

Export Compliance: Sanctions, Embargos, Denied Parties

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REGULATORY SCHEME

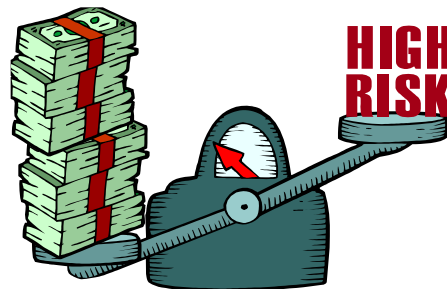
- U.S. export controls apply to all international business
- Understanding the regulatory scheme
 - ◆ The consequences of failing to comply with the regulations
- Taking steps to minimize the risk of a violations
 - ◆ Compliance and risk mitigation

REGULATORY SCHEME

- Enforcement of export controls is a priority for the U.S. government
 - ◆ National security
 - ◆ Foreign policy
- Risk of enforcement varies depending on product/destination
- Demonstrably effective compliance and ethics policies have become a necessity

SPECIAL RISKS

- Prohibited Parties
- Dual-use items and technology
- Deemed exports
- Sanctioned Destinations



WHY SHOULD YOU CARE ABOUT U.S. TRADE CONTROLS?

- **Many countries** have trade control laws that regulate international conduct
- **The United States** trade control laws not only impact U.S. companies; they have extraterritorial application
- **Penalties** can be assessed by the U.S. Government against both U.S. and non-US companies that violate U.S. trade laws (including monetary fines, loss of access to the U.S. commercial and financial markets and other penalties)

WHY SHOULD YOU CARE ABOUT U.S. TRADE CONTROLS?

- If things go wrong:
 - ◆ Strict liability for trade sanctions violations
 - ◆ Cost of investigating potential violations in the event of self-disclosure
 - Legal fees, other expenses
 - ◆ “Involuntary Investigation” – by the U.S. Government may result in three times the legal costs



ROADMAP TO THE AGENCIES THAT REGULATE U.S. EXPORTS



U.S. EXPORT CONTROL LAWS IN GENERAL

- With whom we conduct business?
- What we export, i.e., services, know-how, data?
- How we conduct business?
- How we can demonstrate compliance?

U.S. EXPORT CONTROL LAWS IN GENERAL

What's Covered?

- ◆ Physical commodities, products, components
- ◆ Software
- ◆ Technology / technical data
- ◆ Know-How
- ◆ Services, including training, teaching, etc.

THE AGENCIES AND THE REGULATIONS

- U.S. Commerce Department Bureau of Industry and Security (BIS)
- Export Administration Act (Expired)
 - ◆ International Emergency Economic Powers Act (IEEPA)
- Export Administration Regulations (EAR)



THE AGENCIES AND THE REGULATIONS

- U.S. State Department Directorate of Defense Trade Controls
- Arms Export Control Act (AECA)
- International Traffic in Arms Regulations (ITAR)



THE AGENCIES AND THE REGULATIONS

- U.S. Treasury Department Office of Foreign Assets Control (OFAC)
- International Emergency Economic Powers Act (IEEPA)
- Trading with the Enemy Act
- Foreign Assets Control Regulations



Office of Foreign Assets Control Trade Sanctions and Other Trade Concerns: Understanding the Regulatory Controls



U.S. TRADE CONTROL LAWS IN GENERAL

- With whom do we conduct business?
- What do we export, *i.e.*, services, know-how, data?
- How do we conduct business?
- How can we empirically demonstrate compliance?

KEY LEGAL CONCERNS

- Trade Controls Laws (with whom we conduct business)
 - ◆ U.S. Blocked Party Lists
 - ◆ Country embargoes and sanctions
- Anti-Corruption Laws (how we conduct business)
 - ◆ Foreign Corrupt Practices Act (“FCPA”)

KEY LEGAL CONCERNS

- U.S. Anti-Boycott Laws (prohibit participation in illegal boycotts)
- United Nations Security Council Sanctions (restrictions on countries and individuals)
- Other countries and trade markets

OFAC: JURISDICTION

- **OFAC sanctions apply to:**
 - ◆ U.S. citizens and permanent residents wherever located
 - ◆ Persons, even if visa holders, located in the U.S.
 - ◆ Persons engaging in transactions that involve property in or otherwise subject to the jurisdiction of the U.S.
 - ◆ Non-U.S. entities owned or controlled by U.S. persons

OFAC: JURISDICTION (Cont.)

