



2024-2025

Export Controls & Sanctions Compliance Webcast Series





Assessing Sanctions Risk in a Rapidly Changing Environment

OCTOBER 17, 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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Agenda



Introductions



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Discussion

With You Today



LUIS ARANDIA, JR.

Partner
Barnes & Thornburg

202-408-6909

luis.arandia@btlaw.com



NICHOLAS GALBRAITH

Partner
Barnes & Thornburg

202-371-6379

nicholas.galbraith@btlaw.com



NATE GIARNESE

Forensics Practice
Senior Manager
BDO USA, P.C.

617-422-7551

ngiarnese@bdo.com



RICHARD WEINERT

Forensics Practice Director
BDO USA, P.C.

212-885-7453

rweinert@bdo.com

Learning Objectives

- ▶ Acquire an understanding of how to assess export control risks in your organization
- ▶ Comprehend how to use key export compliance tools and guidance
- ▶ Describe practical solutions to mitigate export compliance risks

Discussion



Course Contents

01

Introductions to export compliance rules and regulations

02

Questions organizations should ask to identify areas of export compliance risk

03

How companies can implement practical, efficient, risk-based practices to mitigate export compliance risks

04

Tools and guidance published by regulators

Export Compliance Rules and Regulations

What are the U.S. Export Control & Sanctions Laws?

IEEPA	International Emergency Economic Powers Act (50 USC 1701 et seq.)
ECRA	Export Control Reform Act of 2018 (50 USC 4801-4852)
EAR	Export Administration Regulations (15 CFR Parts 730-774)
AECA	Arms Export Control Act (22 USC Section 2778)
ITAR	International Traffic in Arms Regulations (22 CFR Parts 120-130)
TWEA	Trading with the Enemy Act
Country-specific sanctions statutes and regulations	e.g., Iranian Transaction and Sanctions Regulations

Export Compliance Rules and Regulations

U.S. Export Controls are Regulated by Three Main Agencies, Among Others:

<p>COMMERCE DEPARTMENT Bureau of Industry and Security (BIS)</p>	<ul style="list-style-type: none">▶ Administers the Export Administration Regulations (EAR)▶ Establishes and maintains the “Commerce Control List” (CCL) of Dual-Use and Lower-Level Military Articles (among others)▶ Items listed on the CCL have Export Control Classification Numbers (ECCNs), otherwise are EAR99▶ Issues export licenses and commodity classifications
<p>STATE DEPARTMENT Directorate of Defense Trade Controls (DDTC)</p>	<ul style="list-style-type: none">▶ Administers the International Traffic in Arms Regulations (ITAR), which includes the U.S. Munitions List (Defense articles and defense services)▶ Authorized to make commodity jurisdiction determinations between ITAR and EAR
<p>TREASURY DEPARTMENT Office of Foreign Assets Control (OFAC)</p>	<ul style="list-style-type: none">▶ Administers various economics sanctions programs against embargoed countries/regions, including Cuba, Iran, Syria, N. Korea, and the following regions of Ukraine: Crimea and the so-called Donetsk and Luhansk People’s Republics▶ Maintains SDN List and other lists/sanctions

Export Compliance Rules and Regulations

Potential Consequences for Non-Compliance

Max civil monetary penalties violation (inflation adjusted annually)	
ITAR	Greater of \$1,238,892 or 2x value of transaction
EAR	\$364,992 or 2x value of transaction
OFAC	\$368,136 or 2x value of transaction

- ▶ Penalties can include debarment, audits, monitors, seizure and forfeiture of goods, and other corrective actions
- ▶ Statute of limitations for U.S. sanctions violations is now 10 years (**new rule**)
- ▶ In addition to civil penalties, agencies through the DOJ can pursue criminal penalties
- ▶ Criminal monetary fines can be up to \$1 million per violation and include up to 20 years of imprisonment

