



SANDLER, TRAVIS & ROSENBERG, P.A.
An International Trade and Business Practice



Trade Sanction Compliance for US Importers from A to Z

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Today's Agenda



- Agencies involved in International Trade
- OFAC Embargoes and Economic Sanctions
- Blocking Statutes
- Customs and Border Protection Import Restrictions
- Consequences of Non-Compliance
- Importer Best Practices for Trade Sanctions Compliance

Agencies Controlling International Trade



OFAC Compliance

(US Embargoes & Economic Sanctions)



Office of Foreign Assets Control (OFAC)

OFAC Targets of Sanctions Programs



Specially
Designated
Nationals
(Individuals
and Entities)



Governmental
Entities



Entire
Countries



Certain
Practices

Programs vary and can include
one or more of these targets

3 Types of OFAC Sanctions Programs

- Comprehensive Sanctions
- Regime-Based Sanctions
- List-Based Sanctions



Current OFAC Programs

Balkans	Belarus	Burma (Myanmar)	Cote d'Ivoire
Counter Narcotics Trafficking Sanctions	Counter Terrorism Sanctions	Cuba	Democratic Republic of the Congo
Iran	Iraq	Lebanon	Liberia
Nonproliferation Sanctions	North Korea	Rough Diamond Sanctions	Somalia
Sudan	Syria	Transnational Criminal Organizations Sanctions	Yemen
Zimbabwe			

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Current Import Prohibitions

- **Import Prohibitions:**

- Iran
- Cuba
- North Korea
- Sudan
- Syria (only Syrian-origin petroleum or petroleum products)



- **End-User Restrictions:** SDNs

Inputs/Raw Materials from Embargoed Countries

- Substantial Transformation
- Prohibition on imports of items containing inputs from embargoed countries
 - Cuba – Part 515.204
 - North Korea – Executive Order 13570 & OFAC guidance
- Exception: Iran (though not a good idea)

Deep Dive into the Country Programs



Cuba



A map of Cuba and its surrounding regions. The map shows the island of Cuba in green, with major cities marked by red dots and labeled: Havana, Matanzas, Sagua la Grande, Sancti Spiritus, Sancti Clara, Sancti Juan, Sancti Pedro, Sancti Pablo, Sancti Antonio, Sancti Francisco, Sancti Diego, Sancti Martin, Sancti Isidro, Sancti Blas, Sancti Sebastian, Sancti Agustin, Sancti Valentin, Sancti Eusebio, Sancti Primitivo, Sancti Ildefonso, Sancti Clemente, Sancti Pelayo, Sancti Salvador, Sancti Juan de los Rios, Sancti Juan de los Baños, Sancti Juan de los Reos, Sancti Juan de los Baños, Sancti Juan de los Reos, Sancti Juan de los Baños, Sancti Juan de los Reos. The map also shows the Gulf of Mexico to the north, the Atlantic Ocean to the east, and the Caribbean Sea to the south. The United States is labeled to the north, and the Bahamas and Jamaica are labeled to the east and south respectively.

NO IMPORTS!



Cuba

A map of Cuba and its surrounding regions. The United States is at the top, with Florida's Straits labeled. To the north are the Bahamas. To the east is the Atlantic Ocean. To the south is the Caribbean Sea and Jamaica. Major Cuban cities are marked with red dots and labeled: Havana, Matanzas, Sagua la Grande, Sancti Spiritus, Cienfuegos, Camaguey, Bayamo, Santiago de las Vegas, Sancti Spiritus, Pinar del Rio, Nuevitas, and Guantánamo.

NO IMPORTS!

Iran



NO IMPORTS!

Sudan



NO IMPORTS!

Republic of Southern Sudan

- Not subject to OFAC Sudanese Sanctions Regulations
- Not subject to U.S. embargoes or economic sanctions



Syria



Sanctions Target

- Country of Syria
- SDNs

Sanctions

- Assets blocked
- No dealing with Syrian Government
- No exports/ reexports from US (except EAR99 food and medicine)

North Korea



NO IMPORTS!

