U.S.A. 2015

Key trends and challenges in export controls and sanctions

A special report from

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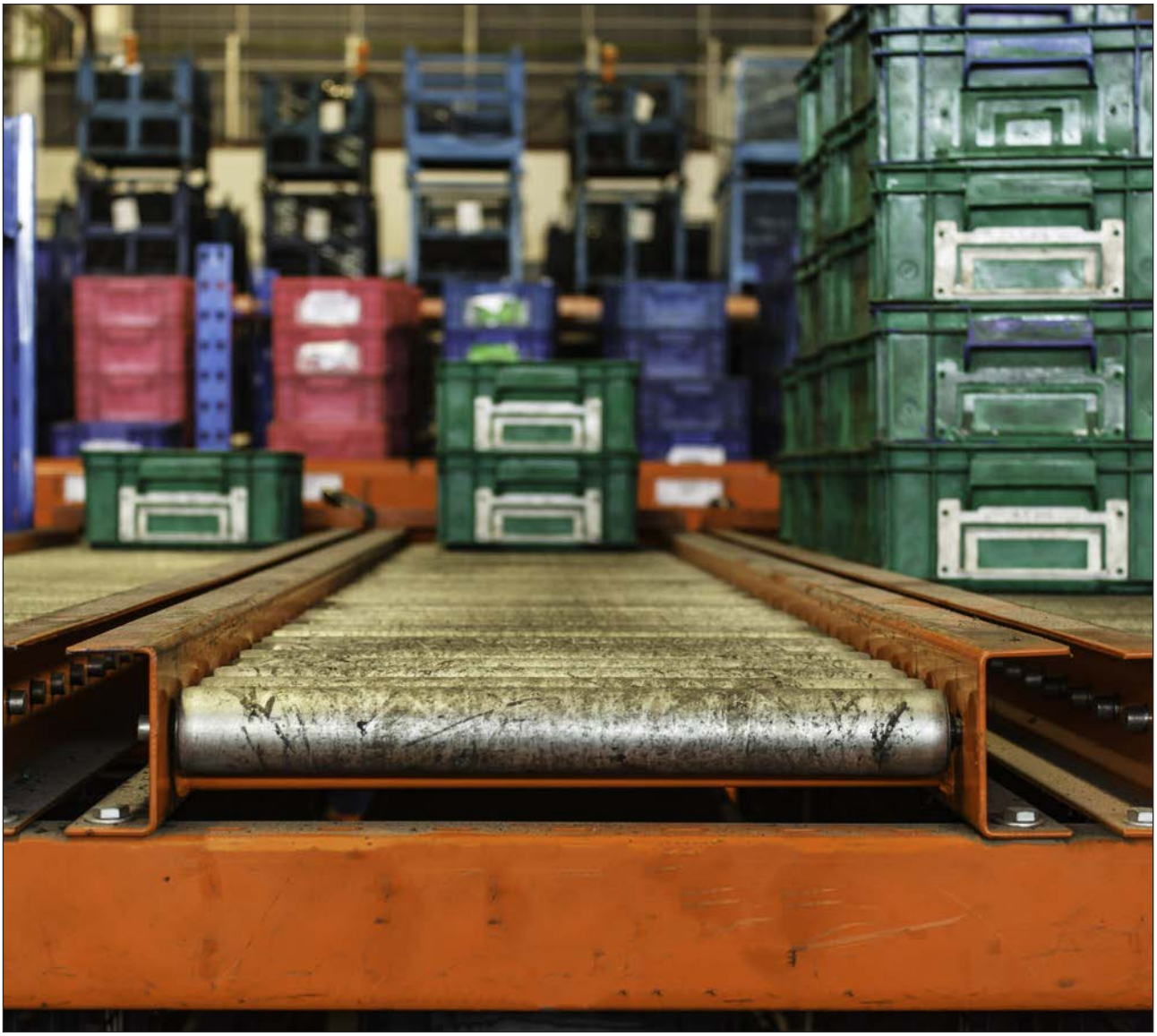
Special focus: U.S.A. 2015



Praphan Jampala

DESIGNATING CHANGE

In the first half of this year, relations between the U.S. and two old enemies, Cuba and Iran, appear to have undergone a radical change – auguring a possible thaw in trading relations with those countries. Inevitable complications, say sanctions lawyers, will require careful counsel.

2015 is shaking out to be quite a year for U.S. sanctions practitioners: not that 2014 wasn't – who knew, for example, that the U.S. and others would be slapping sanctions on Russia? But 2015 has seen milestones that have perhaps a greater resonance, still. In July, Cuba and the United States raised their flags in each other's respective capitals, marking the restoration of diplomatic ties for the first time in 54 years, and shortly afterwards, the U.S. Department of Commerce formally rescinded Cuba's status as a State Sponsor of Terror.

Perhaps more remarkable still, given the added international complexities of the conundrum, has been the emergence, on 14 July, of a 128-page agreement between P5+1 and the Islamic Republic of Iran regarding the latter's nuclear programme, the Joint Comprehensive Plan of Action ('JCPOA'). As at writing time, the removal of U.S. sanctions is still some way off and indeed, at a political level, the agreement isn't out of the woods,

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Secretary of State John Kerry yet to convince the U.S. Congress that the deal is a 'good deal', and not, as some in the U.S. and elsewhere have decried it, a historic mistake.

The chessboard is less active elsewhere: Kerry may have partnered successfully with his Russian counterpart Sergey Lavrov in their dealings with Tehran, but it's looking like stalemate in their own relations – Moscow isn't relaxing its grip on Crimea or its role in Eastern Ukraine, so the sanctions stay in situ: not quite Cold War, but no warm friends either. Still, things change fast, said one lawyer advising on sanctions matters: 'Clearly the United States is looking to realign its foreign policy priorities, take stock of existing threats, and seek closure on attitudes which, depending on your perspective, may need revising. Our clients are constantly evaluating risks and opportunities around that scenario.'

'In the short term, there's no significant change. But Iranian companies have been very active in reaching out to western companies in anticipation of a deal.'

Alan Gourley, Crowell & Moring

Talking to Tehran

As the Brookings Institute noted in a paper on U.S.-Iranian relations, 'since the seizure of the American embassy in Tehran more than 34 years ago, economic sanctions have been at the heart of Washington's strategy for dealing with Iran,' and, unsurprising, the accretion of layers of legislation will be hard to undo.

'We've had serious sanctions on Iran for 20 years that have blocked virtually every possible transaction involving U.S. persons and U.S. origin goods or services,' says Alan Gourley, a partner at Crowell & Moring. 'In the short term, there's no significant change. But Iranian companies have been very active in reaching out to western companies in anticipation of a deal. And it creates some pressure on them. They're being asked, "You want to be the first in the door?"'

'Iran is a very hot topic,' says Latham & Watkins partner Les Carnegie, who correctly predicted (speaking to *WorldECR* in mid-June) that the Vienna talks would over-run, but that there were 'reasonable grounds for optimism that [the parties] would come out with something', as indeed they have.

Estimates vary hugely as to how much the Islamic Republic will be enriched (pun unintended) by sanctions relief, as they do as to what Iran will spend the money on. But Iran possesses a population of 80 million people hungry for consumer goods, services and infrastructure, the world's fourth-largest oil reserves and, unlike many of its neighbours, a sophisticated industrial base.

'Many U.S. companies are animated about the prospect of a new market,' says Carnegie. 'Exporters of general consumer goods are very interested, and already there are opportunities for the sale of certain consumer communication devices as well as agricultural products, medicines and medical supplies and devices. But we're counselling our U.S. clients to temper their excitement or at least be realistic.' Carnegie notes that even if everything goes as planned, U.S. companies will be less likely to benefit than their EU partners.

"Most restrictions on U.S. persons won't be lifted as a result of the deal. My sense is that it's not what people were expecting.'

Rich Matheny, Goodwin Procter

This is because the European Union is set to roll back sanctions more quickly than the U.S. government. As Rich Matheny of Goodwin Procter notes: 'Most restrictions on U.S. persons won't be lifted as a result of the deal. My sense is that it's not what people were expecting. In fact, things are going to become more complicated still – especially around the issue of secondary sanctions. You're going to see non-U.S. companies in bed with Iran and interacting with U.S. companies – and that's going to raise some very interesting issues.'

Lauren Wilk, Director of Trade Facilitation Policy at the National Association of Manufacturers ('NAM'), says of the Iran developments: 'There's likely to be pretty limited impact in the near term – but thawing could have long-term positive effects – and U.S. business will be very competitive. But there are a lot of risks from both the compliance and the reputational standpoints.' Some companies, she says, will be 'nervous' about being perceived as early entrants into Iran: 'There's usually tension between business development and compliance, and compliance always wins.' But, she adds, 'Ultimately, we want to make sure that any restrictions/openings are equal and that U.S. companies are not unfairly disadvantaged.'

This is certainly an irony of sorts, says Trade Pacific law firm partner Corey Norton, given the leadership role that the U.S. State Department played in the negotiations. 'It looks like the impact is going to be disproportionate,' says Norton. 'Six countries negotiating, but ultimately there'll be more opportunities for the non-U.S. companies. The unravelling is going to be complex.'

Kay Georgi of Arent Fox has also been mulling over what opportunities lie in store for her clients post- Vienna: 'The three primary sanctions that the U.S. is looking at relaxing are those that relate to civil aviation, selected imports such as pistachios, caviar and carpets, and the activities of non-U.S. subsidiaries of U.S. parents, where they're consistent with the terms of the JCPOA – but it's never simple. It would be simple, for example, if OFAC were to issue a general licence authorising

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Latham's "well-regarded export controls and sanctions" lawyers "'demonstrate excellent judgment'" and provide "'carefully considered legal advice that really addresses a business client's needs.'"

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non-U.S. subsidiaries to do what they were not prohibited from doing before Congress passed, and the Administration implemented, in Fall 2012 s.218 of the Iran Threat Reduction Act. [This prohibits a non-U.S. entity owned or controlled by a U.S. person from engaging in any transaction with the Government of Iran, or any person "subject to the jurisdiction" of the Government of Iran, if current U.S. laws prohibit a U.S. person, or a person in the United States, from engaging in such a transaction.] But the government doesn't tend to do anything that straightforward!'

Sanctions relief 'is well down the road and it will be more limited in scope than what is being portrayed by some in the press'.

Ed Krauland, Steptoe & Johnson

Steptoe & Johnson partner Ed Krauland has little comfort to offer potential U.S. investors or would-be pioneers in the Iranian market as a result of the JCPOA, noting that the timing for sanctions relief 'is well down the road and it will be more limited in scope than what is being portrayed by some in the press'.

He points out that in addition to the obvious hurdle of the need for Congressional Review (and the exercise of the Presidential veto if Congress fails to approve the agreement), there will be no U.S. sanctions relief until Implementation Day – when the International Atomic Energy Agency ('IAEA') certifies Iranian compliance with certain JCPOA provisions, which would occur no sooner than later this year or in early 2016.

