

Export Controls and Sanctions as “The New FCPA”

Understanding and Preparing for Increased Enforcement

Introductions



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Agenda

- Geopolitical Context & Impact
- Export and Sanctions Overview
- Recent USG and DOJ Policy Pronouncements
- Selected Recent Enforcement Actions
- Considerations for Companies
 - Compliance Programs
 - M&A/Deal Considerations
 - Voluntary Self-Disclosures
- Preparing for Investigations & Enforcement
- Final Takeaways and Q&A

Geopolitical Context & Impact

The geopolitical and global business landscape has shifted dramatically in the last few years

International business environment now fraught with emerging geopolitical risks

Sanctions, export controls, and investment controls have become even more favored as foreign-policy tools

Impact: Companies operating internationally face unprecedented risks, challenges, and scrutiny

→ Reassess business strategy and operations, risk management, compliance, and disclosure practices



Technology Report

US-China Decoupling Accelerates, and Shockwaves Spread

The separation of the world's two largest economies is growing faster, wider, and deeper than predicted.

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RISK & COMPLIANCE JOURNAL

Sanctions Turn Into New Priority for Justice Department




Department's white-collar enforcement efforts increasingly have a national-security focus after Russia's invasion of Ukraine, Deputy Attorney General Lisa Monaco

Export & Sanctions Overview

- Various US laws and regulations govern and generally prohibit without prior authorization:
 - Physical exports and transmissions of controlled items and tech out of the US
 - Reexports and in-country transfers (i.e., **outside of the US**) of controlled items and tech
 - Release of controlled software and tech w/in US to non-US persons
 - Transactions (including investments) with/in sanctioned entities/regions/economy sectors
- These laws and regulations have existed for a long time
- Complex and highly technical underlying regulations; lots of lists
- **Extraterritorial in application**, including controls over certain items made fully outside the US in factories using US tech
- Generally **strict-liability**, potential for significant fines (hundreds of millions to billions of \$)

Export & Sanctions Overview



Key Regulators →	Directorate of Defense Trade Controls (DDTC)	Bureau of Industry and Security (BIS)	Office of Foreign Assets Control (OFAC)
Mission	Ensure commercial exports of defense articles and defense services advance U.S. national security and foreign policy objectives	Advance U.S. national security, foreign policy, and economic objectives by ensuring an effective export control and treaty compliance system and promoting continued U.S. strategic technology leadership.	Administer and enforce economic and trade sanctions based on US foreign policy and national security goals
Controls	Defense Articles and Services (United States Munitions List - USML) 	Dual-Use Items (Commerce Control List - CCL) 	Txns with Sanctioned Entities/Regions/Sectors (Specially Designated Nationals (SDN) list) 
Key Laws and Regulations	Arms Export Control Act of 1976 International Traffic in Arms Regulations (22 CFR Parts 120-130)	Export Control Reform Act of 2018 Export Administration Regulations (15 CFR Parts 730-774)	Trading with the Enemy Act of 1917 Int'l Emergency Economic Powers Act of 1977 Comprehensive Iran Sanctions, Accountability, and Divestment Act (CISADA) of 2011 Executive Orders OFAC Regulations (31 CFR Parts 500-600)
Civil Penalties	Up to greater of \$1.2M+ or 2x txn value / violation; debarment	Up to greater of \$300K+ or 2x txn value / violation; debarment	Dependent on underlying statutory authority Up to \$1.8M / violation (Kingpin Act) Up to greater of \$300K+ or 2x txn value / violation (IEEPA)
Criminal Penalties	20 years prison + up to \$1M / violation	20 years prison + up to \$1M / violation	20 years prison + up to \$1M / violation (IEEPA)



Recent USG and DOJ Policy Pronouncements



JUSTICE NEWS

Deputy Attorney General Lisa Monaco Delivers Remarks at American Bar Association National Institute on White Collar Crime

Miami, FL ~ Thursday, March 2, 2023

Remarks as Prepared for Delivery

Because in today's complex and uncertain geopolitical – very uncertain quite frankly – geopolitical environment, corporate crime and national security are overlapping to a degree never seen before, and the department is retooling to meet that challenge.

Our National Security Division will be elevating its attention to corporate crime through an infusion of personnel and expertise.

And last week, just last week, the world marked one year since Russia's unprovoked invasion of Ukraine. That invasion sparked a global response from governments and companies alike, and it elevated the importance of sanctions and export control enforcement.

What was once a technical area of concern for select businesses should now be at the top of every company's risk compliance chart.

