
United States District Court
District of New Jersey

UNITED STATES OF AMERICA	:	
	:	CRIMINAL COMPLAINT
v.	:	
	:	Magistrate No.
XU WEIBO	:	04-2079 (Xu Weibo)
a/k/a Kevin Xu;	:	04-2080 (Xiu Ling Chen)
XIU LING CHEN	:	04-2081 (Hao Li Chen)
a/k/a Linda Chen;	:	04-2082 (Kwan Chun Chan)
HAO LI CHEN	:	
a/k/a Ali Chan;	:	
KWAN CHUN CHAN	:	
a/k/a Jenny Chan.	:	

I, the undersigned complainant, being duly sworn, state the following is true and correct to the best of my knowledge and belief.

SEE ATTACHMENT A.

I further state that I am a Special Agent of the Department of Commerce and that this complaint is based on the following facts:

SEE ATTACHMENT B.

THOMAS E. WILLIAMS
Special Agent
Department of Commerce

Sworn to before me and subscribed in my presence,

June 30, 2004 at Camden, New Jersey

HONORABLE JOEL B. ROSEN
United States Magistrate Judge

Signature of Judicial Officer

ATTACHMENT A

COUNT ONE – CONSPIRACY

1. Beginning at least as early as in or about October 2003, and continuing to the present, in Burlington County, in the District of New Jersey and elsewhere, defendants:

XU WEIBO, a/k/a Kevin Xu;
XIU LING CHEN, a/k/a Linda Chen;
HAO LI CHEN, a/k/a Ali Chan; and
KWAN CHUN CHAN, a/k/a Jenny Chan

did knowingly and willfully conspire and agree with each other and with others to commit offenses against the United States, namely:

- (a) to devise and intend to devise a scheme and artifice to defraud and to obtain money and property by means of materially false and fraudulent pretenses, representations and promises, and to transmit and cause to be transmitted by means of wire communications in interstate and foreign commerce writings, signs, signals and sounds for the purpose of executing such scheme and artifice to defraud, contrary to Title 18, United States Code, Section 1343; and
- (b) to order, buy, remove, conceal, store, use, sell, loan, dispose of, transfer, transport, finance, forward and otherwise service, in whole and in part, items exported and to be exported from the United States with knowledge that a violation of the Export Administration Act, the Export Administration Regulations and any order, license or authorization issued thereunder, has occurred, is about to occur and is intended to occur in connection with the item, contrary to Title 50, United States Code, Section 1705(b) and Title 15, Code of Federal Regulations, Section 764.2(e).

2. It was a principle object of the conspiracy that defendants sought to obtain export restricted items in the United States and ship them to the People's Republic of China ("PRC").
3. It was part of the conspiracy that importers located in the PRC and government-controlled entities in the PRC requested that defendants obtain and ship various export restricted items to the PRC.
4. It was further part of the conspiracy that defendants located and obtained various export restricted items from distributors in the United States. Among the restricted items obtained were certain Gallium Arsenide ("GaAs") Monolithic Microwave Integrated Circuits ("MMICs"), which had military as well as civilian applications, and which are prohibited from export to the PRC without an export license from the Department of Commerce.
5. It was further part of the conspiracy that defendants shipped these items, or caused them to be shipped, to the PRC.
6. It was further part of the conspiracy that defendants did not apply for or obtain the requisite licenses from the Department of Commerce to ship these items to the PRC. It was further part of the conspiracy that defendants actually concealed their illegal exports by making false statements to U.S. distributors and in shipping documents (including packing lists and invoices) to disguise the nature of the items being shipped.
7. It was further part of the conspiracy that defendants set up a shell company in the District of New Jersey, and falsely stated that the end-user of the export restricted items was the New Jersey-based shell company, to further conceal that the defendants were exporting the items to the PRC.
8. It was further part of the conspiracy that defendants set up various bank accounts in the United States to receive payments for these shipments.
9. It was further part of the conspiracy that defendants received payment from entities within the PRC for these shipments.

