760 of the EAR. The Office of Antiboycott Compliance carries out its mandate through a threefold approach: monitoring boycott requests received by U.S. businesses; bringing enforcement actions when necessary; and guiding U.S. businesses on the application of the EAR to transactions.

BIS Screening Lists

The BIS maintains four screening lists:

- The Denied Persons List, which contains the names and addresses of individuals and entities located in the

United States and overseas subject to a denial of export privileges.

- The Entity List, which imposes a license requirement for exports, reexports, or transfers of some or all items subject to the EAR to listed foreign entities. As a general rule, BIS applies a presumption of denial for license applications involving listed entities.
- The Unverified List (UVL), which contains the names and addresses of foreign persons that have been parties or intended parties to transactions subject to the EAR whose bona fides could not be confirmed as a result of an end-use check, including the U.S. Government's inability to conduct such an end-use check. The presence of a person on the Unverified List in a proposed export transaction creates three consequences: all export transactions must be reported in the Automated Export System (AES) (see Section 758.1(b)(8) of the EAR); license exception-eligibility is suspended (see Section 740.2(a)(17) of the EAR); and for all other EAR transactions not subject to a license requirement, the exporter must obtain a statement from the UVL party agreeing to abide by the EAR, including to permit an end-use check prior to export (see Section 744.15 of the EAR).
- The Military End-User List (MEUL) identifies foreign parties that are prohibited from receiving items described in Supplement No. 2 to part 744 of the EAR, unless the exporter secures a license. These parties have been determined by the U.S. Government to be 'military end users,' as defined in Section 744.21(g) of the EAR, and represent an unacceptable risk of use in or diversion to a 'military end use' or 'military end user' in Belarus, Burma, Cambodia, China, Russia, or Venezuela.

The above BIS lists can be accessed on the BIS website [here](#) and on the U.S. Government Consolidated Screening List available [here](#).

Below is a sampling of the BIS investigations concluded prior to publication:

China

1. "Tao "Jason" Jiang, Broad Tech System, Inc. ("Broad Tech"), and Bohr-Winn Shih: BIS accused Tao "Jason" Jiang of the unauthorized export of photoresist chemicals classified under ECCN 3A992 to NTESY, a company in China acting as an alias of NEDI, aka Nanjing Electronic Devices Institute aka China Electronics Technology Group Corporation 55th Research Institute (CETC 55, each of which appear on the BIS Entity List for acquiring and attempting to acquire U.S.-origin items in support of advancing China's quantum technology capabilities, which has serious ramifications for U.S. national security given the military applications of quantum technologies). Tao "Jason" Jiang and Broad Tech, a California-based electronics distribution company, admitted that they conspired together and with Bohr Winn-Shih, an engineer employed at Broad Tech, to order the photoresist and developer chemicals from a U.S.-based manufacturer, then knowingly submitted false and misleading documentation to the U.S. Government and to shipping companies in an effort to have these products illegally shipped to NTESY. NTESY engages in the manufacturing of electronic components and the research, development and production of core chips and key components in China's military strategic early warning systems, air defense systems, airborne fire control systems, manned space systems, and other national large-scale projects. Photoresist and HPRD are essential to the chip manufacturing process. *On April 27, 2023, Tao "Jason" Jiang was sentenced in the U.S. District Court for the District of Rhode Island to 12 months of probation, a \$5,500 criminal fine, 100 hours of community service, and a \$300 special assessment. Broad Tech was sentenced to 12 months of probation, a \$120,000 criminal fine, and a \$1,200 special assessment. On August 3, 2021, Bohr-Winn Shih was sentenced to 12 months of probation, 50 hours of community service and a \$300 special assessment.*
2. 3D Systems Corporation ("3D Systems"): 3D Systems committed 19 violations of the EAR when it exported technology classified under ECCNs 9E515 and 3E611 to China and Germany, without the required BIS license; exported and transferred metal alloy powder classified under ECCN 1C002 and controlled for national security and nuclear nonproliferation reason to China; and failed to comply with recordkeeping requirements. Additionally, the investigation identified ITAR-controlled technology that was accessed by foreign individuals, as

