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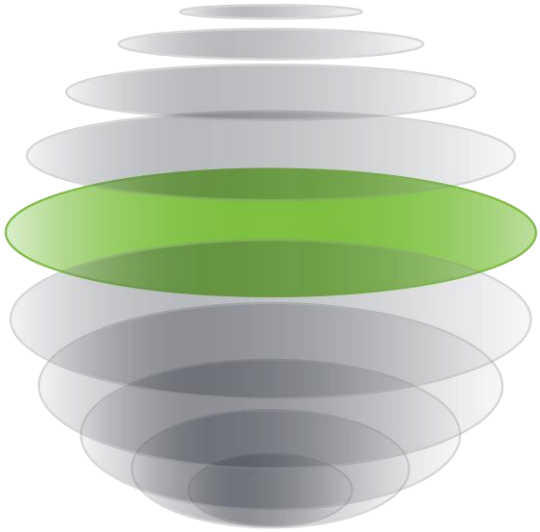

Global Trade Advisory Alert

Export Control Compliance Update

Rising complexity of export control compliance

The international harmonization of export controls requirements and the global coordination in trade sanctions, driven by a common effort through multilateral regimes and organizations such as the United Nations, seemed to be the path of the future. Recent events clearly show that the alignment between the different international requirements is no longer guaranteed. Furthermore, the evolution of export controls frameworks internationally seems to make cross-jurisdiction compliance even more challenging. The rising complexity of export controls compliance is more and more evident after the recent important changes made by the world's major actors.

US and EU sanctions on Iran

On 8 May 2018, President Trump withdrew the United States (US) from the Joint Comprehensive Plan of Action

(JCPOA), also called the Iran Nuclear Deal (the “Agreement”). All of the sanctions that previously had been imposed on Iran prior to the Agreement will be re-imposed in waves. The first portion is already in force as of 6 August 2018. The remaining sanctions are expected to enter into force no later than 4 November 2018.

This action did not receive a warm welcome from the European Union (EU) Member States, which are firmly committed to protect European companies that invested in Iran in good faith in accordance with the relaxed rules arising out of the Agreement.

As a result, companies may find themselves in a peculiar position: certain actions are authorized and even promoted by the EU authorities, yet prohibited in accordance with the US law, which has an extra-territorial reach directly if there is any US nexus (e.g., US products or US persons are involved) or even indirectly for companies dealing with sanctioned entities.

In order to protect EU businesses, the EU Commission activated a Blocking Statute (Council Regulation (EC) 2271/96), which officially “prohibits” EU companies from complying with the extraterritorial effects of the US sanctions. However, even when a company would not have any US nexus, keeping the business in Iran becomes significantly more challenging, especially in terms of ensuring the financing aspects of the transactions. To provide some opportunities to EU companies in securing the financial side of deals with Iran, France, Great Britain, and Germany are currently working on an alternative payments channel prior to the second wave of sanctions this November.

Finally, in an attempt to challenge the decision of the US, Iran has filed a complaint with the International Court of Justice in the Hague. While the future ruling of the court will be final and legally binding, it is not a given that the US will comply with it.

Thus, multiple elements and uncertainties should be carefully considered in order to mitigate the risks of non-compliance with US rules.

Russia

Recent evolutions in the export controls regulatory landscape are showing that Iran sanctions would not be the only case where a company may be facing contradicting regulations. The Russian Federation is on its way to imposing an anti-boycott law of its own, prohibiting Russian companies from complying with the US and the EU sanctions. Specifically, a draft bill dated 14 May 2018 proposes to make changes to the Criminal Code of Russian Federation by which entities that would “act or refrain from action” to execute a decision of a foreign government targeted against the Russian Federation (e.g., the US) may get financial penalties or a prison sentence up to four years. According to the government of Russian Federation, this change would serve as a legal basis for Russian companies not to comply with the US and other countries’ sanctions.

If approved, the bill will create significant compliance challenges for EU and US companies with subsidiaries in Russia, potentially forcing them to rethink their trade strategy going forward.

This is particularly significant in connection with the recent decision of the EU to further extend sanctions against the Russian Federation that impose asset freezes and travel restrictions until 15 March 2019.

China

Furthermore, big changes in global export controls requirements are about to be introduced by China as the country plans to adopt its first comprehensive Export Control law next year. Similar to the US legislation, the Chinese regulations will have extra-territorial application, introducing such concepts as regulated re-export of controlled products from one third country to another third country, meaning that a Chinese re-export authorisation may be required for trade activities performed even outside of China.

It is also expected that China’s law will allow China to retaliate against any discriminatory export controls imposed by other countries on China. In the context of rising global trade tensions and the more frequent use of trade measures as way to influence other countries’ behaviours, an advanced export control system would provide China with an efficient tool to act quickly to pursue its own trade priorities. Businesses, therefore, would need to rapidly adapt their trade operations accordingly.

What does it mean for you?

Companies operating on a global scale need to be aware of the sanctions and controls that can apply on their products and export activities. In today’s world, these sanctions and controls can change quickly, changing business opportunities or exposing companies to the risk of potential violations. The consequences at stake are significant, including loss of export licenses and privileges, fines, listing of a company as a sanctioned entity, and even prison sentences.

As such, companies should understand the export control risks to which they are exposed, the markets they want to serve, and the corresponding organization, policy, and controls that should be in place to effectively manage global trade activities.

Building capabilities to adapt is the key. A company's compliance organization should be in line with the company's operational activities and strategy, as well as with the IT landscape and supporting infrastructure.

If an efficient export control program is put into place, a company should be able to effectively manage operational export control risks while having sufficient flexibility and capacity to deal with future opportunities and challenges that might emerge.

Deloitte's Global Trade Advisory (GTA) specialists are part of a global network of professionals who can provide specialized assistance to companies in global trade matters. Our professionals can help companies seeking to manage the impacts and potential impacts of the developments described above by:

- Performing a throughout analysis of impact of the current and upcoming legislative changes for companies involved in business in Iran, the Russian Federation, and China;

- Supporting an evaluation of whether your company is affected by any of the upcoming changes in export controls around the globe. Due to the extra-territorial and contradictory spirit of recent regulations, any internationally-focused businesses may be affected. The impact of export controls is much broader than what seems obvious: a large range of products, including common materials and technology, could be subject to control, in addition to broad requirements related to destination, end use, or end user.

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