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US Economic Sanctions and Export Controls on Trade with Russia and Belarus

Update on New US Export Controls for China

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US Agencies Responsible for Trade Sanctions and Export Controls Enforcement



US Agencies

- **US Department of Treasury Office of Foreign Assets Control (“OFAC”)**
 - Trade sanctions applicable to financial flows, services, goods, software and technology
 - <https://home.treasury.gov/policy-issues/office-of-foreign-assets-control-sanctions-programs-and-information>
- **US Department of Commerce Bureau of Industry & Security (“BIS”) under the Export Administration Regulations (“EAR”)**
 - Export controls applicable to dual-use goods, software and technology including certain non-US origin content destined to Russia, Belarus and China and manufactured with certain US-origin technology, plants and equipment, <https://www.bis.doc.gov>
- **US Department of State – Secondary Sanctions and Restrictions under the International Traffic in Arms Regulations (“ITAR”)**
 - The State Department implements some secondary sanctions (sanctions for activities contrary to US foreign policy and national security where the U.S. does not have primary jurisdiction over US persons or activities in the US) such as sanctions on dealing with Russian energy export pipelines
 - Secondary sanctions and sanctions program summaries: <https://www.state.gov/economic-sanctions-programs/>
 - State Department also regulates the transfer of arms and arms-related technologies under the ITAR
 - Arms embargo remains on Russia, Belarus and China
 - ITAR: https://www.pmdotc.state.gov/ddtc_public

Russia- and Belarus-related Sanctions Update



Russia- and Belarus-Related Sanctions: Key Substantive Prohibitions

- **Country/Region-based:** Embargo of Ukraine regions of Crimea, Donetsk and Luhansk
- **List-based:** Sanctions against natural persons and entities, identified on prohibited party lists
 - Additions to OFAC's [Specially Designated Nationals and Blocked Persons List](#) (or "SDN List")
 - Additions to non-blocking lists (e.g. [Sectoral Sanctions Identifications List](#) (SSI List))
- New investment ban
- Ban on the provision of certain types of services to any person or entity in Russia or Belarus
 - Other activity- and party-specific prohibitions
- Secondary sanctions for engaging in "significant" transactions with sanctioned Russian and Belarus parties, certain energy-related transactions
- U.S. has imposed secondary sanctions against non-US persons who have supported the war effort against Ukraine

Russia- and Belarus-Related Sanctions: Embargos

- Prohibitions:
 - Investment in embargoed regions
 - Importation of goods, services, or technology from embargoed regions
 - Exportation of goods, services, or technology to embargoed regions
- Exemptions include:
 - Personal communications
 - Donations of food, clothing, and medical supplies
 - Imports/exports of “information or informational materials”
 - Transactions ordinarily incident to travel to or from Crimea



Source: Congressional Research Service.

