

Year Of The Sting: Criminal Export Enforcement In 2013

Law360, New York (January 28, 2014, 12:21 PM ET) -- Historically, violations of United States export laws garnered relatively modest attention from regulators, and few investigations led to criminal indictments. This was particularly the case when the majority of violations detected by the government were of an administrative nature or involved unsophisticated means and actors.

A recent shift in the tactics employed by United States investigative agents, however, resulted, in 2013, in an unusual spate of federal criminal charges arising from alleged international trade activities. In particular, the aggressive and increasingly routine use of undercover tactics, more traditionally employed in sophisticated financial and cross-border white collar criminal investigations, portends an entirely different future for individuals and corporations suspected of violating export regulations, as well as their business associates.

Last week, Russian citizen Roman Kvinikadze was sentenced, after pleading guilty to attempting to export thermal imaging weapon sights — defense articles classified under the International Traffic in Arms Regulations — from the United States to Russia without the required license from the U.S. State Department.

According to the criminal complaint, an undercover agent associated with the U.S. Department of Homeland Security, Homeland Security Investigations (“HSI”) was approached by Kvinikadze in December 2012 through an e-commerce site, comparable to eBay, known as Alibaba.com. Although the complaint is sparse on details regarding the undercover agent’s presence on the site, the Russian Foreign Ministry explained to Russian media that “agents [were] posing as corporate sellers of hunting night-vision devices.”

After Kvinikadze and the HSI agent exchanged email addresses, Kvinikadze explained that he was starting a hunting store in Russia and believed that adding thermal imaging weapon sights would be “very useful for hunting.” Over a series of emails, calls and at least one meeting in the United States over a period of one and a half years, Kvinikadze and the agent discussed the terms under which shipment would be arranged.

According to the complaint, on various occasions, the HSI agent referenced the need for a license, but indicated that there were “other ways” to deliver the shipment. Kvinikadze and the agent ultimately agreed to a shipping methodology that would, according to the agent, “not draw extra attention from customs officials.” After wiring funds to an undercover bank account, Kvinikadze, on the agent’s suggestion, flew to Denver in order to inspect the sights and conclude the final details of the transaction. Upon arrival, Kvinikadze was arrested and detained without bail until sentencing.

The Russian Foreign Ministry publicly reproached the United States' investigative approach, noting that "Kvinikadze was being knowingly provoked to violate the law" and "lured into the United States." Russian Foreign Ministry's human rights commissioner, Konstantin Dolgov, condemned the practice of United States agents "posing as representatives of a private company" as "unacceptable." With an apparent sensitivity toward foreign relations, U.S. District Judge Alan Johnson found that the applicable federal guidelines sentence of 33 to 41 months imprisonment and a fine of up to \$1 million was inappropriate, instead sentencing Kvinikadze to time-served (147 days), a \$7,500 fine and ordering him to leave the United States "as soon as practical."

This was not the first instance in which HSI agents posed on international e-commerce sites, or even Alibaba.com. In August of 2013, Patrick Campbell, a Sierra Leone citizen, was arrested and charged with brokering a supply of uranium intended for Iran in violation of the International Emergency Economic Powers Act. According to the criminal complaint, in May 2012, an undercover agent with the Immigration and Customs Enforcement division of HSI posted an advertisement on Alibaba.com in which he purportedly sought to purchase Uranium 308 ("U308") which, when processed, becomes enriched Uranium.

Campbell responded to the advertisement and began a 15-month dialogue with the ICE agent via telephone, Skype and email, during which Campbell agreed to broker the supply of U308, knowing it was destined for Iran. The complaint alleges that when Campbell was in discussions to come to the United States to meet with the agent, the agent advised Campbell that "unless he could travel to the United States and convince the Iranian buyer that Campbell was serious ... Campbell should not contact the [agent] again."

Campbell ultimately traveled to the United States from Sierra Leone to finalize the details of the transaction with the agent, bringing with him a sample of U308 hidden in the soles of his shoes in his luggage, and was arrested upon landing in JFK. At trial, initially scheduled for this month but continued as a result of the withdrawal of counsel, Campbell faces up to 20 years' incarceration and a \$1 million fine.

As in traditional white collar criminal investigations, such undercover tactics can have significant implications for innocent companies unwittingly engaged in international trade transactions with wrongdoers. Such was the case for one Illinois company (the "U.S. company") that actively cooperated with the United States government in a five-and-a-half-year international sting operation, on the heels of applying for a license from the U.S. Department of Commerce, Bureau of Industry and Security.

According to the criminal complaint, in 2007, the U.S. company received a purchase order to ship aluminum to a company in the United Arab Emirates. Upon investigation, a U.S. Department of Commerce export control officer learned that the general manager of the UAE company was located in Iran and that the only company at the destination address was an Iranian company. What followed was a multiyear undercover investigation, involving at least one representative from the U.S. company and an undercover agent posing as a representative of the U.S. company.

During the course of the investigation, the U.S. company shipped multiple goods to Nicholas Kaiga, a customer in Belgium, which were ultimately forwarded to a company in Malaysia. Following his arrest, in October of 2013, Kaiga pleaded not guilty to one count of attempting to export 7075 T6 aluminum tubes, controlled for nuclear nonproliferation purposes, from the United States to Malaysia without having obtained the required license from the U.S. Department of Commerce, Bureau of Industry and Security and two counts of making false statements on United States export forms. At trial, Kaiga faces

more than 20 years in prison and upward of \$1 million in fines.

The examples are numerous. In November, a Houston man was sentenced to three years imprisonment for his part in avoiding over \$30 million in tariffs on the illegal import of Chinese honey, and in December, a Chinese national was sentenced to 57 months in prison for attempting to export military-grade carbon fiber to China. Both pleaded guilty following investigations involving undercover agents.

There are no signs that the government intends to abandon its seemingly successful approach to potential international trade violations. According to Foreign Corrupt Practices Act officials with both the U.S. Securities and Exchange commission and the U.S. Department of Justice, companies operating internationally can expect increased scrutiny from law enforcement agencies working across borders in 2014. It is inevitable that increased resources and heightened monitoring of international bribery activities will lead to other cross-border investigations, including those related to international trade violations.

All companies subject to international trade regulations should be mindful of the potential criminal implications of violating certain of those regulations and the increasing frequency with which government agencies have sought criminal sanctions for export violations. Companies should conduct appropriate diligence to apprise themselves of the identity and nature of international business partners, affiliates and customers.

Additionally, companies should be mindful that, in today's world of increased international trade scrutiny, foreign governments are as apt to conduct undercover law enforcement efforts as are United States agents. Finally, companies should periodically review their compliance programs to ensure thoroughness and proper implementation, and should have sufficient controls in place to identify and investigate potential export violations.

—By Ross Garber and Sara Goldfarb, Shipman & Goodwin LLP

Ross Garber is a partner in the Washington, D.C., and Hartford, Conn., offices of Shipman & Goodwin. Sara Goldfarb is an associate in the firm's Hartford office. Garber co-chairs and Goldfarb is a member of the firm's international trade compliance and enforcement practice group and the firm's government investigations and white collar criminal defense practice group.

The opinions expressed are those of the author(s) and do not necessarily reflect the views of the firm, its clients, or Portfolio Media Inc., or any of its or their respective affiliates. This article is for general information purposes and is not intended to be and should not be taken as legal advice.