Justice Department Hiring Dozens of New Prosecutors to Enforce Russian Sanctions

Department will add 25 new prosecutors to section enforcing sanctions and export controls against Russia and other adversaries

PRESS RELEASES

U.S. Departments of Treasury and Justice Launch Multilateral Russian Oligarch Task Force

RISK & COMPLIANCE JOURNAL

U.S. Launches 'Strike Force' to Keep Disruptive Tech Away From Adversaries

The Justice Department and Commerce Department are teaming up to police technology exports that could pose a national security threat in the hands of rivals such as China and Russia



Department of Commerce, Department of the Treasury, and Department of Justice Tri-Seal Compliance Note:

Cracking Down on Third-Party Intermediaries Used to Evade Russia-Related Sanctions and Export Controls

Selected Recent Enforcement Actions

Date	Company	Fine	Agencies Involved	Alleged Violation
Feb. 27, 2023	3D Systems, Inc.	\$22M +	State, Commerce, Justice	<ul style="list-style-type: none"> • Unauthorized exports, reexports, and retransfers of technical data to Germany, People's Republic of China (PRC), Taiwan. • Unauthorized exports of technical data to foreign-person employees • Failure to maintain ITAR records • False Claims Act
Mar. 30, 2023	Wells Fargo	\$30M	Treasury	<ul style="list-style-type: none"> • Provision of software to foreign bank which was then used to process trade finance transactions with U.S.-sanctioned jurisdictions and persons
Apr. 6, 2023	Microsoft	\$3.3M	Commerce, Treasury	<ul style="list-style-type: none"> • OFAC sanctions regulations involving Ukraine/Russia, Cuba, Iran, and Syria • Software licensing agreements that would allow the transfer or access to software by companies on BIS's Entity List
Apr. 19, 2023	Seagate Technology LLC	\$300M	Commerce	<ul style="list-style-type: none"> • Selling hard disk drives (HDDs) to Huawei Technologies Co. Ltd. (Huawei) in violation of the foreign direct product (FDP) rule • * Largest administrative fine in BIS history
Apr. 25, 2023	British American Tobacco	\$629M	Justice, Treasury	<ul style="list-style-type: none"> • Bank fraud violations + violations of OFAC's sanctions against North Korea • * Largest ever sanctions-related fine for non-financial institution

Compliance Program Expectations

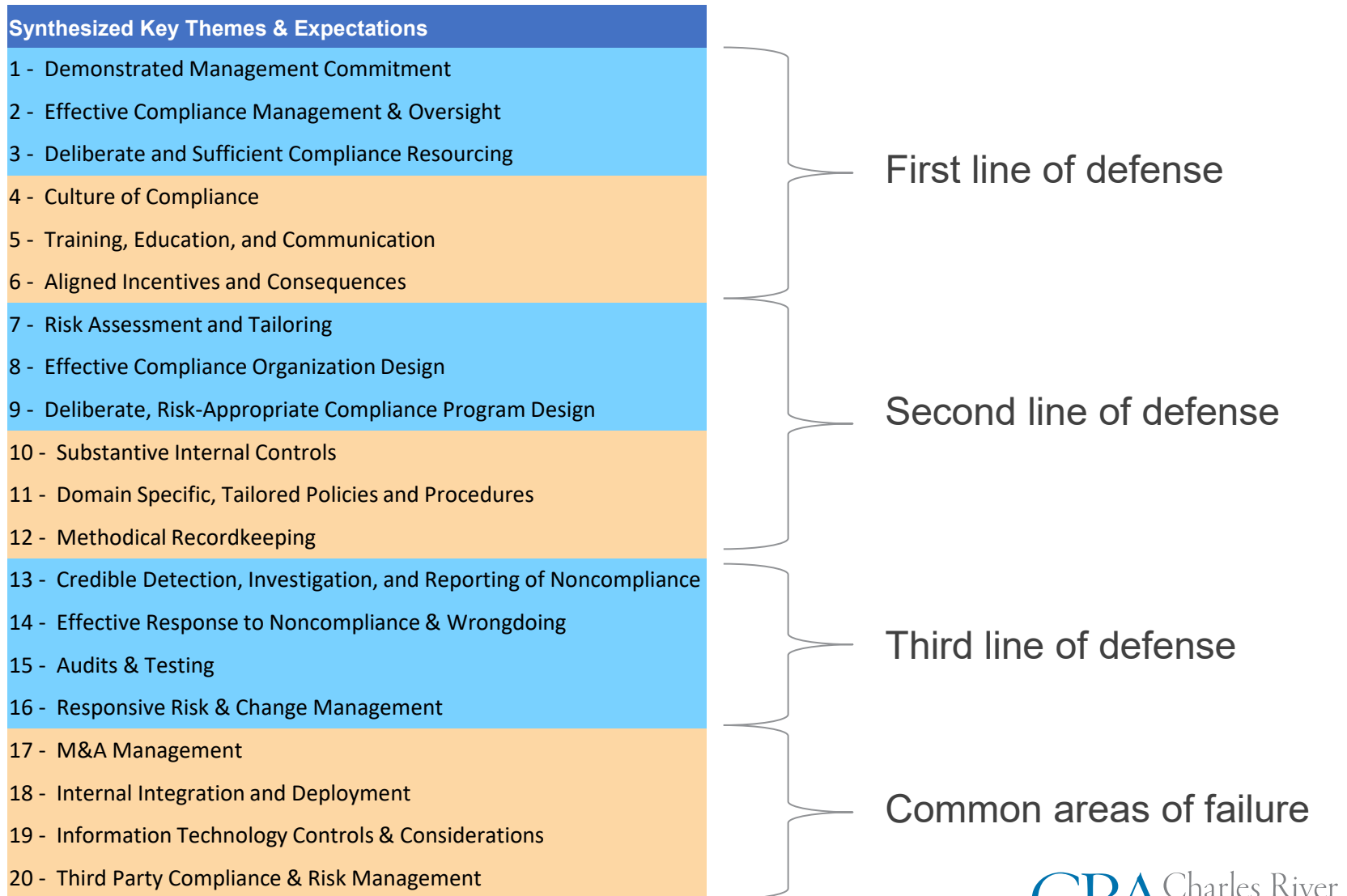
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There is lots of guidance out there on compliance program expectations from regulators and DOJ:

