
Export Controls and Economic Sanctions

International Trade, Investment and Market Access

International transactions can raise significant foreign policy and national security concerns, and US and EU authorities increasingly scrutinize business dealings for such risks. With a footprint across the United States, Europe and China, WilmerHale brings a global perspective to export control and sanctions issues. The US regulatory landscape includes the Departments of Treasury, State and Commerce, each with its own prohibitions, licensing standards and compliance requirements. In the European Union, both the European Commission and individual Member State authorities are involved. Violations can lead to severe consequences, including corporate and individual criminal liability, civil money penalties, and administrative sanctions such as suspension of export privileges. Our lawyers have the knowledge, experience and global reach to provide comprehensive compliance, licensing, enforcement and policy counsel on export control and sanctions matters to a wide range of clients, from early-stage companies to universities and large, multinational corporations.

Areas of Focus

Sanctions Compliance

The US Treasury Department's Office of Foreign Assets Control (OFAC) administers regulations that prohibit transactions with targeted countries, entities and individuals. These regulations apply to US persons, but their impact can extend to many dealings around the world, including relationships between US parent companies and their foreign subsidiaries. In addition, US sanctions may implicate international investment and financial transactions that have a nexus to the United States, as well as M&A activity involving non-US companies that do business in a country targeted by OFAC regulations. Among our recent engagements, we:

- Advised a European-based financial institution on OFAC licensing and compliance requirements for international foreign exchange transactions.
- Advised US-based media companies on the application of OFAC sanctions to broadcast and publication licensing agreements involving targeted countries.
- Advised European-based and Asian companies in different sectors (shipping, heavy

industry, IT and finance) on the application of OFAC and Iran Sanctions Act/Comprehensive Iran Sanctions, Accountability, and Divestment Act sanctions to transactions involving Iran.

- Advised a US-based pharmaceutical company on licensing and compliance requirements affecting an Indian joint venture that included Cuban property interests.
- Counseled buyers and sellers in international M&A transactions on the regulatory impact of foreign companies' business operations in sanctioned countries such as Iran and Syria.

For clients involved in the financial services sector, we provide a broad range of sophisticated legal services to comply with financial sanctions and anti-money laundering regulations in the difficult enforcement environment at the intersection of the USA PATRIOT Act and the OFAC sanctions regulations. We prepare sanctions and anti-money laundering compliance programs for banks, broker-dealers, mutual funds, hedge funds, investment advisers and other types of financial institutions.

Jurisdiction and Classification

US State Department defense trade controls govern exports and temporary imports of military items and services under the International Traffic in Arms Regulations (ITAR). US Commerce Department "dual-use" export controls regulate exports and re-exports of commodities, equipment, software and technologies that have potentially sensitive uses. Our lawyers advise clients on all aspects of these controls, including Commodity Jurisdiction requests to ascertain which set of controls apply to different types of products and technologies. We also advise clients on self-classifications and formal US Commerce Department export classification requests. Among our recent work, we:

- Advised a US-based software firm on Export Administration Regulations (EAR) and ITAR classifications and licensing requirements for software exports used in overseas nuclear power facilities.
- Advised UK technology companies on the application of ITAR requirements to UK defense suppliers seeking US defense contracts.
- Advised a leading IT provider on EAR and ITAR export licensing requirements for sales of technology, software and testing equipment to destinations around the world.
- Obtained export classifications for technologies needed by a US company to establish a product design center in Beijing.
- Obtained a favorable Commodity Jurisdiction determination for a US-based manufacturer of sophisticated electronic testing equipment so that its operations could include production and sales transactions involving China.
- Secured favorable Commodity Jurisdiction decisions for clients that developed commercial products from items originally designed for military applications.

