

 NORTON ROSE FULBRIGHT

2024-2025

Export Controls & Sanctions Compliance Webcast Series

May 30, 2024

1.0 CPE Credit In The Field Of Specialized Knowledge
1.0 CLE Credit In Specialized Knowledge (PA And Reciprocal Jurisdictions)

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Are Sanctions and Export Controls the New FCPA?

May 30, 2024

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With You Today



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Learning Objectives

- ▶ Discuss how noncompliance can often violate both areas. Talk about how the treatment of export control compliance similar to FCPA violations could result in higher penalties due to collaboration between agencies.
- ▶ Talk about how different industries are exposed to export control risks.
- ▶ Utilize previously established FCPA controls to bolster export controls. Emphasize the continuous enforcement of the FCPA and the importance of an overall effective control environment.
- ▶ Discuss the key elements of an effective corporate compliance program and how companies can leverage ABAC risk assessments in enhancing/developing their Export Control compliance program.
- ▶ Understand what constitutes a red flag and have established policies and procedures to mitigate and eliminate risk.
- ▶ Develop a proper escalation and remediation plan to address export control and FCPA non-compliance and minimize potential exposure to penalties.

Discussion



A Consistent Theme from DOJ Leadership Since 2022

DAG Lisa Monaco - June 2022:

“The growth of sanctions enforcement follows the path that the FCPA traveled before it. Both FCPA and sanctions enforcement are relevant to an expanding number of industries. They have extended beyond just U.S. actions to an increasingly multilateral enforcement regime. And they both reward companies that develop the capacity to identify misconduct within the organization, and then come forward and voluntarily disclose that misconduct to the department.”

“For any multinational corporation – indeed, for any business with an international supply chain – sanctions should be at the forefront of its approach to compliance.”

DAG Lisa Monaco - March 2023:

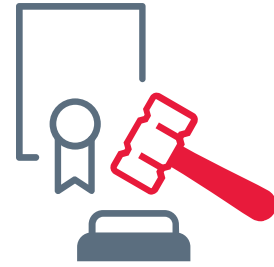
“What was once a technical area of concern for select businesses should now be at the top of every company’s risk compliance chart.

As I’ve said before, in today’s world, sanctions are the new FCPA. And across the department and indeed across the globe, we are handling corporate investigations that involve sanctions evasion – in industries as varied as transportation, fin tech, banking, defense and agriculture.”

What Does “Sanctions Are the New FCPA” Mean?



Increased
resources for
criminal
investigations



Increased
focus on corporate
enforcement
across industries



Heightened
compliance
program
expectations

More Resources for Investigations and Coordination Between Enforcement Agencies

TaskForce KleptoCapture

- ▶ Launched in 2022
- ▶ Interagency focus on enforcement of Russia sanctions and export controls
- ▶ Charged more than 70 individuals

Disruptive Tech Strike Force

- ▶ Launched in 2023
- ▶ Dedicated to sanctions and export violations related to transfers of technology
- ▶ Not limited to Russia sanctions

New Prosecutors

- ▶ **National Security Division**
 - 25 New Attorneys
 - Created Roles of Chief Counsel and Deputy Chief Counsel for Corporate Enforcement
- ▶ **Bank Integrity Unit**
 - 40% increase in new prosecutors

More Incentives for Whistleblowers and Emphasis on Voluntary Self-Disclosures

Whistleblowers

- ▶ New DOJ whistleblower rewards program in 2024 designed to supplement existing incentives
- ▶ OFAC/FINCEN Coordination on whistleblower referrals > over 100 FINCEN tips referred to OFAC and other agencies in 2024 to date
- ▶ Active BIS Hotline

DOJ Corporate Enforcement Policy

- ▶ Arose out of FCPA enforcement
- ▶ Now applicable broadly
- ▶ Creates substantial incentives for companies that self-disclose, cooperate with an investigation, remediate the misconduct, and disgorge profits

New DOJ M&A Safe Harbor Policy

- ▶ Announced October 2023
- ▶ Incentivizing self-disclosure of criminal misconduct discovered in acquired companies
- ▶ Proper self-disclosure and remediation can result in no liability for acquirer
- ▶ Strict time deadlines from date of closing

Enhancement of Export Compliance Program

Export Control/ FCPA Violations

- ▶ Noncompliance often results in violations of both regulations
 - Swiss oil company penalized and fined over \$252 million for violations of the FCPA and export controls

Pre-Existing Procedures

- ▶ Overall commitment to compliance (i.e., routine testing, auditing, etc.) can make export control compliance implementation easier
- ▶ FCPA procedures can be leveraged to develop a baseline Export Control compliance program

Export Control/FCPA Similarities

- ▶ Compliance controls are frequently similar across these two regulations
 - Due Diligence Procedures
 - Knowing Your Customer
 - Risk Assessments
 - Training Programs
 - Information Technology / Systems

Exposure to Export Control Risks & Red Flags

Identifying Export Control Risks

- ▶ Regulators provide tools and guidelines to aid companies in their production of compliance programs
- ▶ DDTC ITAR Risk Matrix: used to assist companies in identifying and assessing ITAR compliance risk

Russian Invasion of Ukraine

- ▶ Increased scrutiny by regulators on compliance relating to Russian entities
- ▶ Shell companies/third party intermediaries maybe used to conceal end-use/end-user of a product

Export Control Red Flags

- ▶ Indicates possibility of concealed end-use or false information provided by client
- ▶ Enhanced scrutiny should be placed on specific details relating to a sale
- ▶ Risks vary among industries and products



**Recent Penalties
have been
Severe - but can
be mitigated by
disclosure,
cooperation, and
remediation**

Crypto Exchange Company (2023)

\$4 Billion in total penalties related to money laundering, unlicensed money transmitting, and sanctions violations

- ▶ Coordinated effort of FinCen, OFAC, CFTC, and DOJ
- ▶ Failed to have controls to prevent transactions in violation of Iran sanctions

Consumer Goods Company (2023)

\$629 Million in total penalties

- ▶ Conducting business in North Korea through third-party entity in violation of sanctions
- ▶ OFAC civil penalty calculated in excess of \$508 million based on twice the value of the sum of each improper transaction over a 7-year period

Computer Tech Company (2023)

\$300 Million civil penalty imposed by BIS relating to alleged violations on export of hard drives



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