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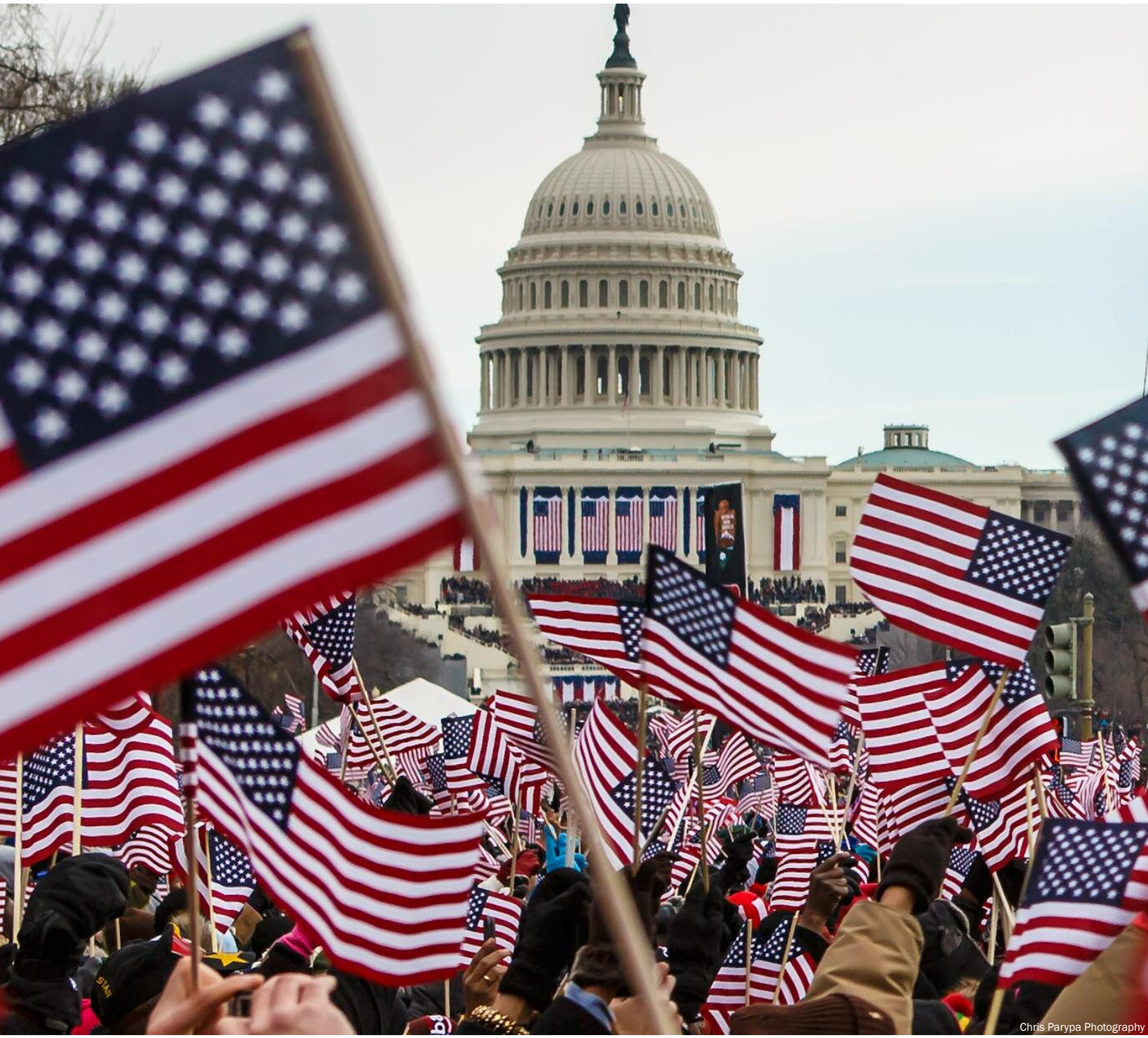
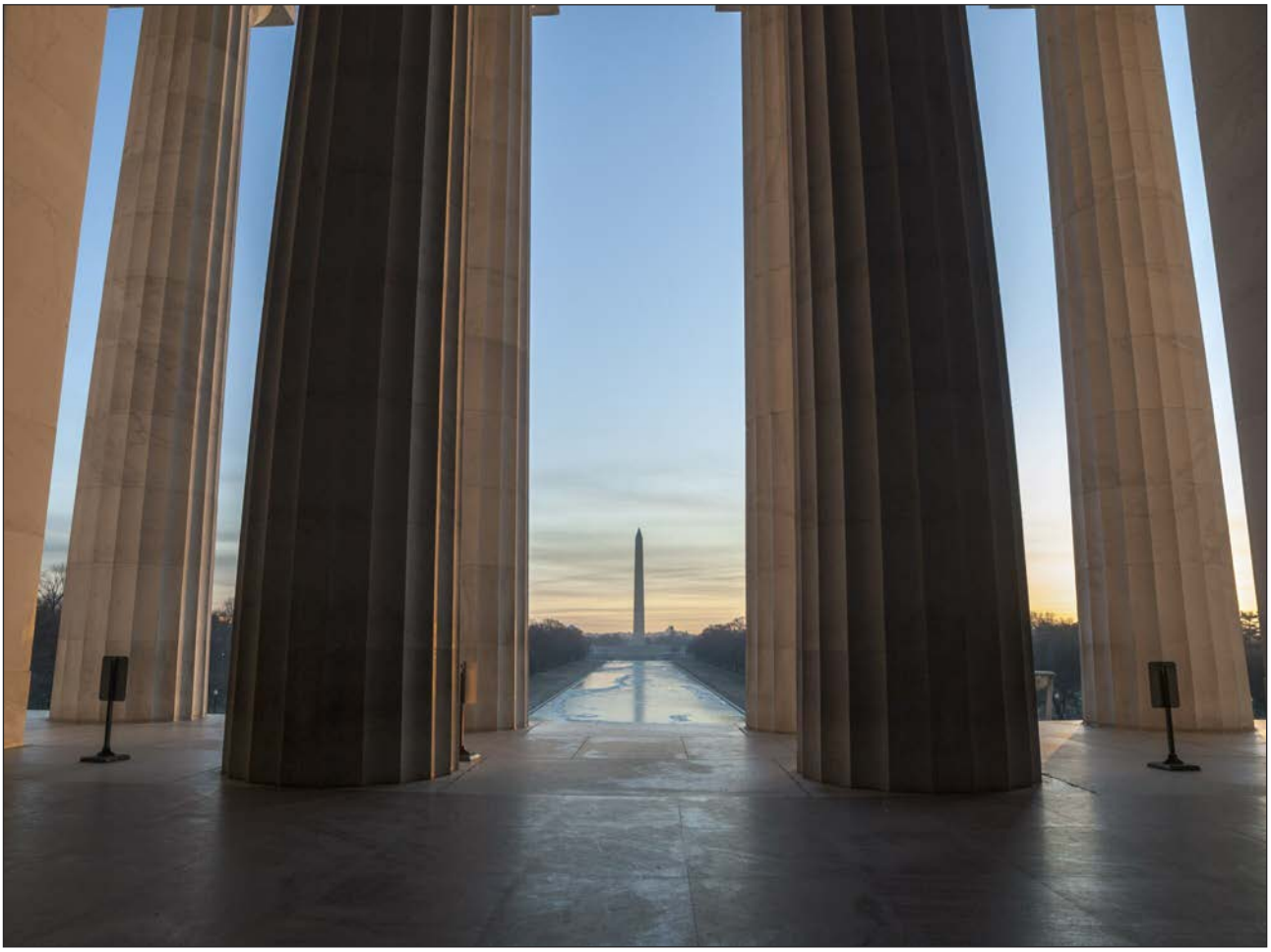


DC FOCUS

The city. The law. The lawyers.

