

Unauthorized Transshipment of U.S.-Origin Items Through the United Arab Emirates

by Thomas M. deButts and Michael J. Noonan

Companies and individuals in the United Arab Emirates (UAE) need to be aware of U.S. export control restrictions when engaging in transactions involving U.S.-origin commodities, software or technology (“items”) that are being transshipped through the UAE. The U.S. Government maintains a long reach in its control of U.S.-origin items. Concern over the final destination of its products lasts long after original export; the U.S. applies the principles of extraterritoriality to its products so that the re-export of U.S. origin items to a destination in violation of U.S. export or re-export control laws by a foreign person is considered a violation of U.S. law. The relevant arms of the U.S. government—the Department of Commerce, Department of State, and Department of Justice—are not hesitant to bring criminal and civil actions against those who do so. Of significant concern in this area is the idea of “transshipment,” in which goods, services, or technologies are exported in accordance with U.S. law and regulation, but with the specific intent to re-export those items to a destination otherwise restricted.

In response to increased concerns over the presence of otherwise barred U.S.-origin items in countries such as Iraq and Iran, the U.S. Department of Commerce has steadily increased its focus on transshipments since 2003. In that year, the Bureau of Industry and Security (“BIS”), charged by Commerce with enforcement of dual-use export controls, set up the Transshipment Country Export Control Initiative. The stated reason for this action was as follows:

The illicit transshipment, re-export, and diversion of goods and technologies in international commerce compromise the effectiveness of U.S. trade agreements and export control laws. In so doing

such illicit transshipments harm U.S. industry, threaten U.S. security, weaken confidence in the international trading regime, and undermine international efforts to liberalize trade.

Among the countries identified by BIS as being principal transfer points for transshipments was the UAE. The UAE's growing market and increased position in international trade, when combined with its proximity to Iran, Syria and Sudan, which are subject to strict export controls, makes it a natural location for unscrupulous traders looking to take advantage of its resources.

Companies operating in the UAE should be particularly concerned with transactions that involve transshipments through the UAE. While transshipments are a legitimate and common practice in international trade, they have been used as an effective means of disguising transactions that violate U.S. export control laws. UAE companies should investigate closely transshipment transactions in which they are involved, and pay extra attention to any other entities involved in the transaction to ensure those parties are not "blacklisted" by the U.S. Government. Although the list is subject to change, those companies and individuals barred from dealing with U.S. items at the time of this writing are included at the end of this article.

UAE-Specific Restrictions:

U.S. export controls on dual-use items, including those restricting re-exports/transshipments, are found in the Export Administration Regulations ("EAR"). In June 2006, the Department of Commerce amended those regulations to specifically address certain entities in the UAE which it stated were involved in providing components for use in improvised explosive devices in Iraq and Afghanistan. Under General Order No. 3, a license was required, and license exceptions barred, for the export or re-export of any item subject to the EAR to any one of eight named entities in Dubai. The General Order also stated the Department policy of denial for all license applications involving entities named in the Order. The focus centered on *Mayrow General Trading* and seven related entities: *Micactic General Trading*, *Majidco Micro Electronics*, *Atlinx Electronics*, *Micro Middle East Electronics*, *Narinco*, *F.N. Yaghmaei*, and *H. Ghasir*. Several months later, in September 2006, General Order No. 3 was further amended to add an additional nine entities and individuals in Germany and the UAE related to Mayrow. In June 2007, a final amendment to General Order No. 3 added sixteen additional individuals and entities to the list, and expanded the list to include persons not affiliated with Mayrow General Trading.

In September 2008, the U.S. Department of Commerce amended the EAR once again in order to eliminate General Order No. 3 and to place the names of all entities and individuals contained in General Order No. 3, along with additional entries, onto the "Entity List." The Entity List, found at Supplement 4 to EAR Part 744, contains the names of individuals and businesses for which license requirements are applied based on "activities contrary to the national security or foreign policy interests of the United States." 15 C.F.R. § 744.11. As of July 2009, 30 entities and individuals in the UAE are on the Entities List. These entities have a license review policy of "presumption of denial," meaning that they are effectively barred from dealing in U.S.-origin items. The Entity List can be accessed at <http://www.bis.doc.gov/entities/default.htm>.

In addition to enhanced restrictions on UAE companies and individuals from the U.S. government, the U.S. encouraged the UAE to implement domestic export laws to address the issue of transshipments through the UAE that violate U.S. export controls and policies. This encouragement included additional proposed amendments to the EAR that would have increased the need for licensing of goods exported to the UAE, more stringent review of those licenses, and increased end-use checks, among other restrictions. In response, the UAE enacted domestic laws to increase penalties for individuals involved in diversion of controlled shipments, and the U.S. Department of Commerce rescinded the proposed amendments.

Removal from the Entity List

The Entity List is the U.S. Department of Commerce's tool for identifying companies and individuals in the UAE, and elsewhere, for "which there is a reasonable cause to believe, based on specific and articulable facts, that the entity has been involved, is involved, or poses a significant risk of being or becoming involved in activities that are contrary to the national security or foreign policy interest of the United States." As stated above, once placed on the List, a license is generally required for export of all U.S.-origin items where that entity is involved in the transaction, and the policy is to deny the license. If a company in the UAE inadvertently becomes involved in a transshipment in violation of U.S. export controls, or deals with a listed entity involving U.S.-origin items, it could be added to the Entity List and would be subject to its restrictions. The Department of Commerce, however, has developed procedures to appeal placement on the Entity List.