Questions Organizations Should Ask to Assess Sanctions Compliance Risk



- ▶ Scope of your business - U.S. entities only or related international entities
 - Know what rules apply
 - Understand what regulators have jurisdiction over your business, products and services (e.g., OFAC, BIS, DDTC, EU, OFSI)
 - Understand your products
 - Where they come from?
 - What they contain?
 - Where are they going?
 - Be familiar with your geography and high-risk jurisdictions/transshipment countries of concern
 - Not always geographically close to embargoed regions or countries. For example, BIS and FinCen published a joint alert listing transshipment countries of concern including, but are not limited to, Armenia, Brazil, China, Georgia, India, Israel, Kazakhstan, Kyrgyzstan, Mexico, Nicaragua, Serbia, Singapore, South Africa, Taiwan, Tajikistan, Turkey, United Arab Emirates, and Uzbekistan
- ▶ Scope of customer and counterparties- selling only in U.S.? Distributors? Tooling/outside shop?
- ▶ U.S. touchpoints (e.g., USD payments, U.S. origin items, U.S. Persons etc.)
- ▶ Jurisdiction of items (ITAR v EAR) and classification of items under EAR and USML
- ▶ When was the last time your organization conducted a sanctions compliance risk assessment?

Key Elements of an Effective Sanctions Compliance Program

- ▶ OFAC, DDTC, and BIS all provide separate guidance for an effective compliance program
- ▶ Although they each differ to some degree, there are key overlapping themes:
 - Senior management commitment - policy statement
 - Risk assessment
 - Internal controls
 - Handling violations and taking corrective action
 - Monitoring, testing, auditing
 - Training

Sanctions Compliance Program

- ▶ Regulators expect a risk-based Sanctions Compliance Plan (SCP)
 - OFAC, BIS and DDTC encourage companies to develop, implement, and routinely update' a risk-based SCP
 - All relationships and transactions are not created equal
 - Not one size fits all
 - Risk should be tailored to the facts and circumstances of the relationship or transaction. For example, some transactions with particular countries or customer types may warrant EDD while others may not
- ▶ Enforcement actions often focused on willful misconduct and negligence
 - Adequate risk-based SCP a mitigating factor- “Good Faith” Lack of an SCP could be an aggravating factor
- ▶ Centralized is preferable to ensure consistent application of the sanctions compliance program
- ▶ Should be Dynamic
 - Organizations should continually assess their sanctions compliance risks in a rapidly changing environment
 - Consider changes in operations, locations, products, services, business relationships, etc.
 - Company should Monitor regulatory guidance and enforcement actions
 - A good sanctions compliance program can respond quickly to regulatory changes and guidance

Transaction Due Diligence

- ▶ Be aware of BIS “Red Flags” and Know Your Customer - [Supp. No. 3 to EAR Part 732](#) is a great resource
 - Customer or purchasing agent is reluctant to provide foreign end-use or end-user information
 - Customer is willing to pay cash for high-value orders, or to provide unusual or extremely lucrative financial compensation
 - Customer’s business background information is scanty or unavailable
- ▶ Risk Factors in Russia/Belarus
 - Generally high risk
 - Significant OFAC Restrictions, including many major companies, banks, oligarchs added to SDN List; sector-specific restrictions (e.g., oil and mining industries); ban on certain services to Russia
 - Significant EAR Restrictions, including license requirement for any item on CCL (Cats. 0-9) and certain EAR99 items too; Russia/Belarus/Crimea Foreign direct product (FDP) rule; additional diligence required for common high priority list (CHPL) items, including new screening requirement

Transaction Due Diligence

- ▶ Risk Factors in China
 - BIS Military End User/End Use issues - who are your customers?
 - License is required for specific AT-controlled items if there is a demonstrated military end use or military end user
 - 47 ECCNs under Supp. 2 to Part 744
 - Military End-User List
 - Controls on all EAR items/foreign-origin items/U.S. persons' activities for China's Intelligence Bureau of the Joint Staff Dept.
 - Advanced computing (not limited to China for risk)
- ▶ Expanded Jurisdiction for BIS and foreign made items
 - De Minimis
 - Foreign Direct Product Rules