Where Does Iraq Stand Now?



Lebanon



Burma / Myanmar



What About Libya?



OFAC Licensing

- General Licenses = license exemptions
- Specific Licenses: License authorizing specific activity
 - No required form or format (narrative letter with supporting documentation)
 - Describe proposed transaction
 - Identify parties to the proposed transaction
 - Why license should be granted
 - No harm posed to economic sanctions program
 - Include Copies of contracts, proposals, etc.

Key Concepts for OFAC Compliance



OFAC Definitions of US Persons

Trading with the Enemy Act (TWEA)	International Emergency Economic Powers Act (IEEPA)
<ul style="list-style-type: none">• “US Person” includes:<ul style="list-style-type: none">• US citizens and permanent residents wherever located• Protected individuals• Foreign persons in the US• Businesses incorporated under US law• Foreign branches of US persons• Foreign-incorporated entities owned or controlled by US persons• Program: Cuba only (currently)	<ul style="list-style-type: none">• “US Person” includes:<ul style="list-style-type: none">• US citizens and permanent residents wherever located• Protected individuals• Foreign persons in the US• Businesses incorporated under US law• Foreign branches of US persons• Programs: Balkans, Belarus, Burma (Myanmar), Cote d’Ivoire, Congo, Iraq, Iran, Liberia, Lebanon, North Korea, Somalia, Sudan, Syria, Zimbabwe, etc.



Facilitation

- **Iran & Burma Sanctions**: Approve, finance, facilitate, or guarantee any transaction by a foreign person where the transaction by that foreign person would be prohibited by this part if performed by a US person or in the United States.
- **Sudan**: Includes brokering activities, of the exportation or reexportation of goods, technology, or services from Sudan to any destination, or to Sudan from any location
- **Syria**: No explicit facilitation provision
- **Cuba**: Any transaction for the purpose or which has the effect of evading or avoiding any of the prohibitions set forth in paragraph (a) or (b) of this section is hereby prohibited.



Facilitation- OFAC Guidance

- **Iran Sanctions:**

- Altering operating policies/procedures to permit a foreign affiliate to accept/perform a contract, engagement, transaction with Iran/GOI
- Referral of purchase orders, requests for bids, business opportunities involving Iran/GOI to a foreign person
- Changing the operating policies/procedures of an affiliate to facilitate prohibited transactions

- **Sudanese Sanctions:**

- Any unlicensed action that assists/supports trading activity with Sudan
- BUT: activities of purely clerical or reporting nature that does not further trade or financial transactions with Sudan/GOS is not facilitation (e.g., reporting on the results of a sub's trade with Sudan)

Examples of Unlawful Facilitation

Any of the following activities involving transactions by a foreign person where that transaction would be prohibited if performed directly by a US person or in the US:

- Approving
- Brokering
- Financing
- Guaranteeing
- Altering operating policies or procedures to permit a foreign affiliate to accept or perform a contract or transaction
- Referral of purchase orders, requests for bids, business opportunities to a foreign person
- **THERE ARE EXCEPTIONS.**

OFAC General Inventory Concept

Selling to a foreign person who resells to an embargoed country is NOT facilitation if—

- For general inventory;
- Embargoed country is not predominant market for foreign reseller; and,
- Seller has no knowledge or reason to know goods destined for embargoed country.



Information/Informational Materials Exemption

- Berman Amendment (1988)
- Free Trade in Ideas Amendment (1994)
- Covers publications, films, posters, phonograph records, photographs, microfilm, microfiche, tapes, compact disks, CD Rom, artworks and news wire feeds.