And relief, when it comes, is likely to be qualified by numerous factors, adds colleague Meredith Rathbone: 'In some respects, things are going to look a lot like the pre-CISADA days,' (i.e. before the ratcheting up of secondary sanctions that explicitly targeted the extraterritorial activities of non-U.S. companies). But not all secondary sanctions are disappearing under the U.S. regime. One example is that the U.S. is retaining the ability to impose secondary sanctions in the case of a [non-U.S.] company facilitating a transaction with the Iranian Revolutionary Guard Corps – which is so embedded in the Iranian economy that businesses will have to conduct extremely careful due diligence in order to establish whether those residual sanctions are likely to be triggered. And while there will be more opportunities for non-U.S. subsidiaries of U.S. companies, they will also remain subject to U.S. jurisdiction for Iran-related activity going forward.'

Rathbone adds that as a 'practical matter,' it will be interesting to see the extent to which non-U.S. banks and insurance companies are willing to

become involved in Iran-related transactions – even when relief is provided.

Les Carnegie says that if and when some relaxation arrives 'the regulatory agencies will continue to remind the public that those portions of the sanctions that have not been affected by the JCPOA continue to constitute U.S. law, and they will continue to enforce them. That is the usual narrative – and that's what we have also seen see in the case of Cuba, where there's been a significant change, but an embargo still remains in place.'

An as-yet-unanswered question, though, is whether those agencies would pursue, with the same kind of energy, 'historical' breaches. Carnegie suspects the answer to that is a definite 'yes', recalling a recent OFAC civil settlement for apparent violations of the former Iraqi Sanctions Regulations, relating to conduct that allegedly took place in 2002 and 2003.

Still, the lawyers are prepared. Olga Torres of Texas-headquartered Braumiller Law Group says: 'I know that Iran is going to generate a lot of work: the kind of questions that we get asked when there's any kind of relaxation in the regime are: "Can I use the exception?...Can you guide me through these rules." Companies will be looking to see whether it's safe – or still high risk. It's the same as happened with Myanmar and Cuba. The rules change, but what's the real impact of that? They need help with due diligence and screening transactions – and generally need the assurance of an attorney [being involved].'

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Olga Torres, Braumiller Law Group

Also with an eye on the changes, says Goodwin Procter partner Rich Matheny, are private equity companies, ever mindful of a shift in exposures. 'Where private equity makes investments outside of the U.S.,' says Matheny, 'they need to understand the new jurisdictional status of the target, and any possible facilitation risks. Even if the foreign company's transactions are not unlawful, how might it make them less attractive for selling or flipping in one or two years' time?'

According to Matheny, on several occasions, clients in the private equity space 'didn't appreciate jurisdictional status change and only later come to learn of it and then have needed to remediate at great expense. That's especially true where they've come unwittingly into exposure with the Iran sanctions.'

The force still there

For the moment, sanctions compliance tends toward the complex and multi-faceted. Doug Jacobson, of boutique trade law firm Jacobson Burton, predicts that the current enforcement focus will stay in place for at least the next three to five years. 'We're advising on a real variety of issues,' he says. 'For example, I'm the third-party auditor in a major sanctions-related case where we're dealing with both the BIS and OFAC. It's been a three-year engagement, and meant a lot of onsite locations across the world. And we're involved in four enforcement cases each of which involves the three agencies – BIS, State Department and OFAC.'

Erich Ferrari, of Ferrari & Associates, has built a niche practice almost entirely dealing with OFAC-related issues. He says: 'Some of our clients will be delisted under the JCPOA – and that's good news for them – and others will be seeking delisting. We're also working on behalf of businesses that want to transact with entities that will be coming off the SDN list.' Like others, he cautions: 'Nothing is changing fast!' – and observes – on the point about the licensing of transactions by foreign subsidiaries: 'If OFAC issues a general licence, that'll be good for business in so much as that they won't need to wait overly. But they'll confront uncertainties as to whether they're meeting the licence's conditions. If OFAC issues a specific licence, there'll be a flood of applications, and that's going to cause massive delays.'

'I can't see anything in the JCPOA that says that U.S. companies can invest in Iran – though those opportunities may be there for foreign firms.'

Erich Ferrari, Ferrari & Associates

More generally, Ferrari says he's concerned about over-exuberance leading to over-reach. 'I can't see anything in the JCPOA that says that U.S. companies can invest in Iran – though those opportunities may be there for foreign firms,' he points out, adding that while it's evident that Iranian companies are reaching out to potential Western partners, 'Even if sanctions are relaxed its going to be very difficult for companies to "partner" in the traditional sense of, say, joint venture agreements.'

Our Man in Havana?

As at writing time, while the U.S. has yet to appoint an official ambassador to Havana, sanctions lawyers are receiving flurries of enquiries from U.S. companies, NGOs and charities relating to the potential for activities on the Caribbean island.

Doug Jacobson speaks for many when he says that 'Cuba is the most over-rated. We get questions every day, but there's a lot of misinformation. Most legislation is going to stay until Congress acts – and anyway, Cuba is a small country with no money.' Still, he says, 'It's generating a lot of discussion. I'd also predict a lot of work around looking at claims settlements.'

Les Carnegie echoes the caution:

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'Cuba has gone through a big shift since the beginning of the year, but it's not quite as dramatic as reported in the popular press. Tourist travel is still not permitted, for example. Travel still needs to be tied to the 12 authorised categories that always existed – although it's no longer necessary to see OFAC for a specific travel licence in order to do so. We have seen interest about the changes to the Cuba sanctions from communications companies that have new opportunities and from NGOs getting involved in humanitarian activities, but it is important to remember that there's still an embargo!'

President Obama's announcement last December of a 'new course of relations' with Cuba was accompanied by the relaxation of some business restrictions including the authorisation of the export of 'certain building materials for private residential construction, goods for use by private sector Cuban entrepreneurs, and agricultural equipment for small farmers,' so as to 'make it easier for Cuban citizens to have access to certain lower-priced goods to improve their living standards and gain greater economic independence from the state.'

OFAC has also published general licences for 12 categories of travel to the island intended to promote Cuba's 'nascent private sector,' and permitted U.S. institutions to open correspondent accounts with Cuban banks. Uncertainty still prevails however.

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Doug Jacobson, Jacobson Burton

'On Cuba,' says Elsa Manzanares of Texas law firm Gardere, 'we've had a lot of enquiries, and we've been speaking to OFAC, but sometimes answers just aren't forthcoming. It seems like OFAC doesn't have the resources for a fast turnaround.'

The advice the firm finds itself giving, she says, tends to be 'very specific to the meaning of words in the light of policy goals – and our conversations with OFAC,' but might typically involve questions from travel service providers looking at the possibility of using general, not specific licences, or be around the issues of people-to-people exchanges or monetary remittances. There is some flexibility, she says, 'the trick is to find your carve-out.'

As things currently stand, says Arent Fox's Kay Georgi, businesses and others are at liberty to undertake fact-finding and research possibilities: 'It's always been possible to talk [to potential partners in Cuba] and to obtain specific or general use licences, so it's ok as long as you don't overstep the terms of your licence [OFAC guidance notes that a traveler's schedule '...must not include free time or recreation in excess of that consistent with a full-time schedule in Cuba'] or take any action which creates a prohibited Cuban interest in property. But the problem is the "private enterprise" requirement in the BIS licence exceptions. There are some very exciting sounding licence exceptions in licence exception SCP (Support for the Cuban People) – but it's not always easy to locate private enterprises in Cuba, especially given the dominant role of the state.'

Tough questions

This intrinsic difficulty, of ascertaining potential partners' true identity, relationship to government or designated parties, pervades all advice

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relating to business in sanctioned countries – not least where Russia is involved. For Olga Torres, partner at Braumiller Law Group, helping Texas-based oil and gas and related businesses navigate the sanctions regimes is an important part of her work-stream. 'So, in the case of Russia,' says Torres, 'a lot of clients are still continuing to work there, but they're having to make sure that their business partners are not in the sectoral sanctions lists. A lot of the time the questions that they ask revolve around ensuring that they've gone far enough in their due diligence.

'A client told us recently that they were doing business with the cousin of a denied party. But there was no way for us to confirm that this cousin didn't have a controlling interest in our client's business partner. Our advice was not to do it but it is ultimately for the client to make these kinds of decisions.'

How much probing are the agencies actually doing of Russia-related transactions? 'I think they're looking at deals, they realise that Russian companies are covering up and making things difficult for U.S. companies,' says Torres. With regard to enforcement generally, Torres thinks regulators are likely to start scrutinising mid-sized companies' transactions: 'I think they'll start focusing there because that's where there's a lack of resources. They're going to want to make the point that they have to keep up.'

'Our advice would be: Do your due diligence but remember you are attempting to comply with laws that apply specifically to "specially designated" persons – not everyone they come in contact with.'

Kay Georgi, Arent Fox

Over-compliance, though, says Georgi, carries its own risks: 'We've had clients take advice from third parties who have run reports advising against doing business with parties that have not been designated. Sometimes they rely on content that is potentially libellous. Our advice would be: Do your due diligence but remember you are attempting to comply with laws that apply specifically to "specially designated" persons – not everyone they come in contact with. A relative of an SDN is not an SDN. Clearly, where you see evidence that assets are being moved from place to place like the shell game, there's something going on and you may want to take a hard look to see if the cousin is acting as his SDN's cousin's agent. But it's a judgement call based on the facts.'

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ECR'S MANY SHADES OF GREY

It was hoped that reform of the U.S. export control regime would bring both ease of use and improved effectiveness. *WorldECR* asks: Has that goal been achieved? Or is the truth, as ever, not quite so black and white?

Six years ago, the U.S. president directed a review of the export control system, with the goal 'of strengthening national security and the competitiveness of key manufacturing and technology sectors', whilst also adapting to a changing economic and technological landscape. That review determined the system to be 'overly complicated, contains too many redundancies, and, in trying to protect too much, diminishes our ability to focus our efforts on the most critical national security priorities.'

It wasn't until April 2013 that America finally saw the publication of two final rules under Export Control Reform ('ECR'), and the process has been ongoing: category by category, the U.S. State Department's Directorate of Defense Trade Controls ('DDTC') and Bureau of Industry and Security ('BIS') within the Department of Commerce have been reclassifying many articles, moving them from the United States Military List ('USML') and thus ITAR regulation and the jurisdiction of the State Department, and placing them on the BIS-administered Commerce Control List ('CCL'), and thus regulated by the Export Administration Regulations ('EAR').

There is, they say, no gain without pain – and the challenge for industry has been in learning how to reclassify items according to the new regime. 'It's like the Harry Potter sorting hat', said one lawyer, 'but without the magic.'

Lauren Wilk, Director of Trade Facilitation Policy at the National Association of Manufacturers ('NAM'), says that while business lauds the objectives, the process '…needs to be efficient and predictable.' NAM, she says, has provided a great deal of input to the departments of Commerce and State – and welcomed the opportunity to comment on proposed rules, but as export controls become more targeted and flexible, 'so they also become more complicated. Where things were once black and white, there's a great deal more grey.'

Many of her member companies, she says, 'are now living in two worlds – those of the EAR and the ITAR – with some items having gone through transition and others not.' While there may be opportunities for increased exports and greater international collaboration, upfront cost in terms of putting in place IT systems and retraining personnel can be expensive.