Special focus: Washington, DC



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CAPITOL PRACTICES

Washington, DC, capital of the United States of America, is home to Congress and the Senate, the Department of Justice, the Directorate of Defense Trade Controls, the Bureau of Industry and Security within the Department of Commerce, and the Office of Foreign Assets Control. It's no surprise that DC has the largest concentration of export controls and sanctions lawyers in the world – and they're busier than ever. *WorldECR* visits the home of trade controls.

With a population of less than one million people, it is still possible to stroll around Washington, DC and conclude that one's pitched up in a sleepy provincial town, proud of its folksy history and monuments and its architectural heritage – all the while forgetting how powerfully decisions made on and around Capitol Hill reverberate across the world.

Notwithstanding the distance-shrinking impact of modern communication technologies, there is a pool of lawyers whose day-to-day concerns are with the crucial nexus between the needs of business and national security and foreign policy concerns, including trade security, export controls, sanctions and CFIUS applications.

For this 'band of brothers' (and sisters), DC is not the only place to build a practice, but it possesses the distinct advantage of proximity to the agencies and institutions charged with making, enforcing and interpreting a suite of legal regimes that can change with remarkable rapidity.

'This must be the best place in the world to be a sanctions and export control lawyer – and a great time to be practising,' says Sidley Austin partner Rob Torresen. 'So much of what we do is coloured by what's happening within the agencies or on Capitol Hill. Alongside that, it's the fact that there's a very large community of practitioners, probably the world's greatest concentration of sanctions and export control lawyers, so we can share ideas and information and discuss trends.'

Torresen says that all branches of what might be called trade and

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national security law, not only sanctions and export controls, but anti-boycott, anti-money laundering ('AML'), Committee on Foreign Investment into the United States. ('CFIUS'), Homeland Security and Foreign Corrupt Practices Act ('FCPA') have grown rapidly as practice areas in the years since the terrorist attacks on the World Trade Center and DC is the natural hub of those activities.

It is of course the seat of the legislative branch of government, the White House, Congress, and Senate. It's also where the trade associations naturally congregate and, alongside them, many of the think tanks and policy institutes, each with their own political stripes, and in their own way a part of the ecosystem of national security.

'So much of what we do is coloured by what's happening within the agencies or on Capitol Hill.'

Rob Torresen, Sidley Austin

But just as importantly, this is where the institutions and agencies are headquartered: amongst them, the Department of Justice ('DOJ'), the various organs of the U.S. State Department, including the Directorate of Defense Trade Controls ('DDTC') responsible for the administration of the International Traffic in Arms Regulations ('ITAR'); the Bureau of Industry and Security ('BIS') within the Department of Commerce, under the auspices of which the Export Administration Regulations ('EAR') functions, and the Office of Foreign Assets Control ('OFAC'), part of the U.S. Treasury.

Thompson Coburn partner Robert Shapiro points out that while its trade group operates out of the Washington, DC office, his firm is actually headquartered in the city of St. Louis, Missouri – one of the cities in United States' industrial heartlands. While that has advantages, enabling the firm to keep a finger on the pulse of its core client base, 'DC is where the regulators are. A lot of [export control sanctions practice] is about relationship building – as much, even, as legal argument. It's a really important thing,' he says.

An office in DC puts the law firm at the heart of the action. As Larry E. Christensen of Miller & Chevalier notes of current pressures, 'The nearly daily policy and regulatory interpretation developments on the Ukraine/Russia front require close contacts with OFAC, BIS and DDTC, and that is typical of every new regulatory response to an international hot spot.'

Being in close physical proximity means being able to read between the lines of rules that are complex, new and untried. Covington & Burling's Kim Strosnider explains: 'One of the main advantages of a Washington presence lies in the ability to interact on a less formal basis with the enforcement agencies. You've got to remember that there's very little or no "case law" or other published materials on, for example, licensing decisions and the little that is published is heavily

Key agencies involved in export control and sanctions policy

Most of the key agencies and institutions involved in the development, debating of, imposition and enforcement of embargo and export control policies are based in Washington, DC. These include: **The Office of the President (White House)**: Authority vested in the office of the President empowers the holder to issue Executive Orders that take immediate effect on issue. The lead role in developing and implementing foreign policy, including policy relating to sanctions is however, taken by The Department of State – within which, key offices include those of:

- **The Under Secretary of State for Arms Control and International Security** – currently headed by Rose E. Gottemoeller – and which leads the policy process on nonproliferation and manages global U.S. security policy, principally in the areas of nonproliferation, arms control, regional security and defence relations, and arms transfers and security assistance.
- **The Bureau of Political-Military Affairs** ('PM'), headed by Assistant Secretary Puneet Talwar – which is the Department of State's principal link to the Department of Defence, and provides policy direction in the areas of international security, security assistance, military operations, defence strategy and plans, and defence trade.
- **The Directorate of Defense Trade Controls** ('DDTC') which is charged (in accordance with the International Traffic in Arms Regulation – ITAR) with controlling the export and temporary import of defence articles and defence services covered by the United States Munitions List (USML).
- **The Bureau of Arms Verification and Compliance** ('AVC') which advances national and international security through the negotiation and implementation of effectively verifiable and diligently enforced arms control and disarmament agreements involving weapons of mass destruction and their means of delivery as well as certain conventional weapons.

Other key agencies include the **Office of Foreign Assets Control** ('OFAC'), which sits within the U.S. Treasury, and the role of which is to 'administer and enforce economic and trade sanctions based on U.S. foreign policy and national security goals against targeted foreign countries and regimes, terrorists, international narcotics traffickers, those engaged in activities related to the proliferation of weapons of mass destruction, and other threats to the national security, foreign policy or economy of the United States.'

OFAC 'acts under Presidential national emergency powers, as well as authority granted by specific legislation, to impose controls on transactions and freeze assets under U.S. jurisdiction. Many of the sanctions are based on United Nations and other international mandates, are multilateral in scope, and involve close cooperation with allied governments.'

The Bureau of Industry and Security ('BIS') sits within the Department of Commerce and regulates the export of sensitive goods and dual-use goods, i.e. goods that are on the Commerce Control List ('CCL') through the issuance of the Export Administration Regulations ('EAR') and thus can be classified according to the Export Control Classification Number ('ECCN') system, and thus require a licence from the Commerce Department prior to export.

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redacted. Having these kinds of contacts, which are built up over time, enables you, as an adviser, to anticipate problems on your client's behalf. It also paves the way for more formal requests, by having addressed any sensitivities earlier on.'

'If, for example, you're working on a disclosure, you're going to get better results if you have face-to-face interactions with, say, OFAC or BIS.'

Grayson Yeargin, Nixon Peabody

Amongst the kinds of issues that Strosnider is referring to would be: What might constitute 'facilitation' in a given circumstance – or how should a particular specially designated national ('SDN') be properly interpreted? 'The FAQs [on the agency websites] are good,' says Strosnider, 'but they don't have all the answers.'

Grayson Yeargin, a partner at Nixon Peabody, concurs: 'If, for example, you're working on a disclosure, you're going to get better results if you have face-to-face interactions with, say, OFAC or BIS. It really can make a great deal of difference if you can show that you're on the straight and narrow. But it also helps to be able to ask questions directly.'

Perhaps to a greater extent than in other areas of legal practice, many export controls/sanctions lawyers enter private practice having cut their teeth within the agencies themselves. Amongst the lawyers spoken to for the purposes of this Focus, Amit Mehta of Zuckerman Spaeder LLP was previously a public defender for the District of Columbia; Cari Stinebower of Crowell & Moring is a former counsel and programmes officer at OFAC; Mario Mancuso of Fried, Frank, Harris, Shriver & Jacobson LLP is a former Under Secretary of Commerce for Industry and Security; Steve Pelak of Holland and Hart was National Coordinator of Export Control/ Embargo Enforcement from 2007 until 2013. Firms are anxious to recruit lawyers who have experience on the other side of the fence, whether within the Treasury, OFAC, Commerce, or the intelligence services. Stinebower, whose experience as a programmes officer for OFAC included advising on sanctions and anti-terrorism legislation and drafting UN Security Council Resolutions and related executive orders, says that that experience 'certainly opened the curtains on how things "work" in government'.

