



Know Your Customer

- Customer Identification Program
- Ultimate Business Owner
- Customer Due Diligence
- Ongoing Monitoring & Review
- Organizational Diligence (Sales)
- Risk Assessment & Classification

COMMON SENSE AND INSTINCT "THE NIGGLE EFFECT"

Guiding Principles

- Procedures must be managed on a consistent basis – you must practice what you preach
- Be realistic in setting up your procedures
- Define access & flow of information in order to conduct the vetting
- Clearly identify responsibilities and culpability
 - Shipping directly to end user
 - Distributor/Sales Channel Partner
 - Overseas affiliate

Best Practices

Collaboration within your organization is key

- Trade Compliance
- Finance
- Product Development
- Sales/Marketing
- Supply Chain
- Logistics
- Legal

- Establish a "Compliance Point of Contact."
- Keep branch offices up to date on regulatory changes
- Comprehensive compliance letter of engagement with contractual resellers

Areas of Compliance Vulnerability

- Lack of a clear corporate governance message
- Export compliance function perceived as administrative
- Insufficient resource commitment
- Outdated policies and procedures
- Theoretical training without practical application
- Compliance audits perceived negatively instead of assessments

Government Agencies

- US Bureau of Industry and Security (BIS)
- Office of Foreign Assets Control (OFAC)
- Director of Defense Trade Controls (DDTC)
- US Customs and Border Protection (CBP)
- US Department of Justice (DOJ)
- Federal Bureau of Investigations (FBI)
- Foreign regulatory and law enforcement agencies

OFAC and BIS Penalty Regimes

- OFAC – General Factors
 - Awareness of Conduct at Issue (General Factor B)
 - Actual knowledge; reason to know; management involvement
 - Individual Characteristics (General Factor D)
 - Commercial sophistication; size of operations and financial condition; volume of transactions; sanctions history
 - Compliance Program (General Factor E) – existence, nature, and adequacy at the time of apparent violation(s)
 - Remedial Response (General Factor F)

OFAC and BIS Penalty Regimes

- OFAC – Responses to Apparent Violations
 - No action – insufficient evidence
 - Request additional information
 - Cautionary letter – insufficient evidence or Finding of Violation or civil penalty not warranted
 - Finding of Violation – violation occurred but civil penalty not appropriate response
 - Civil monetary penalty - settlement
 - Criminal referral
 - Other administrative actions – license denial, suspension, modification, or revocation; cease and desist order

OFAC and BIS Penalty Regimes

- BIS – Guidance on Charging and Penalty Determinations in Settlement of Administrative Enforcement Cases: Supp. No. 1 to Part 766
 - Applicable penalty schedule – based on transaction value; same as OFAC
 - Statutory max. per IEEPA violation - \$356,579 or 2x the transaction value
- Civil Penalty Process – Guidelines V.A.
 - Proposed Charging Letter (PCL) - opportunity to settle
 - Response to PCL
 - Charging Letter – opportunity to settle
- Penalty amount – egregious v. non-egregious
 - Non-egregious: Applicable schedule amount
 - Egregious: General Factors - willful or reckless, awareness of conduct, harm to regulatory program objectives – base amount is max. penalty

OFAC and BIS Penalty Regimes

- BIS Violations (§ 764.2)
 - Engaging in prohibited conduct
 - Causing, aiding, or abetting a violation
 - Solicitation and attempt
 - Conspiracy
 - Acting with knowledge of a violation
 - [reserved]
 - Misrepresentation and concealment of facts
 - Evasion

Update on Significant Export Sanctions

- Commerce BIS – Understaffed and overwhelmed
- Senior Management is not fully established
- Export Control Policies still being reviewed
 - Long delays in license reviews
 - Mistakes being made regarding approvals/denials
 - Lack of transparency re: regulation & license review status
- Focus on China applications (reviews could take 3-7 months)
- More Chinese & Hong Kong parties added to the Commerce Entity List

Update on Significant Export Sanctions

- Commerce Enforcement implements regulatory changes to voluntary self-disclosure (VSD) & penalty guidelines
- Commerce Enforcement establishes Whistle Blower Policy. Encourages ratting out possible violators
- DOJ publishes a comprehensive document - "How Prosecutors Evaluate Corporate Compliance Programs"
- Bureau of Census redefines "Ultimate Consignee (UC)" – is now scenario driven
- CBP scrutinizing shipments to Singapore, Malaysia & Taiwan. Risk of diversion to China/Hong Kong

Proposed Export Regulatory Changes

- Dept of Commerce “Project 2025 Mandate Leadership”
 - Eliminate certain license exceptions
 - Eliminate “specially designed” loopholes
 - Reduce the “de minimis” threshold from 25% to 10%
 - Designate Russia & China to more prohibitive licence group
 - Tighten “Deemed Export Rule” (access by foreign nationals to controlled technology)
 - Tighten definition of “Fundamental Research” impacting universities
- Congress - proposal to increase BIS budget by \$134 million
- Commerce – add subsidiaries/affiliates of parties already on the Entity List

Significant Export Enforcement Cases

- Commerce
 - Seagate Technology (\$330 million) - violation of the “Foreign Direct Product Rule” FDPD diversion to Huawei
 - M&M Wireless (\$5.4 million) – misrepresentation of facts/failure to comply with recordkeeping requirements
 - Hass Automation (\$1.5 million) – causing, aiding or abetting a violation, engaging in prohibited conduct
- OFAC
 - Haas Automation (\$1.1 million) – Russian sanction violations
 - Charles River Systems (sub of State Street Bank) (\$7.5 million) – Russian sanctions violations

Consequences

- Reputational damage
- Significant monetary fines
- Ties up resources
- Potential for loss of export privileges