OVERT ACTS

In furtherance of the conspiracy and to effect the objects thereof, the following overt acts were committed in Burlington County, in the District of New Jersey and elsewhere:

1. On or about December 10, 2003, defendant XU WEIBO, a/k/a Kevin Xu (“XU”), sent a facsimile containing a false Export Declaration from his business office at Manten Electronics, Incorporated, in Mount Laurel, New Jersey, to a distributor of technology in Post Falls, Idaho.

2. On or about December 29, 2003, defendant KWAN CHUN CHAN, a/k/a Jenny Chan, sent from Manten’s office in Mount Laurel, New Jersey to the PRC a facsimile containing an invoice related to the sale of technology that defendants were illegally exporting to the PRC, using false product numbers on the invoice to conceal the illegal export.

3. On or about January 8, 2004, defendant XIU LING CHEN, a/k/a Linda Chen, sent an electronic mail message from Manten’s office in Mount Laurel, New Jersey, to defendant HAO LI CHEN, a/k/a Ali Chan, stating, in substance and in part, “don’t mention ‘Export’” when ordering certain technology that defendants intended to illegally export from the United States to the PRC.

4. On or about January 15, 2004, defendant HAO LI CHEN, a/k/a Ali Chan, sent a facsimile from Manten’s office in Mount Laurel, New Jersey, to an individual in the PRC, stating, in substance and in part, that he was encountering “export permit problems” in defendants’ efforts to illegally export a certain technology to the PRC without the requisite license.

In violation of Title 18, United States Code, Section 371.

COUNT TWO – EXPORT ADMINISTRATION ACT VIOLATION

1. Paragraphs two through nine of Count One are realleged and incorporated herein.
2. In or about December 2003, in Burlington County, in the District of New Jersey

and elsewhere, defendants:

XU WEIBO, a/k/a Kevin Xu;
XIU LING CHEN, a/k/a Linda Chen;
HAO LI CHEN, a/k/a Ali Chan; and
KWAN CHUN CHAN, a/k/a Jenny Chan

did knowingly and willfully order, buy, remove, conceal, store, use, sell, loan, dispose of, transfer, transport, finance, forward and otherwise service, in whole and in part, items exported and to be exported from the United States, specifically, certain Gallium Arsenide (“GaAs”) Monolithic Microwave Integrated Circuits (“MMICs”) to the People’s Republic of China, with knowledge that a violation of the EAA, the EAR and any order, license and authorization issued thereunder, has occurred, is about to occur and is intended to occur in connection with the item.

In violation of Title 50, United States Code, Section 1705(b) and Title 15, Code of Federal Regulations, Section 764.2(e), and Title 18, United States Code, Section 2.

COUNT THREE – WIRE FRAUD

1. Paragraphs two through nine of Count One are realleged and incorporated herein.
2. Beginning at least as early as in or about October 2003, and continuing to the

present, in Burlington County, in the District of New Jersey and elsewhere, defendants:

XU WEIBO, a/k/a Kevin Xu;
XIU LING CHEN, a/k/a Linda Chen;
HAO LI CHEN, a/k/a Ali Chan; and
KWAN CHUN CHAN, a/k/a Jenny Chan

did knowingly and willfully devise and intend to devise a scheme and artifice to defraud and to obtain money and property by means of materially false and fraudulent pretenses, representations and promises, which scheme is set forth in substance and in part in paragraphs two through nine of Count One.

3. On or about January 8, 2004, in Burlington County, in the District of New Jersey and elsewhere, defendants:

XU WEIBO, a/k/a Kevin Xu;
XIU LING CHEN, a/k/a Linda Chen;
HAO LI CHEN, a/k/a Ali Chan; and
KWAN CHUN CHAN, a/k/a Jenny Chan

did knowingly and willfully transmit and cause to be transmitted by means of wire communications in interstate and foreign commerce writings, signs, signals and sounds, namely an electronic communication from defendant XIU LING CHEN, a/k/a “Linda Chen” to defendant HAO LI CHEN, a/k/a “Ali Chan” which traveled from defendants’ office in Mount Laurel, New Jersey, through an internet service provider in Pittsburgh, Pennsylvania, and back, for the purpose of executing such scheme and artifice to defraud.

In violation of Title 18, United States Code, Sections 1343 and 2.