Section 744.16 of the EAR outlines the procedure for companies or persons to appeal their placement on the Entity List. The party must submit a written appeal containing the basis for removal or modification of listing to the End-User Review Committee. A decision will be made and provided in a written response from the Commerce Department Deputy Assistant Secretary for Export Administration. That determination is final; no further appeal is authorized. In the event the determination is made to remove the party from the Entity List, all restrictions will remain in effect until removal notice is published in the Federal Register.

Effective July 21, 2009, two UAE entities, Feroz Jafar and Telectron, were removed from the Entity List pursuant to the appeal procedure described above.

Enforcement

The U.S. Department of Commerce is vigilant in monitoring its responsibilities and works closely with other U.S. agencies and the Department of Justice to prosecute individuals and companies that violate its re-export/transshipment regulations. Below are some examples of recent actions involving transshipment through the UAE.

- In April 2009, Traian Bujduveanu, owner and operator of Orion Aviation of Florida, pled guilty to conspiracy to transship military aircraft parts to Iran through a freight forwarder in Dubai and received a three year prison sentence. The government had previously obtained guilty pleas from Kesh Air International and its owner, Hassan Saied Keshari, for their roles in the transaction.
- In March 2009, Dawn Hanna was sentenced to six years in prison and fined over \$1.1 million dollars for exporting mobile telecommunications equipment containing encryption properties to Iraq through Syria, Jordan, and the United Arab Emirates.
- In January 2009, James Gribbin was sentenced to three years probation for attempting to transship laboratory equipment through the United Arab Emirates to Iran. In the same month, Jeffrey Weiss pled guilty to making false statements on Shipper's Export Declarations related to attempted transshipment of medical equipment through the UAE to Iran.
- In August 2008, Robert Quinn pled guilty to criminal charges of making false statements in connection with the transshipment of forklift truck parts to Iran via Sharp Line Trading in Dubai. David Tatum and Khalid Mahmood (d/b/a Sharp Line Trading) were previously sentenced in 2006 in connection with the scheme.

- In July 2008, Allied Telesis Labs was fined \$500,000 and sentenced to two years probation for attempting to ship telecommunications equipment manufactured in Singapore through the UAE to Iran.
- In May 2008, Afshin Rezaei was sentenced to six months in prison and fined \$50,000 for attempting to export computers to Iran through the UAE.
- In November 2007, Proclad International Pipelines, a British corporation, pled guilty in U.S. court, was fined \$100,000 and received a suspended order denying export privileges for seven years for attempting to export nickel alloyed pipes to Iran through the United Kingdom and the UAE.

Conclusion

Individuals and companies that are involved in international trade in the UAE need to be aware of U.S. export controls when dealing with items of U.S.-origin. The U.S. government is not hesitant to use its resources to enforce its export control policies long after products have left the United States. When dealing with U.S.-origin items exported to the UAE either for future re-export or immediate transshipment, the UAE parties involved should ensure that the items are not destined for an end user in a country subject to U.S. sanctions or embargo, and also need to be aware of those entities in the UAE that the U.S. has determined to be off-limits for transactions involving U.S. items by virtue of their presence on the Entity List. Failure to do so could result in placement on the Entity List and effective debarment from engaging in transactions involving U.S.-origin items.

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UAE Entries on the Entity List:

A.H. Shamnad
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No. 3-4 Sharafia Ahmed Ali Building
Al Nakheel, Deira, Dubai 396, U.A.E.

Ali Akbar Yahya
505 Siraj Building
17B Street
Mankhool, Dubai, U.A.E.

Abubakr Abuelazm, Dubai, U.A.E.
(Alternate address under Kuwait)

Ali Reza Divanizadeh
Al Ras Center Building
Behind Al Ras Hotel
Shop No. B-05
P.O. Box 5680
Dubai, U.A.E.

Advanced Technology General Trading
Company, U.A.E.
(Alternate address under Kuwait)

Al-Faris
RAK Free Zone
P.O. Box 10559
Ras Al Khaimah, U.A.E.

Amir Mohammad Zahedi
RAK Free Zone
P.O.Box 10559
Ras Al Khaimah, U.A.E.

Atlinx Electronics
Flat 401- Bin Yas Center –
Al Maktum Road
P.O. Box 42340
Dubai, U.A.E.;
and Shops 3-4
Sharafia Ahmed Ali Building
al-Nakheel, Deira
Dubai, U.A.E.

Danoush Trading Company
No. 104, Beside Kheibar Hotel
Morshed Market St.
Dubai, U.A.E.

Divanizadeh General Trading Company
Al Ras Center Building
Behind Al Ras Hotel
Shop No. B-05, P.O. Box 5680
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Al Jalel, Deira
Dubai, U.A.E.

Hamed Athari
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Dubai, U.A.E.

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