Russia- and Belarus-Related Sanctions: List-Based Sanctions

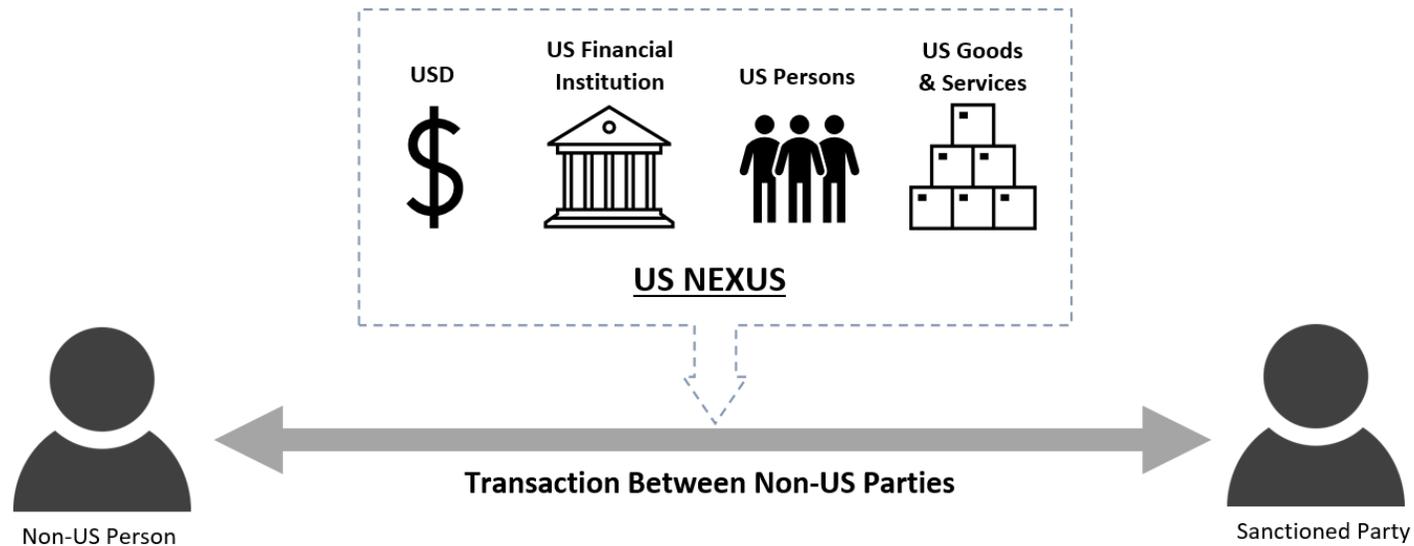
- Most new Russia- and Belarus-related sanctions are list-based; additions to the SDN List.
 - Target government officials, financial institutions, corporations across a variety of sectors, “oligarchs,” and more
 - Obligation to block (i.e., freeze) any property or interests in property belonging to SDNs
 - US persons, including US financial institutions, are prohibited from engaging in any transaction with SDNs unless authorized by a specific or general license including wind-down licenses
 - US persons are also prohibited from “facilitating” transactions: US persons cannot approve, finance, facilitate, or guarantee a transaction by a non-US person, if the US person would not be able to do the transaction themselves
- Additions to non-SDN lists, for example, Sectoral Sanctions Identifications List (SSI List)
 - Not an absolute prohibition on doing business
- Non-US persons are prohibited from “causing” a US person to violate sanctions
 - *I.e.*, sanctions risk if “US Nexus” exist
- Lists are updated frequently; important to check the Specially Designated Nationals List (the primary prohibited list) regularly

Sanctions Risk in Sales of Goods/Services – Example

- Amazon.com, Inc. (“Amazon”)
 - Allowed persons located in the Crimea region of Ukraine, Iran, and Syria to place orders or otherwise conduct business on its website;
 - Processed orders from SDNs and for persons located in or employed by the foreign missions of Cuba, Iran, North Korea, Sudan, and Syria; and
 - Failed to timely report 362 transactions involving Crimea region of Ukraine processed under General License No. 5, which allowed wind down operations subject to reporting requirements
- Failed to fully analyze all transactions and consumer data
 - References to a sanctioned jurisdiction, a city within a sanctioned jurisdiction, or a common alternative spelling of a sanctioned jurisdiction
 - E.g., Yalta, Krimea
- Amazon voluntarily disclosed the apparent violations to OFAC
- Amazon agreed to pay **\$134,523** to settle with OFAC

US Nexus

- Non-US persons are prohibited from “**causing**” a US person to violate US sanctions laws
- US sanctions may apply to non-US person where there is a US nexus, such as:
 - Any involvement of US persons
 - Most US dollar-denominated transactions
 - Any involvement of US financial institutions or foreign branches
 - Any routing of activities through the United States (e.g., correspondent banking, IT and data processing)
 - Includes using US-based video platforms
 - US commodities, software, and technology