Having previously worked at the DDTC as deputy lead on export control reform, Christopher Stagg of law firm Stagg Noonan is well placed to observe that there is sometimes – or often – a disconnect between the worlds of government, and industry: 'Industry and regulators,' says Stagg, 'have different perspectives and often the two perspectives speak past one another. This is fundamentally what my job is now in private practice – to make a client's case presentable to the regulators such that it anticipates and addresses the agency's objections while conveying the message in a way that is relatable to the regulators.' On this point, he adds that, as the official charged with authoring proposed rules, it was evident that 'industry generally wasn't providing the right depth of analysis' when responding to the rules: 'Frequently, the comments lacked specifics, so it was difficult to accept the proposed recommendations based on the comments themselves.'

A similar disjunction, he suggests,

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applies on the enforcement front: 'Since entering private practice, I've done about a dozen internal investigations – but only once advised a disclosure because the other investigations did not identify a violation. Often it's debatable as to whether a violation did or didn't take place – and where it has, it is usually low-grade violations and not a major issue. Of course, companies want to be in compliance but a policy of disclosing everything – particularly even where no actual violation took place – can work against you.'

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Christopher Stagg, Stagg Noonan

Keeping pace

While some lawyers are confident that Commerce and State will be able to have final rules by the end of 2016, Stagg isn't so sure: 'There's a lot of confusion about the proposed rules – and it's amazing how many rules have been proposed in such a short span. I think we're going to see a final rule on Category XVIII of the USML [directed energy weapons] before we see final rules on Category XII (fire control, range finder, optical and guidance and control equipment) – where there'll be a second proposed rule mid-2016, or Category XIV (which deals with toxicological agents, including chemical agents, biological agents, and associated equipment).' The effort to harmonise definitions, he predicts, might not be complete before the end of 2017.

Given the scale of the task, that's arguably not bad going. All lawyers *WorldECR* spoke to for this article have expressed admiration for the energies expended by the Assistant Secretary of Commerce for Export Administration at the Bureau of Industry and Security:

'Kevin Wolf has done so much in the last five years – some of the issues that are coming up now are things that BIS has been struggling with before they appointed him as assistant secretary – they go back several directors past,' says Arent Fox's Kay Georgi. But she adds that until the major definitions are finalised, Export Control Reform won't be complete: 'It really can't be until you know what it actually means to "export" or what constitutes "defense services".' Comments on these are due in early August.

Carmen Fellows, Senior Director of Global Trade Compliance at Finnmeccanica North America & DRS Technologies, says that not all companies are keeping up to speed with the myriad changes – and that that is causing problems: 'Yes, once a part or component is out of the ITAR there are definitely advantages, and it can improve the flow of parts and goods for the supply chain. The difficulty for foreign companies that have always procured parts that have traditionally been under ITAR is that the classification by U.S. suppliers is not being done quickly enough. Many suppliers have thousands of components to classify and they don't have the capacity. Where U.S. companies are not prepared, that's affecting foreign companies.'

Fellows believes that things will get better. 'In the long run, the benefits will become apparent,' she says. 'But for the moment, export control reform hasn't made compliance any easier. Now it's become necessary to put in place additional training, to rewrite procedures, bring on board additional manpower, create modifications to tracking systems and other IT processes.'

Latham & Watkins' Les Carnegie adds his weight to the consensus that there's still some pain to come – but says that some businesses are feeling the upside already: 'Some companies are still struggling with so much shifting product classification and it may be some time before they realise the benefits. But others have already seen that the process has been worth it. Certain companies are realising that they are no longer regulated under ITAR and their entire product line is regulated under the EAR. And that's easier for them. They no longer need to register annually with the DDTC.'

Crowell & Moring's Alan Gourley has been witnessing changes in the export control regime since 1981 when, he says, 'compliance people were essentially clerical staff – the State Department treated known exporters much less formally, even allowing shipment before State had issued the licence!' It was, says Gourley, 'after a succession of huge fines in the 1990s that all the major aerospace and defence companies began – facilitated by State's policy of having settling companies use a portion of their fines to enhance internal compliance – to invest in their compliance programmes. So the threat of fines, combined with extra spend, meant that the majors began to educate their people, and to push their subsidiaries to do the same. The result has been a massive professionalisation of compliance in the last 15 years.'

Change creates hurdles even for the highly skilled, he says: 'The challenge lies in the transition issues, identifying where a company's products have ended up, using some of the exemptions – such as the Strategic Trade Authorization (STA) in the EAR, and classification. There are issues because whereas once people in the defence industry where so familiar with ITAR, now they're more likely to miss something – with the result being a whole lot of little voluntary self-disclosures!'

'Certain companies are realising that they are no longer regulated under ITAR and their entire product line is regulated under the EAR. And that's easier for them. They no longer need to register annually with the DDTC.'

Les Carnegie, Latham & Watkins

Miller Canfield principal, Joseph Gustavus adds: 'As to export control reform, some companies have only ever operated under the ITAR compliance requirements so they do not have the

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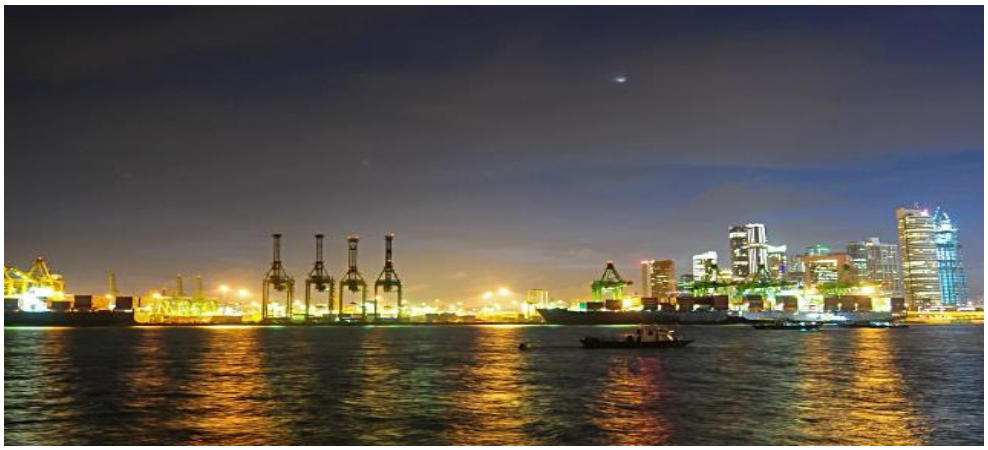

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compliance infrastructure necessary under the EAR. Although draconian in application, there was comfort to clients in the ITAR compliance regime because it was known to them. So companies traditionally operating in the ITAR environment knew for example that, almost always, an export control licence was required for any export of a defence article. Whereas the EAR is more subtle, with complex classifications and nuanced licence exceptions. And dealing with this new complexity is initially expensive to any company revamping its export control compliance programme post export control reform.'

The STA allows certain controlled item to be exported to U.S. allies and some other friendly countries under defined conditions without a transaction-specific licence. But, says Corey Norton of Trade Pacific, the fact that it isn't used more widely suggests that some businesses are still not really taking advantage of the benefits that ECR affords, for example, of the definition of 'specially-designed' introduced in 2013. He says: 'It's one of the most important aspects of ECR, but some companies are still wrestling with what it means. Many companies are saying that merely having our items clearly off the ITAR is enough of a relief. I'd be curious to know what the actual usage is of the opportunities that ECR provides.'

Helping businesses improve their bottom line by taking those opportunities is, says Norton, a key part of his role as an adviser, or 'ongoing business counsellor': 'One thing I've learnt the longer I've been doing this is that as you work with clients over a number of years, you get a feel for their issues, and they're sensitivities. It's really important to get out there to their factories, and see how things work – it really helps in advising them. And it's a lot more fun that way too!'

'Some companies have only ever operated under the ITAR compliance requirements so they do not have the compliance infrastructure necessary under the EAR.'

Joseph Gustavus, Miller Canfield

Beyond the beltway

But it's not all one-way traffic. Investors into the United States are recognising that they, too, need to understand export controls early in the acquisition process.

Miller Canfield is an international law firm that is headquartered in Detroit, whose world-famous car industry has spawned innovative businesses in a myriad of sectors. According to Joseph Gustavus, 'Ours is quite different to a traditional beltway practice advising big domestic corporations. A lot of sectors that have grown out of Detroit's automotive bent, such as robotics, machine tooling, aerospace, software – that informs our practice not only locally but also internationally.'

'As you work with clients over a number of years, you get a feel for their issues, and they're sensitivities. It's really important to get out there to their factories, and see how things work – it really helps in advising them. And it's a lot more fun that way, too!'

Corey Norton, Trade Pacific

Many of the companies that Gustavus advises (along with this colleague Jeffrey Richardson) are non-U.S. companies making inbound investments into this fertile pool of enterprises – and seeking representation on some of the regulatory elements of doing so. Gustavus explains: 'Sometimes the impetus is an acquisition, for which the buyer might seek CFIUS approval. We very much work in lockstep, advising on both regulatory compliance issues addressed at the same time. Having looked at CFIUS first, we'll look at compliance with U.S. export control laws in the context of a foreign parent collaborating with local company.'

Illustrative of that, a recent client instruction related to the purchase of a U.S. by a publicly-traded Chinese company: 'The client had a contract in place to supply items to the U.S. government,' explains Gustavus, 'Those items were set to transition to being under the jurisdiction of the EAR. But there were problems, because no one had experienced them being on the Commerce Control List.' Paving the way for the acquisition to go ahead, says Gustavus, meant 'buttoning things up with the DDTC – and talking to the CFIUS liaison there to really try to get to grips with how they wanted us to deal with the export control issues.'

Jeff Richardson says that around 25% of the firm's practice relates to the automotive sector, but that it also underpins much else of what it does, if indirectly: 'Software is another offshoot,' says Richardson. 'One of our clients is involved in time-capture software with adjunctive capabilities – i.e. workplace management. Look at the numbers of export controls that apply: First of all, there's encryption software held on servers all over the globe. Then the company hires programmers in Pakistan – and of course export of components, including items such as biometric readers. So we're on hand when to field questions, review contract arrangements – or provide advice on acquisitions.'

Practising out of San Francisco, Steven Brotherton's lawyering also takes on a regional slant – nor is his firm, Fragomen, a 'typical' export control practice (if such a thing can be said to exist): 'Our firm is different than most others. Though we are a global Am Law 100 firm (designating the largest firms in the U.S.), we are highly specialised on just two areas: export control and corporate immigration. But you name the industry, and our firm represents the institutions' – in addition to typical export control matters and enforcement representation, he says, more unique counseling relates to screening, potential discrimination issues, and the need to obtain licences and deemed exports.

Brotherton has some major clients on the East Coast, but for the most part, he says, he advises the kinds of business California is known for: semi-

conductor and software houses, aerospace and defence, chemicals, and biotech. And those clients are thankful for having local representation, especially considering the growing number of government investigations and enforcement actions on the West Coast.

Of export control reform, he points out that sometimes there are interesting and unintended consequences of the changes – an example, he says, being how the proposed re-writing of Category XII of the USML might impose greater controls on technology required by manufacturers of sensors used in the automotive industry.

