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Global Trade Advisory Alert

US publishes interagency guidance on illicit shipping practices; BIS publishes interim final rule amending General Prohibition Three of the EAR

Interagency guidance on illicit shipping and sanctions evasion practices

On 14 May 2020, the US Department of State, the US Department of the Treasury's Office of Foreign Assets Control, and the US Coast Guard published interagency guidance addressing various sanctions risks, including illicit shipping and sanctions evasion practices. The guidance focuses on sanctions against Iran, North Korea, and Syria, and specifically addresses risks in the maritime industry, as well as the energy and metal sectors. The guidance examines common deceptive shipping practices and provides exporters with general due diligence and sanctions compliance approaches.

The guidance provides a non-exhaustive list of several mechanisms employed by individuals and entities conducting illicit maritime trade activity that may violate US sanctions. This list includes:

- Disabling or manipulating the Automatic Identification System (AIS) on vessels;
- Physically altering vessel identification;
- Falsifying cargo and vessel documents;
- Ship-to-ship transfers used to evade sanctions by concealing the origin or destination of surreptitiously transferred petroleum, coal, and other materials;
- Voyage irregularities, such as disguising the ultimate destination or origin of cargo or recipients by using indirect routing, unscheduled detours, or transit or transshipment of cargo through third countries;
- False flags and flag hopping, such as falsifying the flags of vessels to mask illicit trade, or repeatedly registering vessels with new flag states to avoid detection; and
- Complex ownership or management.

The guidance recommends increased vigilance against the above tactics, particularly around shipments deemed high risk by the US, such as those transiting maritime areas in proximity to Iran, North Korea, and Syria.

In addition to the above list of activities that may violate US sanctions, the guidance offers general approaches and business practices to identify and target suspicious activity, including:

- Institutionalizing sanctions compliance programs;
- Establishing AIS best practices and contractual requirements;
- Monitoring ships throughout the entire transaction lifecycle;
- Knowing your customer and counterparty programs;
- Exercising supply chain due diligence;
- Considering specific contractual language or provisions to address suspicious activity; and
- Sharing industry information.

Finally, Annex A of the guidance sets forth specific industry actors that may be subject to the US sanctions compliance, including maritime insurance companies, shipping industry associations, regional and global commodity traders, supplier and brokering companies, and financial institutions, among others. In addition, Annex B provides information on maritime industry sanctions related to Iran, North Korea, and Syria.

BIS's interim final rule on foreign produced items

On 15 May 2020, under the authority of the Export Control Reform Act of 2018, the US Department of Commerce's Bureau of Industry and Security ("BIS") published an interim final rule and request for comments amending General Prohibition Three of the Export Administration Regulations ("EAR"), which addresses foreign-produced direct product re-exports. The interim final rule change comes after BIS identified efforts by Chinese telecommunications companies to circumvent and otherwise undermine restrictions on doing business with entities on the Entity List, which sets forth foreign persons, businesses, and other organizations that are subject to specific restrictions and license requirements for the export, reexport, and/or transfer of specified export-controlled items. Over the course of the previous year, BIS has placed over 100 Chinese telecommunications companies on the Entity List.

The interim rule results in the following foreign-produced items now being subject to the EAR:

- Items, such as semiconductor designs, when produced by certain Chinese telecommunications companies and affiliates on the Entity List that are the direct product of certain U.S. Commerce Control List (CCL) software and technology; and
- Items, such as chipsets, when produced from the design specifications of certain Chinese telecommunication companies or an affiliate on the Entity List that are the direct product of certain CCL semiconductor manufacturing equipment located outside the US will only require a license when there is knowledge that they are destined for re-export, export from abroad, or transfer (in-country) to certain Chinese telecommunication companies or any affiliates on the Entity List.

In its notice, the BIS has also provided a 120-day period from the effective date of the final rule, where foreign produced items as described above are not yet subject to the new licensing requirements. The purpose of this grace period is to limit the immediate impacts to semiconductor manufacturing at foreign foundries using US equipment where the production process has already been initiated.

BIS will accept comments to the interim final rule until 14 July 2020. Comments should be submitted through the Federal eRuleMaking Portal (http://regulations.gov) and should be identified by docket number BIS 2020-0011 or RIN 0694-AH99

How we can help

Deloitte's Global Trade Advisory specialists are part of a global network of professionals who can provide specialized assistance to companies in global trade matters. Our professionals can help companies seeking to manage the current and potential impacts of the developments described above by:

- Supporting clients in reviewing export compliance strategies in order to adapt to upcoming changes,

including evaluating the applicability of license authorizations and license exceptions;
- Providing training and insights into export controls and sanctions compliance to leadership and employees; and
- Supporting modifications to trade processes and automation that require updates resulting from regulatory changes.

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