



## Case Study: Guilty Plea for Charge of Exporting Metallic Powder with Nuclear and Missile Applications to Iran

By Andrea Stricker

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In June 2016, the Department of Justice and the Eastern District of New York announced the guilty plea of a U.S. citizen of Turkish descent, Erdal Kuyumcu, 44, of Woodside, New York, on a charge of conspiring to sell to Iran specialized metallic powder composed of cobalt and nickel and applicable in nuclear and missile programs. Kuyumcu was arrested in March 2016. From January 2013 until February 2015, Kuyumcu, who was CEO of the U.S. company Global Metallurgy, acted as an intermediary for an unidentified Iranian procurement agent and an unidentified Turkish representative who owned an unidentified company based in Turkey to procure metallic powder and deceive U.S. suppliers about its end destination. Kuyumcu helped arrange for some 1,000 pounds of the commodity to be shipped to Turkey where it was sent onward to Iran.<sup>1</sup> The Department of Justice characterized the metallic powder as having uses to “coat gas turbine components, including turbine blades, and can be used in aerospace, missile production and nuclear applications.”<sup>2</sup> The exports were in violation of the International Emergency Economic Powers Act (IEEPA) and Iranian Transactions and Sanctions Regulations (ITSR). A U.S. Department of Commerce post-shipment check uncovered the scheme when an agent visited the Turkish company, met with the Turkish representative, and viewed documents indicating the goods had been exported to Iran.

Kuyumcu’s Global Metallurgy LLC website stated, according to the complaint, “Customers around the globe are contacting us when they are challenged by unique requirements.” According to press reports, Kuyumcu stated in court, “I was aware...that I did this against U.S. law. But I had not the bravery to stand up and refuse.”<sup>3</sup> Kuyumcu’s attorney disputed that the commodity was intended for nuclear or missile use but was planned for industrial uses.

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<sup>1</sup> United States District Court in the Eastern District of New York, *Affidavit and Complaint in Support of an Application for an Arrest Warrant: United States of America against Erdal Kuyumcu*, Case No. 1:16-cr-00308-DLI, Filed February 18, 2016, Available at Pacer.gov.

<sup>2</sup> Department of Justice, Press Release, “CEO of Metallurgical Company Pleads Guilty to Conspiring to Export Specialty Metals to Iran,” June 14, 2016, <https://www.justice.gov/opa/pr/ceo-international-metallurgical-company-pleads-guilty-conspiring-export-specialty-metals-iran>

<sup>3</sup> Lia Eustachewich, “Businessman Pleads Guilty to Selling Missile Powder to Iran,” *The New York Post*, June 14, 2016, <http://nypost.com/2016/06/14/businessman-pleads-guilty-to-selling-missile-powder-to-iran/>

Kuyumcu's sentencing is currently pending in court.<sup>4</sup> It is unclear whether Turkey is cooperating with U.S. authorities or charging the unidentified Turkish representative or his/her company with export violations.

## Acts in the Case

**March 2013 Export of Cobalt Compound.** On January 28, 2013, the unidentified Iranian procurement agent sent an e-mail to the unidentified representative of a metallurgical company in Istanbul, Turkey, according to e-mails obtained by prosecutors. The Iranian agent claimed to be a representative of an Iranian company that is not identified in legal documents. The e-mail indicated that a meeting had taken place between the Turkish representative and the Iranian agent in Tehran.<sup>5</sup> The Iranian agent stated that there was a requirement for 1,500 kilograms of Sulzer Metco Thermal Spray Powder AMDRY 9954. According to complaint, AMDRY 9954 "is the brand name of a thermal spray powder composed primarily of cobalt and nickel that is used to protect surfaces against the corrosive effects of oxidization and sulfidation at high temperatures." The Department of Commerce advised for the complaint that AMDRY 9954 "can be used to coat gas turbine components, including turbine blades and shrouds and can be used in aerospace, missile production, and nuclear applications."<sup>6</sup> The Turkish company indicated it was unable to obtain the commodity from the supplier it originally planned to use and the Turkish company began discussing procurement of the compound with Kuyumcu in the United States. These e-mails used coded language to refer to Iran, such as calling it "the Neighbor."