- **Extended Jurisdiction** - If OFAC determines a non-U.S. party is violating OFAC sanctions:
 - OFAC can place that party on the Specially Designated Nationals List and preclude it from doing business with any U.S. party (banks, for example) and a majority of the international community
- **Secondary Sanctions**
 - Absent clear jurisdiction, pressure on foreign parties to advance U.S. foreign policy interests

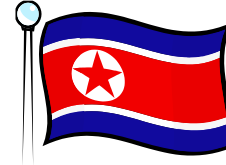
OFAC: COUNTRY SANCTIONS

- **Country Sanctions**
 - ◆ OFAC administers U.S. trade sanctions on select countries
 - ◆ These sanctions bar or restrict trade activity by U.S. individuals or companies

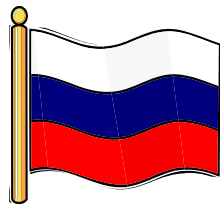


UNDERSTANDING THE EXPORT COMPLIANCE PROCESS

- Sanctioned countries



- ◆ Each sanction program is different
- ◆ Sanction programs are modified as foreign policy evolves.



U.S. SANCTIONS AT WORK: IRANIAN SANCTIONS

- ◆ **Joint Comprehensive Plan of Action (JCPOA) by the P5+1, July 14 2015**
 - Secondary sanctions currently suspended
 - Does not terminate or suspend U.S. primary sanctions against Iran (e.g., ballistic missile proliferation)
- ◆ **On-going monitoring and verification International Atomic Energy Agency**
 - Most recent report was issued on August 31, 2017
 - *“The world’s nuclear inspectors complicated President Trump’s effort to find Iran in violation of the two-year-old nuclear accord with the United States and five other world powers, declaring on Thursday that the latest inspections found no evidence that the country is breaching the agreement.”*

<https://www.nytimes.com/2017/08/31/world/middleeast/un-nuclear-iran-trump.html>

U.S. SANCTIONS AT WORK: IRANIAN SANCTIONS

Arms Control Experts Urge Trump to Honor Iran Nuclear Deal

By RICK GLADSTONE SEPT. 13, 2017



President Hassan Rouhani of Iran at Parliament in Tehran last month. President Trump says he believes Iran is violating the nuclear accord, an assertion that has been contradicted by the United Nations nuclear monitor. *Vahid Salemi/Associated Press*

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<https://www.nytimes.com/2017/09/13/world/middleeast/iran-nuclear-deal-trump.html>

U.S. SANCTIONS AT WORK: IRANIAN SANCTIONS

Trump Decertified The Iran Nuclear Deal. Now What?



Heshmat Alavi, CONTRIBUTOR

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WASHINGTON, DC - OCTOBER 13: U.S. President Donald Trump makes a statement on the administration's strategy for dealing with Iran, in the Diplomatic Reception Room in the White House, October 13, 2017 in Washington, DC. President Trump stated that the Iran nuclear deal is not in the best interests for the security of the United States, but stopped short of withdrawing from the 2015 agreement. (Photo by Drew Angerer/Getty Images) [-]

<https://www.forbes.com/sites/heshmatalavi/2017/10/13/trump-iran-nuclear-deal-jcpoa-irc/#4eb308bf4215>

U.S. SANCTIONS AT WORK: CUBAN SANCTIONS

- December 17, 2014 – President Obama announces economic and diplomatic changes
- January 2015 to October 2016 – OFAC and BIS issued revised regulations
- Certain travel activities
 - Banking and Financial Services
 - Facilitate interpersonal communications and telecommunications
 - Importation of certain Cuban-origin products (alcohol/tobacco)
 - Educational opportunities
- June 16-2017 – President Trump announced changes rolling back some travel, business with Cuban government – **Not yet effective, agencies need to first issue amended regulations**

