

# Catch All Controls: Embargoed Countries and Prohibited Parties

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In certain circumstances, catch all controls require a license for exporting<sup>1</sup> or will totally prohibit a transaction.

## A. SANCTIONED COUNTRIES

U.S. economic sanctions broadly prohibit a “U.S. person” (person subject to U.S. Jurisdiction for Cuba) from participating in activities with embargoed countries, their representatives, or nationals. Entities owned by governments of embargoed countries located outside the country are usually restricted for export similar to that of the embargoed country.

**Embargoed** countries include Cuba, Iran and Syria<sup>2</sup>. Embargoes prohibit virtually ALL exports/imports and other transactions<sup>3</sup> without a license or other US Government authorization. In certain rare cases, a license exception may be used to authorize a shipment to an embargoed country. For example, License Exception TMP authorizes certain news media exports to Cuba and certain humanitarian relief efforts in Sudan.

In addition, certain countries are subject to **targeted** sanctions. North Korea<sup>4</sup> is an example of a country having targeted sanctions. Targeted sanctions are prohibitions on trade in specified goods, technologies and services with specific organizations (including foreign governments) and persons.<sup>5</sup>

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<sup>1</sup>Export: Export, Reexport, Deemed export, Deemed Reexport, Transfer.

<sup>2</sup> Embargoed countries:

- OFAC: Cuba, Iran, Syria;
- EAR: Cuba, Iran, Syria;
- ITAR: Burma, Code d’Ivoire, Congo, Eritrea, Iraq, Iran, Lebanon, Liberia, Libya, North Korea, People’s Republic of China, Somalia, The Republic of the Sudan.

<sup>3</sup> importation and exportation of goods and services, whether direct or indirect, as well as "facilitation" by a U.S. person of transactions between foreign parties and a sanctioned country.

<sup>4</sup> Targeted sanctions countries and territories:

- OFAC: Balkans, Belarus, Myanmar (Burma), Central African Republic, Cote d’Ivoire, Iraq, Lebanon, Liberia, Libya, North Korea, Somalia, Sudan, Syria, Ukraine/Russia, Yemen, and Zimbabwe;
- EAR: Crimea – Region of Ukraine; Iraq, North Korea; Russian Industry sector;
- ITAR – Prohibited countries::Belarus, Cuba, Eritrea, Iran, North Korea, Syria, Venezuela.
- ITAR – special policy: Iraq, Afghanistan, Democratic Republic of Congo, Haiti, Libya, Vietnam, Somalia, Sri Lanka, Liberia, Cote d’Ivoire, Cyprus, Zimbabwe, Lebanon, Central African Republic, Sudan.

<sup>5</sup> See <http://www.treas.gov/offices/enforcement/ofac/> for a full list of U.S. sanction programs.

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While most sanctions are administered by OFAC, BIS has jurisdiction over certain export prohibitions (via “embargo” regulations), as it is the case with exports to Syria<sup>6</sup>. In other words, a license from BIS would be required to ship most items to Syria and other OFAC sanctioned countries, or could be prohibited. Economic sanctions and embargo programs are country-specific and very detailed in the specific prohibitions.

## **B. PROHIBITED PARTIES: TERRORIST AND OTHER BARRED ENTITY LISTS**

Various U.S. Government agencies maintain a number of lists of individuals or entities barred or otherwise restricted from entering into certain types of transactions with U.S. persons. Particularly since 9/11, U.S. companies are beginning to become more assertive in attempting to place contractual terms with foreign companies related to these lists. Such individuals and/or entities must be screened against these lists to ensure that the University does not engage in a transaction with a restricted or barred entity. The University conducts this screening under a PA system-wide license to Visual Compliance™, which screens against the following lists:

- **Specially Designated Nationals and Blocked Persons List (“SDN List”).** Maintained by OFAC, this is a list of barred terrorists, narcotics traffickers, and persons and entities associated with embargoed regimes. Generally, all transactions with such persons are barred. The *SDN List* is available at: <http://www.treas.gov/offices/enforcement/ofac/sdn/index.shtml>.
- **Persons Named in General Orders (15 C.F.R. § 736, Supp. No. 1).** General Order No. 2 contains the provisions of the U.S. embargo on Syria; General Order No. 3 prohibits the re-exports to Mayrow General Trading and related parties.
- **List of Debarred Parties.** The Department of State bars certain persons and entities from engaging in the export or re-export of items subject to the USML. The list of debarred parties is available at: <http://www.pmdtc.state.gov/compliance/debar.html>. Note that the number of countries subject to a U.S. arms embargo is much broader than those subject to OFAC embargoes. See: [http://www.pmdtc.state.gov/embargoed\\_countries/index.html](http://www.pmdtc.state.gov/embargoed_countries/index.html).

