US GOVERNMENT HIGHLIGHTS SANCTIONS AND EXPORT CONTROL OBLIGATIONS TO IMPROVE COMPLIANCE AND PREVENT EVASION

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US Policy and Regulatory Alert

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Driven by concerns around increasing sanctions evasion activities by Russia, China, Iran, and North Korea, the US Government is stepping up enforcement and warning companies in the extended cargo and shipping supply chain to improve compliance and controls. On 11 December 2023, the US Departments of Commerce, Treasury, Justice, State, and Homeland Security issued a joint compliance note entitled “Know Your Cargo: Reinforcing Best Practices to Ensure the Safe and Compliant Transport of Goods in Maritime and Other Forms of Transportation” (Compliance Note). As discussed below, the Compliance Note highlights prior advisories on this topic and underscores the lessons observed from recent investigations and enforcement actions. Our international trade and national security practice can assist with risk assessments, due diligence, and reviews of compliance programs.

ADVICE REGARDING DECEPTIVE PRACTICES TO EVADE SANCTIONS AND EXPORT CONTROLS

Much like advisories issued in the past by the Treasury Department's Office of Foreign Assets Control (OFAC) and other agencies,[1] the Compliance Note provides guidance for all parties involved in international shipping on how to guard against deceptive practices intended to evade sanctions and export controls. These include:

- Manipulating location or identification data;
- Falsifying cargo and vessel documents;
- Ship-to-ship (STS) transfers;
- Voyage irregularities and use of abnormal shipping routes;
- Frequent registration changes; and
- Complex ownership or management.

The Compliance Note also urges parties who participate in maritime and other transportation industries to have strong, risk-based compliance policies, procedures, standards of conduct, and safeguards tailored to one's operations. Among other things, such policies should include:

Location Monitoring

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Due diligence on the location history of vessels, vehicles, and aircraft to identify prior manipulation or disabling of location or identification tracking data.

Screening and KYC

Due diligence on counterparties, based on their role in a transaction. This includes, but should not be limited to, screening transaction parties against government lists, such as the US Government's Consolidated Screening List.

Supply Chain Diligence

Due diligence to ensure that recipients and counterparties to a transaction are not sending or receiving commodities in violation of US sanctions or export control laws. This may require requesting copies of licenses, a review of complete, accurate shipping documentation, including bills of lading, and reviewing public information.

Industry Information Sharing

Sharing “red flags” and other concerning information with industry groups and government authorities.

DISCUSSION OF CRIMINAL AND CIVIL ENFORCEMENT

The Compliance Note contains background information and insights into specific investigations and enforcement actions in cases involving the evasion of US sanctions and export controls. The following issues, legal principles, and cases highlighted in the Compliance Note are particularly instructive.

DOJ Focus on Iran

The Department of Justice (DOJ) criminally prosecutes a broad variety of sanctions and export control violations. DOJ devotes special resources to Iran's efforts to sell and transport oil products for the benefit of the Iranian Revolutionary Guard Corps (IRGC), which uses the proceeds from such sales to fund terrorism, weapons proliferation, and human rights abuses in Iran and abroad.

Freight Forwarders and Agents

The Department of Commerce's Bureau of Industry and Security (BIS), in its efforts to enforce US export controls, focuses principally on violations by US sellers and foreign buyers. However, the Compliance Note highlights the fact that freight forwarders and other agents acting on behalf of such buyers and sellers can also be held responsible for their part in violations, including the representations they make when filing export control documents. Freight forwarders and other agents are expected to identify red flags (like those listed above), make inquiries, and take appropriate action—not turn a blind eye—or else they face penalties. The Compliance Note states that BIS plans to issue additional guidance, specifically for freight forwarders, in the near future.