Converging expertise

But there are other convergences within the export controls/sanctions rubric. In

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the course of researching these articles, practitioners have spoken of how they often provide what could be described as specialist auxiliary support to colleagues within their firms with quite separate skills sets, such as banking, M&A, data protection or employment.

'Experience suggests that if a company is being lax about who it's doing business with in one area, e.g. under the terms of the FCPA, it's possibly lax in another – like sanctions.'

Kay Georgi, Arent Fox

They say it is time to 'unbundle' the perception of export controls and sanctions practice and to recognise the overlap that exists with other areas of trade compliance – with many firms creating a wider 'trade security' umbrella that also includes FCPA, CFIUS and anti-money laundering.

CFIUS is a good case in point. As in the case of sanctions and embargo-related practice, the tension underpinning CFIUS is between national security concerns, and national economic interest. Mark Plotkin, co-chair of Covington's National Security and Defense Industry Group notes, for example, that: 'We on the CFIUS team find ourselves often working surprisingly closely with our export control/sanctions colleagues. Clients often see CFIUS as being in a separate workstream but ultimately, the vast majority of CFIUS reviews have a trade control/sanctions element to them. Also we're seeing more foreign investments from China and a higher percentage of those are seen as risky, compared for example, to investments from, say, the UK, EU or Canada.'

'There's a convergence in all these matters,' says Dechert's Jeremy Zucker, co-chair of the firm's International Trade and Government Regulation practice. 'I recently advised a Middle Eastern entity on an issue where its dealings with Iran were under discussion. And that involved speaking to multiple agencies – the Commerce Department, the Treasury – and the intelligence community. Think of it this way: respectively, they are concerned with the flow of items, funds and people.'

It could plausibly be argued that over the course of the past decade or two there's been a sea-change in the way that business conducted overseas – particularly in or with so-called 'exotic' destinations – is now perceived. Behaviour once considered out of sight and thus out of mind has been brought into the fold not only of the increasing territoriality of some regulatory regimes, but also what might be called the moral censure of an increasingly globally aware world community. Bribery, for example is now regarded both in law and public opinion as no less 'corrupt' if it happens abroad than in the United States or Europe.

And it can be a bellwether for other forms of malfeasance – all of which

Ken Schulze

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may fall within the purview of the Washington lawyer.

Primarily an international trade lawyer, Arent Fox partner Kay Georgi also sits on the firm's cross-practice area FCPA group. 'There's a lot of overlap with sanctions and export controls here. What's the biggest FCPA issue? Third parties. And experience suggests that if a company is being lax about who it's doing business with in one area, e.g. under the terms of the FCPA, it's possibly lax in another – like sanctions.'

To fail to see each of these legal regimes (i.e., sanctions, export controls, CFIUS, anti-money laundering, etc) as related to a common core of national security or foreign policy concerns would be a mistake, cautions Fried Frank's Mario Mancuso. 'Each of these is a discrete regulatory regime, but they move together, rather like figure skaters on an ice-rink. Ultimately, they are designed to advance, in different commercial contexts, the same national security or foreign policy objectives.'

'9/11 highlighted the need for coordinated enforcement, because it laid bare the connections between and among these regimes…Companies recognise that a risk in one area can breed risk in another.'

Kathryn Cameron Atkinson, Miller & Chevalier

Kathryn Cameron Atkinson of Miller & Chevalier believes the changes can be easily explained: 'There are several reasons for the trend, but the effect of 9/11 is probably most important. 9/11 highlighted the need for coordinated enforcement, because it laid bare the connections between and among these regimes. Corruption funds other international crimes. Money laundering facilitates the movement of illicitly obtained funding, whether sourced from corruption or other criminal activity. To conduct business, terrorists and other criminals require funding, means of communication, and access to items subject to export controls, whether they be weapons controlled under the ITAR, or dual-use items controlled under the EAR. Economic sanctions target specific activities of concern, and seek to block criminals' access to these items and pathways. Companies recognise that a risk in one area can breed risk in another. Thus, lawyers need to be able to help companies identify and manage these risks. To do so efficiently, it's best to consider them together rather than piecemeal.'

It is this kind of deeper understanding – and also of how policy translates into regulation (albeit sometimes bluntly) – that empowers a DC law firm to deliver strong advice pertaining not only to sanctions and export controls, but beyond.

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EXPORT CONTROL REFORM: THE PAIN BEFORE THE GAIN

The Export Control Reform initiative is the biggest shake-up in trade controls in years. It aims to simplify export controls and in so doing improve export opportunities for U.S. businesses as well as facilitating export to America's allies. Five years on from its conception, *WorldECR* asks practitioners if their clients are benefiting from the new regime.

The United States' export control regime is a bedrock of its national security strategy, governing, as it does, how the nation's strategic and military products are sold across the world. Doing so has always been a balancing act, with the aim, as per all export control regimes, of striking the right note between the country's obligations to foreign partners and allies, concerns about human rights abroad, international commitments to anti-proliferation regimes such as the Wassenaar Arrangement, domestic competitiveness, and regional and international security.

The basic principles have always been clear enough: goods fall under the jurisdiction of the International Traffic in Arms Regulations ('ITAR') administered by the Directorate of Defense Trade Controls ('DDTC') within the Department of State, or that of the Export Administration Regulations ('EAR') under the remit of the Bureau of Industry and Security ('BIS') within the Department of Commerce. Generally speaking, ITAR applies to military ('USML') goods, and the EAR governs dual-use ('CCL') products, with quite different rules pertaining to their export and re-export.

But the status quo is being shaken up by the Export Control Reform ('ECR') initiative, a radical rethink of how 'the system' should function. 'It's akin,' said one lawyer, 'to asking all the nation's aerospace and defence contractors to go through their toy boxes and sort them out all over again.'

The catchy slogan used to describe the philosophy underlying the Export Control Reform initiative is, of course, 'a higher fence around a smaller yard' – or, as the U.S. State Department described it (less pithily, but more explanatorily): 'Export Control Reform will move less sensitive items that no longer merit controls under the USML, such as certain parts and components, to the CCL, to allow for more flexible licensing authorisations to allies and partners while increasing the number of enforcement officials available to safeguard against illicit attempts to procure sensitive defense technologies.'

The underlying policy drivers are that once completed ECR should increase interoperability with NATO and other close allies while reducing the current incentives for companies in 'friendly' (i.e., non-embargoed countries) to design out or avoid the use of U.S. origin content previously/currently controlled under ITAR. As at time of writing, Final Rules have been published redefining how around a dozen categories of items should be treated. Not all these changes impact on every manufacturer or exporter (by some estimates, defence trade is only around 10% of the total of U.S. trade)

but for those that do the process of reform is proving significant.

'This is the biggest revision to the export control regime that I've seen in over 30 years of practice,' says Ben Flowe of Berliner, Corcoran & Rowe. 'It is extremely complicated because what you have is two sets of rule revisions, ITAR and the EAR, that are happening in parallel. It's a huge amount of work for companies to have to reclassify all their products.'

'For people used to dealing with the ITAR, their first instinct is that a product requires a licence. But now they are responsible for deciding whether, in fact, a licence is required – and there's a strict liability if they get it wrong.'

Ben Flowe, Berliner, Corcoran & Rowe

In essence, says Flowe, the process requires a major shift of responsibility from government licensing officers to company export administrators: 'For people used to dealing with the ITAR, their first instinct is that a product requires a licence. But now they are responsible for deciding whether, in fact, a licence is required – and there's a strict liability if they get it wrong.'

Flowe says that the wrong response to the ECR programme is to think 'This merely removes a whole lot of licensing requirements, so we can shed some of our compliance people. If anything there's a need for more, not less.'

Big challenges for all sizes

The challenge of compliance with U.S. export controls has never been straightforward. One issue that arises, says Richard Matheny of Goodwin Procter, is that the potential for unwitting breaches of export controls is so broad – in other words, it is very easy for companies, especially smaller businesses lacking the resources to commit to dedicated compliance personnel to slip up against a backdrop of 'dynamic' changes in the law. 'We're still finding [encryption control] violations every day,' says Matheny. 'In part, that's because companies find it counter-intuitive, for example, that technologies that are openly available should be controlled for export purposes.'