ATTACHMENT B

I, Thomas E. Williams, a Special Agent with the Department of Commerce, having conducted an investigation, am aware of the following facts:

I. BACKGROUND

1. At all times relevant to this complaint, the Ministry of Information Industry (“MII’s”) 20th Research Institute and 41st Research Institute in the People’s Republic of China (“PRC”) was involved in the research, development and production of a wide variety of electronics and communications technology for both civilian and military use. Specialties of the 20th Research Institute include military radio-navigation technology, aircraft landing systems, military communications equipment and global positioning systems. Specialties of the 41st Research Institute include military amplifiers and testing devices for military instruments.

2. On or about May 14, 2001, the U.S. Department of Commerce, Bureau of Industry Security, identified the 20th Research Institute (also known as the Xian Research Institute of Navigation Technology (“XRINT”)) as an entity which poses an unacceptable risk in the development of weapons of mass destruction or the missiles used to deliver weapons of mass destruction. Consequently, exports to the 20th Research Institute are subject to even greater licensing restrictions than other exports to the PRC.

3. At all times relevant to this complaint, defendants XU WEIBO, a/k/a Kevin Xu (“Xu”); XIU LING CHEN, a/k/a Linda Chen (“Linda Chen”); HAO LI CHEN, a/k/a Ali Chan (“Ali Chan”); and KWAN CHUN CHAN, a/k/a Jenny Chan (“Jenny Chan”) worked at Manten Electronics, Incorporated, a technology exporter, in Mount Laurel, New Jersey.

4. Specifically, at all times relevant to this complaint:

- (a) defendant XU was Manten's president; in this capacity, he directed all Manten's business and approved all shipments, purchases and sales;
- (b) Defendant LINDA CHEN (XU's wife) coordinated technology purchases;
- (c) Defendant ALI CHAN (LINDA CHEN's brother), was Manten's vice president; in this capacity, his duties included obtaining price quotations for high-technology items, ordering technology and managing the logistics of shipping the technology to the PRC; and
- (d) Defendant JENNY CHAN (ALI CHAN's wife), held the title of "controller"; JENNY CHAN handled accounts payable/receivable duties for Manten and acted as the company's receptionist.

5. At all times relevant to this complaint, Coconspirator 1 ("CC-1") was a known importer of Restricted Items for certain Research Institutes directed by the PRC government, including the 20th Research Institute; CC-1 also was one of defendants' largest broker of goods shipped to the PRC.

**II. EXPORT ADMINISTRATION ACT/
EXPORT ADMINISTRATION REGULATIONS**

6. The Export Administration Act of 1979, as amended, 50 U.S.C. §§ 2401-2420, (the "EAA") authorizes the Secretary of Commerce to prohibit or curtail the export of certain goods, technology, and software (identified therein as "items") to protect the national security, foreign policy, nonproliferation, and short-supply interests of the United States. The Secretary of Commerce implements the authority provided by the EAA through the promulgation of the Export Administration Regulations ("EAR").

7. The EAA is temporary legislation and lapses from time to time. Although the EAA lapsed on August 21, 2001, the President, through Executive Order 13222 of August 17, 2001, (3 C.F.R., 2001 Comp., p. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 7, 2003 (68 Fed. Reg. 47833, August 11, 2003), invoked his authority under the International Emergency Economic Powers Act (“IEEPA”) to continue the EAR in effect during the period of EAA lapse. Both the EAA and IEEPA authorize investigations into violations of regulations issued to implement the authority of the relevant statute.

8. Part 734 of the EAR identifies the items that are subject to the EAR. Section 734.3(c) of the EAR (15 C.F.R. § 734.3(c)) provides “items subject to the EAR consist of the items on the Commerce Control List (the “CCL”) in part 774 of the EAR and all other items which meet the definition of that term.” On the CCL, individual items are identified by an Export Control Classification Number (“ECCN”). Certain items (including the microwave amplifiers, integrated circuits, digital signal processors, static random access memory and other items discussed herein) are covered by ECCN 3A001.

9. The Bureau of Industry and Security (“BIS”), Department of Commerce (“DOC”) has determined that items under ECCN 3A001 are controlled for national security reasons, and a BIS license is required to export these items from the United States to most destinations worldwide, including the PRC. The export of these items from the United States to the PRC without an export license is a violation of the EAR.