EU Blocking Statutes



EU Blocking Statutes

- Prohibit EU firms from complying with US sanctions where—
 - No corresponding EU sanctions; PLUS
 - Compliance = economic disadvantage.
- Limited enforcement
- US & EU sanctions laws becoming more harmonized



U.S. Customs and Border Protection

US Customs and Border Protection



CBP has authority to:

- Inspect imported goods/goods for export
- Investigate
- Detain or seize inbound/outbound goods
- Request records or information



- Safeguards borders against terrorism
- Facilitates imports/exports
- Assesses duties, fees and taxes
- Determines admissibility of imported goods
- **Enforces laws of other govt agencies**

CBP Import Restrictions

- Absinthe (Alcohol)
- Alcoholic Beverages
- Automobiles
- Biologicals
- Ceramic Tableware
- Cuban-Made Products
- Cultural Artifacts & Cultural Property
- Defense Articles
- Dog and Cat Fur
- Drug Paraphernalia
- Firearms
- Fish and Wildlife
- Food Products (Prepared)
- Fruits and Vegetables
- Game and Hunting Trophies
- Gold
- Haitian Animal Hide Drums
- Meats, Livestock and Poultry
- Medication
- **Merchandise from Embargoed Countries**
- Pets
- Photographic Film
- Plants and Seeds
- Soil
- Textiles and Clothing
- Trademarked and Copyrighted Articles



Bureau of Industry and Security
U.S. Department of Commerce

Bureau of Industry and Security (BIS)

Controls exports/reexports/transfers of purely commercial and dual-use goods, software and technology to foreign persons and administers a few of the US sanctions programs.

Issues licenses if required per classification, destination country, end-user and end-use.

Requirements found in:

- Export Administration Regulations (EAR) (15 CFR 730 – 744)
- Commerce Control List (CCL) (15 CFR Part 744)

Current BIS Country Programs

BIS controls exports/reexports to:

Cuba

Iran

North Korea

Sudan

Syria

Consequences of Trade Sanction Non-Compliance



OFAC Penalties

Trading With the Enemy Act (TWEA) **Civil and Criminal**

- Civil: \$65K violation
- Criminal: \$1M corp. fines, \$250K individual and/or max 10 years jail

International Emergency Economic Powers Act (IEEPA) **Civil penalties**

- The greater of:
 - \$250,000 or
 - 2X the amount of the transaction

Criminal (IEEPA)

- \$1,000,000 and/or 20 years jail (if an individual)

Additional penalties

- Penalties subject to increase (false statements)
- Denial of Export Privileges
- Increased US government scrutiny & bad publicity

OFAC Enforcement Guidelines

OFAC May:

- Take no action or request additional information
- Issue Cautionary Letter
- Issue Finding of Violation
- Refer case to DOJ for criminal proceedings



OFAC Enforcement Guidelines

- Willfulness or recklessness
- Compliance program in place?
- Corrective action taken?
- Cooperation with OFAC investigation
- Timing of Violation
- Other enforcement action pending?
- Future deterrence impact
- Other relevant factors to be considered at OFAC's discretion

OFAC Enforcement Guidelines

	Egregious	Non-Egregious
No VSD	Max Penalty	Schedule Amount capped at \$250k
VSD Filed	50% reduction in Max Penalty	50% reduction in Schedule Amount capped at \$125k

Example of OFAC Schedule Amount:

- TV <\$1000: \$1000 penalty
- TV \$1000 < \$10k: \$10k penalty
- TV \$10k < \$25k: \$25k penalty
- TV \$25k < \$50k: \$50k penalty
- TV \$50k < \$100k: \$100k penalty
- TV \$100k < \$170k: \$170k penalty
- TV >\$170k - \$250k penalty

Current Trends in Enforcement

- Outreach/visits
- End-Use Monitoring/Checks
- Investigations
- Subpoena Power
- Search Warrants
- Increase in significant civil penalties
- Increase in Joint Settlements



CBP Enforcement Options

- Detention of Imported Merchandise
- Exclusions/Deemed Exclusions
- Seizures and Forfeitures
- Demands to Redeliver
- Liquidated Damages
- Penalties
- Increase in CBP Scrutiny:
 - Increase in number of exams
 - Requests for Information (CF-28s)
 - Notices of Action (CF-29s)
 - Quick Response Audits & Focused Assessments



CBP Demands for Redelivery

- Food products subject to conditional release
- CBP, FDA, USDA, other agencies can demand return for inadmissibility reasons
- Goods returned will be exported or destroyed
- Consequences: liquidated damages

CBP Liquidated Damages

- Liquidated damages defined
- Customs Bond Conditions
- Failure to redeliver or late delivery as demanded by CBP
 - Max Claim: Value of Goods
 - CBP may agree to payment of 1 – 10% value of goods (first violation) or 10% - 50% value of goods (subsequent violations)
- Where decision to exclude belongs to FDA, USDA, etc. max claim is 3x value of the imported goods.