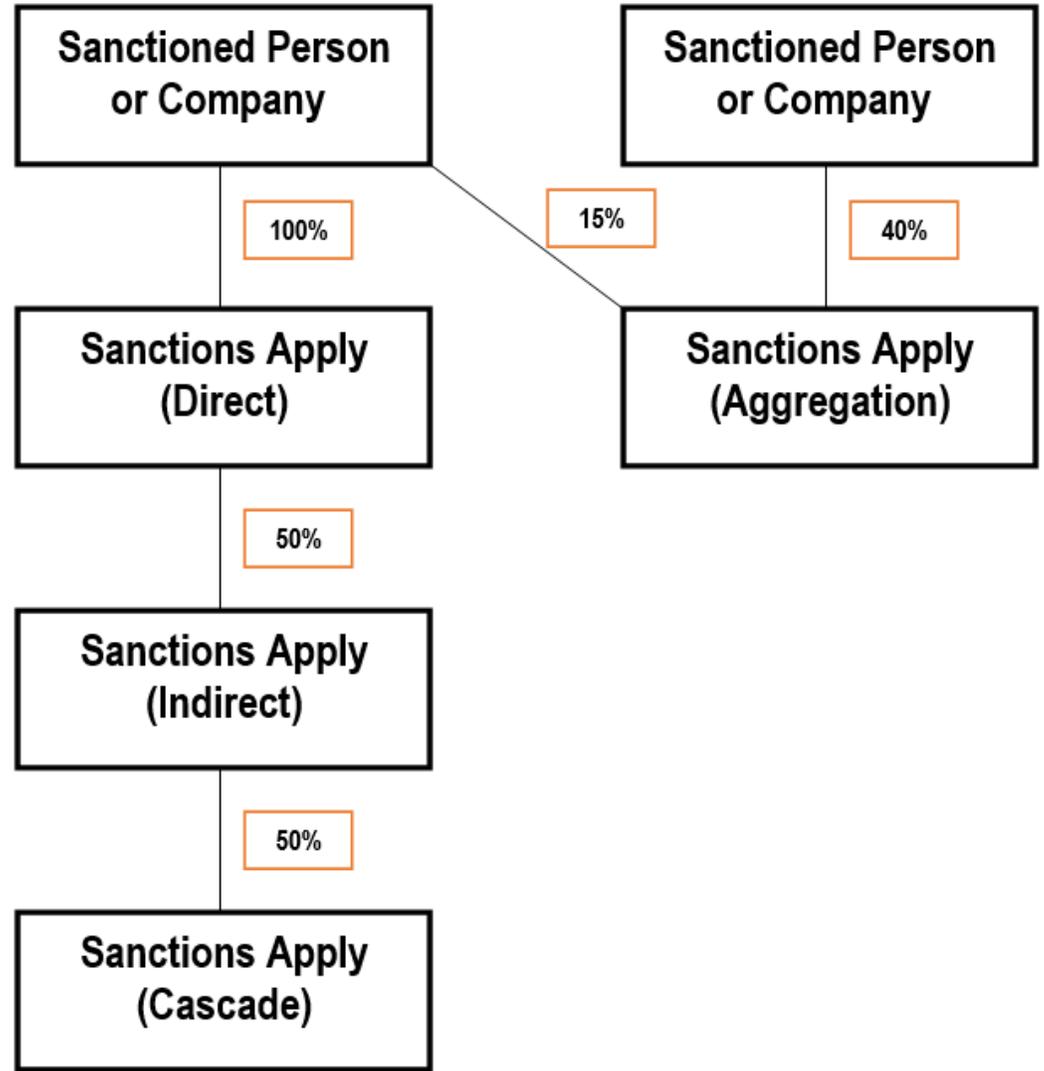


“Causing” a Violation: Example

- CSE TransTel, a Singaporean entity
 - Dealt with Iranian companies to deliver and install telecommunications equipment in Iran and/or Iranian territorial waters
 - Transferred related USD funds from its USD-denominated account at a Singaporean bank
 - USD funds were processed through the United States
- OFAC determined that CSE TransTel “**caused**” financial institutions to violate US sanctions laws involving Iran
- CSE TransTel agreed to pay **\$12,077,066** to settle with OFAC
- Enforcement cases from OFAC take several years to process; we expect similar enforcement cases involving prohibited parties in Russia and Belarus in the coming years

OFAC's "50 Percent Rule"

- Applies to both SDNs and SSIs
- If an entity is 50% or more owned, directly or indirectly, by one or more SDN (or SSI), that entity is also considered an SDN (or SSI), even if the entity is not itself listed
 - **Subsidiary:** Sanctioned Person or Company is designated as an SDN; all subsidiaries 50% or more owned directly or indirectly by Sanctioned Company are also treated as SDNs even if not listed on the SDN List
 - **Aggregate Owners:** Company is owned 15% by one SDN company and 40% by another SDN Company. The Company is owned 50% by one or more SDNs and is treated as an SDN even if not listed on the SDN List
- Note: there are some exceptions under the SSI rule where a 33% ownership interest by an SSI entity is sufficient to trigger SSI restrictions in a subsidiary



