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Locke Lord QuickStudy: Global Coalition Provides Guidance to ?Frustrate Russian Sanctions Evasion for Weapons ?Development

Locke Lord LLP

WRITTEN BY

Ryan Last

On September 26, 2023, in response to the escalating crisis in Ukraine resulting from Russian aggression, Australia, Canada, New Zealand, the United Kingdom, and the United States (the “Export Enforcement Five” or “E5”) issued guidance to attempt to further degrade Russia’s military capabilities. The guidance (i) identifies and prioritizes by harmonized system codes (“HS codes”) items critical to Russian weapons development, and (ii) provides a list of “red flag” indicators to assist exporters and intermediate nations to tactics that Russia has used to evade sanctions to obtain these critical foreign made goods. The E5’s efforts are being coordinated with the Russian sanctions and export controls implemented by all 39 members of the Global Export Control Coalition (“GECC”).[1]

Exporters are urged to conduct thorough due diligence on end-users and end-uses prior to exporting any of the listed HS codes to try to block Russia’s attempts to circumvent sanctions and the GECC’s export controls on these goods. The guidance prioritizes critical goods into four tiers, with tiers one and two covering items deemed most sensitive:

- **Tier 1:** Integrated circuits (also referred to as microelectronics).
- **Tier 2:** Electronics items related to wireless communication, satellite-based radio navigation, and passive electronic components.
- **Tier 3:** This tier is divided into electronic and non-electronic items to provide greater clarity to the different industries that may work with these items.
- **Tier 4:** Manufacturing, production and quality testing equipment of electric components and circuits.

Many other items not captured by the listed HS codes are subject to export controls and sanctions. It is the responsibility of the exporter to ensure compliance with all applicable export and sanction laws and regulations.

Exporters and intermediate nations are asked to apply a risk-based approach to exporting and screening. In the guidance, the E5 identify the following three distinct patterns associated with potential diversion of controlled goods:

- the customer did not import any goods prior to February 24, 2022;
- the customer did not, prior to February 24, 2022, import tier one and tier two HS codes; or
- the customer significantly increased imports of tier one and tier two HS codes after February 24, 2022.

Additional red flags include: (1) a newly incorporated customer located in anon-GECC country trading in products linked to tier one or two HS codes; (2) a customer willing to over pay for a tier 1 or tier 2 product, particularly if to expedite shipment; (3) a customer who is unwilling to provide information about its banks, shippers, or third parties, including end-users, intended end-use, or company owners; and (4) transactions with smaller-volume payments from the same foreign bank account to various suppliers of dual-use products.

The E5 suggest that exporters use additional due diligence to identify these patterns and red flags by: (1) reviewing the customer's date of incorporation; (2) screening orders to determine whether the end-users and intended use of the item are consistent with historical business; and (3) evaluating whether the customer's physical location and publicly available website raise any suspicions and being attentive to inconsistencies between the items ordered and the customer's stated line of business. For pre-existing customers, exporters should be particularly vigilant regarding any substantial increases in the volume, frequency or value of orders. Exporters should request and review from customers additional disclosure if any of the patterns or other suspicions arise; it would be prudent for exporters to retain supporting materials in their due diligence records. Given these sensitivities, customers' refusal to substantiate end-uses and end-users should raise additional red flags.

Failure to adhere to these recommendations can lead to damage to an exporter's reputation, difficulties in future business relationships, fines and/or criminal changes. Exporters can expect that GECC nations will apply additional security and scrutiny to the transport of these items. Therefore, it is crucial for exporters to ensure compliance with pertinent laws and regulations, understand their obligations, and establish a comprehensive compliance program to mitigate risks effectively.

<u>Conclusion</u>

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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[1]The GECC includes Iceland, Liechtenstein, Norway, Switzerland, Australia, Canada, the 27 member states of the European Union, Japan, the Republic of Korea, Taiwan, New Zealand, the United Kingdom, and the United States.

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