Brotherton, who is co-chair of a Tech America sub-committee on export controls, also represents some of the largest engineering universities in the United States, and has engaged in the ongoing debate around 'fundamental research' – currently a focus of BIS and the DDTC's efforts to arrive at a harmonised definition: 'A typical headache might be that, even if [an academic institution] has a policy of not accepting restrictions on research, a sponsor wants you to sign an NDA, and there are people signing those, without realising the impact of that [which is to exclude the material from constituting 'fundamental research].' He notes that every ten years or so, 'the agencies take a look at fundamental research, fail to address some of its unnecessary limitations, and then revisit it a decade later'.

What appears to differentiate export controls in the U.S. from the way that they're employed and applied elsewhere – even in the EU, where they're increasingly making inroads into policy making and compliance – is their sheer pervasiveness, depth and breadth. Les Carnegie thinks that one of the 'next big things' may the short supply controls on crude oil: 'This is a very interesting area. Since the 1970s there has been an almost complete embargo on the export of crude oil from the United Sates. Now that the U.S. is able to access additional supplies of crude there's a growing movement to ease restrictions. At the end of 2014, the U.S. Commerce has issued useful guidance on how much processing it takes before "crude" is no longer crude and therefore freely exportable, and it will be interesting to see how much further the Administration can go in loosening the crude oil export restrictions, and whether the U.S. Congress will intervene to lift the restrictions.'

'[Every ten years or so] the agencies take a look at fundamental research, fail to address some of its unnecessary limitations, and then revisit it a decade later."

Steven Brotherton, Fragomen Worldwide

Ergo: the U.S. export control lawyer's practice potentially spans everything – from the transfer of data, through widgets, defence articles, software – to the very lifeblood of the global economy. The common denominators? Each has the potential to tip the balance, for good or for ill.

Special focus: U.S.A. 2015

THE DIGITAL REVOLUTION

Can compliance keep pace with rapidly developing technology and the challenges it brings? *WorldECR* gets to grip with the fiddly subject of intangibles.

With every passing year, the importance of the digital economy appears to further displace the world of the tangible. In step with that exponential expansion, the online space, for all the opportunities it creates and vistas it opens, possesses challenges in abundance – exfiltration of data, use of the cloud, intrusion and surveillance tools, 3-D printing. These are complex and quickly changing areas of technology (and to a lesser extent law and policy) that fall squarely within the remit of the sanctions and export control practitioner – and in sometimes surprising ways.

In line online

From the perspective of the sanctions practitioner, it's looking as though sanctions based on physical geography will start to look old hat in the next few years. Against the backdrop of headline-hitting hacking attempts, sensitive data theft, and internet espionage, it's no surprise that cyberspace is looking like the next chapter. In April this year, President Obama issued an executive order which would target any person determined, 'to be responsible for or complicit in, or to have engaged in, directly or indirectly, cyber-enabled activities originating from, or directed by persons located, in whole or in substantial part, outside the United States that are reasonably likely to result in, or have materially contributed to, a significant threat to the national security, foreign policy, or economic health or financial stability of the United States.'

As yet, (and despite the recent theft of data pertaining to 21 million

Special focus: U.S.A. 2015

government employees from the U.S. Office of Personnel – a hack attributed by many to a Chinese entity – there have been no designations under the order. But for how long?

'James Clapper, Director of National Intelligence, recently identified cyber security as the number one security threat displacing terrorism, and the executive order identifying cyber hackers does reflect the fact that this is a very important priority now, both from a technology and a threat management perspective,' says Ed Krauland of Steptoe & Johnson. 'No-one has been designated under the executive order yet, but given that sanctions policy has gotten a lot of credibility recently it wouldn't surprise me if we saw efforts to implement [the executive order] by putting some of the people to whom it refers on the SDN list…While there may be a difference between listing, say, an Iranian bank, and a cyber-hacker, it's still another tool that the government could use to make a statement – and put pressure on those engaging in those activities.' This is, of course, where a sanctions policy begins.

There's an interesting nexus here between sanctions, export controls and cybersecurity. In essence, where a (potentially sanctionable) cyber-violation occurs, a company or other organisation stands to lose the same kind of data as would be compromised by the unauthorised export of controlled technology. Could an infiltrated party thus find itself liable under export control regulations? It's an interesting question, says Christopher Stagg of Stagg Noonan: 'I think that this is an area where the DDTC might take a conservative view and argue that a violation has occurred if there has been access to the controlled technical data. It's going to ask whether the company had the proper controls in place and was adhering to best practice. If not, I think they might argue that the company had an affirmative responsibility to appropriately limit access to data – including hackers.'

Michael Burton of Jacobson Burton agrees with much of that analysis and believes the regulators are not out to punish companies who take good faith steps to safeguard their data which nonetheless are compromised: 'I was involved in a matter where a client was hacked and filed a voluntary disclosure with DDTC to alert the government that it had occurred (to be a good corporate citizen) but also to guard against the possibility DDTC might take the position that the company "released" technical data by allowing access – albeit unauthorised access – to its technical data. Although I don't believe a release or export resulting from hacking is properly treated as a violation of the ITAR, the regulations are quite broad and DDTC's interpretation is, as a practical matter, dispositive. Moreover, mandatory disclosure may be required in the case of even unauthorised access by hackers believed to be acting on behalf of a 126.1 country, such as China.'

'Mandatory disclosure may be required in the case of even unauthorised access by hackers believed to be acting on behalf of a 126.1 country, such as China.'

Michael Burton, Jacobson Burton

'Companies don't understand the impact of the carve-out in the cloud that says that if you have a server in London, and have secure encryption, you could send data without being in breach of export controls.'

Michelle Schulz, Gardere

Given reports of U.S. government departments including the National Security Agency and the Central Intelligence Agency being hacked, no one is immune – government might be reluctant to incur the charge of undue hypocrisy.

Virtual terrain

From a straight export controls perspective, two issues are dominating the cyber compliance landscape, raising questions about what is possible, permissible and desirable in equal measure. This is a terrain which Lillian Norwood of IBM is extremely familiar with – and she knows where the bunkers lie: 'At IBM, we've been in the cloud space for at least ten years – and we've been generally focusing on intangibles for a lot longer than many of the companies that are only now just getting on board. What's interesting for us is that for a long time there's been no guidance. We're beginning to see various advisory opinions, but there's still very little from the Department of State or from OFAC. It's still a very difficult environment with which to comply.'

The June-published complementary proposed rules issued by BIS and the DDTC jointly include a carve-out for information protected by end-to-end encryption – i.e. uninterrupted cryptographic protection of data between an originator and an intended recipient – which is, says Norwood, 'a good rule,' and a much-appreciated token of government's efforts to provide clarity in the situation. But still, she says, much of the path-paving, in terms of arriving at good practice, is undertaken by industry groups working in concert with lawyers.

To this point, Michelle Schulz of Gardere says, 'I think there's still a great deal of learning to be done. Companies don't understand the impact of the carve-out in the cloud that says that if you have a server in London, and have secure encryption, you could send data without being in breach of export controls.'

Schulz adds that the learning curve on such issues tends to be faster in technology companies – but that it 'applies to any company using the cloud – even a law firm like ours'.

Watching the watchmen

The other potent issue in this space is the proposed rule implementing Wassenaar Arrangement changes

Special focus: U.S.A. 2015

relating to surveillance equipment and intrusion software. This is a highly technical area, but in essence it revolves around the issue as to whether regulations intended to prevent autocratic regimes accessing the tools necessary to snoop on citizens will be counter-productive, stymying efforts to improve internet security. In a July-published public policy 'blog', internet search giant Google argued *inter alia* that not only the U.S. proposed implementing rule but also the Wassenaar rule, needs revisiting.

As currently framed, the U.S. proposed rule is a stark illustration of the commercial impact of export controls, says Goodwin Procter partner Rich Matheny: 'We have a number of clients who would be significantly affected by the rules as they're drafted. For example, we're looking at whether the controls on zero-day rootkits would be triggered by the rule. If it did, a presumption of [licence] denial would really put the wood to some companies in that space.' Matheny says that while he had advised his clients to anticipate a range of potential eventualities, the rule as drafted is 'at the Draconian end of the spectrum.'

In late July, the Department of Commerce announced that as a result of copious criticism there would be a rewrite of the rule forthcoming – which serves to illustrate Matheny's point that as technological change outstrips the ability of the regulators to keep up, compliance in the hi-tech space will always be a difficult topic. Goodwin Procter serves many technology clients, which draws in interesting export control-related questions (and dilemmas). 'One of the issues is – software service companies with a freemium model that take on so many customers – so there's a question of how to manage the screening protocol,' says Matheny. 'That's a perpetual dilemma – and one that can come to a head when you do an IPO. It can be a problem reconciling a growing company that has a risk appetite with an acquirer – or underwriter or lender – that doesn't have any. Those kinds of issues are not diminishing. At this point, the banks'/lenders' sanctions reps and warranties become pretty pervasive. That can become more complicated with medicine and medical devices, where companies are taking advantage of general licences but have also to ensure that they're consistent with obligations in lending agreements.'

New dimensions

One of the authorisations under which U.S. businesses have been able to export is General License D-1 'With Respect to Certain Services, Software and Hardware Incident to Personal Communication.' Erich Ferrari of Ferrari Associates suspects that this is an area of trade, legitimate under the present sanctions regime, that may accelerate against the backdrop of détente – but he also warns that some parties in the U.S. are taking General License D-1 to mean they can invest in a burgeoning Iranian tech sector: 'This is not the case as the general licence is clear to the point that U.S. persons can merely export certain types of hardware, software, and technology incident to personal communication to Iran.'

Ironically, tech observers point out, Iran is burgeoning with opportunities in the tech sector as businesses have sought alternatives to the technologies that sanctions deprived them from accessing.

What, then, hypothetically, would be the legal implications of a 3-D printing facility creating items from U.S. originating blueprints? 3-D printing is likely to have a number of consequences for international trade (a threat to 41% of air cargo according to one PWC estimate) – and the publication (and subsequent removal at the request of the U.S. State Department) by Defense Distributed of plans for a plastic handgun that could be 'printed' continues to cause a ruckus, as Defense Distributed sues the Department for violation of its freedom of speech. But are the legal issues as complex as the technology? Elsa Manzanares of Gardere cautions that, 'Companies should be cognisant of the heightened risk of technology transfers involving controlled items. 3D printing is making it much easier to replicate controlled items through the sharing of designs with a foreign national abroad. The proliferation of 3D printers should keep companies on their toes about protecting their controlled technology.'

'Companies should be cognisant of the heightened risk of technology transfers involving controlled items... The proliferation of 3D printers should keep companies on their toes about protecting their controlled technology.'

Elsa Manzanares, Gardere

But, suggests Michael Burton, 'From an export controls perspective, 3D printing is ultimately just another way of making an item. A defence article is a defence article – it doesn't make a great deal of difference how it's made from a regulatory perspective – it's the export or release of the defence technical data or controlled technology and subsequent manufacture that's really the problem, not the means of creation,' though he adds that the relative ease and efficiency of production that 3D printing enables makes enforcement of tech-transfer rules 'even more important and heightened...If you're thinking about the national security implications and, say, the ability of undesirable actors to access technology, the implications are pretty significant.'

Special focus: U.S.A. 2015

MEET THE LAWYERS

First-rate export control and sanctions legal advisors can be found across the U.S. and come in all shapes and sizes. *WorldECR* introduces some of the country's specialist advisors.