10. Section 764.2 of the EAR sets out violations of the EAR which can lead to criminal and administrative (civil) penalties. Section 764.2(a) of the EAR prohibits any person

from engaging in any conduct contrary to the EAR or from refraining from engaging in activity required by the EAR. Section 764.2(b) of the EAR prohibits any person from causing, aiding, abetting, counseling, commanding, inducing, procuring, or permitting the doing of any act prohibited by the EAR, or the omission of any act required by the EAR. Section 764.2(c) of the EAR prohibits any person from soliciting or attempting a violation of the EAR. Section 764.2(d) of the EAR prohibits any person from conspiring or acting in concert with another in any manner for any purpose to bring about or do any act that constitutes a violation of the EAR. Section 764.2(e) of the EAR prohibits any person from proceeding with an export transaction with knowledge that a violation of the EAR has occurred or is about to occur. Section 764.2(g)(1) of the EAR, prohibits any person from making any false or misleading representations, statements, or certifications, or falsifying or concealing any material fact, either directly to the BIS or an official of any other United States agency in the course of an investigation or in connection with the submission of any export control document. All representations, statements, and certifications made by any person are deemed to be continuing in effect. Section 764.2(h) of the EAR prohibits any person from engaging in any transaction or taking any action with the intent to evade the provisions of the EAR. Section 764.2(i) of the EAR prohibits any person from failing or refusing to comply with any reporting or record keeping requirement of the EAR.

**III. THE ARMS EXPORT CONTROL ACT/
INTERNATIONAL TRAFFIC IN ARMS REGULATIONS (“ITAR”)**

11. The Arms Export Control Act, 22 U.S.C. § 2778, authorizes the President to control the export of defense articles and services from the United States. The Act requires every person engaged in the business of exporting defense articles from the United States to obtain a license or other approval from the U.S. Department of State. 22 U.S.C. §

2778(b)(1)(A)(i). The regulations promulgated pursuant to the Act, known as the International Traffic in Arms Regulations (hereafter, “ITAR”) provide the following definitions of exporting:

- (1) Sending or taking a defense article out of the United States in any manner, except by mere travel outside the United States by a person whose personal knowledge includes technical data; or . . .
- (3) Disclosing (including oral or visual disclosure) or transferring in the United States any defense article to an embassy, any agency or subdivision of a foreign government (e.g., diplomatic missions); or
- (4) Disclosing (including oral or visual disclosure) or transferring technical data to a foreign person, whether in the United States or abroad

22 C.F.R. § 120.17.

12. The ITAR defines a defense article and service to be any item on the United States Munitions List contained in the regulations. The Munitions List sets forth twenty-one categories of defense articles that are subject to export licensing controls by the State Department’s Directorate of Defense Trade Controls (“DDTC”). 22 C.F.R. § 121.1. Category XI on the Munitions List includes “military electronics,” including components and associated equipment, such as the technology discussed herein.

13. Unless an exemption applies, the ITAR requires registration of all persons who intend to export a defense article to obtain the approval of the DDTC before engaging in such an export. 22 C.F.R. § 123.1(a).

14. With regard to countries against which the United States has an arms embargo and which are listed in 22 C.F.R. Section 126.1, the ITAR provides that:

It is the policy of the United States to deny licenses and other approvals for exports and imports of defense articles and defense services, destined for or originating in certain countries. . . . This policy . . . applies to countries with respect to which the United States maintains an arms embargo (e.g., . . . China . . .)

22 C.F.R. Section 126.1(a).

IV. EXAMPLES OF MANTEN'S ILLEGAL EXPORTS

15. Sometime prior to October 2003, defendants XU, LINDA CHEN, ALI CHAN and JENNY CHAN agreed to export certain items (referred to herein as "Restricted Items") to the PRC without the requisite licenses. For each of these Restricted Items, the Bureau of Industry and Security ("BIS"), Department of Commerce, or the Department of State has determined that these Restricted Items are controlled for national security reasons, and a license is required to export these Restricted Items from the United States to most destinations world-wide, including the PRC. (The license must be obtained from BIS or the Department of State, depending on the item.)