Fried Frank partner Mario Mancuso says that it is surprising how many companies are either unaware about their export control compliance obligations or overconfident about their export control compliance posture, regardless of the reform programme. 'It isn't uncommon,' says Mancuso, 'to find companies with really antiquated classification systems that haven't taken into account how their products have been upgraded or modified over the years. You'd be surprised how many simply don't classify their products at all, or have their sales teams self-classify without expert guidance. You'd seldom find that with large cap public companies, but it is often true of large, private companies, even those with turnovers running into hundreds of millions of dollars.'

This might reflect the fact that until recently the U.S. itself has provided a more than lucrative market for U.S. products, and that for obvious reasons companies which are traditionally domestically focused have paid less attention to their export-related obligations. These are now coming up to speed with the legal and technical complexities of, for example, the EAR, as they look for new buyers for their products.

This is a trend noticed by Covington & Burling's Kim Strosnider who says that U.S. defence contractors 'are seeking out new international markets and opportunities as the U.S. defence budget shrinks. That of course increases the need for understanding the export control regimes, not just for the big players but medium-sized businesses in the sector too.'

'This is an ongoing process, so it's going to take some time before the new controls are integrated with existing product lines and processes.'

Kim Strosnider, Covington & Burling

The reform process will in time provide greater clarity and efficiencies for businesses, she says, but not before companies get to grips with it: 'This is an ongoing process, so it's going to take some time before the new controls are integrated with existing product lines and processes. In the meantime, businesses are asking all the same questions about licence requirements, exporting dual-use goods – but the answers are changing as the regulations are revised and as product jurisdictions and classifications shift.'

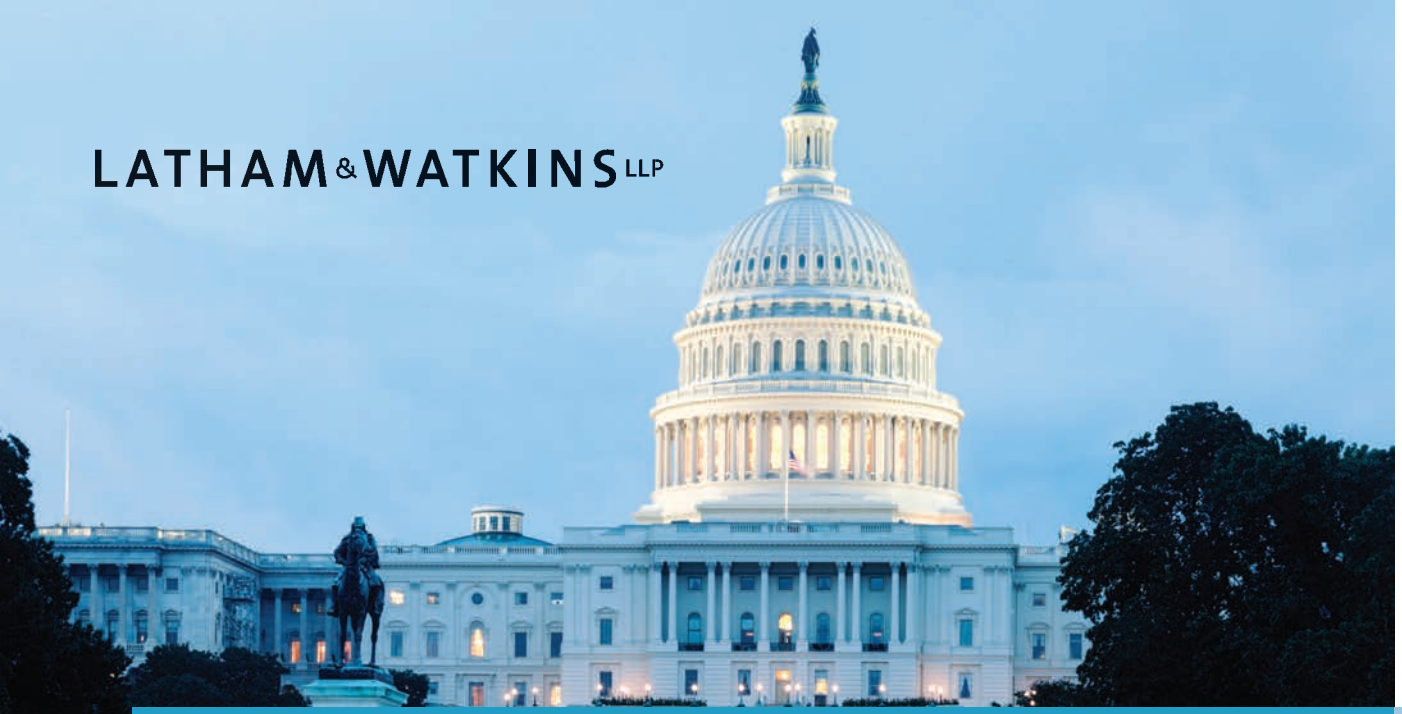
Barbara D. Linney of Miller & Chevalier points out that the struggle to come to terms with the new regime is not felt only at home. 'These folks are facing a very steep learning curve. This is particularly true for non-U.S. clients who deal in formerly ITAR-controlled goods that now are subject to the EAR. For these companies, the challenge of learning a new export control regime is exacerbated by the need to obtain the new classifications from their U.S. suppliers. U.S. suppliers with an extensive product line to reclassify are doing the best they can to get through the process, but since they must of necessity prioritise the order in which their products are to be reclassified, not all of their customers will find the products they buy at the top of the list.'

Tricky transition

Bill McGlone of Latham & Watkins says that ECR is proving to be 'an extremely complex transition that raises some complicated issues – there is plenty of room for confusion.'

As McGlone points out, one of the subtleties (or indeed ironies) of the reform process is that the two longstanding export control lists (USML, subject to ITAR, and CCL, subject to the EAR) have essentially morphed into three lists: those two, and the new 600 series within the CCL, which includes defence items previously on the USML and to which a whole new set of parameters applies. At least at this stage, this is causing some exporters to question whether the policy objective of simplification is being achieved.

Further, as the administration has been keen to emphasise, this doesn't represent a complete 'decontrol'. Many items that have moved from the USML



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We partner with clients to resolve their most challenging and sensitive matters by:

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- Designing, implementing, and enhancing practical and targeted internal compliance programs and training materials and methods
- Securing export, reexport and other forms of approval from US and EU authorities
- Assisting in product classification and jurisdiction determinations, particularly in light of Export Control Reform in the US
- Conducting due diligence in support of proposed mergers, acquisitions, debt and equity offerings and lending transactions
- Advising on SEC and other disclosure obligations under US sanctions and other trade control laws

Latham has "impressive strength in export controls and economic sanctions," as well as expertise in "customs and CFIUS compliance."

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to the CCL remain controlled under the 600 series list and are generally subject to a licensing requirement for all foreign destinations and are ineligible for shipment to ITAR embargoed countries.

'Correct classification, or categorisation, of commodities, software, and technology is the cornerstone of compliance with the U.S. export control rules, both before and after ECR,' says Latham & Watkins' Les Carnegie. 'Doing it properly means drawing on a number of skill sets – there's a need for both engineering/technical and regulatory expertise.'

Currently, a hot topic amongst exporters of 600 series products is the use of what Sidley Austin's Rob Torresen calls the 'tricky' License Exception Strategic Trade Authorisation ('STA'), the effect of which is to remove the need for specific licences for exports, re-exports, and in-country transfers (including 'deemed exports' and 'deemed re-exports') of some 600 series products to some destinations and nationals of eligible destinations where it has been determined that there's a low risk of diversion.

But it does nonetheless contain its own compliance requirements, some of which place considerable burdens on the company to whom a product has been exported: 'Although the License Exception STA is intended to make life easier, it is actually so complicated that in many instances companies are opting, or their customers are requesting, that the exporter actually obtain the licence and not use STA,' says Torresen.