Non-US persons

Much of OFAC's enforcement of US sanctions pertains to the transactions and activities of “US persons” for whom the bulk of prohibitions in OFAC's regulations apply. However, non-US persons are subject to numerous prohibitions as well. For example, non-US persons may be penalized for “causing” US persons to violate sanctions including by using the US banking system in the course of a transaction prohibited by US sanctions. Under some sanctions programs, non-US persons may be subject to US “secondary sanctions” for dealing with

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certain sanctioned persons or jurisdictions even if there is no US nexus to the transaction. Also, with regard to OFAC's Iran and Cuba programs, non-US entities owned or controlled by US companies are subject to most of the same prohibitions as US persons.

DOJ Prosecution of Vessel Charterer and Manager

In September 2023, both the non-US charterer and operator of a tank vessel were criminally prosecuted for facilitating the sale and transport of oil from Iran, ultimately for the benefit of the IRGC, while utilizing the US financial system for part of their activities. The charterer pled guilty, received a sentence of three years' probation, and paid a fine of nearly US$2.5 million for carrying Iranian oil. The vessel manager entered into a deferred prosecution agreement and was required to transport the Iranian oil to the United States at great cost. Notably, US authorities found that the charterer and operator arranged for the vessel to receive the illicit cargo via two STS transfers and concealed the oil's origin by, among other things, fabricating shipping records, vessel logs, and declarations to conceal the STS transfers and the vessels involved, as well as “spoofing” AIS transponder information to broadcast a false location while the vessel was loading.

Civil Forfeiture Actions

In July 2020, DOJ sought and obtained a judgment for the forfeiture of petroleum products aboard four different vessels found to be covertly shipping Iranian oil via STS transfers to Venezuela. The involvement of Iranian parties, like the IRGC and the National Iranian Oil Company was concealed by altering shipping documents (e.g., by misrepresenting a UAE-based company as the shipper), using a substitute shipper that had changed names three times in the preceding two years, and engaging in STS transfers to take on Iranian oil.

BIS Enforcement Case

In 2018, BIS imposed a civil penalty and probation on a logistics company for exporting items to parties in China and Russia that are designated on BIS's Entity List. While the logistics company had a screening procedure to prevent shipments to companies on the Entity List, the company used an abbreviated name for a university in China (despite knowing the full, unabbreviated name), which did not result in a “flag” in the system. In another instance, the same logistics company overrode or ignored a red flag that appeared when shipping liquid nitrogen plant equipment to the Russian Federal Nuclear Center. BIS determined that the company willingly ignored or misused information that indicated potential problems with the transactions.

OFAC Enforcement Cases

In 2019, OFAC imposed a US$871,837 civil penalty on a US-based shipping company whose Chinese and Turkish subsidiaries executed agreements with third parties who had nominated blocked Iranian vessels for their shipments. The company engaged in transactions involving these blocked vessels despite knowing that financial institutions had rejected at least two earlier payments related to the vessels. Separately, in a 2022 case, OFAC imposed a US$6,131,855 penalty against a non-US freight forwarder for causing US persons (US financial institutions or their foreign branches) to violate sanctions by making 2,958 payments related to sea, air, and rail shipments involving blocked persons on the Specially Designated Nationals and Blocked Persons List (SDN List) and North Korea, Iran, and Syria. To avoid scrutiny by US banks, the company instructed its UAE and South Korea affiliates to not include the names of sanctioned jurisdictions on invoices.

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CONCLUSION

The Compliance Note is intended to provide updated guidance on deceptive shipping practices but also to put industry players on notice that US authorities expect and will penalize failures to: (1) know your obligations under US sanctions and export controls (including obligations of non-US persons); (2) conduct due diligence on all parties, cargos, and vessels; and (3) identify and take appropriate action when confronted with facts (red flags) that suggest a shipment violates US sanctions or export controls.

If you have any questions regarding the issues discussed in this alert, or require assistance to strengthen your due diligence and compliance procedures, please contact our International Trade team.

FOOTNOTES

[1] *See Updated Guidance on Addressing North Korea's Illicit Shipping Practices* (March 21, 2019); *Sanctions Advisory for the Maritime Industry, Energy and Metals Sectors, and Related Communities* (May 14, 2020); and *Price Cap Coalition Advisory for the Maritime Oil Industry and Related Sectors* (Oct. 12, 2023).

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