

External Memorandum

**To:** Howkingtech International Holding Limited  
**From:** Winston & Strawn  
**Date:** 30 November 2022  
**Re:** Compliance of import laws and regulations in the United States

Howkingtech International Holding Limited (“Nanjing Howking” or the “Company”) has inquired as to the compliance of the Company’s and its subsidiaries’ (collectively, the “Group”) export of products to the United States and the potential imposition of import liabilities on the Group as a non-Importer of Record with respect to sales made to its U.S.-based customer, World Products Inc. (“World Products”) during the years ending on December 31 2019, 2020 and 2021 and the five months ended 31 May 2022 (the “Track Record Period”).

U.S. Customs and Border Protection (“CBP”) is the authorized governmental entity tasked with enforcing U.S. import laws and regulations at the border. Importers of Record are required to act with “reasonable care” when importing merchandise into the United States by filing information to enable CBP to determine whether the merchandise may be released from CBP custody, as well as to enable CBP to properly assess duties, collect accurate statistics, and determine whether any other applicable requirement of law is met.<sup>1</sup> Such information includes, but is not limited to, tariff classification, country of origin, and declared value.<sup>2</sup> Typically, CBP pursues enforcement proceedings against the Importer of Record or, where duties are owed, its sureties.<sup>3</sup> However, CBP has broad authority to seek enforcement proceedings against all parties to a transaction for a violation of U.S. import laws and regulations. More specifically, the import penalty statute, 19 U.S.C. §1592, provides penalties for false statements, acts, and omissions in connection with the importation of merchandise into the United States. A “person”<sup>4</sup> violates 19 U.S.C. §1592 if, without regard to whether the United States is deprived of any duty, by fraud, gross negligence, or negligence,” if that person “enters, introduces, or attempts to enter or

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<sup>1</sup> See 19 U.S.C. § 1484.

<sup>2</sup> See *id.*

<sup>3</sup> See *United States v. Inn Foods, Inc.*, 560 F.3d 1338 (Fed. Cir. Ct. App. 2009).

<sup>4</sup> The term “person” includes partnerships, associations, and corporations. See 19 U.S.C. § 1401(d).

introduce,” including by way of aiding and abetting or some other theory, any merchandise into the commerce of the United States by means of “any document or electronically transmitted data or information, written or oral statement, or act which is material and false, or any omission which is material.”<sup>5</sup>

Courts have found parties other than Importers of Record as having introduced, or attempted to introduce, merchandise in violation of U.S. import laws and regulations; though, typically in the context of fraud. For example, in *United States v. Trek Leather, Inc.*, the court stated that a “person” violating the statute’s terms is sufficiently broad to encompass both Importers of Record and other individuals and entities who “introduce” merchandise into the United States.<sup>6</sup> In that case, a corporate officer of the importing entity was found to have fraudulently introduced merchandise into the United States by directing customs brokers to transfer merchandise and providing those brokers manufacturers’ invoices containing material misstatements for the broker’s use in completing the customs entry filings.<sup>7</sup> The court explicitly stated that the term “introduce” was “broad enough to cover, among other things, actions completed before any formal entry filings made to effectuate release of imported goods.”

Similarly, but of greater relevance, in *United States v. Inn Foods, Inc.*, the court held a sister company liable for duties and fees owed wherein two companies were owned and controlled by the same people, had the same phone number, and utilized the same employees and officers.<sup>8</sup> There, the court relied on an aiding and abetting theory.<sup>9</sup> Though, again, this was also in the context of fraudulent importations as it was determined that the Importer of Record submitted undervalued invoices to its licensed customs brokers for the broker’s use in completing the customs entry filings.<sup>10</sup>

In the current scenario, Nanjing Howking designs and outsourced the production of antennae from manufacturers located in China. Thereafter, the Company exports the Chinese-

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<sup>5</sup> 19 U.S.C. §1592(a)(1)(A).

<sup>6</sup> See 767 F.3d 1288, 25 (Fed. Cir. Ct. App. 2014).

<sup>7</sup> See *id.*, at 25-26.

<sup>8</sup> See 560 F.3d 1338, 1343 (Fed. Cir. Ct. App. 2009).

<sup>9</sup> See *id.*, at 1347.

<sup>10</sup> See *id.*, at 1341.

origin antennae from China to its customer located in the United States, World Products. World Products is the Importer of Record in the United States. The Group advised that and as confirmed by World Products it does not provide directions or instructions to World Products with respect to completing any customs entry filings. World Products has been the responsible party for such process. This suggests that the likelihood of Nanjing Howking being found to having “introduced” or aided and abetted in the importation of merchandise “by fraud, gross negligence, or negligence” is remote. Additionally, the Group advised that and as confirmed by World Products it has not made, participated in, or is aware of the preparation by World Products (during the Track Record Period and up to date) of any disclosures (whether voluntary or mandatory) to any government agency, including CBP, regarding known, suspected, or potential violations of import/customs laws and regulations related to World Products’ importations of the subject antennae. Furthermore, the Group has not received, and is not aware of World Products having received, (during the Track Record Period and up to date) any violations, accusations, allegations, claims, internal complaints, investigations, informal inquiries, indictments, prosecutions, charges, or other enforcement actions with respect to World Products’ importations of the subject antennae. Lastly, the Group has not received, and is not aware of World Products having received, (during the Track Record Period and up to date) any communication from any government agency regarding any issue of non-compliance with U.S. import laws and regulations over the last five years,<sup>11</sup> including but not limited to penalties, pre-penalty notices, findings of violation, requests for information, notices of action, investigations, seizures, detentions, inspections, or any other correspondence. Accordingly, the likelihood that the importation activities conducted by World Products are in violation with or with implication of breaching any U.S. import laws and regulations appears remote. As a non-Importer of Record, the Company is not required to register with CBP, and the Company is not liable for any import duties, fees, customs/ trade tariffs to the extent that it does not “introduce” or aid and abet any potential violations of import laws and regulations. No public record of government agency actions regarding any issue of non-compliance with US import laws and regulations over the past years by WPI.