16. The investigation has further revealed that defendants XU, LINDA CHEN, ALI CHAN and JENNY CHAN have illegally exported Restricted Items to the PRC, in at least fifteen shipments with an approximate total value exceeding \$300,000. For each of these transactions, one or more of the defendant: received an order from a person or entity in the PRC for a Restricted Item; obtained that Restricted Item from a United States manufacturer or distributor without disclosing that the Restricted Item would be sent to the PRC; and shipped the Restricted Item to the PRC without receiving, or even applying for, the requisite export license. The defendants often would falsify shipping documents and communications (as noted below) to disguise their illegal export of the Restricted Items.

17. In furtherance of the conspiracy, as detailed below, the defendants used facsimile and email correspondence from Manten's office in Mount Laurel, New Jersey to entities in the PRC, as well as to United States distributors of the Restricted Items located in

Idaho, New York and elsewhere, to obtain, process and fill orders for Restricted Items and to collect payment for the illegal exports.

A. Defendants' EAR Violation: MMIC Shipment

18. One example of such an illegal export pertains to Restricted Items manufactured by a Massachusetts-based company. On or about October 24, 2003, defendant XU received a facsimile from CC-1 at Manten's office in Mount Laurel, New Jersey, requesting price quotations for certain items and correctly noting, in substance and in part, that two items on the list, model numbers MAAM71100 and MAAM71200 "may need export licenses."

19. These items are Gallium Arsenide ("GaAs") Monolithic Microwave Integrated Circuits ("MMICs"). According to the Department of Defense and the U.S. Air Force National Air & Space Intelligence Center, the MMICs are a technology used for a wide variety of defense weapon systems, including radar, smart weapons, electronic warfare and communications; MMICs are used in B-2 bombers, military helicopters, fighter aircraft, missiles, radar and satellites.

20. The specific model numbers of the MMICs requested in CC-1's facsimile are military-grade amplifiers that are used in wireless applications such as cell phones, wireless personal data assistants ("PDAs") and computers; notably, they also are a key element in radar systems, especially fighter aircraft and reconnaissance radar systems. (These specific part numbers are referred to hereafter as the "MMICs.")

21. A license determination provided by the U.S. Department of Commerce shows that these MMICs cannot be exported without the express authorization of the U.S.

Department of Commerce, in the form of an export license. At no time did defendant XU or anyone else at Manten apply for or receive a license to export the MMICs.

22. In response to CC-1's order for the MMICs, on or about October 29, 2003, defendant LINDA CHEN sent a facsimile to a distributor of the MMICs based in Post Falls, Idaho ("Distributor 1") requesting a price quotation. On or about November 5, 2003, defendant LINDA CHEN received a facsimile from Distributor 1, providing a price quotation for the MMICs and stating, in substance and in part: "export or re-export of this commodity may require prior government approval."

23. On or about December 4, 2003, Distributor 1 sent defendant XU an email, from its Idaho offices to Manten's New Jersey office, requesting that defendants complete an export declaration form, providing the end-user and designated use of the MMICs defendants had ordered. Distributor 1 stated, in substance and in part, that this form was required because these MMICs are "export controlled devices" which cannot be sent outside of the United States without a license.

24. In an email the following day, on or about December 5, 2003, CC-1 suggested to defendant XU that he falsify the end-user to disguise the fact that these items were destined for the PRC. CC-1 stated, in substance and in part: "Couldn't you look for an American local supplier as an end-user? Or (suppliers) in other locations, for example Taiwan perhaps?"

25. On or about December 10, 2003, defendant XU sent Distributor 1 a falsified export declaration form regarding the MMICs (model number MAAM71100) via facsimile from the Manten office. On that form, which he signed, defendant XU certified that he has knowledge that "the products identified [on the form] and the related technology are

controlled for export by the United States Government.” Defendant XU then falsely stated, in substance and in part, that the ultimate end-user of the MMICs was a New Jersey company called “GMC.”

26. In fact, GMC was a shell corporation created by the defendants in furtherance of their illegal export scheme. GMC Corporate documents list GMC’s president as defendant XU and GMC’s operating address as defendant ALI CHAN and defendant JENNY CHAN’s home address in Mount Laurel, New Jersey.