Jacobson Burton partner Michael Burton says that one of the problems is that 'It is as if the old regime had been more "either/or" – generally speaking, you either needed a licence under the ITAR, or the EAR applied and you were subject to those somewhat more complicated but flexible rules. Many companies had become comfortable operating in one of the two regimes. But the new system is more ambiguous, at least during this transitional period, as portions of the USML are gradually being transferred to the CCL. Many companies simply don't have systems in place to cope with these changes.'

All of which, Burton points out, is less straightforward in practice than theory: 'Ultimately, License Exception Strategic Trade Authorisation is not simple to apply, just as the new definition of "Specially Designed", introduced last year and now used in both the USML and the CCL, is a difficult concept for many exporters to understand and operationalise, notwithstanding BIS's outstanding efforts to educate industry.'

Steve Pelak of Holland & Hart has also witnessed confusion over the changes. 'Companies that typically dealt only in ITAR-related goods, e.g., defence contractors,' says Pelak, 'seem to be having the most difficulty adapting to the export control reform initiative's changes. These companies are not as familiar with the EAR, which generally is more complicated than the ITAR. A USML item almost always requires a State Department export licence. But once that same item moves from the USML to the CCL, the item might fall under an EAR licence exception or might require a licence from the Commerce Department. Under the EAR, the determination can depend on the country and/or end-user to which the item is going, the end use of the item, the value of the item, or a combination of these factors. Non-U.S. manufacturers are often confused because their U.S. suppliers do not fully understand these changes and are having difficulty explaining them.'

'Companies that typically dealt only in ITAR-related goods, e.g., defence contractors, seem to be having the most difficulty adapting to the Export Control Reform initiative's changes.'

Steve Pelak, Holland & Hart

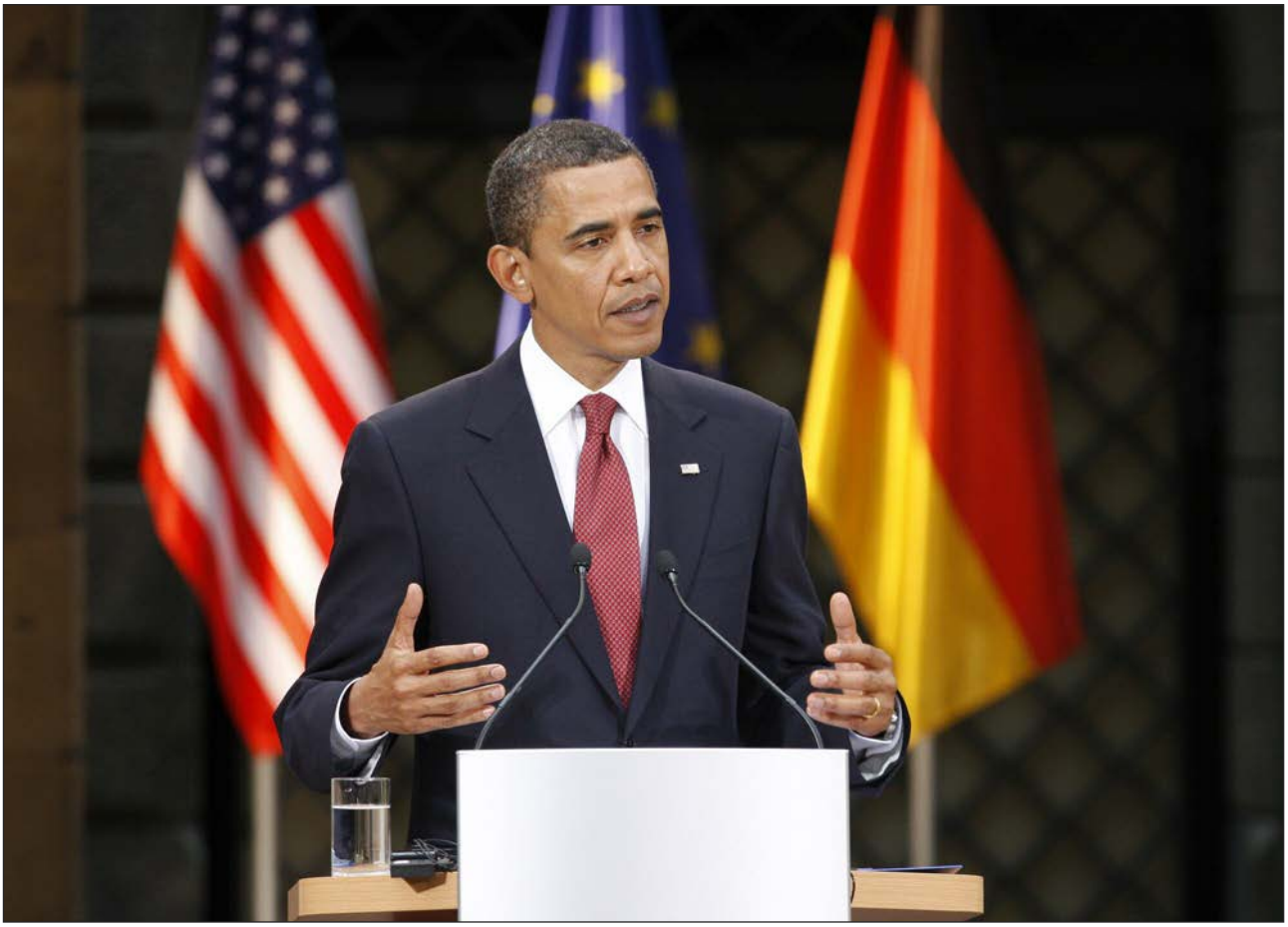
Corey Norton of Trade Pacific PLLC points to another challenge: how to stay abreast of the staggered implementation of reform. According to Norton, 'The fact that some USML categories have been reformed, such as Category VIII (aircraft and related articles), but others are still pending revision, means that many businesses find themselves in a state of limbo, pending the completion of the programme.'

Not all those seeking export control advice are defence players. Alongside a client portfolio of major players in the hi-tech sector, Nixon Peabody partner Grayson Yeargin routinely advises a number of universities and research of institutions: 'It would be hard to pigeon-hole the kind of practice we have – but one of the issues that keeps coming up is that of deemed exports where it's really easy to get caught up in the technicalities. Universities are very cosmopolitan settings – many students and researchers from all over the world working and collaborating on research projects. But it's easy for them to cross the line between what's controlled by ITAR, and what's controlled by the Department of Commerce. Often, when clients have fallen foul it's because of a lack of awareness. Half the time the trick lies in knowing to ask the question: "Is this controlled material?"'

Counter-intuitive they may be, but at the heart of the export control regulation is (and though the transposition into law is sometimes blunt and imperfect) the laudable objective of keeping dangerous technologies out of the hands of those who might use them for nefarious purposes – either against the interests of the United States and its allies, or, for example, for the oppression of their own peoples or neighbours.

The challenge for U.S. lawmakers is to ensure that the regime is fit, not for one, but for several purposes. But, say lawyers, the authorities are to be credited with extensive outreach, including BIS's weekly teleconferences, seminars provided by the DDTC, and live events. Each stage of change has been accompanied by consultation with industry, giving companies the opportunity to put to government how the rule changes would impact upon their commercial interests and, say lawyers, the government has been responsive to that input. Reform takes time, and even its own architects don't yet know all the answers to the questions constituents want to pose.

There are no short-cuts to export control compliance, but there are pointers. As Michael Burton notes: 'Within export controls and economic sanctions compliance, the key questions are these: "What is the product? Where is the product being exported and ultimately destined? Who are the recipients of the product and parties to the transaction? For what purpose will it be used? And where is the money coming from? If you can't answer these questions, or worse don't ask, you simply can't comply.'



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SANCTIONS LAWYERS: AT THE NEXUS OF FOREIGN POLICY AND THE LAW

Economic sanctions have played a starring role in the execution of U.S. foreign policy throughout history. *WorldECR* examines the politicians' tool of choice and the impact it can have on the law.