well as exported to Germany and China without the proper export licenses. *On February 27, 2023, 3D Systems agreed to a \$2,777,570 civil penalty, to complete two audits of its export controls compliance program with the hiring of an unaffiliated third-party consultant, and to be subject to a three-year denial of its export privileges, to be waived provided no further violations are committed during the probationary period. Additionally, the company agreed to pay in fines and remedial compliance measures of \$20 million as part of a consent agreement with the U.S. Department of State's Directorate of Defense Trade Controls. Finally, the company agreed to pay \$4.4 million to settle the False Claims Act allegations brought by the U.S. Department of Justice for improperly transmitting export-controlled technical data to China in violation of export control laws in connection with certain National Aeronautics and Space Administration and U.S. Department of Defense contracts.*

Russia

1. Vorago Technologies, Inc. ("Vorago"): Vorago (known as Silicon Space Technology Corporation during part of this time) conspired to send radiation-hardened 16mB SRAM silicon wafers classified under ECCN 9A515 to Russia without the required BIS export license, and ultimately did so, knowingly, via a Bulgarian front company. Vorago designed and manufactured radiation-hardened and extreme-temperature hardened integrated circuit components that could be used in satellite, military, medical, automotive, oil & gas, mining, and other industrial applications. *On September 28, 2021, Vorago agreed to a civil penalty of \$497,000, \$247,00 of which was suspended, along with a two-year suspended denial of export privileges. Previously, the U.S. Department of Justice entered into a three-year Non-Prosecution Agreement with Vorago related to these illegal transactions and previously returned an indictment against three foreign nationals for related conduct. Additionally, three Russian companies and four Russian individuals were added to the BIS Entity List in connection with this investigation.*

Iran

1. Johnny Tourino ("Tourino"): Between September 2015 and March 2017, Tourino negotiated the sale of five business-class computer servers valued at \$2.1 million and attempted to have them sent to Iran for use by two Iranian financial institutions. When the manufacturer of the servers asked Tourino to identify the end user, he falsely stated that the servers were being sold to a bank in Africa and "NOT going to Iran." Later that month, Tourino, through his lawyer, falsely represented to the manufacturer that the servers were going to Slovenia. Roughly one week later, Tourino sent three checks to the manufacturer as partial payment for the servers. After learning that the U.S. Department of Treasury had blocked funds from Iran that were to be used to pay for the servers, Tourino deleted his emails and contacted the U.S. Department of the Treasury and again falsely stated that the servers were not going to Iran and were destined for Slovenia. *On December 8, 2023, Tourino was sentenced in the U.S. District Court for the Central District of California to 18 months in prison, three years of supervised release, a \$20,000 criminal fine, forfeiture of \$2,124,859, and a \$100 special assessment.*

Anti-Boycott Compliance

1. Forta, LLC ("Forta"): Forta, a manufacturer of synthetic reinforcement fibers participated in a trade show in the UAE. In connection with the shipment of products and items for display at the trade show, Forta furnished to its freight forwarder a commercial invoice/packing list certifying that the goods were not of Israeli origin and not manufactured by a company on the "Israeli Boycott Blacklist". Furnishing such information is prohibited by Section 760.2(d) of the EAR. In addition, the company failed to report to BIS receipt of the request to engage in a restrictive trade practice or boycott. *On November 3, 2023, after voluntarily disclosing the offense and fully cooperating with the investigation, Forta agreed to a reduced a civil penalty of \$44,750.*

Conclusion

This paper is intended as a guide only and is not a substitute for specific legal or tax advice. Please reach

out to the authors for any specific questions. We expect to continue to monitor the topics addressed in this paper and provide future client updates when useful.

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