Due Diligence Best Practices

Business Partner Due Diligence

- ▶ Business Partner Due Diligence should include several components, including
 - Documents and electronic records provided by the business partner
 - Independent research of publicly available information and media
 - In-person visits, inspections and verification
 - KYC's Customer - End Users
 - End Use verification
 - Screening and re-screening parties
- ▶ Due diligence should be risk based
 - Enhanced due diligence for higher risk jurisdictions, customer types, and significant relationships
- ▶ Mergers and Acquisitions
 - Proactively identify risks when entering international trade/acquisitions
 - Evaluate the target organization's sanction compliance program
 - Conduct site inspections
 - Assess compliance culture and tone at the top

Question #1

What are the components of a risk-based due diligence program?

A

Documents and electronic records provided by the business partner

B

Independent research of publicly available records and media

C

In-person visits, inspections and verification

D

A and B

E

All of the above

PRACTICAL STEPS

Data and Metrics

Data

- ▶ Understand your data collection - and use it
 - Regulators expect it
- ▶ Standardize data entry
 - Ensure required information is captured
 - Standardized data can be linked between disparate systems and analyzed

IT Systems

- ▶ Integrate Systems to automate controls
 - Restricted party screening and system transaction blocking
 - IP blocking and SWIFT analysis
- ▶ Require support for travel, shipment, and payment requests in IT systems
 - Allows automated matching, e.g., bill of lading to invoices to verify delivery location

Metrics & Monitoring

- ▶ Generate dashboards to alert for potential risks or problem areas
- ▶ Keyword searches in emails for “code words” pointing to prohibited transactions

Test system controls

- ▶ Failure to test and enhance may lead to increased penalties

PRACTICAL STEPS

Compliance Policies



- ▶ Compliance policies and manuals are your company's sanctions compliance roadmap
- ▶ Compliance Policies should:
 - Reflect requirements of regulatory guidance
 - Encompass all business cycles with sanctions compliance risk (e.g., sales, procurement, supply chain, etc.)
 - Clearly identify and explain compliance risks
 - Detail mitigating controls
 - Designate roles and systems
 - Provide real-life examples to help employee comprehension
 - Identify records to retain and related storage systems
 - Be disseminated/readily available to employees
 - Be periodically updated based on regulatory, system, and business changes

PRACTICAL STEPS

Quality Assurance, Audits & Inspections



Quality Assurance, Audits & Inspections

- ▶ Conduct focused internal or external audits of your sanctions compliance program
- ▶ Auditors should be qualified and independent
- ▶ Examine your key sanctions controls, ensure they are operating as designed
- ▶ Test system/IT controls - e.g., automated screening, transaction holds
- ▶ Conduct random records spot checks to ensure appropriate record retention
- ▶ Audit/Inspect your business partners (e.g., freight forwarders, distributors, contract manufacturers, warehousing providers)
- ▶ Process to implement corrective actions - tracked, milestones, deadlines and accountability
- ▶ Feedback loop - communicate results, observations and enhancements to stakeholders
- ▶ Reporting hotline - mechanisms/channels for employees and business partners to report suspected violations for follow up

Training



Training

- ▶ Sanctions compliance awareness training for all employees/contractors - front line of defense
- ▶ External trainings for key relationships
- ▶ Job-specific training that is risk-based and tailored to employee roles
- ▶ Multiple formats - online, in-person with Q&A
- ▶ Continuous reinforcement - periodic training, sanctions compliance communications
- ▶ Knowledge checks and exams
- ▶ Periodic evaluation of training content - is it keeping up with changes in regulations and the sanctions environment? Has it been updated for changes in business?

Contracts

Customers

- ▶ Restricted countries/regions, restricted parties, restrictions on end/users
- ▶ Restricted parties
- ▶ Restrictions on end uses/end users
- ▶ Affirmations

Distributors/Logistics Providers

- ▶ Restricted countries/regions, restricted parties, restrictions on end/users
- ▶ Maintenance of KYC Program
- ▶ Maintenance of records (e.g., electronic shipping records)
- ▶ Audits/Inspection rights

Contract Manufacturers

- ▶ Restrictions on Transfers
- ▶ Restrictions on disposal
- ▶ Audit/Inspection Rights
- ▶ Item identification requirements

Question #2

Which of the following are statements correctly related to data and IT systems?

