

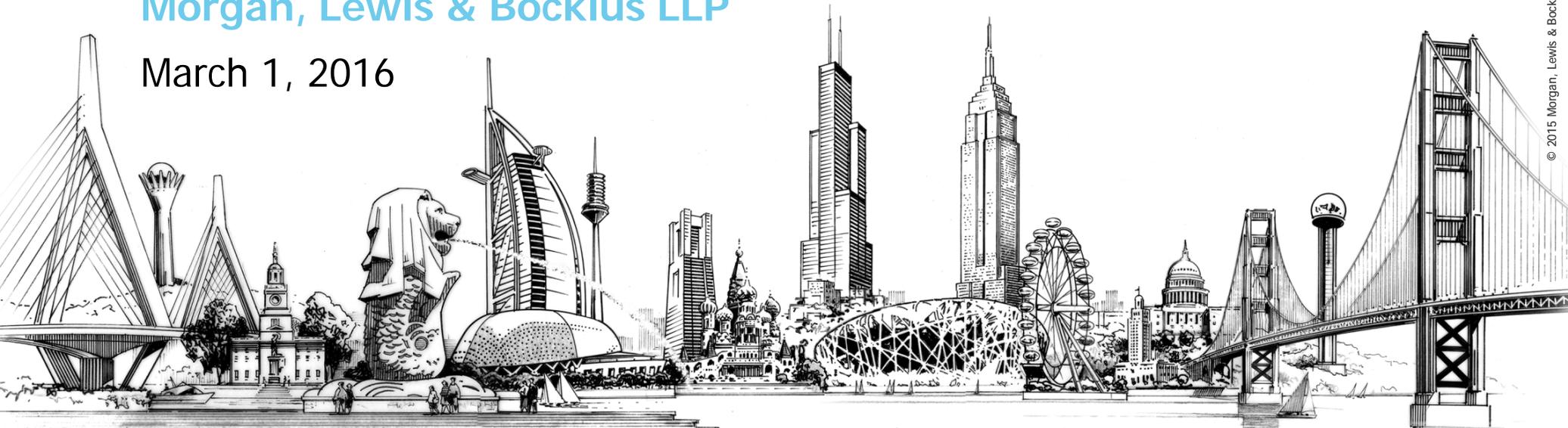
Morgan Lewis

U.S. EXPORT COMPLIANCE TRAINING (EXPORT UNIVERSITY – EXPORT 201)

Presented by:

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U.S. EXPORT CONTROLS

U.S. Export Controls

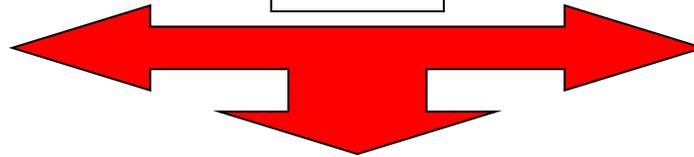
1. **Definition of Export**
2. **Export Jurisdiction**
 - **Who**
 - **What**
3. **Export Procedures**



Export Definition

- Goods
- Services
- Software
- Technology

To



US Person in
Foreign
Country

Foreign Person
in Foreign
Country

Foreign Person
in United States



Who qualifies as a foreign person?

- ✓ Non-U.S. Citizen
- ✓ Non-U.S. Green Card Holder
- ✓ Recipient of Worker Visa (H1B, *etc.*)

Export to Foreign Person =

Export to Foreign Person's:

- Country of Residence
- Country of Nationality / Citizenship
- (Country of Birth)



US Export Controls

✓ Controls based on status as US Person

“Who” is subject to US jurisdiction?

✓ Controls based on what is being exported by US company

“What” is subject to US jurisdiction?



US Export Controls

Who Based Jurisdiction = US Person

- US Individuals (WW)
- US Companies
- Foreign Branches of US Companies
- Foreign Subsidiaries of US Companies
- US-based Branches of Foreign Companies
- US-based Subsidiaries of Foreign Companies
- Foreign Individuals in US



US Export Controls

Applicability Based on “Who”:

- ✓ **Anti-Boycott Act**
- ✓ **False Statements Act**
- ✓ **Economic Sanctions**



“Who”-based Jurisdiction

Anti-Boycott Act



Anti-boycott Regulations

Prohibit “US Persons” from participating in other countries’ boycotts of countries NOT boycotted by US

Boycott requests may be:

- **in written or oral format**
- **in fine print in T&C on back of PO**

Require “US Persons” to report receipt of boycott requests



Anti-boycott Regulations

Arab League Boycott of Israel is the principal foreign economic boycott that U.S. Persons must be concerned with today

