



## STEPTOE OUTSIDE COUNSEL

# Preparing for inevitable changes in trade controls

Operating in the world of economic sanctions and export controls, you are no stranger to change. Major shifts in policy and related rules arise frequently, sometimes affecting multiple countries and customers, and often upending established business practices. In sanctions policy, the US government recently reversed its position toward certain Belarussian companies and effectively reactivated longstanding sanctions by revoking a general license from 2015 – and that was before the EU announced new Belarus sanctions in May. In another example, the US Department of Commerce surprised many when it halted exports of many items with US technology ties to Huawei last August by tightening its rules. The US government is continuing to develop its overall China and Russia policies, which will inevitably result in changes to export rules and sanctions for these countries, while other countries around the globe also consider their sanctions and export rules.

These types of regulatory updates are common, given complex and ever-changing international dynamics. As global compliance manager, how should you react to an immediate shift, and how do you conduct your operations so you can anticipate and face these changes effectively?

When you see a change in sanctions or export rules, what immediate steps should you take? First, make sure you fully understand the change – consider what actions were authorized previously and what is prohibited going forward. Second, consider whether and how these changes affect your company’s ongoing business practices. Understand the specific sales and transactions impacted by these changes. Third, stop newly prohibited activity and alert relevant business segments with practical guidance. Make sure automated systems are updated. If you need assistance with interpreting the change or conducting due diligence within your business practices, reach out to your outside compliance counsel or other professionals for support.

Beyond each immediate crisis, what compliance elements best position you to adjust to inevitable changes? Follow these best practices:

- Sign up for alerts. Government agencies, law firms, and other entities regularly issue alerts on regulatory changes – get on their lists and check relevant government websites and publications for rule changes.
- Understand your company’s business and internal systems. Knowing how global trade is incorporated into your company’s business practices and

management software is critical to your ability to manage and respond to policy changes. Think ahead about how you might identify the sales and transactions affected by a new restriction and allow you to adjust sales and export practices to align with new guidance. For example, if automated platforms do not include destination and end-user information as individual fields, adding those fields may facilitate your ability to respond quickly.

- Make yourself visible within your organization and ensure you know who to call when quick change is needed. The more your role is known and you understand the individuals implementing operations, the better positioned you are to implement rule changes quickly and effectively.
- Ensure timely screening. Export and other foreign transactions should be screened against restricted party lists and for export controls. Screening should be performed not only at the contract-formation stage, but also regularly, including immediately before export so that any later developments are captured.
- Practice good recordkeeping. Ensure that sales and transactions are properly documented with relevant details. If certain activities are authorized at one time, but then prohibited later, you want to be able to prove that you undertook activities within the proper window. If only certain activities are allowed with a company, such as pursuant to a general license issued for that entity, be sure to document that your transactions fall only within the purview of authorized activities.
- Develop strong contract language. Ensure that your contract language includes escape clauses allowing you to exit without penalty when regulatory changes prohibit you from continuing to transact with a customer or country.
- Stay abreast of foreign policy developments. Keeping a pulse on international geopolitical developments is crucial. Sanctions and export control regulations always reflect broader policy goals, so remaining aware of foreign policy positions you to anticipate upcoming regulatory changes, and sharing that information with your business teams can help to shape their supply chain, sales, and investment strategies going forward. ■

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