Russia-Related Sanctions: New Investment Ban

- Among the most broad and comprehensive of any Russia-related prohibition
- [Prohibitions](#) include:
 - **New investment** in the Russian Federation by a US person, wherever located;
 - The exportation, reexportation, sale, or supply, directly or indirectly, from the United States, or by a US person, wherever located, of **any category of services** as determined by the US government, to any person located in the Russian Federation; and
 - Any **approval, financing, facilitation, or guarantee** by a United States person, wherever located, of a transaction by a non-US person where the transaction by that non-US person would be prohibited if performed by a United States person or within the United States.
- “New investment”
 - The “commitment of capital or other assets for the purpose of generating returns or appreciation” after the effective date of the ban
- Does not include:
 - Maintenance of an agreement that existed prior to the ban
 - Ordinary sales to/from Russia (but other restrictions may apply)

Russia-Related Sanctions: Banned Services

- US government may designate any category of services that are prohibited
- One such designation to date: [accounting, trust and corporate formation, and management consulting services](#)
 - Export, reexport, sale, or supply of these services, directly or indirectly from the United States, or by a US person wherever located, to any person in the Russian Federation is prohibited
 - Non-US persons must also comply where any such services involve a US nexus
- Does not prohibit:
 - Certain services to an entity located in Russia that is owned or controlled, directly or indirectly, by a US person, or
 - Services in connection with the wind down or divestiture of an entity located in Russia that is not owned or controlled, directly or indirectly, by a Russian person
- Other examples: Price Cap Policy for [crude oil](#) and [petroleum products](#) of Russian origin
- Additional examples of non-services related restrictions include, but are not limited to:
 - Exportation from the United States of USD-dominated banknotes;
 - Certain transactions related to Russian sovereign debt

Secondary Sanctions

- No US jurisdiction necessary
- Apply to non-US persons
 - Usually related to “significant transactions” with sanctioned parties (e.g., Russian SDN)
- SDN Designation, e.g.,
 - KVT-RUS and its vessel, Fortuna (supporting Russian energy export pipelines)
 - Rosneft Trading SA and its chairman (operating in Venezuelan oil sector)
- Deny access to US market, e.g.,
 - Loss of US Export-Import Bank assistance
 - Loss of access to US financial markets
 - Prohibitions against US persons’ investment
 - Exclusion of officers, principals, and shareholders from the United States
 - Ineligibility to receive US export licenses
- U.S. intends to apply secondary sanctions against non-U.S. persons who support Russia’s war effort in Ukraine

Licenses and Penalties

- **Licensing:**

- **Generally, an OFAC license is required for prohibited transactions subject to US jurisdiction**
- **General licenses** (depends on sanctions program)
 - For provision of certain humanitarian assistance
 - Winddown licenses
- **Specific licenses**
 - No guarantees
 - Could take a long time – could be 1-5 years

- **Penalties:**

- **Criminal violations:** up to \$1 million per violation; up to 20 years imprisonment
- **Civil penalties:** up to over \$1.5 million fine (depending on the applicable law and inflation rate) per violation
 - Strict liability standard (i.e., does not require knowledge or intent)
- Penalties may be imposed against individuals
- Additional penalties depending on specific sanctions laws

- **Secondary Sanctions:** Risk to non-US person support to sanctioned parties / countries

Russia- and Belarus-related Export Controls Update



US Export Control Laws: Items Subject to the EAR

- US Export Administration Regulations (EAR); maintained by US Department of Commerce, Bureau of Industry and Security (BIS): covers “Dual-Use” Items and Technology
- The United States exercises jurisdiction over items subject to the EAR
- Items subject to the EAR include:
 - US-origin items;
 - Items that are in the United States in transit to a foreign (non-US) country;
 - Foreign (non-US)-made items that incorporate more than a *de minimis* amount of controlled US-origin components or technologies; and
 - Certain foreign (non-US)-made items that are direct products of US-origin technologies, under the foreign-made direct products rule (FDPR)
 - May be specific to the purchasing party or ultimate end user (e.g., footnote 1, 3, and 4 entities)
- If an item is subject to the EAR, US export control laws apply—even if the activity takes place entirely abroad and involves only non-US persons
- *De minimis* (small amounts of US content) and Foreign Direct Product Rule calculations often require consulting the manufacturer of the item

US Export Control Laws: Items Subject to the EAR

- If an item is subject to the EAR, it may require a BIS export license to be exported, reexported, or transferred (in-country)
- Whether a BIS license is required depends on several factors, including:
 - The origin of the goods;
 - The extent to which the item is controlled on the BIS Commerce Control List (CCL), based on the item's Export Control Classification Number (ECCN);
 - The destination of the item;
 - The end use and end user of the item
 - For Russia and Belarus: if the item was manufactured using certain US-origin technology or software or in a plant or equipment that itself is a direct product of certain US-origin technology or software (addressed on next slide)