There is a refreshing variety of law firms advising on export controls and sanctions matters in the U.S. and clients should not struggle to find one which suits their own personal requirements. Large, global teams can offer a seamless full service with their European and Asian colleagues, while smaller, niche boutiques combine sanctions and export control experience with other specialised areas, including government relations, inward investment, technology, and customs expertise.

With an office situated just across the street from the U.S. Department of the Treasury, home to OFAC, DC law firm **Ferrari & Associates PC** has a clear and specialist focus: U.S. economic sanctions, OFAC licensing, OFAC compliance, OFAC SDN List removal, OFAC investigations and enforcement defence, U.S. export controls and OFAC criminal defence.

Team head and name partner, Erich Ferrari represents U.S. and non-U.S. corporations, financial institutions, exporters, insurers, as well as private individuals, in trade compliance, regulatory licensing matters, and federal investigations and prosecutions. He frequently represents clients before OFAC, the Bureau of Industry and Security ('BIS'), and in federal courts around the country. Ferrari is a 'seasoned litigator' who has obtained mistrials and acquittals for his clients in various matters, including in prosecutions for smuggling, and International Emergency Economic Powers Act ('IEEPA')-based export control charges. He has also successfully handled fraud cases, money-laundering cases, espionage cases, economic sanctions criminal cases, and federal criminal appeals. These representations have occurred in various courts across the United States and involved U.S. and international clientele. He maintains a security

Special focus: Washington, DC

U.S. export controls and sanctions law firms

Arent Fox
Braumiller Law Group
Crowell & Moring
Ferrari & Associates, P.C.
Fragomen Worldwide
Gardere Wynne Sewell
Goodwin Procter LLP
Jacobson Burton PLLC
Latham & Watkins LLP
Miller Canfield
Stagg Noonan LLP
Steptoe & Johnson LLP
Trade Pacific PLLC

This list does not purport to be exhaustive

clearance and has served as cleared counsel in national security cases.

Members of Ferrari's team offer expertise in a wide but specialist range of matters – for example, doing business in the Middle East and Africa; developing tailored compliance programmes on behalf of U.S. and foreign financial institutions and money service businesses; advising U.S. companies seeking to broker and export in sanctioned regions; acting for domestic and foreign companies listed on U.S. stock exchanges; advising educational institutions hosting visiting students from sanctioned countries and media outlets pursuing journalistic activities.

Recent matters have seen the firm

- Representing an Asian conglomerate in seeking removal of its OFAC SDN List designation;
- Representing a foreign corporation in a federal criminal matter involving violations of U.S. sanctions targeting Iran;
- Representing a foreign financial institution under investigation by OFAC for violations of U.S. economic sanctions;
- Obtaining authorisation for export of aircraft parts and services to Iran;
- Obtaining authorisation for export of medicine and medical devices to Iran.

The firm's SanctionLaw service (sanctionlaw.com) offers practitioner guidance to U.S. sanctions, annotations to regulations, and a repository providing 'full access to a comprehensive source of OFAC documentation'.

Arent Fox's International Trade Practice, headed by partner Kay Georgi, is home to a team of four partners and five associates, assisting clients in a broad range of trade-related issues. The team assists clients with:

- Export controls and economic sanctions: EAR advice related to dual-use export controls; ITAR services related to defence articles and services; embargoes and sanctions/OFAC; U.S. antiboycott compliance; U.S. security-related regulation, CFIUS, Exon/Florio, security clearance/classified information.
- Global trade policy: legislative and administrative advocacy; international trade negotiations; trade compliance, market access, and preference programmes; international trade and investment disputes.
- International anti-corruption and Foreign Corrupt Practices Act ('FCPA'): compliance training and programme development; counselling; controversy.
- International trade litigation: administrative proceedings; litigation – U.S. Court of International Trade, NAFTA


Edward Krauland, Steptoe & Johnson LLP


Meredith Rathbone, Steptoe & Johnson LLP


Stephen Heifetz, Steptoe & Johnson LLP


Kay Georgi, Arent Fox

Tribunals, U.S. Court of Appeals for the Federal Circuit, World Trade Organisation; CAFTA, NAFTA, and AD/CVD proceedings in third countries; Section 201 'Escape Clause' or 'Safeguard' investigations; international arbitration.

Clients, who include 3M, Dover, Leidos, G4S, Topcon, and Academi, come from the full range of industry: defence; security services; oil & gas; energy equipment and services, including exploration; sensors, lasers; navigation (e.g. GPS, IMUs, INS); encryption, information security; computers, processors, memory, software; aircraft/aviation; crime control; nuclear; machinery/equipment of all sorts; healthcare/medical devices; and financial/insurance services. Examples of recent instructions would include:

- Assisting a security services company provider with ITAR/EAR due diligence for acquisitions of security service companies and related certification and compliance work;
- Assisting a global diversified manufacturer with voluntary disclosures to, and follow-on questions from, DDTC, OFAC, and BIS;
- Preparing a defence contractor for an ITAR audit and improving export control procedures;
- Advising a Europe-headquartered geophysical services company on defence and dual-use export controls and economic sanctions issues; and
- Advising a wide range of clients, small to large, on classification of their products under the Export Control Reform initiative.

Steptoe & Johnson's highly regarded International Regulation & Compliance Group is home to the export controls and sanctions practice, which includes 11 partners, five of-counsel and 15 associates.

Key contacts for export controls and sanctions matters are partners Ed Krauland and Meredith Rathbone, while partner Stephen Heifetz is contact for CFIUS matters and Lucinda Low for FCPA/anti-corruption enquiries.

The group offers a wide range of trade-related legal services, including: export controls (military, dual-use, nuclear); economic sanctions (Iran, Syria, Sudan, Cuba, Russia); CFIUS Foreign Investment reviews & FOCI mitigation; FCPA/ UK Bribery Act, IFI and multinational anti-corruption regimes; anti-money laundering; anti-boycott; customs; immigration; and international procurement.

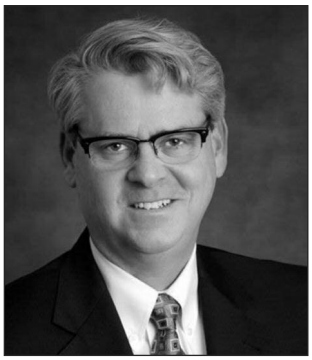
Clients, who include Raytheon, Esterline Technologies Corporation and The Coalition for Responsible Cybersecurity, come from the full spectrum of industry, including: aerospace and defence; airline services and aviation; automotive; chemicals; computer hardware; cyber security; data processing; educational and humanitarian service providers; electronics; energy and power generation; extractive, including oil and gas, mining, and related services; financial services; food and beverages; hospitals, healthcare and medical; industrial process controls; IT infrastructure and encryption; manufacturing; mechanical and industrial equipment; oil field services; pharmaceutical; satellite and UAVs; telecommunications.

Recent instructions have included

- Assisting a major aerospace and defence company in a major, enterprise-wide effort to establish a comprehensive jurisdiction/classification system that responds to the complexity of ECR and will enable the client to make quick and consistent assessments whether products or technologies are covered by the ITAR or EAR, as well as the relevant USML and CCL classifications for each.
- Removing U.S. economic sanctions against a major petroleum company. The client was also subject to a non-public 'blocking' order issued by the U.S. Department of the Treasury, resulting in the freezing of significant company funds located at a U.S. bank. After extensive fact-gathering, written submissions to both the Treasury and State Departments, and advocacy meetings with relevant USG officials, the blocked assets were released and the sanctions were removed.
- Assisting a NYSE-traded company with the international regulatory aspects of its acquisition of the defence-related business of a European company traded on Euronext.
- Assisting an international bank in assessing various U.S. sanctions risks, and in drafting its sanctions compliance policy.

Trade Pacific PLLC is a DC-based law firm, providing legal services to clients wishing to navigate U.S. trade laws. The firm prides itself on providing clients with 'big law firm expertise' while receiving 'the attention, commitment, and loyalty of a boutique


Christopher Stagg,
Stagg Noonan LLP


Michael Noonan,
Stagg Noonan LLP


Erich Ferrari,
Ferrari & Associates PC

firm'. In DC, the export controls and sanctions practice is headed by partner Corey Norton.

The firm has significant expertise in Asia-related trade matters, with resources on the ground in China, Thailand and Vietnam – in Asia, the firm has a half-dozen affiliated attorneys, and the team expands as matters require.

Services include: determining whether export licences are required for transactions and technology transfers (including domestic transfers) and drafting licence applications; conducting investigations and audits, drafting and resolving voluntary disclosures and conducting due diligence in acquisitions; assisting companies to avoid impermissible boycott requests and complying with reporting requirements under the anti-boycott laws; advice on anti-corruption, trade remedies (antidumpuing, countervailing duties and safeguards), customs; and seafood safety. The team also provides training and drafts policies and procedures in export control compliance.

Trade Pacific works closely with contractors in the oil and gas, process management, aerospace, automotive, electronics, biotech and aquaculture sectors.

Recent instructions have seen the firm

- Counsel a global automotive company on frequent transfers of production technology and equipment between plants in multiple countries;
- Vet for a large oil and gas supplier whether transactions in Africa, Asia, Europe and South America are permissible due to sensitivity of goods, countries and actors involved;
- Guide sanctioned country business activities of a medical device manufacturer;
- Train electronics companies on opportunities in new export control restrictions and obtain licences for the same;
- Conduct trade due diligence in acquisitions for defence contractors and global process management companies.

At **Braumiller Law Group**, the entire firm's focus is on international trade. With its principal office in Dallas, and also serving clients out of offices in Los Angeles and Mexico, two partners, four of-counsel attorneys, three associates plus two law clerks and nine trade advisors devote their time to customs, export controls, sanctions, industrial security and anti-corruption matters.

Led by partners Adrienne Braumiller and Olga Torres, the firm prides itself on providing 'a consultative, customized approach' for all clients. The firm has particular expertise acting for clients in the defence, energy, aerospace, computers and software, electronics, chemical, pharmaceutical, medical, and freight-forwarding sectors, among others.

Expertise can be found in import process and customs matters; export process, licensing and agreements; deemed exports and technology transfers; duty drawback recovery; foreign-trade zones; international trade and market access; Mexican trade law; domestic and international corporate transactions; NAFTA and other free trade agreements.

Clients of the firm include Sabre Corporation, Nokia Solutions and Networks Holdings USA, Inc. and Triumph Group, Inc.

Recent instructions saw the team

- Assist a global freight-forwarder with an internal investigation and filing of a voluntary self-disclosure of violations of OFAC and EAR involving transhipments through the United Arab Emirates to Iran, Syria, and Sudan.
- Advise a Fortune 500 company on conducting business in Cuba after recent changes to U.S. sanctions and export controls.
- Assist a major global distributor in overhauling its export compliance programme through classifying its products, developing its internal policies and procedures, and creating an export compliance manual.
- Assist a major U.S. aerospace company in developing its export compliance policies and procedures, and advising on filing voluntary self-disclosures with BIS for unlicensed exports of controlled items.
- Co-counsel with a criminal defence attorney representing a Russian national charged with exporting controlled electronic components to Russia in violation of export laws.
- Advise a U.S.-based developer and manufacturer of magnetometers in classifying their products under the Commerce Control List ('CCL'), submitting commodity classification requests ('CCATS'), and licensing their products for export to India, China, and other locations for use in biomedical imaging applications.