A

Regulators do not expect companies to use all available data

B

Regulators expect companies to periodically test and upgrade IT controls

C

Data from disparate sources should be in separate formats

D

Requests for payment, purchases, and travel should be submitted for approval in an IT system along with attached supporting documents

E

B and D

Available Tools and Guidance

Compliance Guidelines



[OFAC Framework for Compliance Commitments](#)



[DDTC Compliance Program Guidelines](#)



[BIS Export Compliance Guidelines](#)

OFAC Guidance and Sanctions Advisories



OFAC Guidance and Sanctions Advisories

- ▶ [Risks and Considerations for Businesses Operating in Hong Kong](#)
- ▶ [Cambodia Business Advisory on High-Risk Investments and Interactions](#)
- ▶ [Tri-Seal Compliance Note: Obligations of foreign-based persons to comply with U.S. sanctions and export control laws](#)
- ▶ [Tri-Seal Compliance Note: Cracking Down on Third-Party Intermediaries Used to Evade Russia-Related Sanctions and Export Controls](#)
- ▶ [Quint-Seal Compliance Note-Know Your Cargo: Reinforcing Best Practices to Ensure the Safe and Compliant Transport of Goods in Maritime and Other Forms of Transportation](#)

DDTC Compliance Program Guidelines



DDTC Risk Matrices

▶ [ITAR Compliance Risk Matrix](#)

- Enterprise Risks: Mergers, Acquisitions, & Divestitures; Lines of Business
- Organizational Function Risks: Information Technology (IT); Procurement/Supply Chain/Purchasing
- ITAR Compliance Program Element Risks: DDTC Registration, Export Jurisdiction & USML Classification, Authorizations, & Other ITAR Activities

▶ Best practices for Universities: [ITAR Compliance Risk Matrix for Universities](#)

- ▶ The ITAR Compliance Assessment Risk Matrices are tools for organizations to use to review and assess their ITAR compliance risks and gain a general understanding of their overall level of ITAR compliance risk. It is not intended to be comprehensive, nor is it intended to be exhaustive, and not all risks apply to all organizations. ITAR compliance risks are specific to each organization's operations and functions

BIS Export Compliance Guidelines



BIS Guidance

- ▶ [Don't Let This Happen to You!](#)
- ▶ [BIS Guidance to Exporters on Priority HS Codes](#)
- ▶ [Red Flag Indicators - Russian Procurement Techniques](#)
- ▶ [Guidance to Industry on BIS Actions Identifying Transaction Parties of Diversion Risk](#)
- ▶ [BIS-FinCEN Joint Alert - Evasion of Export Controls Globally](#)
- ▶ [BIS-FinCEN Supplemental Alert- Continued Vigilance for Potential Russian Export Control Evasion Attempts](#)
- ▶ [Export Enforcement Five \(Australia, Canada, New Zealand, the United Kingdom, and the United States\) Guidance for Industry and Academia on Russia Sanctions](#)

Question #3

Which of the following are key elements of a compliance program?

- A Compliance manuals and policies
- B Third-party management
- C Contract terms
- D Limit volume of international transactions
- E Training of employees
- F A, B, C, and E
- G A, D, E, and B

Key Takeaways

‘If you think compliance is expensive, try non-compliance.’

Do...

- ▶ Conduct risk assessment
- ▶ Implement policies
- ▶ Due Diligence
- ▶ Leverage IT systems
- ▶ Monitor current enforcement trends
- ▶ Whistleblower channels
- ▶ Audits/site visits

Don't...

- ▶ Conceal violations
- ▶ Fail to monitor transactions
- ▶ Do nothing

Q&A



Question #4

Would you like to speak to any of our presenters on the content from today's webcast?

A

Yes, I'd like to speak to a BDO or Barnes & Thornburg professional.

B

No, not currently, thank you.

Thank You!





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