



Importing from China – is your due diligence sufficient?

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Procurement and importation from China increasingly involve complex and emerging regulatory risks, going beyond traditional customs considerations like rules of origin and valuation. Sanctions, export controls, and other national security or foreign policy regulatory regimes may impact a wider array of activity than in the past, from R&D and investments, to procurement and importation. This article highlights key US risk areas – also seen in other jurisdictions around the world – in procuring goods and services from China.

Sanctioned parties

Companies procuring goods or services in China should consider reviewing the scope of their sanctioned party due diligence and screening to ensure they are appropriately protecting themselves in their highest-risk activities. This may include screening not only customers and suppliers but also other parties to the transaction, such as service providers, shippers, and other parties in the supply chain. In addition, though sometimes challenging, companies can further reduce risk by attempting to confirm that an unlisted party would not be treated as sanctioned due to ownership or control by sanctioned parties. This is especially important in countries such as China where there are a large number of sanctioned parties, running the gamut from mid-level government officials, to trading companies and their principals, to subsidiaries of large state-owned enterprises, and others.

Export control risks

Export controls only apply to exports, right? Wrong. US export controls are broader than what many may believe. On the procurement front, there are two main risks to consider: first, whether any of the parties involved are subject to targeted export control restrictions, and, second, whether the products/technologies involved may be subject to export control restrictions applicable to the country as a whole. Many Chinese companies in the technology, construction, minerals, and other sectors are subject to targeted US

export controls. For example, companies designated under the 'Entity List' typically cannot be provided with any US-origin goods, software, or technology, or even many types of non-US products or technology that have US content or that were produced using US technology or software. These types of US-origin (or otherwise US-linked) products and technologies may even require a licence to share with a Chinese supplier that is not a restricted party. So, when preparing to provide a supplier with specifications, know-how, tooling or testing equipment, troubleshooting feedback, or many other types of products or technical information necessary for an effective supply relationship, remember to consider 'export' compliance as well.

Sanctioned territory links

China has trade links with places like North Korea and Iran, which are subject to broad US sanctions restrictions. Therefore, it is important to assess the risk that goods or services procured from China may have been sourced from such a sanctioned territory. For example, in a 2019 OFAC penalty involving the importation of false eyelash kits procured in China that contained materials sourced from North Korea, the US sanctions enforcer characterised China as a 'high risk' area when it comes to North Korea sanctions, warranting a more robust sanctions compliance infrastructure for such procurement activity.

Restricted conduct

Supply chain compliance measures should include not just a review of potential sanctioned party involvement and links to sanctioned territories, but also whether any of the underlying conduct may be sanctionable or give rise to import restrictions or other legal risks. For example, the US government may prohibit the importation of goods due to forced labour concerns. A Chinese supplier, or even a purchasing company itself, could potentially become sanctioned if it is involved in forced labour or other sanctionable conduct. Moreover, civil or

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criminal penalties, or reputational risks, can also arise in such cases. In short, an effective compliance approach may call for a broader look at one's suppliers and service providers, taking account of any sanctionable conduct with which they may be associated.

Supply chain security regulations

Another emerging risk area is the possibility that goods or services with a supply chain link to China may be restricted from being sold or used in the United States or other countries. This risk is particularly high in the area of Information and Communications Technology and Services ('ICTS'), pursuant to a newly-implemented and wide-ranging US regulation, as well as government contracting. In addition to the regulatory risk, there is a commercial risk that it may not be possible to sell the product or service as intended if the supply chain is viewed by the US government as raising security concerns. □



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