Iraq	Saudi Arabia
Kuwait	Syria
Lebanon	UAE
Libya	Yemen
Qatar	

But anti-boycott is not limited to the above, and also is not limited to Israel



Anti-boycott Regulations

Principal Prohibitions:

- ✓ **Boycott-based refusal or agreement to refuse to do business with boycotted country**
- ✓ **Certifying to foreign buyers that products sold do not contain components of boycotted country origin**
- ✓ **Furnishing or agreement to furnish information about business relationships with a boycotted country or blacklisted persons**
- ✓ **Boycott-based discrimination or agreement to discriminate based on religion, race, sex, national origin or nationality**



Anti-boycott Regulations

Requirement to Report Boycott Requests to BIS and IRS

- ✓ Quarterly Report
- ✓ Single Transaction Form
- ✓ Multiple Transaction Form
- ✓ Advise tax Department on possible need to file IRS form 5713 with Ametek tax return

Violations caused by participation in boycott and / or failure to report



“Who”-based Jurisdiction

False Statements Act



False Statements Act

No False Statements on:

- ✓ Export License Applications
- ✓ Commercial Invoices
- ✓ Exit Documents (Electronic Export Information ("EEI") Records in AES)
- ✓ Origin Certificates
- ✓ Any export-related document



“Who”-based Jurisdiction

Economic Sanctions



OFAC Sanctions

- **OFAC's sanctions target:**
 - Countries whose actions are determined to constitute a threat to US national security, US foreign policy, or the US economy; and / or
 - Specific individuals or entities which may be in any country involved in or contributing to activities which are deemed to constitute a threat to US national security, US foreign policy, or the US economy.
- **Each OFAC sanction program is unique with its own definitions, prohibitions and regulations**



OFAC Comprehensive Country Sanctions

6 Countries

Cuba (Comprehensive)	Iran (Comprehensive)	North Korea (Comprehensive)
Sudan (Comprehensive)	Syria (Comprehensive)	Crimea (Comprehensive)



What do OFAC Comprehensive Country Sanctions prohibit?

“U.S. persons” are prohibited under OFAC country sanctions from:

- directly or indirectly engaging in any dealings regarding any goods, technology or services, in or with, an OFAC sanctioned country, unless otherwise authorized by OFAC.
- Evading or avoiding OFAC country sanctions
- Facilitating a transaction by a foreign person when the transaction would be prohibited if performed by a US person or within the US.



Who Must Comply with OFAC Comprehensive Country Sanctions?

“U.S. persons”

- **Crimea, North Korea, Sudan & Syria include:**
 - **U.S. citizens (wherever located) and permanent residents**
 - **U.S. entities organized under any law in US/State**
 - **Foreign branches of U.S. entities**
 - **Any persons or entities located in the United States**
- **Cuba & Iran include all the above plus the foreign subs owned or controlled by U.S. Companies.**



Current Efforts to Reform Certain Comprehensive Country Sanctions Programs

- Cuba
- Iran



Cuba

- In remarks made from the White House on December 17, 2014, U.S. President Obama announced new changes in the longstanding U.S. policy toward Cuba
 - The U.S. has had sanctions against Cuba since 1960 in the form of a full scale embargo on Cuba (which also applied to foreign subs by their inclusion in the definition of “U.S. Person”).
- President Obama instructed Secretary of State Kerry in December 2014 to immediately initiate discussions with Cuba on the re-establishment of diplomatic relations



OFAC Cuba Regulations

- Effective January 16, 2015, the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) revised the Cuba Assets Control Regulations (CACR, 31 CFR Part 515) to relax some, but not all, restrictions
- Relaxation of Cuban sanctions continues in "drips and drabs"
- Further relaxation expected before President's upcoming visit to Cuba



Reality Check on Cuba

- The changes that have been implemented to date are very modest in scope, because long-standing statutory provisions restrict the extent to which the President can act on his own with respect to Cuba.
- Changes to date do not:
 - Lift the general embargo against trade with Cuba.
 - Open the door further to travel to Cuba for U.S. businesses or tourists.
- **Significant limitations in dealing with Cuba continue to apply. Companies need to consider remaining limitations when developing Cuban strategies.**



OFAC Iran Regulations

- On July 14, 2015 the United States, European Union, United Kingdom, France, China, Russia, and Germany (P5+1/E3/EU+3 countries) and Iran reached a Joint Comprehensive Plan of Action (JCPOA) deal regarding Iran's nuclear program.
- Implementation Day under the JCPOA occurred on January 16, 2016.
- The relaxation of Iran sanctions that the U.S. implemented on Implementation Day results in:
 - Very few changes for U.S. individuals and U.S. companies ("U.S. Persons");
 - somewhat greater changes for foreign companies that are owned or controlled by U.S. Persons ("U.S.-owned or –controlled Foreign Entities"); and
 - rather significant changes for foreign companies that have no U.S. Person ownership ("Foreign Persons") and that are involved in Iranian transactions with no U.S. nexus.