Securing Export Licenses

Depending upon the jurisdiction and technical classification, export regulations may impose licensing requirements that vary according to the relevant countries, parties, end use and technical parameters. Our lawyers advise clients on all phases of export licensing, including preparation of application materials, advocating for approval and engaging directly with regulatory authorities amidst intra-agency disputes. Among our export licensing work, we:

- Obtained US Commerce Department licensing for a US aerospace company to transfer technologies for a major aviation project in China.
- Obtained TAAs and MLAs under the ITAR for a US-based industrial corporation with global facilities to establish outsourcing, further manufacturing and sublicensing operations outside the United States.
- Obtained Commerce Department licensing for medical and agricultural sales to countries subject to significant export restrictions.
- Obtained manufacturing license agreements authorizing US industrial suppliers to export ITAR-regulated components and technical specifications to contract manufacturers in Canada and Mexico.

Addressing Deemed Exports

With millions of non-US nationals employed in the United States, companies and institutions must consider "deemed export" licensing requirements, which cover the transfer or disclosure of controlled technology and software to foreign nationals. Recently, we have:

- Secured authorizations for an after-market aircraft equipment supplier to disclose technical materials to foreign nationals working in the United States.
- Advised a US information technology manufacturer on regulatory exceptions for certain fundamental research activities conducted in the course of sponsored university research programs.

Strategies for Compliance

We help many US and non-US clients develop and implement internal policies and procedures to promote compliance with applicable export and sanctions regulations, which often present complex challenges for companies that have diverse product lines and global operations. Our advice includes corporate compliance programs, contractual assurances, technology control plans, transaction and customer screening, and in-house training and compliance reviews. Our recent work in this area includes:

- Advising a US-based financial services firm on an OFAC sanctions compliance program that covers deposits, transfers and the recording of securities from participants around the world.

- Advising a Europe-based energy company on export control and sanctions compliance requirements relating to the use of US equipment and technical data in offshore exploration.
- Advising a non-US aircraft repair company on the establishment and operation of a global compliance program that incorporates applicable US sanctions and export control requirements.
- Advising many US and non-US clients on OFAC and export control risk assessments and compliance measures that address such risks.

Experience in Enforcement

When a compliance issue arises, our lawyers bring extensive experience in internal investigations, administrative enforcement and defensive litigation in federal courts. We frequently advise clients on matters involving voluntary self-disclosures of export or sanctions violations. When compliance issues arise in the course of a corporate transaction, we advise clients on the potential impact on the prospective transaction and on the allocation of risks and liabilities between the parties. For example, we have:

- Prepared voluntary self-disclosures and negotiated settlement agreements with OFAC, the US Commerce Department and the US State Department.
- Conducted internal investigations to identify and evaluate potential violations in advance of governmental enforcement proceedings.
- Assisted numerous clients in internal investigations involving EAR, OFAC and ITAR compliance issues.
- Intervened in a corporate transaction upon discovering potential liabilities for export violations during due diligence review.
- Assisted a US-based supplier of energetic systems in a congressional investigation of possible diversion of products to nuclear weapons applications.

Shaping Export Policy

Export and sanctions policies change in response to evolving foreign policy, national security and technological developments, among other factors. Recent initiatives include enhanced penalties and validated end-user programs to distinguish among entities in controlled countries. We work with clients to help navigate and shape legislative and regulatory developments in this complicated area. For example, we:

- Advise nanotechnology innovators on emerging export control policies.
- Advise industry participants on various aspects of US export control reform.

EU Sanctions and Export Control Policy and Compliance

Our lawyers also advise clients on the full range of export control and sanctions issues arising in the EU. This includes both work with the European Commission and Council, and with individual Member State authorities who are often directly involved. We have:

- Advised major US and European companies on EU export control and sanctions compliance issues.
- Prepared and helped structure global compliance programs, including dedicated EU policies and programs.
- Advised companies in Europe and elsewhere on EU policies towards Iran, Cuba and other "sensitive" countries.
- Advised and represented companies in EU Member State export control, customs and sanctions investigations and audits, and helped avert the threat of potential prosecution.