U.S. SANCTIONS AT WORK: VENEZUELAN SANCTIONS

- Certain individuals, including government officials, and entities (listed or 50% owned) considered to be contributing to the current unrest blocked
- Executive Order 13808 of August 24, 2017
 - Prohibitions dealing in new debt with Petroleos de Venezuela and other parts of the Venezuelan government.
 - 90 days – PdVSA
 - 30 days – Rest of the Venezuelan government
 - Prohibition involving bonds/transactions involving payment of dividends
- If conducting business in Venezuela, you need to assess current status
- Considered a country Sponsor of Terrorism

U.S. SANCTIONS AT WORK: RUSSIA RELATED SANCTIONS

- Initially through Executive Action by President Obama starting in March 2014
 - Targeted Sanctions
 - Sectoral Sanctions and Blocking Sanctions
 - Crimea Region – Comprehensive Sanctions
 - Cyber-related sanctions
- U.S. Senate voted 98-2 on July 27, 2017 to toughen sanctions. Codifies Obama era sanctions, imposes additional sanctions, Congressional approval for repeal.
- President Trump signed the bill into law on August 2, 2017.

U.S. SANCTIONS AT WORK: NORTH KOREAN SANCTIONS

- U.S. Sanctions
 - Prohibit import of goods, technology and services from North Korea without a license
 - Transactions with blocked parties
 - Export only if transactions with blocked parties; Commerce Department jurisdiction policy of denial

- Most recent UN action – United Nations Security Council Resolution 2371 – Adopted August 5, 2017
 - ❑ Prohibits all exports of North Korean coal, iron, iron ore, lead ore, and sea food.
 - ❑ Prohibits opening of new joint ventures or cooperative entities or expansion of existing ones / financial system designations
 - ❑ Bans an increase on the number of workers sent abroad

❑ Sanctions impact being debated

OFAC: COUNTRY SANCTIONS

- Other countries subject to OFAC targeted sanctions include:
 - ◆ Balkans
 - ◆ Belarus
 - ◆ Burundi
 - ◆ Central African Republic Sanctions
 - ◆ Democratic Republic of the Congo
 - ◆ Iraq
 - ◆ Lebanon
 - ◆ Liberia
 - ◆ Libya
 - ◆ Somalia
 - ◆ South Sudan
 - ◆ Yemen
 - ◆ Zimbabwe

OFAC: PROHIBITED PARTIES

- **U.S. Blocked Parties** – OFAC maintains a regularly updated list of foreign individuals and companies with which U.S. parties are prohibited from conducting business
 - ◆ **Specially Designated Nationals List (“SDNL”)** Individuals on the blocked party registers are frequently “Specially Designated Nationals” or “SDNs”
 - ◆ Other lists are maintained by OFAC, the U.S. Departments of Commerce and State

OFAC: PROHIBITED PARTIES

- **Rule** - OFAC sanctions prohibit U.S. citizens, businesses and financial institutions from engaging in business or financial transactions with persons or entities on the SDNL or other lists
- Financial institutions are required to file reports with OFAC for:
 - ♦ Blocked payments or transfers held at the financial institution
 - ♦ Rejected transactions with parties blocked by OFAC or listed on the SDNL has any interest
- Reports **must** be filed within ten business days of the transaction
- **Screening** - A company that is subject to OFAC jurisdiction **must** screen customers, representatives, and agents to identify and prevent possible transactions involving a proscribed party

OFAC: PENALTIES

- **Treasury Department – Office of Foreign Assets Control**
 - ◆ **Civil penalties (IEEPA) - \$289,238 per violation or twice the amount of the underlying transactions**
 - ✓ Cuba (TWEA) – \$85,236
 - ◆ **Criminal penalties (IEEPA - up to \$1,000,000 or 20 years imprisonment**
 - ✓ Cuba (TWEA) – \$1,000,000 /\$100,000

Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015

TRADE COMPLIANCE PLAN

- **At a minimum, a trade compliance program should include:**
 - ◆ **Compliance policy and export responsibility**
 - ◆ **Screening of prohibited parties, sanctioned countries and red flags**
 - ◆ **Recordkeeping**
 - ✓ Reporting requirements
 - ✓ **Defensive data**
 - ◆ **Training**
 - ◆ **Safety valve for reporting violations**