27. On or about December 19, 2003, defendant XU sent Distributor 1 a second falsified export declaration form regarding additional MMICs (model number MAAM71200). Again, defendant XU falsely stated that the end-user of the technology was defendants’ shell corporation, GMC. This falsification was common practice for defendants: on at least twelve separate occasions between in or about November 2003 and in or about March 2004, defendants XU, ALI CHAN and LINDA CHEN, individually and at times collectively, misrepresented to United States technology distributors that the technology they sought to obtain would be shipped to GMC in New Jersey when, in fact, all the items were destined for the PRC.

28. On or about December 2003, CC-1 and defendant XU discussed how to further disguise the shipments of the MMICs to the PRC in order to avoid detection by law enforcement. They agreed to provide a vague product description and false model number on the invoice accompanying the shipment. They also agreed not to use Federal Express shipping company but instead to send the MMICs via China Interocean Transport, a shipping company that is a subsidiary of the Chinese government.

29. In or about December 2003, defendants received the MMICs from Distributor 1 – 800 pieces of model number MAAM71100, and 300 pieces of model number MAAM71200 – and sent them to CC-1 in Xian, PRC. In or about December 2003, defendant JENNY CHAN generated false invoices and shipping documents for these shipments, describing the product with fabricated model numbers to conceal that the shipment was for the export-restricted MMICs.

30. An analysis of bank records reveal that, on or about December 15, 2003, December 26, 2003, and January 5, 2004, defendants received approximately \$116,330 from CC-1, in three separate wire transfers to a bank account in the name of Manten Electronics, Incorporated at Commerce Bank. Approximately \$83,050 of those funds were payment for the MMICs discussed herein. The remaining \$33,280 was payment for defendants' illegal export of another Restricted Items, a field-programmable logic device manufactured by a company based in San Jose California; this payment was part of the December 26, 2003 wire transfer. The Department of Commerce has determined that this logic device cannot be exported to the PRC without a license.

**B. Defendants' Wire Fraud To Commit ITAR Violations:
Military MMIC Shipment**

31. In addition to illegally exporting dual-use items in violation of the Export Administration Act and EAR, the defendants also have conspired to violate (and have violated) the Arms Export Control Act and ITAR, by shipping U.S. military products to the PRC without first registering or obtaining a license or other written approval from the Directorate of Defense Trade Controls of the United States Department of State. In furtherance of their scheme to violate ITAR, the defendants transmitted and caused to be

transmitted interstate and international facsimiles, emails and telephone calls, as discussed below.

32. On or about November 5, 2003, the MII's 41st Research Institute in the PRC sent a facsimile to Manten's office, requesting price quotes for four ITAR-controlled military items. The requested items are all U.S. military-grade MMICs manufactured by a Massachusetts-based company (referred to herein as "Military MMICs"). These Military MMICs operate at a high frequency range and assist the processing of signals within military radar systems. Many U.S. fighter aircraft and reconnaissance radars operate at this high frequency range, making the Military MMICs an essential device for U.S. military radar.

33. The United States Department of State, Directorate of Defense Trade Controls, has determined that the transfer of this technology is controlled under the United States Munitions List, found in the ITAR. Thus, pursuant to ITAR, Military MMICs cannot be exported without the express authorization of the U.S. Department of State, in the form of an export license.

34. The day after receiving the order for the Military MMICs, on or about November 6, 2003, defendant ALI CHAN responded by return facsimile to the director of the 41st Research Institute in the PRC. In this facsimile, defendant ALI CHAN acknowledged that he had received the order for the four different model numbers of the Military MMICs and was working on obtaining the requested items from U.S. distributors. A day later, on or about November 7, 2003, defendant ALI CHAN received a facsimile at the Manten office from a distributor of Military MMICs based in Brooklyn, New York. In the facsimile, the distributor provided a price quote for three of the four requested model numbers of the

Military MMICs (including the two model numbers referred to hereinafter as “Military MMICs I” and “Military MMICs II”); for each of these items, the distributor noted in capital letters: “EXPORT OR RE-EXPORT OF THIS COMMODITY MAY REQUIRE PRIOR GOVERNMENT APPROVAL.”