Iran Sanctions

- For US Persons, very few changes were made to the status quo. The sanction changes implemented on January 16 applicable to US Persons constitute relatively minor modifications to the USG's primary Iran sanctions.
- However, in accordance with the terms of the JCPOA, the United States committed to license three additional categories of activities that would otherwise be prohibited under the USG's primary Iran sanctions.
 - A Statement of Licensing Policy—Issued and effective on Implementation Day. This Licensing Policy Statement provides for a favorable case-by-case review of specific license applications submitted to OFAC by individuals and entities who request OFAC authorization to export, re-export, sell, lease, or transfer commercial passenger aircraft (as well as related parts and services) to Iran.
 - New general license will authorize US Persons to import Iranian-origin carpets and foodstuffs (including pistachios and caviar) into the United States.
 - New General License H



Iran Sanctions

General License H authorizes:

- Foreign subsidiaries of US companies to sell foreign-made products to Iran; and
- US Persons to engage, to the extent necessary, in the following activities in connection with transactions involving Iran that US-owned or controlled Foreign Entities are otherwise authorized to conduct pursuant to General License H:
 1. activities related to the establishment or alteration of operating policies and procedures of a US entity or a US-owned or controlled Foreign Entity so that the US-owned or controlled Foreign Entity can engage in activities newly authorized by General License H; and
 2. activities to make available to US-owned or controlled Foreign Entities automated and globally integrated computer, accounting and other back office activities



Iran Sanctions: Reality Check

Aside from these minor modifications, the USG's primary Iran sanctions remain largely unchanged after Implementation Day and, as a consequence, US Persons continue to be broadly prohibited from engaging in transactions or dealings in or with Iran or its government.

In addition, the government of Iran and Iranian financial institutions remain persons whose property and interests in property are blocked.



OFAC Sanctions Against Designated Individuals & Entities

Individuals / Entities

- SDN's
- Foreign Sanctions Evaders



What are the requirements for OFAC Sanctioned Individuals & Entities?

- **US persons**

- Must block the assets of SDNs if such assets are in the U.S. or come into the possession of U.S. Persons
- Are prohibited from engaging in any dealings with SDNs
- Must treat as SDNs (Shadow SDNs) any entities directly or indirectly owned 50% or more by a named SDN
- Must exercise caution when dealing with entities that are “controlled” by an SDN



US Export Controls

✓ Controls based on status as US Person

“Who” is subject to US jurisdiction?

✓ Controls based on what is being exported by US company

“What” is subject to US jurisdiction?



Export controls vary based on export control jurisdiction

Jurisdiction = Fork in the Road

DDTC & ITAR
Defense Items

OFAC & OFACR

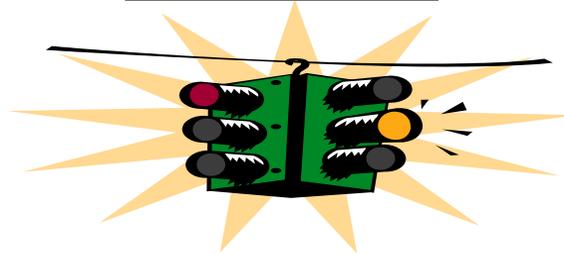
BIS & EAR
Dual Use Items

Prohibitions

Country?
End User?

Restrictions

License Required



Prohibitions

Country?
End User?

Restrictions

Product?
End User?
End Use?
Red Flag?
License Required?

Export Controls

Require an initial assessment of export control jurisdiction, *i.e.*,

WHICH

US Laws & US Regulations apply to the proposed export?

OFAC, ITAR, EAR, other?



Export Jurisdiction Based on Product

Military or Space

- ✓ Defense Article
- ✓ AECA / ITAR
- ✓ DOS / DDTC

Not Military or Space

- ✓ Dual Use Article
- ✓ EAA / EAR
- ✓ DOC / BIS



ITAR exports require export licenses unless a license exemption is available.

Multiple license exemptions sprinkled throughout ITAR – narrowly construed



U.S. Export Control Jurisdiction of DDTTC

If not Munitions Item, item will be dual use

- ❑ Mutually exclusive
- ❑ Item cannot have both USML Category and ECCN (dual use)



Ignorance, No Excuse

**ITAR and EAR apply a standard of
“Strict Liability” in assessing
violations!**

There is No Margin For Error!