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<sup>6</sup> See 15 C.F.R. § 746.

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- **Denied Persons List.** These are individuals and entities that have had their export privileges revoked or suspended by BIS. It is a violation of the EAR to deal with anyone on this list. The *Denied Persons List* is available at: <http://www.bis.doc.gov/index.php/policy-guidance/lists-of-parties-of-concern/denied-persons-list>
- **Entity List.** These are entities identified as being involved in proliferation of missile technology, weapons of mass destruction, and related technologies. The *Entity List* is available at: <http://www.bis.doc.gov/index.php/policy-guidance/lists-of-parties-of-concern/entity-list>
- **Unverified List.** These are foreign persons and entities for which BIS has been unable to verify the nature of their operations. The *Unverified List* is available at: <http://www.bis.doc.gov/index.php/policy-guidance/lists-of-parties-of-concern/unverified-list>
- **Excluded Parties List.** These are entities that have been barred from contracting with U.S. Government agencies. In general, companies cannot contract with such parties in fulfilling a U.S. Government contract, either as prime or sub-contractor. While transactions with these entities may not be barred if the contract does not relate to fulfilling a U.S. Government contract, a hit against this list would alert the University about the nature of prior activity giving rise to the designation and this information should be considered as part of due diligence for the transaction.
- **Non-proliferation Sanctions** maintained by the Department of State. These lists are available at: <http://www.state.gov/t/isn/c15231.htm>.

## C. PROLIFERATION ACTIVITIES

Also known as the Enhanced Proliferation Control Initiative (EPCI). The U.S. export controls laws require a license for the export and reexport to entities with nuclear, missile, chemical/biological weapons activities in certain countries.

## D. RED FLAGS

The EAR prohibits proceeding with any transaction if the exporter detects something suspicious or that indicates an illegal activity might occur. For instance, a customer may illegally

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transfer equipment to a problem destination or be involved in an illicit proliferation activity. In such a case, the EAR requires the exporter to investigate and clear the red flags before proceeding. For a list of red flags indicators, please consult the BIS website: <http://www.bis.doc.gov/index.php/enforcement/oe/compliance/23-compliance-a-training/51-red-flag-indicators>

## **E. MILITARY END-USE / END-USER LICENSING REQUIREMENTS**

### **i. China Military Catch All**

In June 19, 2007 EAR added a new control in order to slow Chinese military development. This control applies to items in certain ECCNs when exported/reexported/or transferred to a military end use in China, or when the exporter has reason to know there is a “military end use”. In those cases, the exporter must apply for a license.

### **ii. Russia Military Catch All**

The U.S. Department of Commerce, Bureau of Industry and Security (BIS) and the U.S. Department of the Treasury, Office of Foreign Assets Control (OFAC) have implemented various Russia sector sanctions and Ukraine-related sanctions. The Treasury sanctions cover a range of financing in the financial, defense and energy sectors as well as services in the energy sector<sup>7</sup>. The Commerce sanctions cover certain exports, reexports and in-country transfers in the energy and defense sectors as well as such transactions with specified foreign persons<sup>8</sup>.

### **iii. Venezuela**

On November 7, 2014, the Department of Commerce's Bureau of Industry and Security (BIS) issued a final rule amending the Export Administration Regulations (EAR) to impose license requirements on the export, re-export, or transfer (in-country) of certain items to or within Venezuela when intended for a "military end use" or "military end user."<sup>9</sup>

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<sup>7</sup> <http://www.treasury.gov/resource-center/sanctions/Programs/Pages/ukraine.aspx>

<sup>8</sup> <http://www.bis.doc.gov/index.php/component/content/article/9-bis/carousel/775-frequently-asked-question-on-bis-s-russia-sanctions>

<sup>9</sup> <http://www.bis.doc.gov/index.php/regulations/federal-register-notices/17-regulations/616-federal-register-notices-2014>