Special focus: U.S.A. 2015


Steven Brotherton, Fragomen Worldwide


Corey Norton, Trade Pacific


Doug Jacobson, Jacobson Burton


Michael Burton, Jacobson Burton

Two-partner firm, **Stagg Noonan LLP** is a specialist boutique practice providing assistance in export controls, national security, and agency rulemaking. Partners Christopher Stagg and Michael Noonan 'have the unique experience of working in government as former senior regulators with the Directorate of Defense Trade Controls at the U.S. Department of State', where they were 'responsible for administering, enforcing, and re-writing U.S. export control laws'.

The firm's services include: handling presidential waivers, seeking regulatory or interpretative changes, requesting the removal of items from the U.S. Munitions List, responding to proposed rules, and appeals of commodity jurisdiction determinations; commodity jurisdiction and classification; developing and implementing export compliance programmes and performing internal investigations and audits to uncover potential violations that may lead to a voluntary disclosure; advising on responding to government-directed disclosures and administrative subpoenas; developing licensing strategies and complying with the ITAR's brokering regulations; due diligence in M&A and transactions reviews; and advising non-U.S. entities on compliance with the ITAR and EAR.

Clients come from a range of sectors, including software, aerospace, oil and gas, space, and education.

Among instructions, the partners have

- Represented numerous companies in successful appeals and requests of reconsideration of commodity jurisdiction determinations, resulting in moving items from the U.S. Munitions List to the Commerce Control List.
- Advised a U.S. defence information publisher on the ITAR's requirements for the use and dissemination of public domain information, including an assessment of the jurisdiction and classification of proposed new products.
- Successfully advised clients with high-level advisory opinion requests to the U.S. Department of State for clarifying interpretations of material sections to the ITAR, the negative outcome of which would have significantly affected the clients' business operations.
- Advocated client positions in responses to proposed federal rules published in the Federal Register involving the ITAR and EAR to advance and protect the client's interests.
- Advised a non-U.S. aerospace company on the applicability of the ITAR and EAR to existing and derived products that incorporate U.S. origin goods and information to avoid potential export control violations based on a proposed multinational development strategy.

Latham & Watkins LLP's Export Controls, Economic Sanctions & Customs team is composed of 15 partners, three counsel and 16 associates, advising on anti-boycott laws, anti-terrorism controls, anti-money laundering regimes, customs and import regulations, export controls, foreign investment in the U.S., FCPA, UK Bribery Act, and trade and economic sanctions. Key contacts in the U.S. include William McGlone, Les Carnegie and Kevin DiBartolo.

Clients come from a wide range of industry sectors, including, but not limited to, aerospace and defence, energy (particularly oil and gas), satellite/communications, semi-


Adrienne Braumiller, Braumiller Law Group


Olga Torres, Braumiller Law Group


Joseph Gustavus, Miller Canfield


Jeffrey Richardson, Miller Canfield

conductors, and include, among others, Genzyme, Honeywell International and Stratasys.

Among recent work, the firm

- Has served as lead counsel to Schlumberger, the Fortune 50 multinational company, in a global investigation and resolution of a criminal case involving alleged violations of U.S. sanctions laws. The case involved multiple grand jury criminal proceedings, parallel SEC, OFAC and other administrative investigations, and enforcement actions and internal compliance reviews, focusing on potential violations of U.S. sanctions against Iran, Sudan, Cuba and Syria.
- Advised Siemens AG, a German multinational company, in its strategic acquisition of Dresser-Rand Group, a supplier of custom-engineered rotating equipment solutions. As part of its representation, the firm successfully obtained CFIUS approval for the transaction.
- Represented Avago Technologies Limited, a Singaporean semiconductor company, in its successful efforts to obtain CFIUS approval in connection with its acquisition of Broadcom, a major manufacturer of telecommunications and networking equipment.

The firm represents a number of leading life sciences companies as well as not-for-profit entities and foundations in connection with the development, implementation and enhancement of U.S. sanctions compliance programmes as well as the application and receipt of OFAC licensing.

Well-known and popular partner Jeff Snyder heads up the International Trade and Government Contracts groups at **Crowell & Moring**. The groups are home to four partners, two counsel, and seven associates, along with three trade professionals working from Washington, DC, Brussels, London, and California. Key team members include partners Alan Gourley and Cari Stinebower and counsel Christopher Monahan.

The team advises on a wide range of trade-related matters including anti-money laundering; anti-boycott legislation; CFIUS; customs law; export controls; global investment strategies; sanctions and embargoed countries; unfair trade investigations and litigation; WTO, FTAs and market access.

The groups' clients include well-known domestic and international organisations operating in aerospace and defence; the information technology sector, including encryption software; electronics manufacturers; financial institutions (banks, (re)insurance, broker-dealers, private equity); educational institutions; publishing companies; food and beverage; health care (including both medical devices and pharmaceuticals); shipping companies; and chemical and basic material manufacturers. A list of clients includes Alcoa, General Motors and Open Text.

Amongst recent client instructions, the team has:

- Successfully obtained a commodity jurisdiction determination that a laser diode acquired and tested to space specifications was not a defence article.
- Performed a multi-site compliance review of an aerospace company, including all aspects of its export control compliance system, including marketing of defence products, performing defence services, implementing licence limitations (provisos), controlling access to facilities, hiring of foreign nationals, denied party and other screening, compliance with licences and agreements, and shipping and supplier management.
- Counselled a global auto parts manufacturer on the scope and application of U.S. and EU export controls and sanctions laws and regulations to numerous business dealings, including mergers and acquisitions, existing and potential contracts with suppliers.
- Advised a global publisher with regard to various U.S. and EU export control and sanctions compliance issues, especially in light of the continued expansion of the U.S. and EU sanctions regimes targeting Iran and Russia/Ukraine. This work also includes preparing monthly reports on developments on UN, EU, and U.S. sanctions.
- Advised a number of non-U.S.-headquartered global financial institutions on the development of effective risk-based global sanctions and anti-money laundering compliance programmes; engaging with regulators where appropriate; and conducting innovative training for financial crimes compliance personnel.

Steven Brotherton heads the Export Controls Practice Group at **Fragomen Worldwide** out of offices in Washington, DC and San Francisco. Brotherton is a member the U.S. Department of Commerce's


Rich Matheny,
Goodwin Procter


Cari Stinebower,
Crowell & Moring


Alan Gourley,
Crowell & Moring


Jeff Snyder,
Crowell & Moring

Regulations and Procedures Technical Advisory Committee ('RPTAC'), which advises the Department of Commerce on export control regulation and policy. He is also the Co-Chair of TechAmerica's Export Control Reform Subcommittee.

The group is solely focused on U.S. export control matters; services include

- Development and implementation of global export control management systems;
- On-site programme management and other outsourced export compliance staffing solutions;
- Deemed export licensing and compliance counselling;
- Preemptive compliance audits and internal reviews, as well as representation for government enforcement actions and investigations;
- Preparation of export licence applications for the U.S. Departments of Commerce and State and Office of Foreign Assets Control ('OFAC') licences;
- Advice on voluntary disclosures and mitigation plans;
- Evaluation and classification of products, technology, and technical data to determine applicable controls;
- Support for ITAR commodity jurisdiction requests;
- Assistance with preparing and filing encryption classification requests;
- Training on export controls requirements;
- Export control due diligence services for mergers and acquisitions.

Recent instructions have seen the group

- Performing a DDTC-mandated ITAR audit of a $15 billion electronics company, reviewing over 25 key manufacturing locations in five countries.
- Successfully representing a Fortune 100 company in a BIS audit of the company's deemed export compliance programme.
- Conducting internal investigations and assisting in the preparation of a voluntary disclosure involving over 1,000 violations of the ITAR, resulting in the issuance of a warning letter in lieu of fines and penalties.
- Serving as lead counsel for a large computer company in an investigation and achieving a favourable resolution of a U.S. government enforcement action covering exports to sanctioned countries.
- Representing a major research university in obtaining a landmark advisory opinion from the U.S. Department of State on the application of the 'fundamental research' exemption in an academic setting.

Dallas-based, Elsa Manzanares and Michelle Schulz co-chair **Gardere Wynne Sewell**'s International Trade Group. The multi-lingual team includes two other partners, three associates and a trade analyst. In addition to its office in Dallas, the firm has offices in Austin, Houston and Mexico City.

The International Trade Group offers clients expertise in a variety of substantive areas in global trade compliance, including, but not limited to: export process, licensing and agreements; deemed exports and technology transfers; Office of Foreign Assets Control compliance and licensing; CFIUS filings; FCPA compliance and enforcement matters; compliance monitors and special compliance officer oversight; trade compliance training; international corporate transactions; and investigations.

The International Trade Group also calls on the firm's immigration team to partner on technology export matters involving foreign nationals employed by U.S. companies under various visa categories.

Clients come from a wide range of industry sectors, including, among others: aerospace; automotive; explosives; energy; firearms; chemicals and refining; military training and services; electronics; oil and gas; manufacturing; software and technology; maritime; food and beverage; research and development; retail; and banking.

Manzanares is a former in-house counsel for a multinational company and has particular insight into dealing with trade, corporate and litigation matters covering both Latin America and Canada, and an understanding of how trade and compliance matters can disrupt global business and operations.

Schulz serves on the President's Export Council Subcommittee for Export Administration ('PECSEA'), a senior-level advisory body to the U.S. Department of Commerce and, in particular, BIS. She also serves as an advisor to the U.S. Secretary of Commerce and the U.S. trade representative on the Industry Trade Advisory Committee for Aerospace. She holds secret level security clearance.

Special focus: U.S.A. 2015


Les Carnegie,
Latham & Watkins


William McGlone,
Latham & Watkins


Elsa Manzanares,
Gardere Wynne Sewell


Michelle Schulz,
Gardere Wynne Sewell

Examples of recent instructions include

- Successful completion of an oil and gas company's voluntary self-disclosure of apparent export licensing violations with no penalties, while developing the company's global trade compliance programme.
- Developing a coordinated export licensing process for an oil and gas company on exports involving Russia sanctions.
- Advising a non-U.S. software developer on the application of U.S. sanctions and encryption controls in foreign transactions.
- Leading the development of a global anti-corruption programme for an aerospace company under the FCPA.
- Advising numerous clients on recent developments involving U.S. sanctions on Russia, Cuba, and Iran.

At **Goodwin Procter**, five partners and two associates form the National Security & Foreign Trade Regulation practice. The team acts for a wide range of clients active in sectors such as technology, clean technology, financial services, transportation, real estate, energy, and defence manufacturing, among others, and advises on matters such as the export and re-export of sensitive goods and technologies; investments and other dealings having national security implications; and relationships with persons and entities that may be governed by U.S. economic sanctions, anti-money laundering and anti-corruption laws. Richard Matheny III is the head of the practice.

The National Security and Foreign Trade Regulation Practice advises on six interlocking regulatory regimes:

- OFAC regulations;
- Export Administration Regulations;
- International Traffic in Arms Regulations;
- Committee on Foreign Investment in the United States ('CFIUS');
- U.S. Patriot Act and anti-money laundering laws; and
- Foreign Corrupt Practices Act.