Russia- and Belarus-Related Sanctions: Export Control Laws

- An export license is [required](#) to export many (but not all) US items to or within Russia or Belarus
 - Restrictions also apply to **reexport** or **transfer** and activities of US persons anywhere in the world
 - Consult manufacturer to determine if item is subject to the EAR and/or if it is on the Commerce Control List ([CCL](#))
- Even certain items subject to the least stringent export controls under the EAR (i.e., EAR99 items) require a license, if destined for a military end user or military end use in Russia or Belarus
- EAR99 items requiring an export license for Russia or Belarus include:
 - EAR99 items used in certain [Russian energy sector projects](#) (e.g., drilling rigs, high pressure pumps, and subsea processing equipment)
 - EAR99 items subject to [Russia industry sector sanctions](#); covers a host of industrial and commercial items (e.g., bulldozers, industrial engines, boilers, motors, fans, ventilation equipment)
 - EAR99 [chemicals and related items](#) (e.g., discrete chemicals, biologics, fentanyl, its precursors, and related equipment)
 - Certain [luxury goods](#)
 - Transfers to military end users or for military end uses

New Rule Applicable to Russia and Belarus Trade: Foreign Direct Product

- [Russia Foreign Direct Product Rule](#)

- Non-US-produced items located outside the United States are subject to the EAR when they are a “direct product” of specified “technology” or “software,” or are produced by a plant or 'major component' of a plant that itself is a “direct product” of specified “technology” or “software.”

- Under the New Russia Foreign Direct Product Rule, an export license is required for non-EAR99 items manufactured in countries not otherwise exempt from the rule that are a direct product of:

- US-origin technology or software that is more sensitive than EAR99, or
 - A plant or equipment that itself is a direct product of US-origin technology or software that is more sensitive than EAR99; and
 - For transaction with or involving military end-users (footnote 3 entities), the product would be controlled even if the equivalent of EAR99



China Export Controls Update



New US Semi-Conductor and Supercomputing Controls on China

- On October 7, 2022, the US Department of Commerce's Bureau of Industry and Security (BIS) issued [two rules](#) amending the EAR to expand export controls on China-destined semiconductor and supercomputer items.
- New Export Control Classification for Advanced Semi Equipment (and specially designed components), Chips, Software, and Technology:
 - Requires licenses to all customers of these products under new Regional Stability ("RS") controls when destined to China
 - Adds new end use license requirements, including certain EAR-controlled items for use in supercomputers, for the development or production of semiconductor manufacturing equipment, and for the development or production of semiconductors destined to fabrication facilities ("fabs") in China that produce:
 - Logic chips with non-planar transistor architectures or with a "production" technology node of 16/14 nanometers ("nm") or below;
 - DRAM memory chips of 18nm half-pitch or less; or
 - NAND flash memory chips with 128 layers or more (collectively, "Restricted Chips").
- Restricts the ability of US persons to support (directly or indirectly) the development or production of integrated circuits ("ICs") at certain semiconductor fabs in China that produce Restricted Chips
 - Including the shipment of non-EAR products made overseas if directly supported by a US Person
 - US person support restrictions limited to "authorization" (*i.e.*, excluding administrative or clerical) activities and servicing
- Expansion of the Scope of the EAR, Foreign Direct Product Rules covering non-US products:
 - Expands potential restrictions on Entities List companies; and
 - Adds two new Foreign Direct Product Rules for certain advanced computing products, and those that will be used in or with a Supercomputer, or used in development or production of any part, component or equipment that will be used in a supercomputer destined for China

Additional Updates to US List-Based Export Controls on China; Implications for Non-US Companies