U.S. embargo/sanctions law leaves an indelible trail through foreign policy for which historians present and future will be forever indebted. In 1807, Thomas Jefferson imposed an embargo on trade with Britain in an attempt to gain independence while averting war. Half a century later, America in effect embargoed itself when the forces of the Union blockaded Confederate ports during the Civil War.

More contemporary statutes reveal the Export Control Act of 1940 limiting the sale of war-critical products to Japan; Harry Truman's Battle Act of 1951 banning U.S. help to European countries doing business with the Soviet Union; the 1956 oil embargo against Britain and France during the Suez crisis; sanctions against Vietnam, Cuba, South Africa, Sudan, Iraq and, of course, Iran.

Sanctions are the tool by which the United States government exercises foreign policy short of military action. It is of course, in Washington, DC that these laws and schemes are formulated, debated, amended, promulgated and announced.

Thus the making and unmaking of sanctions policy has form in DC. The terminology is familiar and the arguments – about ethics, effectiveness and impact on domestic interests – are well rehearsed and incarnated through each generation's national security concerns. As one lawyer joked, 'Trade practitioners can be carbon-dated by reference to how far back their embargo experience extends: The Oil-for-Food program? 1963 Cuba regulations? Jackson-Vanik Amendment? The Anaconda Plan?' (The latter refers to the 1861 blockade upon the

Southern states – a 'giant snake' choking off exports of cotton and other commodities.)

Since Barack Obama took presidential office, the White House has very actively invoked sanctions to respond to a slew of evolving international challenges. Iran has dominated the international pages up until and beyond the negotiation of the Joint Plan of Action ('JPOA'), the first six months of the implementation of which is soon to expire. But the Arab Spring, civil war in Syria and conflict in South Sudan have also generated legislative responses – as has, of course, the current crisis in Ukraine.

'There's definitely a sense of more robust enforcement by the agencies involved in this area, and of stronger assertion of jurisdiction generally.'

Jeremy Zucker, Dechert

At the same time as developing its own policies, the United States has worked hard to galvanise allies to take measures that are broadly aligned, with the corresponding effect that 21st Century businesses now face an unprecedented volume of complex legislation and compliance regimes. And while it was always the case that certain cliques of business knew that the nature and location of their activities were likely to be impacted by sanctions, now they make a bigger splash throughout the ecosystem of business – banking, insurance, private equity, service providers, and ICT companies

'There's definitely a sense of more robust enforcement by the agencies involved in this area, and of stronger assertion of jurisdiction generally,' says Jeremy Zucker, co-chair of the International Trade and Government Regulation practice at the DC office of Dechert.

Zucker says that it was the ramping up of the sanctions against Iran in particular (with the passing of legislation including CISADA (Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010) and ITRSHRA (Iran Threat Reduction and Syria Human Rights Act of 2012) that has heightened sensitivities very significantly.

With the JPOA still under negotiation between Iran and P5+1, Iran-related legislation still holds sway over the much of the day-to-day work of lawyers, and this despite the fact that U.S. trade with Iran is at an all-time low. 'That really reflects the extra-territorial element of the sanctions. Many U.S. businesses long ago wrote off doing Iran business. But non-U.S. entities, especially financial institutions, are feeling potentially very exposed,' says Zucker.

The reason for that, he says, lies in the rapid expansion of the sanctions and their extra-territorial impact. That not only draws in non-U.S. clients seeking advice on their potential exposures, but also increases the exposure of U.S. companies to 'suspect' business partners.

'The consequences for non-U.S. entities of being hit by the extra-territorial effects of U.S. sanctions include loss of access to U.S. markets and finance,' points out Zucker. That each of those would be accompanied by the kind of reputational fall-out attendant on recent big settlements goes without saying.

Latham & Watkins' Les Carnegie describes the sanctions landscape as being 'very active at the moment. The challenge is that the rules are complex, far-reaching, and in some cases counterintuitive – so clients are always looking for extra clarity. And there's high sensitivity, especially amongst the banks, about the possibility of becoming subject to an enforcement action or engaging in activities that present reputational risks.' In particular, with the new Russia-related sanctions announced through three executive orders in March 2014, client interest in understanding sanctions' impacts is incredibly high.

One of the oft-mentioned corollaries of sanctions legislation has been that many institutions, particularly in the financial sector, have become risk averse to the extent that legitimate activity with sanctioned countries becomes very difficult. For instance, Carnegie described that a client could not persuade a bank that contemplated activities in Burma were lawful because of the targeted nature of the Burma sanctions or that sales to Iran of most U.S.-regulated medicines no longer require an OFAC specific licence: 'The sanctions have such a chilling effect that companies are walking away from deals that are perfectly lawful and some banks aren't taking any chances with sales of medicines to Iran – the juice just isn't worth the squeeze.'

As at time of writing, the U.S. and its Security Council partners (plus Germany) are quietly negotiating with Iran an agreement which would, if successful, relax sanctions in return for assurances and safeguards relating to Iran's nuclear programme. Under the terms of the JPOA, Iran is already afforded some limited sanctions relief, creating some opportunities for EU businesses but few for their U.S. counterparts. In February, U.S. vice-president Joe Biden criticised a delegation of French businesspeople visiting Tehran for sending the wrong signals. Nonetheless, Iran is a big market. Covington & Burling partner Kim Strosnider says that the first steps toward a relaxation of Iran sanctions – as called for by the JPOA – has garnered some interest already.

'The sanctions have such a chilling effect that companies are walking away from deals that are perfectly lawful and some banks aren't taking any chances with sales of medicines to Iran – the juice just isn't worth the squeeze.'

Les Carnegie, Latham & Watkins

'No-one is jumping the gun,' says Strosnider. 'The U.S. government has issued many cautions on taking premature steps. Nonetheless, people are looking closely, watching the slight easing.' Covington is, she says, also keeping a weather-eye on the changing

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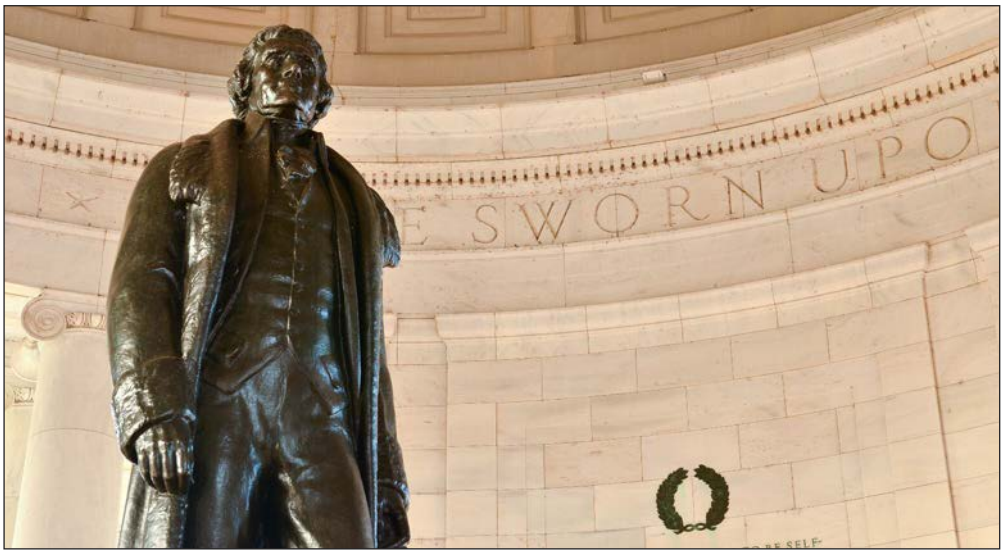
relationship because, as she points out, the art of giving accurate sanctions-related advice requires political awareness and astuteness as much as legal accuracy.

If one diplomatic door appears to be, however tentatively, looking less resolutely shut than it once did, another is drawing closed, with Russia/U.S. relations at a post-Cold War all-time low in the wake of the violence inflicted against demonstrators in Kiev during the dying embers of the Yanukovych regime, and with the abrupt annexation of the Crimean peninsula by Russia. '[The Ukraine-related] sanctions are very much *de jour* right now,' says Arent Fox partner Kay Georgi.