A varied client list includes Advent International Corporation, HCL America, Inc., Princeton University, TA Associates and American President Lines, Ltd plus various technology and private equity companies.

Recent instructions have included

- Preparing an application with OFAC for a major U.S. academic institution seeking authorisation to conduct polling inside Iran following the 2016 parliamentary elections in that country.
- Representing a U.S. software company and its Singapore-based subsidiary in connection with the latter's violation of U.S. economic sanctions administered by OFAC. This included conducting the internal investigation and preparing the voluntary self-disclosure. In early June 2015, OFAC closed the investigation without issuance of any penalty or sanction.
- Representing an oceanographic research institution in an internal investigation and voluntary self-disclosure to the U.S. Department of State's Directorate of Defense Trade Controls, pertaining to certain apparent violations of the ITAR.

At **Miller Canfield**, the export controls and sanctions practice is run out of the firm's Corporate Group. Key figures in the team are Joseph Gustavus, Principal, and Jeffrey Richardson, Senior Attorney. The team enjoys established contacts with the various U.S. administrative agencies, including the Department of State, Directorate of Defense Trade Controls, Department of Commerce, Bureau of Industry and Security, Bureau of Alcohol, Tobacco, and Firearms, Department of Defense, Department of the Treasury, and the Office of Foreign Assets Control.

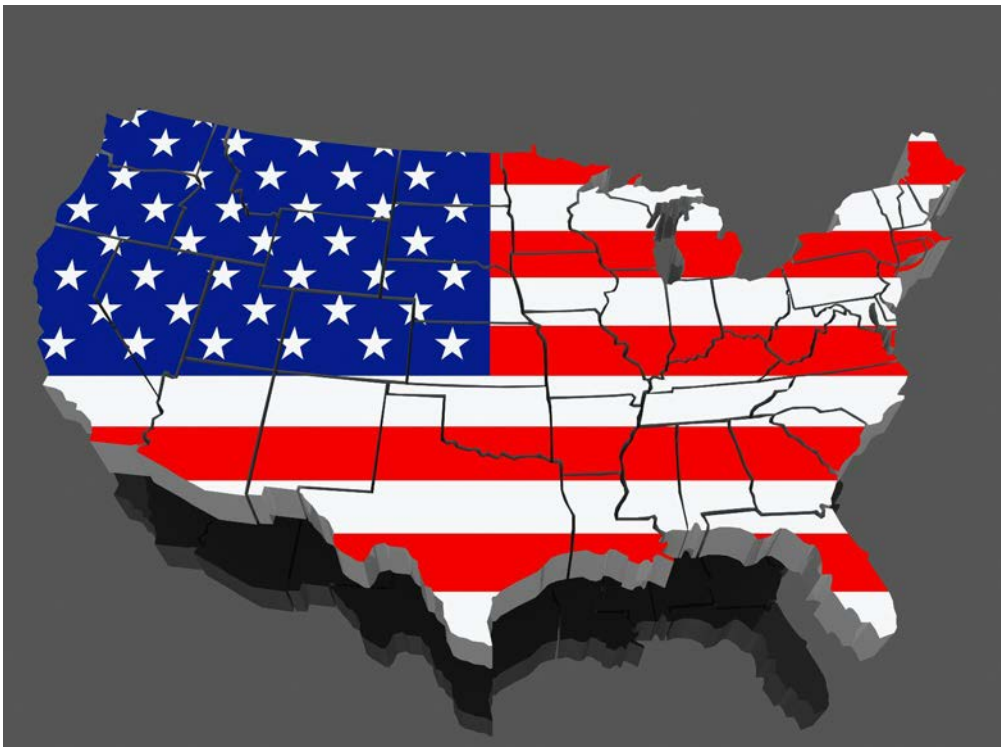
Clients can be found in a wide range of industries, including aerospace, automotive, information technology, machine tools, robotics, software and telecommunications.

Examples of the varied and expert work the team carries out include:

- Assisting clients with registering under the ITAR or EAR;
- Analysing company product, service, and technology portfolios to identify and classify assets subject to export controls;
- Drafting commodity jurisdiction requests for government determination when export control law jurisdiction or controlled asset classification is at issue;
- Assisting clients with the development, implementation, monitoring, and improvement of tailored export control compliance programmes;
- Drafting ITAR and EAR export licence applications and supporting transmittal letters and documentation to permit the licensed export of controlled products, services, technology, and technical data;
- Drafting export control

Special focus: U.S.A. 2015

collaboration agreements for government approval, such as technical assistance agreements and manufacturing licence agreements;
- Advising on the qualification for export control exemption;
- Export control audit and benchmark reports;
- Undertaking targeted due diligence in M&A;
- CFIUS filing for foreign acquisitions of U.S. target companies with export-controlled assets;
- Counselling clients on post-acquisition integration of export control compliance programmes;
- Drafting export control compliance manuals and policy statements and technology control plans addressing export control compliance;
- Conducting on-site training on the ITAR, EAR, and other export control laws;
- Advising on making voluntary disclosures for potential export control violations.



Boutique specialist trade law firm, **Jacobson Burton PLLC** focuses solely on international trade matters. Led by partners Doug Jacobson and Michael Burton, the firm assists clients in

- Export controls (including ITAR and EAR compliance, licensing and enforcement matters);
- Economic sanctions and embargoes (including OFAC and related enforcement matters);
- Antiboycott compliance, U.S. Foreign Corrupt Practices Act and anti-corruption compliance;
- U.S. customs and import regulatory matters;
- Audits, internal investigations, and mergers and acquisition due diligence across the above areas of international trade compliance;
- Antidumping and countervailing duty proceedings;
- International aviation and U.S. Department of Transportation enforcement proceedings;
- International trade policy matters (including GSP and Free Trade Agreements).

Jacobson Burton advises on export controls and sanctions matters impacting clients in sectors such as oil and gas, chemical, automotive, electronics, defence, medical, agricultural, software, aviation, engineering, financial services, eCommerce, and insurance.

Among recent work, the firm has:

- Partnered with an EU firm to handle a multijurisdictional investigation and voluntary disclosures under U.S. sanctions programmes;
- Served as expert witness on U.S. sanctions issues in a major international arbitration conducted at the London Court of International Arbitration;
- Conducted government-mandated export controls and sanctions compliance audit for a publicly-traded company;
- Advised a Fortune 10 company on export controls, economic sanctions, and anti-boycott compliance;
- Advised numerous energy sector companies regarding Russia sanctions compliance issues and obtained numerous authorisations from BIS and OFAC in connection with exports of oilfield equipment to Russia;
- Obtained an OFAC 'Cautionary Letter' for an aviation company in connection with transactions involving Cuba;
- Obtained numerous OFAC and BIS licences authorising the export and payment for sales of medical devices to embargoed countries;
- Prepared technical assistance agreements ('TAA') for the U.S. subsidiary of a European defence contractor to manufacture next generation ITAR-controlled optical equipment;
- Prepared voluntary disclosures to BIS, OFAC and DDTC in connection with ecommerce transactions involving embargoed countries, resulting in warning letters from all agencies;
- Advised and created for a petroleum sector client a deemed export and OFAC sanctions compliance programme consistent with employment law protections when hiring foreign nationals;
- Counselled military aircraft parts exporters on jurisdictional determinations and licensing issues in connection with changes from the ITAR to the EAR as a result of U.S. export control reform.

Arent Fox

- ⇨ Need help reclassifying your products and technology under the ITAR and EAR after Export Control Reform (ECR)?
- ⇨ Can't tell if your company can get a licence to export to Iran, Cuba, or Crimea?
- ⇨ Just received a three-page single spaced letter/subpoena from the Directorate of DefenseTrade Controls (DTC), the Department of Treasury Office of Foreign Assets Control (OFAC), or the Bureau of Industry and Security (BIS) of the Department of Commerce and don't know where to start?

Welcome to our world! 

At Arent Fox, we help clients like you by offering a full-service practice advising on U.S. and international trade controls requirements with an emphasis on compliance, counseling, controversy management and disclosures, and government investigations.

- With over 50 years' combined experience, our team has breadth and depth of knowledge in multiple industry sectors;
- We advise clients daily on all aspects export controls, defence trade controls, economic sanctions, and antiboycott issues;
- We provide comprehensive services including counseling, classification, licensing, opinion writing, and auditing the most sophisticated worldwide systems; and
- We are advocates with a proven track record defending our clients and achieving resolutions of civil and criminal investigations and enforcement actions.

Arent Fox counsels clients on U.S. and international export control and economic sanctions laws, including the Export Administration Regulations (EAR); the International Traffic in Arms Regulations (ITAR); OFAC and Department of State assets controls and economic sanctions regulations; Nuclear Regulatory Commission (NRC) and Department of Energy (DOE) regulations on the export of nuclear equipment and material (NRC) and technology (DOE); the Food and Drug Administration and Drug Enforcement Agency (DEA) regulations; and other countries' export regulations.

In addition, Arent Fox advises on a wide range of cross-border matters, including customs/import compliance, global trade policy, international trade litigation, and international anti-corruption and the Foreign Corrupt Practices Act (FCPA).

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Arent Fox

Crowell & Moring LLP

Crowell & Moring LLP is an international law firm with more than 500 lawyers in offices in the U.S., the EU and the Middle East. Our International Trade Group includes 30 practitioners, located mainly in Brussels and Washington, D.C., who advise clients ranging from local SMEs to the world's largest multinational corporations on all aspects of international trade, customs, and regulatory laws.

Our core practice areas are export controls and sanctions, WTO law, trade remedy procedures and litigation, customs and duty recovery, anti-corruption, investment and market access rules, and preferential trade agreements. Our clients are active in a wide range of industries, including aerospace & defence; information technology; financial services; automotive; semiconductor; construction; aluminium, iron and steel; consumer products; agriculture and food products; sports and leisure; chemicals; and pharmaceuticals.

The International Trade Group provides clients with a range of services, from straightforward licence applications and training programs to responding to government investigations and counselling on difficult commodity jurisdiction or regulatory compliance issues. We counsel traditional financial institutions and designated non-financial businesses and professionals on how to successfully navigate anti-money laundering laws and regulations.

Our U.S. and Brussels teams are consistently ranked among the world's leading practitioners by *Chambers USA* and *Chambers Global*, including for export controls and economic sanctions.

Our services include:

- Advising on licensing requirements and preparing licence and agreement applications
- Performing internal investigations and assisting with voluntary disclosures
- Performing compliance audits
- Designing and implementing compliance programs
- Performing jurisdictional assessments and preparing requests for commodity jurisdiction determinations
- Assisting in self-classification of products and preparing requests for commodity classification requests
- Performing export control/sanctions/anti-money laundering/ anti-corruption/import due diligence reviews related to proposed mergers and acquisitions
- Representing clients in civil and criminal enforcement proceedings
- Training on export controls, anti-money laundering, sanctions, anti-corruption/anti-bribery, import procedures and requirements

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Ferrari & Associates, P.C.

Ferrari & Associates, P.C. is a boutique law firm located in Washington, DC focusing solely on representations relating to U.S. economic sanctions administered by the United States Department of the Treasury's Office of Foreign Assets Control (OFAC).

