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Quint-Seal Compliance Note—Know Your Cargo: Best Practices for Maritime and Other Transportation Industries

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December 12, 2023 – On December 11, 2023, the U.S. Departments of Commerce, State, Justice, Treasury and Homeland Security published a joint Quint-Seal Compliance Note, “Know Your Cargo: Reinforcing Best Practices to Ensure the Safe and Compliant Transport of Goods in Maritime and Other Forms of Transportation.” The five U.S. government agencies jointly highlighted “certain tactics commonly deployed by malign actors” who seek to avoid U.S. sanctions and export controls. They further identified “steps that the maritime and other transportation industries can take to ensure compliance with U.S. law.”

This is the latest of several compliance notes that U.S. government agencies have issued jointly to broadcast the U.S. government’s view of the seriousness of sanctions evasion risks and their expectations regarding how to mitigate those risks (the “Compliance Notes”). While nominally directed at “individuals and entities directly participating in and enabling the global transport of goods,” as with the other Compliance Notes, this note is highly relevant to any manufacturer or exporter whose goods or services are sold overseas and thereby utilizes the services of maritime and transport resources. The note stresses the importance of risk-based due diligence, as well as sanctions and export control compliance programs, frequently referring to “all participants” in international trade and referring to the importance of recipient or counterparty due diligence for “[e]xporters and entities across any supply chain.”

Common Evasion Tactics

The Quint-Seal Compliance Note directs transportation and maintenance companies, insurance providers, financial institutions, and others involved in funding and facilitating the transport of cargo to be alert to common practices that suggest efforts at export controls or sanctions evasion, including:

- **“Manipulating location or identification data”** by means of disabling or altering the vessel’s Automated Identification System (“AIS”) or physically changing the vessel name and/or International Maritime Organization (“IMO”) number;

- **“Falsifying cargo and vessel documents,”** including bills of lading, certificates of origin, invoices, and lists of ports of call;
- **“Ship-to-ship transfers”** used to conceal the origin or destination of cargo;
- **“Voyage irregularities and use of abnormal shipping routes,”** including unscheduled detours, transshipment through third-countries, or suspicious deviations of route that do not have an apparent legitimate business purpose;
- **“Frequent registration changes”** that evade national provisions; and
- **“Complex ownership or management”** structures to disguise the ultimate beneficial owner of the cargo, end user, or other entities involved in the shipping process.

Recommended Compliance Controls

The compliance quintet recommends that those involved in maritime and other transportation industries implement enhanced compliance controls as necessary to detect and avoid evasion. Controls are particularly important “when operating near or in geographic areas determined to be high-risk or when dealing with counterparties who demonstrate anomalous behavior that may be indicative of deceptive shipping.” The note recommends the following controls, all informed by a risk-based assessment of evasion risk¹:

- **“Institutionalizing sanctions and export control programs”** through standardized, risk-based policies, procedures, standards, and safeguards, including a communicated expectation that partners have similarly robust compliance policies;
- **“Establish location monitoring best practices and contractual requirements”** that include risk-based due diligence on the location history of vessels and investigation of signs of data gaps or manipulation;
- **“Know your customer”** risk-based due diligence of counterparties tailored to their role in the transactions, including screening against the U.S. Government’s Consolidated Screening List;
- **“Exercise supply chain due diligence”** to ensure that recipients and counterparties are not sending or receiving commodities in violation of sanctions or export control laws; and
- **“Industry information sharing”** of common challenges, threats, and risk-mitigation measures by industry groups and similar organizations.

Increased U.S. Enforcement Activity

The Quint-Seal Compliance Note concludes by highlighting increased U.S. criminal and regulatory enforcement activity. The U.S. Department of Justice (“DOJ”) has brought multiple actions in recent years, with a focus on transactions involving the transport of oil products for the benefit of sanctioned Iranian entities, including Iran’s Islamic Revolutionary Guard Corps (“IRGC”). The U.S. Department of Commerce’s Bureau of Industry and Security (“BIS”), the U.S. Department of State’s Directorate of Defense Trade Controls (“DDTC”), and the U.S. Department of the Treasury’s Office of Foreign Assets Control (“OFAC”) have partnered with the DOJ in pursuing civil and criminal actions to enforce the Export Administrative Regulations (“EAR”), the International Traffic in Arms Regulations (“ITAR”), and U.S. sanctions regulations, respectively; and have also brought their own administrative enforcement actions, including seeking significant monetary penalties. The note provides the following examples of such enforcement activity:

Criminal Prosecutions

- On September 8, 2023, the DOJ announced the first-ever criminal resolution against a bareboat charterer of a crude oil tanker carrying contraband Iranian oil for the benefit of the IRGC and a deferred prosecution agreement (“DPA”) with a second company that managed the operations of the vessel during the relevant time period. The companies used fabricated shipping records, ship-to-ship transfers, spoofing of AIS data, and other deceptive practices to hide the origin of one million barrels of Iranian crude oil. The bareboat charterer received a sentence of three years of corporate probation and a fine of nearly \$2.5 million. Further—as a condition to its DPA—the tanker operator was required to transport the contraband Iranian oil across the globe to the United States, at a significant cost. The United States then seized the crude oil and is currently pursuing a forfeiture action.

Civil Forfeiture Action

- In 2021, DOJ secured a default judgment forfeiting the Iranian oil aboard four vessels that used ship-to-ship transfers and altered shipping documents in a scheme to deliver the Iranian oil to Venezuela.

Civil Enforcement Actions

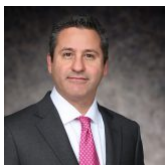
- In 2018, BIS imposed monetary penalties of \$155,000 on a logistics company that exported items to entities in China and Russia on the Entity List, a BIS-administered list of entities and individuals subject to specified export restrictions. BIS determined that the logistics company had “willingly ignored or misused information that indicated potential problems with the transactions.”
- In 2019, OFAC imposed monetary penalties of \$871,837 on a company whose subsidiaries engaged in transactions involving blocked, Iranian-flagged vessels “despite knowing that financial institutions had rejected at least two earlier payments” related to the transaction; and
- In 2022, OFAC imposed another monetary penalty, this one of \$6.1 million, against a freight forwarding company who, to “avoid scrutiny by financial institutions, instructed its United Arab Emirates and South Korea affiliates to avoid including the names of sanctioned jurisdictions on invoices.”

Takeaways

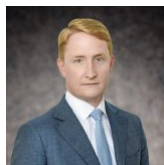
If the above guidance appears to sound in anti-corruption due diligence overtones, it is because it does. The Quint-Seal Compliance Note is another step towards the convergence of sanctions and export controls anti-evasion due diligence—and the necessary risk-based mindset to meet regulators’ expectations in that arena—towards anti-corruption due diligence. The Quint-Seal Note also illustrates (again) how U.S. law enforcement agencies continue to step up cooperation in enforcement activity, particularly against sanctions and export controls evasion. These agencies expect manufacturers, exporters, and any other party involved in international trade to read and implement this and prior U.S. guidance to detect and avoid evasion.

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1. For practical tips for conducting risk-based sanctions and export controls evasion risk assessments, see Brent Carlson & Michael Huneke, *Know Your Customer, But Also Yourself: A Fresh Look at Sanctions & Export Controls Risk Assessments in the Era of the “New FCPA”*, NYU Compliance & Enforcement Blog (Sept. 28, 2023). ↵

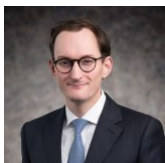
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