Orhan Cam

Though narrowly targeted, designating a very restricted number of individuals and few entities, the handful of executive orders that have constituted the U.S. response to those events have, in concert with actions taken by the European Union, Canada and Australia, precipitated a seemingly disproportionate volume of client enquiries.

Georgi suggests that the reason for this is that while her clients might not be involved with the SDNs directly, 'Under OFAC rules U.S. persons are prohibited from doing business with entities that are 50% (or more) owned by designated persons. In tandem with the lack of transparency typically attendant on Russian corporate ownership structures, it really makes sense to look closely at your business operations.'

'There's an obvious difference between the Russia-related sanctions and the Iran embargo – which is that Russia is a major trading partner with the United States.'

Robert Shapiro, Thompson Coburn

'Perhaps the single most frustrating compliance challenge that clients are encountering in the sanctions arena,' says Barbara D. Linney of Miller & Chevalier, 'is the lack of clear guidance on the standard of care expected of companies when attempting to determine whether a party is owned or controlled by a blocked person or SDN (under the U.S. rules) or a designated person under asset freezing programmes of other countries. Is a rumour or an unsubstantiated (or even denied) allegation enough to create an unacceptable risk of violation? Published guidance – OFAC's so-called "50% rule" and HM Treasury's deference to section 1162 of the Companies Act 2006, for example – does little more than establish the applicable thresholds of ownership. Far more challenging is assembling the facts necessary to determine whether the threshold has been met in a given case, and while HMT invites consultation in cases of doubt, OFAC is as reluctant as ever to share intelligence. This leaves companies with limited sources of verifiable information regarding the ownership of private entities with whom they may wish to deal.'

Berliner, Corcoran & Rowe partner Ben Flowe gives a flavour of the sense of urgency created by the Ukraine/Russia sanctions: 'It got pretty confusing when we saw three executive orders and one law passed in the space of a few weeks – there's guidance on the OFAC website, but that's not the whole story. It doesn't answer all the questions. The sanctions looked limited but they still affect all kinds of transactions. All of a sudden our clients were asking all sorts of questions: "Can I sell my goods to Russian Railways if the CEO is a designated individual? What happens where a designated person divests of a business? Can I buy those assets?"'

Whether the designations of Russian and Ukrainian individuals and entities put the brakes on business between the Cold War's erstwhile sparring partners has yet to be seen. Thompson Coburn partner Robert Shapiro says that 'There's an obvious difference between the Russia-related sanctions and the Iran embargo – which is that Russia is a major trading partner with the United States. And in the broader ambit of trade, they play on so many dimensions.'

As at time of writing, the mood around the situation in Ukraine is ominous, and as NATO countries talk about bolstering the presence of troops in Eastern Europe, and Moscow makes a show of force close to the Ukraine border, something greater than the self-determination of a Russian-speaking population appears to be at stake.

Russia is neither immune from the impact of sanctions, but nor does it have the energy card to play with respect to relations with the United States. Already amongst those designated by the State Department are included Kremlin insider Igor Sechin, chairman of Rosneft, the world's largest publicly-traded petroleum company. The designation does not preclude U.S. companies from doing business with Rosneft, but it will send tremors, says Shapiro, who adds that it is within this industry that the impact of sanctions may be felt.

'From a geopolitical perspective, this means that the United States is going to have to focus on Europe's supplies of energy. Surely there's going

to be greater pressure to increase exports of U.S. crude and natural gas. These are tough issues that are going to have to be faced,' says Shapiro, adding that, looked at through an energy security prism, the Russia sanctions 'may also have some influence on the dynamics of the Iranian sanctions'.

Fried Frank partner Mario Mancuso brings his policy experience as a former member of the President's national security and economic leadership teams to bear on his client engagements. In recent days, he has been called upon extensively to provide practical counsel – not merely legal advice – in relation to the new Russia sanctions. 'It's certainly true that the real world reach of the sanctions is greater than their actual legal reach,' he says. That can be partly attributed to the difficulties outlined above but also, says Mancuso, to the probable 'incremental trajectory' of further and more restrictive measures.

As we go to press, pro-Russian rebels have held referendums in Eastern Ukraine, the result of which purports to show overwhelming support for 'self-rule' or absorption into Russia. These have been widely criticised as flawed by observers, and decried as 'farcical' and lacking in legal basis by the authorities in Kiev. The world is now watching the Kremlin's response, which could in turn bring more far-reaching, sector-based, sanctions from Washington.

'It's certainly true that the real world reach of the sanctions is greater than their actual legal reach.'

Mario Mancuso, Fried Frank

As ever in the world of sanctions, who makes the next move and how is contingent on a bigger picture. In the case of Iran, the United States has succeeded in convincing the EU that it should align its policy, in effect, with Washington, a strategy that appears to have succeeded in advancing the current diplomatic efforts.

Vis a vis Russia, it's yet to be proven that the same choreographed response can be sustained. There are, of course-both plus and minus factors, as Mario Mancuso points out: 'European countries are more economically exposed than U.S. companies [to a slowdown in commercial relations with Russia]. On the other hand, Europe has a greater security interest in preventing Eastern Europe from becoming a contested, strategic frontier between the West and Russia'

No certainty but change

Counselling on these kinds of political trajectories, uncertainties and nuances is all part of the remit for DC trade security lawyers. Indeed, the only certainty is that while there are constants, sanctions practice, following as it does the contours of both foreign affairs and enforcement trends, is seldom repetitive.

Broadly speaking, practice tends to fall into one of two categories. The 'preventive' work involved in advising on ongoing compliance measures, and secondly, the more aggressive investigatory work and advocacy demanded when a company strays off course.

'[There is a palpable sense of] greater commitment by criminal prosecutors to come after those who violate export control regulations... the U.S. Department of Justice has secured significant jail sentences in many of these cases.'

Amit Mehta, Zuckerman Spaeder

Within some firms' teams the two elements are parts of the same spectrum, with the emphasis shifting to respond to demand. Latham & Watkins' les Carnegie says that firms have responded to an increase in enforcement activity and thus 'There's more demand for investigative skills than there was a few years ago.' As a result, he says, he and his team have been taken up with a slew of investigations-related work, but also see many more clients placing a premium on pre-emptive compliance strategies.

Amit Mehta of Zuckerman Spaeder LLP sees things very much from the sharp end. Prior to joining his current firm, Mehta (whose clients have included Dominique Strauss-Kahn, former President of the World Bank, who was cleared of criminal allegations of sexual assault in 2011) worked at the Public Defender Service for the District of Columbia. He says there is a palpable sense of 'greater commitment by criminal prosecutors to come after those who violate export control regulations, and it's not just financial penalties they are seeking – the U.S. Department of Justice has secured significant jail sentences in many of these cases.'

Mehta also observes that one of the ironies of the export control world is that, typically, despite or because of the fact that larger companies are taking compliance very seriously, 'with some high-profile exceptions, the big companies are not getting caught up in these prosecutions. It's the small companies that tend to take the bigger risks and that get caught.'

One sometimes vexed question is whether/when clients should undertake a voluntary disclosure (for OFAC, in the case of potential sanctions violations, or the departments of Commerce or State if EAR- or ITAR-related). Jacobson Burton's Michael Burton outlines some of the horns of the dilemma:

'What's the best thing to do if you discover a violation? It depends on the circumstances, on the harm done, on whether a mistake was made through ignorance or negligence versus more egregious conduct. We're seeing an increased understanding or clemency on the part of the three main agencies enforcing export controls and economic sanctions laws – if the exporter has been responsible overall, the violation did not involve knowing or willful conduct, and a voluntary disclosure has been made. Having a strong compliance programme is a critical part of that.'