In February 2013, a representative of an Ohio-based company that supplied metal, ceramic, and specialty powders e-mailed Kuyumcu with "the powder quote that you requested," for 800 pounds of the cobalt compound. The brand was PAC9950AM and the company indicated it was gas atomized and similar to AMDRY9954. The Turkish representative then sent an e-mail from the Iranian agent confirming the order, modified to 670 pounds to reflect the needed quantity in kilograms. The Iranian agent indicated that the compound would be used "for coating of Turbine blades." The Ohio company then e-mailed Kuyumcu an invoice for \$22,679.50 with the warning that the commodity was controlled by U.S. export regulations. Next, Kuyumcu sent the Turkish company an invoice from Global Metallurgy with a balance due of \$23,450.00 which included the same export warning. The Turkish company then e-mailed Kuyumcu a receipt for a wire transfer of \$23,450.00 made through a New York financial institution to an account held by Kuyumcu. The Ohio company then sent an updated price quote for \$22,076.50. Kuyumcu sent two checks to the Ohio company for \$12,000.00 and \$10,076.50. It appears that the

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<sup>4</sup> As of this writing, the most recent court filing for the case was dated March 20, 2017 according to a records search on Pacer.gov.

<sup>5</sup> According to the complaint, the representative of the Turkish company and Kuyumcu had a longstanding relationship. In February 2013, the two met in Istanbul, Turkey and then traveled together to Stuttgart, Germany. In March 2013, they went again from Istanbul to Cologne, Germany. That month, the Turkish representative obtained a U.S. B1/B2 visa and planned to stay at Kuyumcu's residence in May 2013.

<sup>6</sup> *Affidavit and Complaint: USA against Erdal Kuyumcu.*

amount remaining from the Iranian/Turkish transfer, or \$1,373.50, was then Kuyumcu's commission.

The Ohio company then requested the name of the end user for the compound. Kuyumcu e-mailed the Turkish representative asking for the name of a company with a website that uses the material and the person provided the name of a company in Turkey. In April 2013, Kuyumcu asked the Turkish representative whether the person had "heard anything from the Neighbor." No additional information is provided in the complaint about the export.

**July 2013 Export of Cobalt Compound.** In March 2013, the Turkish company representative sent an e-mail to Kuyumcu containing a new enquiry for the cobalt compound. Kuyumcu then corresponded with the Ohio company about an additional procurement of the compound. In June, the Ohio company sent an invoice for 330 pounds of cobalt compound containing an export warning. Kuyumcu then made a wire transfer of \$10,230.00 from a New York financial institution to the Ohio company. In July, Kuyumcu e-mailed the Turkish company an invoice of \$11,170.50 for the compound, apparently representing a commission of \$940.50 for Kuyumcu. The e-mail also included an airway bill stating that the compound would be shipped from JFK Airport in New York City to Istanbul. Global Metallurgy was listed as the shipper and the Turkish company was listed as the recipient.

**Other Activities.** In April 2014, in an e-mail from Kuyumcu and a different Turkish company representative, Kuyumcu discussed another procurement that was denied "due to suspicions of it being the NEIGHBOR." He asked the representative for assistance finding a relevant Turkish company to serve as a purported end user for unidentified goods that needed to be melted down using a vacuum furnace. The agent stated, "Basically, we need to be able to show that there is a company in Turkey that can melt this down." In another e-mail from January 2014, Kuyumcu was contacted by a Turkey-based former employee of both Global Metallurgy and the Turkish company stating that the person wanted to discuss business opportunities in Iran.

### **Department of Commerce Post-Shipment Verification Uncovers Scheme**

In February 2015, the Department of Commerce, which administers the Commerce Control List (CCL) under the IEEPA, and oversees exports of cobalt compounds due to their inclusion on the CCL, conducted an in-person, post-shipment check at the Turkish company. At the Turkish company, the Commerce agent met with the Turkish representative from the scheme who claimed to be the owner. The Turkish representative told the Commerce agent that the company was an import business that "supplied various metals" and that "90 percent of the Turkish company's customers were located in Turkey." The agent stated that the company imported mainly from Germany and Italy, and to a lesser degree, from the United States. The agent stated that it had exported metal powders to Iran but that the company had first obtained approval from the "Turkish Atom Energy Foundation" – perhaps meaning to refer to the Turkish Atomic Energy Authority.

