

Export Controls

Written by Nick Sanders
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If you are a prime contractor selling military equipment (or dual use equipment) only to the U.S. Government, you don't really need to worry about what happens to your equipment after acceptance. The U.S. Government has it, and it's pretty much all good from there.

But if you are a company that sells military equipment (or dual use equipment) to a variety of customers, including prime contractors and other commercial entities, then you need to worry about complying with a complex regime intended to control what stuff gets shipped where—and what happens to your equipment after receipt by the entity that purchased it from you.

This is not the article about that complex control regime. We are not experts in that area. Experts exist and, if you think you need them, you should go hire them. You can also take seminars addressing that topic, if you are inclined to get smarter about the subject. The point is, it's a complex topic and, if you need to know about compliance, you aren't going to find what you need on this website.

What we want to talk about is a quick object lesson about how a company acquired controlled items and then illegally exported them.

From the [Department of Justice](#) —

Peter Zuccarelli, 62, of Plano, Texas was sentenced today to 46 months in prison for conspiring to smuggle and illegally export from the U.S. in violation of the International Emergency Economic Powers Act (IEEPA), radiation hardened integrated circuits (RHICs) for use in the space programs of China and Russia. Zuccarelli was also sentenced to three years supervised release and a \$50,000 fine.

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According to the plea agreement, between approximately June 2015 and March 2016, Zuccarelli and his co-conspirators agreed to illegally export RHICs to China and Russia. RHICs

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have military and space applications, and their export is strictly controlled. In furtherance of the conspiracy, Zuccarelli's co-conspirator received purchase orders from customers seeking to purchase RHICs for use in China's and Russia's space programs. Zuccarelli received these orders from his co-conspirator, as well as payment of approximately \$1.5 million to purchase the RHICs for the Chinese and Russian customers. Zuccarelli placed orders with U.S. suppliers, and used the money received from his co-conspirator to pay the U.S. suppliers. In communications with the U.S. suppliers, Zuccarelli certified that his company, American Coating Technologies, was the end user of the RHICs, knowing that this was false. Zuccarelli received the RHICs he ordered from U.S. suppliers, removed them from their original packaging, repackaged them, falsely declared them as 'touch screen parts,' and shipped them out of the U.S. without the required licenses. He also attempted to export what he believed to be RHICs. In an attempt to hide the conspiracy from the U.S. government, he created false paperwork and made false statements.

The phrase that leapt to our attention in the foregoing was "He also attempted to export *what he believed to be RHICs*

." We suspect that means that somebody found out about the scheme while it was going on, and substituted something else for the RHICs. (We hope that's what that means.) If we're correct, then it means the company selling the RHICs noticed that something was off in the order, and tipped-off governmental authorities.

If you are a company that sells military equipment (or dual use equipment) to a variety of customers, including prime contractors and other commercial entities, what would you do to detect orders that seemed off? Do you have routine monitoring procedures? What are they?

For example, do you check to see if entities purchasing your equipment have a reasonably legitimate use for the equipment? Look at the name of Zuccarelli's company in the DoJ announcement—"American Coating Technologies." It's possible that the "coating" might apply to PWCs and PWAs and the like, but it's also possible that the "coating" might refer to powder coating or something very machine-shop oriented. How might you reasonably investigate to find out which one it was?

Further, if a company is re-exporting your equipment under false pretenses, you wouldn't know that. But you might know that the company was in the exporting business. And you might also make reasonable inquiries into the destination of those exports. In this case, if you found out that "American Coating Technologies" was exporting products—no matter what they were called—to Russia and China, you might be somewhat concerned. And you might call the authorities and ask for some assistance.

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This is a big chain of what-ifs, based on a single sentence in a DoJ press release. But that sentence got us thinking. You should know if your goods are subject to export controls, and what type of exports controls they are subject to. But you should also make reasonable efforts to ensure that your customers are complying with those controls.

Obviously, how you do that and how much effort you make must be commensurate with your products and your business size and your customers. But it seems to us that you ought to be doing something. We suspect that the unnamed producer of RHICs from which Zuccarelli acquired his chips was doing something—and it was how the scheme was detected and ultimately stopped.