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<sup>11</sup> The statute of limitations for violations of U.S. import laws and regulations is five years.

Separately, CBP enforces import requirements that are created by over forty government agencies at the time of importation. It is possible that the subject antennae are regulated by the Federal Communications Commission ("FCC"), including, but not limited to, from an import perspective (*e.g.*, import licenses, etc.). To the extent that there is a FCC import requirement, similar to duty payments and other import liabilities, such requirements would be imposed upon the Importer of Record. As a non-Importer of Record, the Company is not liable for import requirements that are enforced by CBP, but imposed upon by other government agencies to the extent that it does not "introduce" or aid and abet any potential violations of laws and regulations at the time of importation.

In conclusion, the likelihood in this context is remote given the CBP enforcement precedent; the lack of apparent fraudulent activity; the lack of direction and instruction provided by the Group to World Products related to the completion of customs filings; and the understanding and confirmation from World Products that World Products is in compliance with all the relevant import laws and regulations in the United States.

Yours faithfully,



WINSTON & STRAWN

External Memorandum

**To:** Howkingtech International Holding Limited  
**From:** Winston & Strawn LLP  
**Date:** 30 November 2022  
**Re:** Compliance with import laws and regulations in Russia

Howkingtech International Holding Limited (the “**Company**”) has inquired as to the compliance of the Company’s and its subsidiaries’ (collectively, the “**Group**”) export of products to Russia and the potential imposition by Russian authorities of import liabilities on the Group as a non-importer of record with respect to sales made to its Russia - based customers during the years ending on December 31 2019, 2020 and 2021 and the five months ended 31 May 2022 (the “**Track Record Period**”).

Russian law imposes liability on any persons before Russian authorities for non-compliance with public law restrictions on importation of goods and/or services into the Russian Federation only insofar as the relevant activity qualifies as a criminal and/or administrative offence under, respectively, the Russian Criminal Code<sup>1</sup> and the Russian Administrative Code<sup>2</sup>. However, neither the Russian Criminal Code nor the Russian Administrative Code appears to extend to the activities of the Group (as opposed to the importer of record, the Group’s counterparty) for the following reasons:

- (1) The Russian Criminal Code applies to the most egregious illegal acts, and under Articles 200.1, 200.2, 226.1 and 229.1 of the Russian Criminal Code, insofar as export/import operations are concerned, only cross-border illicit movement of:
  - a. cash and monetary instruments,
  - b. alcohol and tobacco products,
  - c. potent, poisonous, explosive, radioactive substances, radiation sources, nuclear materials, firearms or their main parts, explosive devices, ammunition,

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<sup>1</sup> Articles 200.1, 200.2, 226.1 and 229.1 of the Russian Criminal Code

<sup>2</sup> Articles 16.1, 16.3, 16.5 and 16.10 of the Russian Administrative Code

weapons of mass destruction, their delivery vehicles, other weapons, other military equipment, as well as materials and equipment that can be used to create weapons of mass destruction, their delivery vehicles, other weapons, other military equipment, as well as strategically important goods and resources or cultural values or especially valuable wild animals and aquatic biological resources,

- d. narcotic drugs, psychotropic substances, their precursors or analogues; plants containing narcotic drugs, psychotropic substances or their precursors, or their parts containing narcotic drugs, psychotropic substances or their precursors; tools or equipment put under special control and used for manufacturing narcotic drugs or psychotropic substances

give rise to criminal liability<sup>3</sup>. As such, antennae sales should not in principle qualify as activities subject to the Russian Criminal Code.

- (2) Pursuant to the Russian Administrative Code, which codifies non-criminal export/import transgressions, administrative liability does not extend to persons acting in concert with the importer of record<sup>4</sup> and, by the text of the statute, only importer of record shall be made liable for failure to comply with the export/ import restrictions.

As the importer of record, NPP Itelma LLC (“NPP”) is responsible for customs entry filings. The Group has not received, and is not aware of NPP having received, (during the Track Record Period and up to date) any violations, accusations, allegations, claims, internal complaints, investigations, informal inquiries, indictments, prosecutions, charges, or other enforcement actions with respect to NPP’s importation of the subject antenna. Accordingly, the likelihood that the importation activities conducted by NPP are in violation with or with implication of breaching any Russian import laws and regulations appears remote.

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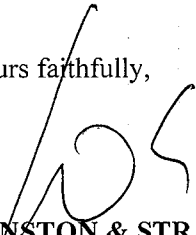
<sup>3</sup> See *Resolution of the Russian Federation Supreme Court’s Plenum dated 27 April 2017 № 12 “On case law for cases involving smuggling”*

<sup>4</sup> See *Resolution of the Russian Federation Supreme Court dated 5 August 2021 № 41-AD21-10*

Accordingly, given the current state of law and judicial interpretation in Russia and as of the date of this memorandum, we are unaware of any legal standing that could be used as a basis for the long arm reach to the Group (as opposed to the importer of record) in connection with its export operations in respect of antennae into Russia. The Group as the non-importer of record will not be liable for customs and/or trade tariffs on importation of the Group's product into Russia.

Accordingly, on the basis of our analysis set forth above, we are not aware of any non-compliance of the Group with applicable laws and regulations in Russia during the Track Record Period and up to the date of this memorandum. In conclusion, it is conceivable that the Group's business operations with respect to its sales made to its Russia - based customers are in compliance with all the relevant import laws and regulations in Russia.

Yours faithfully,



WINSTON & STRAWN