Regarding the specific July 2013 cobalt compound shipment investigated by the Commerce agent, the Turkish representative stated that it was used by companies to manufacture medical implants. The complaint states that this use for the cobalt compound was not possible. The Commerce agent physically inspected a stock portion of the cobalt compound that the Turkish representative said had not been sold and viewed the shipment's export documents. The documents indicated that the Turkish company had shipped 330 pounds of cobalt compound to an Iranian company. Neither Kuyumcu nor the Turkish representative had obtained licenses for the export.

### **Who was the Iranian End User?**

The district attorney's sentencing memorandum dated November 21, 2016 states that "the day after the July 2013 Cobalt Powder shipment was sent from Turkey to Iran, a steel company in Iran sent a FedEx letter-sized package to the defendant's [Kuyumcu's] Turkey-based co-conspirator. That Iranian steel company has the same address as an OFAC [U.S. Treasury Department Office of Foreign Assets Control]-designated Iranian entity under the Weapons of Mass Destruction proliferators sanctions program associated with Iran's nuclear and ballistic missile programs." The district attorney stated that "this fact alone strongly suggests that whether or not the Cobalt Powder was 'intended' for nuclear or military use, it ended up at an address associated with Iranian weapons of mass destruction."<sup>7</sup> The prosecution is calling for a sentence of between 46 to 57 months for Kuyumcu; his defense is asking for several mitigating factors to be taken into consideration such as the intended use of the commodities, and for probation only.

### **Lessons and Recommendations**

This case shows that Turkey remains a destination of diversion concern. This and another [recent case](#) involving transshipment of U.S. goods from Turkey to Iran highlight the need for suppliers and governments to be vigilant about orders involving Turkey and to devote additional scrutiny to assessing whether sensitive goods have the potential for diversion to sanctioned countries. This case also shows that Iranian illicit procurement agents are regularly using trading companies in Turkey and working with middlemen who are eager for profit in order to bypass sanctions against Iran and obtain sensitive goods from abroad.

Turkey must do better at enforcing its export control laws and crack down on illicit procurement by trading companies in violation of U.S. and other countries' laws. It must bolster its customs and border efforts on its shared border with Iran in order to better detect and interdict sensitive commodities. It should cooperate with U.S., European, and other investigations of trading companies acting from its territory including, if applicable, extradition requests. Turkey and the United States have a mutual extradition treaty which covers "offenses

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<sup>7</sup> United States Attorney of the Eastern District of New York, *Sentencing Memorandum regarding United States v. Erdal Kuyumcu*, Case No. 1:16-cr-00308-DLI, Filed November 21, 2016. Available at Pacer.gov.

against the laws relating to importation, exportation or transit of goods, articles, or merchandise, including smuggling.”<sup>8</sup>

This case also shows that the Department of Commerce’s Office of Export Enforcement (OEE)’s, post-shipment verifications have been important to catching illicit procurement schemes and ensuring that U.S. commodities are not being diverted to sanctioned countries. OEE and the Department of Homeland Security’s Homeland Security Investigations (HSI) agency, which has international investigative authority, should increase their investigatory efforts in Turkey.

Iran’s illicit procurements would have likely violated United Nations sanctions resolutions in force at the time instituting an embargo on nuclear, missile, and military goods destined for Iran. In January 2016, UN Resolution 2231 replaced those resolutions but enacted an international military and missile goods embargo with regard to Iran until 2021 and 2024, respectively, unless a supplier obtains Security Council approval. Thus, any such exports to Iran are prohibited. Regarding the transfer of nuclear or nuclear-related goods, suppliers must use a procurement channel set up at the UN under the auspices of the P5+1/Iran Joint Comprehensive Plan of Action. The Security Council should strengthen its current woefully implemented efforts aimed at preventing Iranian illicit procurement activities in violation of UNSCR 2231, including authorizing additional sanctions.

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<sup>8</sup> 32 U.S.T. 3111: *Turkey: Extradition and Mutual Assistance in Criminal Matters*, Date-in-force January 1, 1981, <https://photos.state.gov/libraries/turkey/461177/pdf/32t3111.pdf>