Over the years, Ferrari & Associates has handled every variety of OFAC matter imaginable, from advising international financial institutions on U.S. sanctions, to defending OFAC investigations against financial institutions, to complex licensing on behalf of aviation companies, and to removal of private individuals and foreign entities from the OFAC SDN List.

Known as thought-leaders in the field of U.S. economic sanctions, Ferrari & Associates blends its knowledge and experience in both the law and policy underlying U.S. sanctions to offer unparalleled service in both advising on sanctions as well as representing parties before OFAC.

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Ferrari &Associates, P.C.

Fragomen Worldwide

Fragomen is the leading law firm in the United States dedicated to the global movement of people, goods and technology. Our more than 2,700 employees are located throughout more than 40 offices across the Americas, Europe, Asia-Pacific, the Middle East and Africa.

Located in San Francisco and serving leading technology, biotech, manufacturing and academic institutions, Fragomen's Export Controls Practice Group counsels companies and academic institutions on all aspects of U.S. export control regulations. We regularly advise clients on the Export Administration Regulations ('EAR'), International Traffic in Arms Regulations ('ITAR') and U.S. Department of Treasury, Office of Foreign Assets Control ('OFAC') sanction regulations.

Having worked with clients on export control matters over the past 20 years, we partner with clients to design export compliance systems; facilitate the efficient movement of people, goods and technology; and ultimately meet business demands without unnecessary delays that can be caused by export control requirements.

Our comprehensive range of services includes:

- Export control classification advice and counseling
- Preparation of EAR, ITAR and OFAC export license applications
- Comprehensive training programs
- Compliance audits and program assessments
- Representation in government investigations and enforcement actions
- Best practices in deemed export compliance programs
- Development of global export control management systems
- ITAR and EAR best practices
- Preparation of commodity classifications and commodity jurisdiction requests
- Export control mergers and acquisitions due diligence
- Preparation of voluntary self-disclosures and related mitigation plans
- Day-to-day export control counsel and advice

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FRAGOMEN
WORLDWIDE

Goodwin Procter LLP

Goodwin Procter's international trade practice is distinguished by its dedicated focus on the demands of middle-market technology companies as they confront dynamic laws regulating their export of goods and services and their attraction of investment from the United States and abroad.

Our clients in the technology sector are expanding their global footprint through the offering of software, hardware, Software-as-a-Service, and other products and services. At the same time, they are arranging to attract private investment or to prepare for a sale of the company, an initial public offering, or other forms of transactions in which trade compliance is vital to success. This critical intersection of expanding trade while attracting investment from the United States and elsewhere is where Goodwin really excels.

In the last year, we worked with over 230 separate companies – representing a diverse range of technologies, services, and markets – in managing their exportation of controlled goods and services from the United States; provision of defense articles and services; transactions involving sanctioned countries, persons, and entities; and cross-border investments and transactions that impact U.S. national security and foreign policy.

Goodwin has confronted a litany of trade issues for our technology clients: from the esoteric corners of the Export Administration Regulations encryption controls to the perils of cloud computing; from the shifting boundaries of the International Traffic in Arms Regulations to the exploitation of social media and other licenses in the U.S. sanctions programmes administered by the Office of Foreign Assets Control; from the national security concerns of the Committee on Foreign Investment in the United States and its constituent agencies to emerging technologies for which the regulations and their enforcing agencies are slow to adapt.

Because we understand the regulatory pitfalls for investors and others who place their money, trust and reputation in the hands of companies in growth mode, we are especially adept in striking a comfortable balance through tested advice and counseling that avoids over-regulation while allaying investor concerns by reducing actual risk.

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GOODWIN
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Miller Canfield

Based upon deep and diverse experience, Miller Canfield confidently and practically navigates through the International Traffic in Arms Regulations ('ITAR'), Export Administration Regulations ('EAR'), as well as the economic and trade sanctions administered and enforced by the Office of Foreign Assets Control. We have significant contacts and know how to work with various U.S. government agencies, including the Department of State, Directorate of Defense Trade Controls, Department of Commerce, Bureau of Industry and Security, Department of Defense, Department of the Treasury, and the Office of Foreign Assets Control.

Industry insight; global relationships

With offices throughout the world, we draw from our international resources to assist clients with export control matters from a global perspective. With our U.S. locations embedded in the dynamic manufacturing centers throughout Michigan and the Midwest, we offer global industry insight and legal counsel based upon over 160 years of experience in working with local manufacturing concerns. Clients in these targeted industries depend on our export controls team:

- Aerospace
- Automotive
- Defense
- Machine tools
- Nuclear power
- Robotics
- Information technology
- Software
- Telecommunications

Export controls practice areas of focus

With offices in the EU and China, Miller Canfield brings corporate and export controls expertise to foreign investors in the United States. During 2015, Miller Canfield expects Chinese clients with foreign direct investment in the United States to top the 1 billion dollar mark. This corporate experience with foreign inbound investment is coupled with traditional export controls practice areas such as compliance training, classification, as well as support for voluntary self-disclosures and investigations.

Competitive advantages for clients

Our team provides complete Export Control and ITAR representation, from registrations and litigation to voluntary disclosures including:

- Acquisition-Phase CFIUS Filings
- Acquisition-Phase Export License, TAA, and MLA Transfers
- Acquisition-Phase Facility Clearance FOCI Approvals
- Post-Acquisition Integration of Export Control Compliance Programs

We're proud of our work, our clients and our representative matters.

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MILLER CANFIELD

Stagg Noonan LLP

Trusted by some of the world's largest defense companies, Stagg Noonan LLP is a unique law firm with exclusive attributes. We are industry-leading lawyers and thought leaders that provide a distinct service to our clients. We have significant government and industry experience in the area of U.S. export control laws.

The firm's lawyers don't just have experience working closely with the government on behalf of its clients. We have the unique experience of working in government as senior regulators with the Directorate of Defense Trade Controls at the U.S. Department of State. We were responsible for administering, enforcing, and re-writing U.S. export control laws.

With our deep and unparalleled understanding into how the regulatory agencies operate and function, we provide special strategies to solve complex and high-stakes issues before the U.S. Government and the federal courts.

Key Services

- Strategic Representation: We handle presidential waivers, seeking regulatory or interpretative changes, requesting the removal of items from the U.S. Munitions List, responding to proposed rules, and appeals of commodity jurisdiction determinations.
- Commodity Jurisdiction and Classification: We assist with developing policies and procedures, providing self-determinations, and submitting commodity jurisdiction (CJ) or commodity classification (CCATS) requests.
- Compliance and Internal Investigations: We advise on developing and implementing export compliance programs. We also handle internal investigations and audits to uncover potential violations that may lead to a voluntary disclosure.
- Enforcement Defense: We advise businesses on responding to government-directed disclosures and administrative subpoenas. The firm's lawyers defend companies against administrative, civil, and criminal export enforcement matters.
- Licensing, Brokering, and Due Diligence: We advise on developing licensing strategies and complying with the ITAR's brokering regulations. We handle due diligence of mergers/acquisitions, as well as transactional review.
- Non-U.S. Businesses: We advise non-U.S. entities to ensure their compliance with the ITAR and EAR.

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Steptoe & Johnson LLP

Steptoe is a recognised leader in export controls, economic sanctions, anti-corruption, and other international regulatory areas. We work for clients in multiple jurisdictions, and have strong familiarity with the regulatory regimes in the U.S., UK the EU, and China. Steptoe's robust International Regulation & Compliance Group covers the full spectrum of regulatory requirements, including:

- Export controls (military, dual-use, nuclear)
- Economic sanctions (Iran, Syria, Sudan, Cuba, North Korea, Burma, Russia and others)
- CFIUS Foreign Investment Reviews & FOCI Mitigation
- FCPA / UKBA, IFI & multinational anti-corruption regimes
- Anti-money laundering, Anti-boycott, Customs, Immigration

Steptoe has earned a reputation as a go-to firm for boards, audit committees, special committees, organisations, and individuals in need of outside counsel to handle government investigations, sensitive internal investigations, and compliance reviews. Throughout the recent period of very active U.S. enforcement, we have successfully represented clients in hundreds of investigations and enforcement actions involving international regulation in the U.S., the Middle East, Latin America, Russia and Eastern Europe, Africa, and Asia. We have been in the forefront of the development of World Bank investigations and sanctions proceedings. We have also developed compliance programs tailored to clients' businesses, taking into account internal management structures, compliance resources, geographic footprint, and customer/supply chain bases.

Our services range from the preventive to the investigative and remedial, including counseling on the legality of transactions and risk-mitigation measures, interpretation of regulatory requirements, licensing and advisory opinion services, compliance advice and assistance in developing and implementing compliance programs, internal reviews and investigations, third-party audits, voluntary disclosures when appropriate, and defence of civil and criminal enforcement actions of the relevant enforcement agencies.

We assist clients both within and outside of the U.S. across a wide range of industries, including information technology, aerospace and defence, chemicals, computers and electronics, educational services, energy, engineering & construction, homeland security, industrial products, oilfield services, mining, power generation, process controls, telecommunications, transportation, and related technologies, as well as financial services, including banking, insurance, reinsurance, legal services, and brokering.

We are well known for our experience with cutting-edge issues, such as control of encryption technology, e-commerce transactions, cybersecurity, deemed exports/reexports, IP, international M&A, and global supply chain issues.

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Steptoe
STEPTOE & JOHNSON LLP

Trade Pacific PLLC

Trade Pacific is a leading international trade law firm. We opened in 2004 with the sole purpose of specialising in compliance with international trade laws. Our attorneys and advisors collectively have decades of experience, and each has had a substantial career either in trade practices at the largest global law firms or within the U.S. government. Our law firm provides sophisticated legal expertise through personalities that naturally find solutions the largest firms typically do not offer. Our name reflects our particular experience with trade relations between the United States and Pacific nations, while our overall experience extends around the globe. Headquartered in Washington, D.C., we have resources on the ground in China, Thailand and Vietnam.

For exports, our expertise keeps clients in compliance with export controls and economic sanctions, including the Export Administration Regulations ('EAR'), International Traffic in Arms Regulations ('ITAR'), Office of Foreign Assets Control's ('OFAC') sanctions regulations, Foreign Corrupt Practices Act ('FCPA'), and counterpart laws in other countries. Compliance is not the only goal, however. Business proceeds more smoothly because we reduce export licensing burdens and provide tailored policies, procedures and training. We also ensure clients can properly evaluate possible acquisitions by providing effective trade due diligence. In the event of violations, investigations or audits, clients rely on us to avoid or minimise consequences for the business while also resolving any compliance weaknesses.

For imports, we specialise in cutting costs that result from trade remedies like antidumping, countervailing duty and safeguards investigations. Over the last 20 years, our trade remedy lawyers have been involved in every significant AD/CVD and safeguards case. Our clients have obtained substantial victories in these cases while also achieving competitive advantages in their industries. Companies also use our strategies to identify and prepare for cases to come. With our planning, clients have avoided substantial import duties. We understand how companies operate, and we guide them in structuring their operations to ensure products enter the U.S. market at the lowest possible duty rate.

We prioritise going where industry is, both in the United States and abroad, and understanding each business's particular concerns and issues. Our approach is to immerse ourselves in the complexities of business and law so that clients get the best compliance strategies without needlessly hampering their global business.

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