- Constant changes to US lists including Denied Persons Lists (Temporary Denial Orders), Entity List and Unverified List
- Mostly additions to lists, but some deletions
- Lists can require licenses to or prohibit transfers to certain end-users on designated lists even if a license would not otherwise be required for export or re-export to that country for similarly situated entities not on prohibited lists
- Implications for non-US companies:
 - Determine if the transaction is subject to the EAR, whether because of U.S. content in more than *de minimis* amounts, U.S. person involvement (e.g, to service the product) or product was manufactured subject to the Foreign Direct Product Rule (non-US-produced items located outside the United States are subject to the EAR when they are a “direct product” of specified “technology” or “software,” or are produced by a plant or 'major component' of a plant that itself is a “direct product” of specified “technology” or “software.”)
 - If the transaction is subject to the EAR, determine the classification of the items and whether a license is required
 - Failure to follow the US rules risks being placed on the US prohibited lists
 - This has happened to companies located in countries that are close allies of the U.S. where the companies violated the EAR by making unauthorized transfers to entities on prohibited lists
 - *Risks are particularly high for exporters in the high technology industries, especially semi-conductor equipment and supercomputers, or any transfers to entities that support the Russian war effort against Ukraine*

What You Should Do to Remain in Compliance with US Trade Sanctions and Export Controls?



Sanctions Risks in Sale of Goods/Services

- **Assess US Persons Risks**

- Sales of goods and/or services to SDNs and/or to embargoed countries/regions
- Sales of goods and/or services for prohibited end-use
- Sales of goods, technology, services or software
- Facilitation

- **Assess Non-US Persons Risks**

- Sales of goods, technology, services or software subject to US jurisdiction to prohibited parties or which require licenses
- “Causing” a US Person to violate sanctions by a non-US person
- Facilitating any direct or indirect support for Russia’s war effort in Ukraine

- **Determine if a counterparty or others involved becomes a target of sanctions**

- Transactions may be prohibited from the point of designation
- Collection of payment for goods and services provided may be prohibited (even if the goods and services were provided *prior to* the designation)

Steps to Remain in Compliance with US Sanctions

- Determine if the transaction is subject to US primary jurisdiction
 - US persons including US citizens and US permanent residents (aka “Green Card Holders”) involved?
 - Trade in US dollars, involving US financial institutions or their subsidiaries?
 - Any activities actually in the US?
 - Any other support from the U.S. including cloud-based computing or other IT or financial services support?
 - Any management or supervisors in the U.S.? Involvement of U.S. board members? Financial or payment support from the US?
- Conduct due diligence on customer
- Check US lists for customer, transaction, all intermediaries including financial institutions, freight forwarders
 - Consider retaining a software service provider to check the lists; OR
 - Check Consolidated Screening List (checks OFAC and Commerce Department lists) available at: <https://www.trade.gov/consolidated-screening-list>
- If the transaction is *not* subject to US primary jurisdiction:
 - Evaluate risk of Secondary Sanctions and whether to proceed as a policy matter, risks of effect on access to US market
- Humanitarian trade for civil use (agricultural products, medicines and medical devices, most fertilizer sales) generally exempt UNLESS trade will be used for the war effort

Steps to Remain in Compliance with US Export Controls

- Items of US origin?
- Any items actually in, or transported through, the United States?
- US-origin content above de minimis amounts?
- Subject to the Foreign Direct Product Rules?
 - Non-US-produced items located outside the United States are subject to the EAR when they are a “direct product” of specified “technology” or “software,” or are produced by a plant or 'major component' of a plant that itself is a “direct product” of specified “technology” or “software.”
- Conduct due diligence on customer (military end user? Sanctioned for another purpose?)
- If the transaction is to a prohibited region of Ukraine (Crimea, Donetsk or Luhansk), subject to US controls based on the on incorporation of goods, software and technology to Russia, Belarus, or items other than the most basic items manufactured with US technology, software, plant or equipment, a US license will be required
 - License unlikely to be granted unless extraordinary policy reasons (.e.g., humanitarian support, safety of flight, etc.)
- Humanitarian trade for civil use (agricultural products, medicines and medical devices, most fertilizer sales) generally exempt UNLESS trade will be used for the war effort

Importance of Due Diligence and Sanctions Screening

- Intent or knowledge is not required to trigger a violation (strict liability standard)
- **A robust due diligence / sanctions screening procedures necessary**
 - Screen all counterparties (also consider the 50 Percent Rule)
 - Include “sanctions provisions” in contracts
 - Monitor and audit counterparties regularly
 - Regular updates to screening tools
 - The US has adopted sanctions against parties that failed to complete an internet search for even minimal due diligence on a sale
- **Account for variants**
 - Include alternative spellings, AKA names
 - Could use automated screening software with “fuzzy” logic
- Screening and implementing a compliance program can be considered a **mitigating factor** in enforcement actions

Due Diligence Example - Tango Card (2022)