Negligent versus Criminal



Export Procedures: Prohibition Screening #1

**Based on Export Jurisdiction,
Analyze Export for Prohibited Countries**

- ✓ **Export shipment destination**
- ✓ **Ultimate destination country**
- ✓ **Intermediate & transshipment destinations**
- ✓ **Countries between export shipment and ultimate destination**
- ✓ **ITAR has 26 countries vs EAR has 6**



Export Procedures: Prohibition Screening #2

Based on Export Jurisdiction, Analyze Export
for Prohibited Buyers / End Users

- ✓ Debarred Parties
- ✓ Denied Parties
- ✓ SDNs
- ✓ Foreign Sanctions Evaders
- ✓ Proliferators



Export Procedures: Licensing Analysis

Based on Export Jurisdiction, Analyze
Export for Product-Specific Restrictions /
License Requirements

- ITAR products almost always require export licenses
- EAR products may require export licenses
 - ECCN on Commerce Control List
 - Commerce Country Chart



Export Procedures

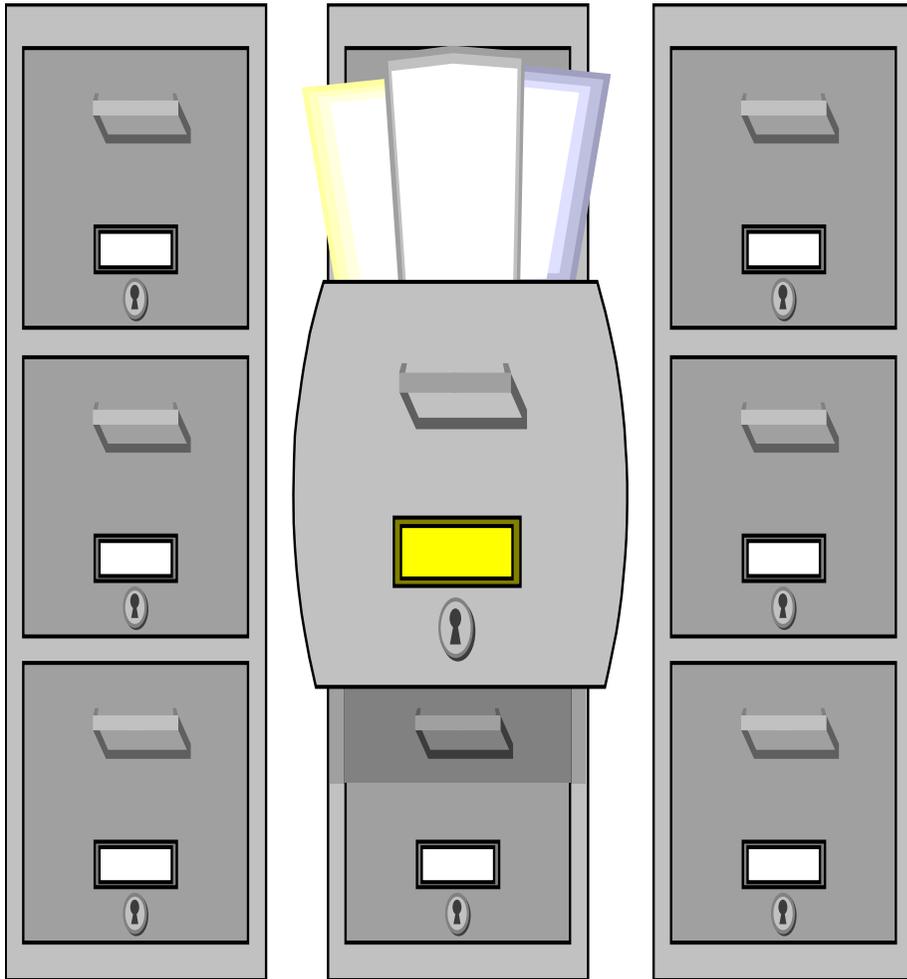
If EAR Jurisdiction applies and do not need an export license based on product-specific controls, must now analyze export for Export License Requirements Based on:

- ✓ End User: Entity List? Unverified List?
- ✓ End Use: MT? NP? CBW?
- ✓ Red Flags: Smell Test?



Export Procedures:

Retain Records for 5 Years From Date of Export



- Export License Application**
- Export License**
- Commercial Invoice**
- Transportation Document**
- EEI Record for AES**
- Origin Certificates for FTA**
- Sales Contract**
- Financial Records**
- Correspondence / E-Mails**



Questions?



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