Detentions, Exclusions, Seizures & Forfeitures

- **Detentions**

- Detention Notices
- Requests for Information

- **Exclusion & Deemed Exclusions**

- Export or destroy goods
- File action in CIT

- **Seizures**

- Notices of Seizure
- Written Petitions for Relief
- Penalties
- Forfeitures of merchandise (export or destruction)



CBP Penalties under Section 1592

- Entry/attempted entry of goods into the US by means of false information or material omission
- Negligent Violations:
 - Duty Loss Violation: Max 2x duty loss
 - No Duty Loss: 20% value of goods
- Grossly Negligent Violations:
 - Duty Loss Violation: Max 4x duty loss or value of goods
 - No Duty Loss: Max 40% of value of goods
- Fraudulent Violations:
 - Duty Loss Violation: Max 8x loss of duty or value of goods
 - No Duty Loss: Max 80% value of goods



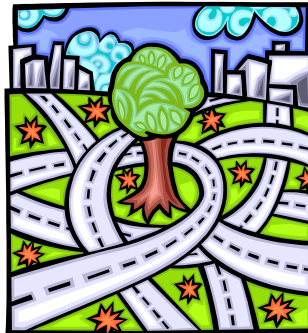
Importer Best Practices for Trade Sanction Compliance



Recommended Process for All Transactions

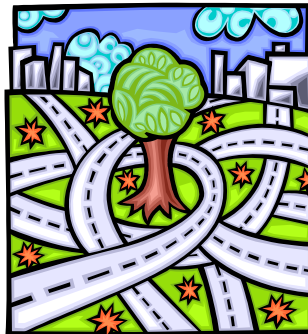
1. Understand the OFAC Country Program Requirements & Communicate to Organizational Leads

- 31 C.F.R. Part 500 (Foreign Assets Control Regulations)
- OFAC Website: <http://www.treasury.gov/resource-center/sanctions/Programs/Pages/Programs.aspx>



2. Incorporate Trade Sanctions Compliance into Existing Customs Compliance Policies

- Take foreign affiliate issues into consideration
- Ask the right questions for new opportunities



Multinationals' Compliance Hazards

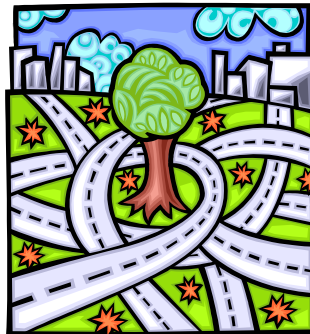


New Opportunity? Ask the Right Questions

- Any US Person(s) involved in opportunity overseas?
- What is the country of origin of finished product and ingredients?
- Are any restricted countries or SDNs involved directly or indirectly?
- Have all vendors/manufacturers been screened against SDNs?
- Seek in-house counsel guidance
- Seek outside legal counsel help
- Consider use of internal, global trade compliance questionnaire

3. Incorporate Trade Sanctions Compliance into Formal Vendor Selection & Order Placement Processes

- Restricted Parties List Screening
- Enhance Purchase Order Terms & Conditions
- Contractual prohibitions in Vendor Agreements
- Embargo & Economic Sanctions Certificate of Compliance



Restricted Parties List Screening

US persons are prohibited from dealing with individuals and entities designated on published restricted parties lists without a license:



Screen **ALL PARTIES** to their transactions against these lists and establish processes for handling any “hits.”