- State – [ITAR Compliance Program Guidelines](#) (Updated Dec. 2022)
- OFAC – [A Framework for OFAC Compliance Commitments](#) (Issued May 2019)
- Commerce – [Export Compliance Guidelines](#) (Updated Jan. 2017)
- DOJ – [Evaluation of Corporate Compliance Programs](#) (Updated Mar. 2023)

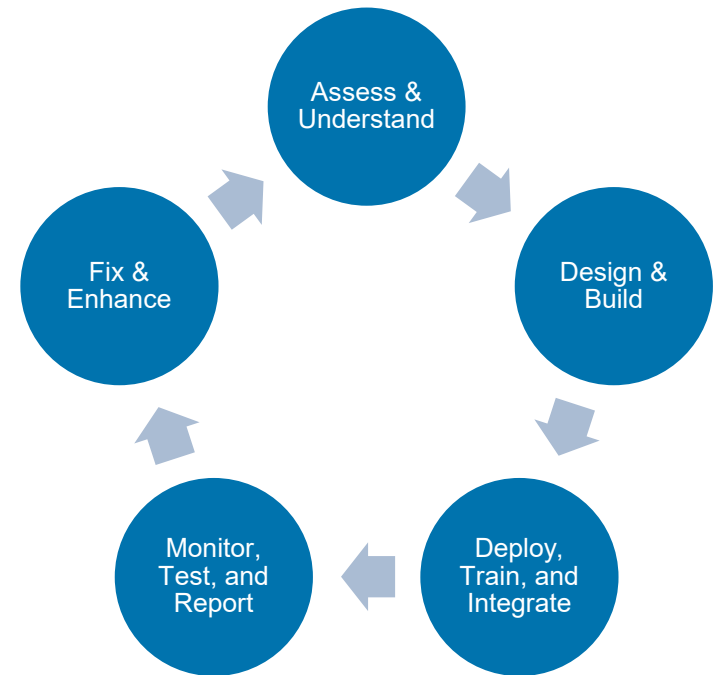
Compliance Program Expectations (Cont.)



Compliance Program Expectations (Cont.)

Things to remember and best practices:

- It starts from the top
- Figure out what works for your organization; there is no one-size-fits-all program
- Something now is better than a "perfect" compliance program in 2 years; effective compliance programs are built cyclically and constantly evolving
- There is no "perfect" compliance; dealing with non-compliance and misses is an essential and expected part of a well-functioning compliance program
- Business risks evolve constantly (new products, customers, geographies, acquisitions, divestments) and compliance programs must respond nimbly



M&A Deal Considerations

- Identifying risk – Pre-closing diligence; what are you looking for?
- Protecting your client – Risk allocation & common terms
- Post-closing risk mitigation – Dealing with shortcomings

Voluntary Self-Disclosures (VSDs) Considerations

- The key regulators and DOJ all have VSD programs
- VSDs can result in penalty reductions and other concessions
- To have this effect, disclosures and underlying investigations must be thorough, remediation must be effective, and company must fully cooperate
- New DOJ and Commerce policies on VSDs → Further incentive VSDs related to export controls and sanctions violations, and dis-incentivize deliberate non-disclosure for significant violations
- What does an effective investigation look like? Lessons from FCPA investigations
- Considerations for submitting “voluntary” self-disclosures

Dealing with Government Investigations and Enforcement

- Best defense is a good (compliance) offense
- What to do when the government knocks
- What NOT to do
- Getting to resolution
- Coming out on the other side

Final Takeaways and Questions