35. On or about November 17, 2003, defendant ALI CHAN sent a purchase order via facsimile from Manten’s office to Distributor 1 and requested ten pieces of Military MMICs I. After receiving confirmation from Distributor 1 for this sale, defendant ALI CHAN sent the Director of the 41st Research Institute a facsimile confirming that he was able to obtain the Military MMICs I portion of her order and would send those items to her in the PRC. On or about November 25, 2003, defendant ALI CHAN received a fax from the director of the 41st Research Institute asking him to order twenty pieces of the Military MMICs II. The following day, on or about November 26, 2003, defendant ALI CHAN sent via facsimile a purchase order for the Military MMICs II to Distributor 1. Distributor 1 was scheduled to ship the twenty Military MMICs II to defendants on or about December 5, 2003, and the ten Military MMICs I to defendants on or about December 17, 2003. As of on or about December 23, 2003, however, defendants still had not received the requested military parts. On or about that date, and again on or about January 8, 2004, defendant ALI CHAN sent emails to Distributor 1 requesting an update regarding the delayed shipments of these Military MMICs.

36. Also on or about January 8, 2004, concerned regarding his ability to fulfill the order for the 41st Research Institute, defendant ALI CHAN sent an email to defendant LINDA CHEN stating, in substance and in part: “are we recently having trouble on these part

numbers with First [S]ource?” In response, defendant LINDA CHEN stated, in substance and in part that the defendants had some trouble with “the big order for [CC-1]” – a reference to the MMICs described above, which the defendants illegally exported to the PRC through CC-1. Defendant LINDA CHEN instructed defendant ALI CHAN to contact the salesperson at Distributor 1 who helped Defendants obtain the MMICs in December 2003, and further stated, in substance and in part: **“Don’t mention ‘export.’”** (Emphasis added.) All the emails discussed in this paragraph traveled through an internet service provider located in Pittsburgh, Pennsylvania.

37. By email on or about January 9, 2004, Distributor 1 informed defendant ALI CHAN that it had obtained the Military MMICs I from the manufacturer and explained that they had been delayed because they needed to be repackaged. With regard to the Military MMICs II, Distributor 1 stated, in substance and in part: “before this order can be booked I would need the attached End User Statement form filled out and returned to me via e-mail, as this item is on the State Department’s controlled list.”

38. Also by email dated February 9, 2004, defendant XU informed defendant ALI CHAN that “[t]he parts in attached invoices are being shipped ” to the PRC and told defendant ALI CHAN to notify the director of the 41st Research Institute that she should inspect the parts upon their arrival. The invoice attached to defendant XU’s email was signed by defendant JENNY CHAN and includes Military MMICs I. Also included in this same shipment to the PRC was an export Restricted Item on the Commerce Control List (thereby invoking EAR), specifically, a broad-band driver amplifier manufactured by a Massachusetts-based company. Defendants shipped these Restricted Items to the PRC without obtaining the

requisite licenses from the U.S. Department of State (for the Military MMICs I) and the U.S. Department of Commerce (for the broad-band driver amplifier).

39. Regarding Distributor 1's request for an end-user statement for the pending order for the Military MMICs II, defendant XU and defendant ALI CHAN discussed providing an end-user statement and having defendant ALI CHAN sign the recipient's name. Ultimately, however, defendant XU and defendant ALI CHAN agreed to circumvent this requirement (or attempt to do so) by ordering this military item from an alternative distributor, Distributor 2, located in Phoenix, Arizona. By emails on or about January 9 and 12, 2004, and a phone call on or about January 13, 2004, defendant ALI CHAN tried unsuccessfully to obtain the Military MMICs II from Distributor 2.

40. By facsimile on or about January 15, 2004, defendant ALI CHAN notified the director of the MII's 41st Research Institute that defendants were encountering "export permit problems" but were "negotiating with another dealer hoping no export permit would be needed." Ultimately, defendants were unable to obtain the product from Distributor 1 or Distributor 2. On or about January 30, 2004, defendant ALI CHAN sent a facsimile from the Manten office to the director of the 41st Research Institute, stating in substance and in part, that Defendants could not fulfill the 41st Research Institute's order for the twenty items of Military MMICs because "another dealer also would need export license."