

# **Export Compliance Violations**

## **This Could Happen to You!**

**Wisconsin International Trade Conference  
May 11, 2017**

# ZTE – Background

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- One of world's largest manufacturers of telecommunications equipment
- Operations in over 160 countries
- Over 65,000 employees
- 22 million Americans have a ZTE cell phone
- Significant business relationships with major US companies

# ZTE – The Scheme

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- From 2010 to 2016, ZTE engaged in a complex scheme to evade US export controls
- Shipped \$32 million of US-origin equipment to Iran without obtaining proper export licenses

# ZTE – Enforcement Response

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- In March 2012, Reuters published an article detailing some parts of the alleged scheme
- Prompted a government investigation
- ZTE hired outside counsel to investigate, which in turn hired forensic accounting firm
- In March 2016, BIS placed ZTE on the Entity List
- BIS issued ZTE a series of temporary general licenses while settlement negotiations took place

# ZTE – Active Concealment

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- Concealed the scheme in various ways
- Senior management involved
- Used shell companies (“isolation companies”) to ship US items to embargoed countries
- After scheme came to light in 2012, told US government it had stopped doing business in Iran
- But then created special team to sanitize materials related to Iran transactions
- Deleted emails on a nightly basis
- Required employees to sign NDAs
- Misled outside counsel and its accounting firm during internal investigation

# ZTE – Penalty

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- Announced March 7, 2017
- Record \$1.19 billion penalty
  - \$661 million to BIS (\$300 million suspended)
    - Largest fine ever imposed by BIS
  - \$100.9 million to OFAC
    - Largest fine ever imposed by OFAC on a non-financial entity
  - \$430.5 million to DOJ
    - Largest fine ever for export violation
- *BUT:* ZTE removed from Entity List

# ZTE – It's Not Just the Money

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- Four ZTE employees fired (Yates memo)
- Must submit periodic audit reports to BIS
- Must hire independent compliance monitor for three years
- Must sit down for annual meeting with BIS
- Must allow BIS verification of end uses
- Must operate under a suspended denial order for seven years

# Access USA Shipping – Background

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- Does business as “MyUS.com”
- Florida-based mail and package forwarding company
- For a fee, provides foreign customers with a physical address in the US and “suite” space at its warehouse for items purchased from US merchants ultimately intended for export
- Previously won the Department of Commerce “President’s E Award” for exporters

# Access USA Shipping – The Scheme

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- Foreign customers used MyUS.com to conceal from US merchants that the items they purchased were destined for export
- Access USA then altered item descriptions to avoid detection by US law enforcement
  - Night vision lenses . . . “camera lenses”
  - Optical sights . . . “garage tool kits”
  - Rifle scopes . . . “sporting goods”
  - Rifle stocks and grips . . . “toy accessories”

# Access USA Shipping – The Scheme

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- Removed labels, price tags and other information from items prior to export—all according to “account notes” in its order system
- Multiple strategies and policies to undervalue exports
  - Modified order system to undervalue items by a set percentage automatically, based on the country of destination for the export
  - Manipulated description of item as “wholesale” or “retail” in order to alter value

# Access USA Shipping – The Scheme

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- Exported items to a variety of destinations without required export license
- Failed to make required EEI filings in AES
- In EEI filings Access USA did make, many contained false certifications
- Shipped to a company on the Entity List

# Access USA Shipping – The Scheme

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- Offered a “personal shopper program”
- Purchased items for export to foreign customers without informing US merchants that items were for export
  - Foreign customer sent shopping list to Access USA
  - Access USA employee then purchased items using personal credit cards, with charges subsequently reimbursed
- At times, items shipped to home addresses to mislead merchant into thinking that Access USA not involved

# Access USA Shipping – Willfulness

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- BIS and DHS conducted several “outreach visits”
- Provided information about export control lists to check and export license requirements

# Access USA Shipping – Willfulness

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“I will not be a party to [undervaluation].

I know we’re doing it now.

I know we have the means to avoid doing it.

I know we are **WILLINGLY AND INTENTIONALLY**  
breaking the law.”