- Emphasizes need to implement reverse IP check to determine if person ordering products is from a sanctioned location
- The Tango Card settlement agreement is one of several OFAC enforcement actions involving sanctions screening and IP blocking deficiencies in recent years.
- Tango Card, a US-headquartered company that supplies and distributes electronic rewards to support client businesses' employee and customer incentive programs.
 - Tango engaged in 27,720 transactions with persons with an internet protocol ("IP") address or email address associated with Cuba, Iran, Syria, North Korea, and the Crimea region that resulted in apparent violations of US sanctions.
 - OFAC determined that although Tango Card maintained IP blocking and sanctions screening procedures for its direct customers (i.e., merchants), Tango Card did not maintain such procedures with regard to the recipients of rewards (i.e., the merchant's customers and employees).
- OFAC indicated that Tango Card voluntarily self-disclosed these violations, which the agency determined were non-egregious, and Tango Card was only required to pay a \$116,048 settlement. However, the statutory maximum civil monetary penalty amount for the apparent violations was \$9,168,949,062 according to OFAC.
 - This enforcement action emphasizes the importance of effective screening for persons located in comprehensively sanctioned jurisdictions—including ensuring that shipping or billing address information, IP addresses, or email address suffixes collected during the normal course of a company's business.

Russia-Related Red Flags

- Examples of red flags for potential export control evasion activity:
 - Parties to transactions with addresses that do not appear consistent with the business or are otherwise problematic (e.g., either the physical address does not exist, or it is residential)
 - Last-minute changes to transactions associated with an entity in Russia or Belarus
 - Rapid shifts to new purchasers of transactions involving restricted goods
 - Transactions involving consolidated shipments of goods that previously would have been destined for Russia or Belarus; now destined for a transshipment country or a country without restrictions on exports/re-exports to Russia or Belarus
 - Transactions involving freight-forwarding firms that are also listed as the product's final end customer
 - Transactions associated with atypical shipping routes for a product and destination
 - Companies or individuals with links to Russian state-owned corporations (including shared ownership, as well as branches of, subsidiaries of, or shareholders in such state-owned corporations) involved in export-related transactions or the provision of export-related services
 - Unusual quantities (particularly for spare parts, services, etc.)

US Regulatory Citations

- US sanctions and export control rules for Russia, Belarus and China are included in hundreds of pages of US guidance
- Most important references are as follows (guidance is updated frequently; check for updates):

OFAC Sanctions Russia and Belarus

- Russian Harmful Foreign Activities Sanctions: <https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information/russia-related-sanctions> (Executive Orders 14071, 14068, 14066, 14039, and 14024; four directives, including amendments, 31 general licenses, three statutes, nine determinations; 26 *Federal Register* notices)
- Ukraine/Russia-Related Sanctions: <https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information/ukraine-russia-related-sanctions> (Executive Orders 14065, 13883, 13849, 13685, 13662, 13661, 13660; four directives; 10 general licenses plus update to List of Authorized Medical Supplies); five statutes; 12 *Federal Register* notices)
- Countering America's Adversaries Through Sanctions Act-Related Sanctions: <https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information/countering-americas-adversaries-through-sanctions-act-related-sanctions> (Executive Order 13849, three statutes, some of which also apply to other countries)
- Magnitsky Sanctions: <https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information/the-magnitsky-sanctions> (Two statutes, three *Federal Register* notices, some of which also apply to other countries)
- Belarus Sanctions: <https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information/belarus-sanctions> (Executive Orders 14038, 13405, two statutes, three general licenses, five *Federal Register* notices)

Export Controls under the EAR: Russia and Belarus

- Overall guidance: <https://www.bis.doc.gov/index.php/policy-guidance/country-guidance/russia-belarus>
- Russia and Belarus-specific provisions in the Export Administration Regulations, § 746.8: <https://www.bis.doc.gov/index.php/documents/regulation-docs/420-part-746-embargoes-and-other-special-controls/file>

Export Controls under the EAR: China

- Advanced Computing and Semiconductor Manufacturing Items; Supercomputer and Semiconductor End Use: [Federal Register :: Implementation of Additional Export Controls: Certain Advanced Computing and Semiconductor Manufacturing Items; Supercomputer and Semiconductor End Use; Entity List Modification](#)
- Entity List, Denied Persons List, Unverified List, Military End-User List: [Entity List \(doc.gov\)](#)

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