Sample Warranty Language in PO Terms & Conditions

“...neither the items sold nor their inputs originated in, were obtained from or transited through any country that is currently subject to U.S. embargoes or economic sanctions. Seller shall allow Buyer or Buyer's chosen representative(s) the opportunity to audit the books and records of Seller and to inspect Seller's workplaces and facilities to ensure compliance with these warranties and representations. Such audits may be conducted at Buyer's sole discretion during normal business hours, with or without notice by Buyer.”

PO Terms & Conditions, Contracts, Vendor Agreements

- Prohibit use of products originating in US-embargoed countries
- Prohibit use of products from SDNs to fill orders
- Prohibit offshore subcontracting without prior approval
- Require vendors to maintain records substantiating origin
- Importer's right to review/inspect vendor records
- Indemnification and hold harmless language
- Termination rights if material breach occurs

U.S. Embargo and Economic Sanctions

Certification of Compliance

On behalf of _____ (insert company name), I, _____ (insert name), do hereby certify that, during the period _____ (month/year) to _____ (month/year), none of the products that we sold to _____ (company name), nor any raw materials or other inputs used in the manufacture of said items, originated in, were obtained from, transited through or otherwise involved any country that is currently subject to U.S. embargoes or economic sanctions.

Signature

Printed Name

Title

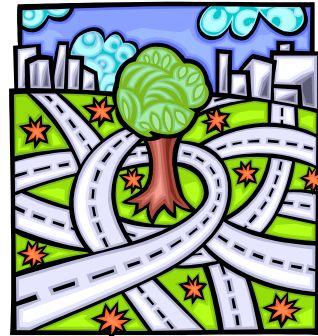
Date

Recommended Processes for All Transactions

4. Train Purchasing/Sourcing Personnel on U.S. embargoes and economic sanctions programs

5. Establish escalation process to address issues of concern and take corrective action

- Response to Detention/Exclusions/Seizures
- Response to Demands to Redeliver
- Response to Claims of Liquidated Damages
- Response to Penalty Notices
- Voluntary Self-Disclosures



Handling Detentions/Seizures by CBP

- Research error
- Log notice & request extensions if needed.
- Communication with CBP.
- Compile documentation.
- Preventative measures.
- Consider outside assistance.
- Timely file the seizure petition.
- If inadmissible: forfeiture (export/destruction)
- If can prove admissibility:
 - Pay penalty and storage fees
 - Execute hold harmless agreement.



Handling Penalty Cases & Liquidated Damages Claims

- Consider outside assistance.
- Research error
- Log notice & request extensions if needed.
- Compile supporting documentation.
- Adopt preventative measures.
- Identify mitigating factors .
- Timely respond in writing.
- Consider settlement options.



Voluntary Self-Disclosures

- Written admissions of an export violation that must be received by the govt agency **before** it (or another US agency) obtains knowledge of the violation from other sources.
- The VSD weight is within the sole discretion of the agency.
- The Filing of a VSD Is Just That: Voluntary.

Voluntary Self-Disclosure Tips

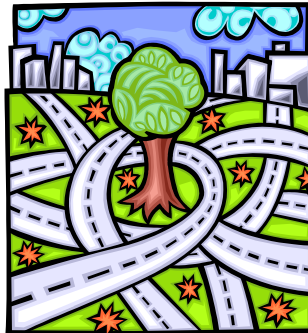
- Disclose violations as soon as possible after discovery.
- Review all export-related transactions going back 5 years in time and compile supporting documentation, interview personnel involved.
- While preparing a VSD, review your internal controls and make the necessary process changes as a result of the errors that occurred
- Be thorough in the narrative VSD letter(s), and cover all violations.
 - Outline specific errors and corrective action taken;
 - Describe internal review methodology in detail; and,
 - Explain preventive measures taken.
- Consider scheduling meeting with agencies .

Recommended Processes for All Transactions

6. Enhance Record Retention Process to Address Trade Sanctions Compliance (i.e., Substantiation of Origin)

7. Document Trade Sanctions Compliance Policies and Procedures in Writing—incorporate trade sanctions compliance into:

- Corporate Trade Compliance Policy Statement
- Customs Compliance and Procedures Manual
- Import Desk References (if applicable)





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