Email from Chief Technology Officer to CEO  
(September 20, 2011)  
(emphasis in original)

# Access USA Shipping – Violations

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- Violations occurred between April 2011 and January 2013
  - 129 counts of evasion
  - 17 counts of exporting or attempting to export without a license
  - 4 counts of exporting or attempting to export to sanctioned entity on Entity List without a license

# Access USA Shipping – Penalty

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- Announced March 14, 2017
- \$27 million civil settlement
  - \$17 million suspended for two-year probationary period

# Kaiga – Background

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- Nicholas Kaiga started a Belgian company called Industrial Metals and Commodities (IMC)
- IMC transhipped goods for various individuals, including “Individual A”
  - Individual A had connections to Iran
- Purpose was to help Individual A evade US export control laws
- Kaiga agreed to use IMC as an intermediary for Individual A’s business with a company in Schaumburg, Illinois (“Company A”)

# Kaiga – Controlled Product

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- Aluminum tubing is a “dual use” item
- On the Commerce Control List when diameter and ultimate tensile strength exceed certain measures
  - ECCN 1C202.a
  - Controlled for nuclear nonproliferation purposes (NP1)

# Kaiga – Controlled Destinations

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- Export from US of NP1 materials to *Malaysia* usually required a license issued by BIS
- *HOWEVER . . .*
  - Export from US of NP1 materials to *Belgium* did *not* require a license issued by BIS
- This incongruity was the basis for the scheme

# Kaiga – Failed Export

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- Individual A tried to deal with Company A directly
  - Ordered 1,800 feet of “7075 Aluminum” for shipment to United Arab Emirates
  - Met requirements for NP1 control
- Company A asked about end use
- Individual A said it was “for oil companies here in UAE and is used for low pressure steam transmission”
- Using this information, Company A applied for license
- After an investigation, BIS denied license

# Kaiga – Investigation

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- Around the time that BIS began its investigation, Company A began cooperating with law enforcement
- Start of a long undercover operation
- Thereafter, undercover agent (“UA”) posed as employee of Company A

# Kaiga – The Scheme

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- Individual A instructed UA to ship 7075 Aluminum to IMC (Kaiga's company in Belgium)
- Address in Belgium appears to be apartment building in a residential neighborhood
- Kaiga sent UA a BIS form saying that the materials would not be re-exported from Belgium
- Individual A then emailed the UA, asking him to list the cost as \$5.90/ft
  - Reduced price from \$67,836 to \$10,089
  - IP address for email registered to ISP in Iran

# Kaiga – The Scheme

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- Previous steel shipments to IMC showed that they were then sent to Malaysia
- Government sent a “sham” shipment of 7075 Aluminum to IMC, with a type of aluminum that was not controlled for export to Malaysia
- Company A shipped the goods
- IMC hired freight forwarder, which filed SED
  - Listed total value as \$10,089
- Shipping company issued bill of lading listing ultimate consignee as IMC

# Kaiga – The Scheme

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- Belgian and Malaysian authorities cooperated with investigation
- The sham 7075 Aluminum arrived in Belgium
- A little over two months later, the sham 7075 Aluminum was exported from Belgium to Malaysia
- Destination in Malaysia connected to Individual A
- ECO tried to meet with Individual A in Malaysia
  - Informed that Individual A was unavailable to meet because he is based in . . .

Iran

# Kaiga – The Penalty

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- Kaiga flew to New York to meet with the UA
- Arrested shortly thereafter
- Indicted in federal court in Chicago
- Sentenced to 27 months in prison
- Served his prison sentence and deported

# Kaiga – What About Company A?

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- Identified red flags
- Asked for end use information
- Decided to cooperate with the investigation

# Other Red Flag Indicators

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- Name or address *similar* to party on Entity List
- Reluctant to offer information on end use
- Product does not fit line of business
- Little information about background of business
- Cash payment
- Customer unfamiliar with product characteristics
- Routine installation, training or maintenance services are declined
- Freight forwarding firm listed as final destination
- Abnormal shipping route
- *OR:* It just doesn't feel right

# Thank You

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