Is disclosure always the best way forward where a client uncovers 'red flags'? Burton says, 'A company that undertakes a voluntary disclosure is less likely to face a penalty, and any penalty that might be imposed is significantly mitigated. That being said, whether, when, and how to disclose turns on the facts of a given case. We always lay out the pros and cons of making a disclosure, including the costs both in legal fees and implementing remedial measures, but it is ultimately the client's decision. On the other hand, in certain situations – such as a breach of the ITAR involving a s.126.1 country (arms-embargoed countries), or where a company finds it has received blocked property belonging to an SDN, there's no choice. You have to disclose.'

Just as world events are subject to their own, particular rhythms, so also are enforcement trends, says Crowell & Moring partner Cari Stinebower: 'Companies tend to react to what they perceive the agencies to have been focusing in on in the previous year.'

What's interesting, she adds, is that they don't only base their understanding on completed investigations, which can take up to three years to conclude. '[Compliance professionals within industry] "hear the chatter" ie. get wind of the direction of interest by the agencies before an investigation is completed – so they're responding to the trend even before the outcome of the investigation has been published. This information sharing and trend spotting is an essential component to securing the financial sector against new money laundering and sanctions busting trends.'

Stinebower says that heightened sanctions compliance, in conjunction with an increase in corporate activity, means that she and team colleagues are working closely with M&A lawyers: 'For example, we're currently working for a client that's making a few acquisitions a month and we find that the due diligence is really focused on anti-money laundering, FCPA, customs/imports, sanctions, and export controls.'

Mostly, she says, the general trend she is seeing is acquirers are U.S. companies buying U.S. companies with overseas sales facilities or subsidiaries. As a result, often the team is having to work 'fast and furious' with the process of management interviews and data room access so they are paced to tight deal deadlines: 'We haven't seen this volume of activity until recently. But there was an uptick that began around 2006 when we saw some hard-hitting successor liability issues coming up. Now it's more common to deal with these issues in the pre-closing due

'Companies tend to react to what they perceive the agencies to have been focusing in on in the previous year.'

Cari Stinebower, Crowell & Moring

diligence – the banks are expecting this.'

What is also apparent is that the nexus to foreign trade need only be slim before sanctions-related due diligence becomes an issue – indeed, Corey Norton of Trade Pacific PLLC says that clients are sometimes surprised to see sanctions-related compliance checks emerging.

'You're actually seeing sanctions-oriented contract clauses in purely domestic, U.S. activity, such as real estate contracts that contain provisions to ensure that one or other party has no connection with anybody on an SDN list.'

Corey Norton, Trade Pacific PLLC

'This stuff isn't always intuitive,' says Norton. 'What's interesting to my mind is that sanctions issues are coming up in contexts which have absolutely no obvious foreign component or dimension whatsoever. You're actually seeing sanctions-oriented contract clauses in purely domestic, U.S. activity, such as real estate contracts that contain provisions to ensure that one or other party has no connection with anybody on an SDN list.'

There are other arenas, such as employment, where businesses sometimes need reminding of potential exposures: 'If you're buying a company in Latin America, have you checked to see, for example, whether that business hires Cuban nationals – and is that a problem?' Norton asks.

'Our team of sanctions/export controls lawyers is increasingly working with lawyers in other practice areas,' says Steve Pelak of Holland & Hart, 'partly due to a growing recognition by both our colleagues and our clients that export controls/trade sanctions issues permeate these transactions. We routinely help business attorneys with drafting contracts for services that require export control, trade sanctions or anti corruption provisions. Our intellectual property colleagues increasingly seek assistance from us with licensing for transactions in sanctioned countries to protect clients' IP rights. And, in the M&A arena, successor liability concerns have helped to make trade sanctions issues a more common component of transactional due diligence. For example, we are currently helping a U.S.-based mining company to implement a trade sanctions and anti corruption compliance programme to satisfy the requirements of the foreign bank that financed our client's acquisition of assets from a foreign company.'

That sanctions-related issues can arise in circumstances that are, if not surprising, at least counter-intuitive, reflects the extent to which the legislation has permeated through multiple layers of the business 'ecosystem', but also the fact that in an age where technology eschews boundaries the distinction between 'domestic' and 'foreign' is easily blurred. Web-based applications for example can by default be accessed by users anywhere in the world, regardless of whom the intended users might be – as Goodwin Procter partner Richard Matheny, whose clients include (among others) a portfolio of early and growth stage technology companies around Boston and Silicon Valley: 'Often we're representing these companies as acquisition targets, and they are using or producing controlled software, services or hardware – due diligence concerns arise, as they do where technology can be accessed by SDNs or from designated countries. Often I'm involved in interpretative disputes as to whether licences are required or are eligible for a first amendment or social media exception.'

'We do a lot of work for the underwriters in IPOs – some of the banks can be very skittish about underwriting because they've seen how hard financial institutions have been hit.'

Rich Matheny, Goodwin Procter

Many of Matheny's clients, he says, would not naturally conceive of their products as presenting a potential threat of sanctions violations; sometimes the topic isn't on the agenda until there's a scaling up of their ambitions: 'We do a lot of work for the underwriters in IPOs – some of the banks can be very skittish about underwriting because they've seen how hard financial institutions have been hit.'

Matheny adds that private equity firms financing technology companies are also extremely interested in understanding the potential liabilities of companies within their portfolios and targets.

'A sudden change in the law can create a tremendous amount of work,' says Matheny. 'The October 2012 Executive Order [Authorizing the Implementation of Certain Sanctions Set Forth in the Iran Threat Reduction and Human Rights Act] which was intended to close off loopholes relating to the activities of foreign subsidiaries unleashed a degree of chaos!'

It is the kinetic nature – and the multi-dimensionality – of the sanctions and trade security arena that attracts practitioners. Sanctions regimes can bed in with a kind of semi-permanent chilling effect on trade with a given country pending a tectonic change in relations with the United States.

Increasingly they are more targeted and exhibit more dynamic, but often no less or indeed more, confusing characteristics as policy makers strive to avoid the negative impacts that so often attended the blanket embargoes of the past.

A good practitioner in this area takes on board these nuances – and also understands that key to giving sound advice is having a grasp of the policy rationale driving the legislation or regulation. As Fried Frank's Mario Mancuso puts it: 'Regulation is an instrument, it is the vessel of policy. Regulation is the bottle; policy is the wine. That is why technical expertise is necessary but not sufficient to providing clients with judicious, actionable advice. Understanding how the U.S. government is reading and assessing a particular scenario is what enables you to help your clients comply with the law and look around the corner. That is strategically valuable advice'

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EmiliaUngur

MEET THE LAWYERS

The ideal legal advisor combines first-rate technical expertise with experience of implementing the law in practice. *WorldECR* profiles some of DC's finest export controls/sanctions practices.

There's a real spectrum of firms in Washington, DC offering export control and sanctions advice. Most of the 'big name' international practices have a presence, their trade security teams operating alongside finance and corporate, and possessing all the accoutrements of the global brand. But this is also an area in which smaller, niche outfits, either combining sanctions/export control experience with other specialised areas including government relations, technology, customs or tax, or as stand-alone trade practices, can shine.

Thompson Coburn LLP fields more than 350 lawyers practising in Chicago, St. Louis, Los Angeles, Washington, DC and Southern Illinois. Its D.C. office, active since 1982, is responsible for liaising with federal agencies and the U.S. Congress on regulatory matters in the fields of transportation; utilities; international trade, finance, customs and export control; government contracts; intellectual property; telecommunications; corporate and securities; postal and publishing; and litigation, including appellate matters.

The International Trade practice, structurally part of the Federal Practice group, comprises four partners and two associates, who advise clients on export controls and financial sanctions, as well as on anti corruption, CFIUS, conflict minerals and customs laws. Industry sector expertise is wide, including finance and reinsurance, electronics, miscellaneous engineered components, satellite technology, chemical, encryption, and medical devices.

Among its past experiences, the firm recounts:

- Advising a satellite technology company regarding export controls after completing a directed disclosure regarding the failure to adhere to licence conditions. In this case, the executives of the company were required to meet with the

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Department of State to assure their commitment to compliance. Notwithstanding the severity of the violations, the matter was settled without penalty;

- Advising an engineering company regarding violations associated with the exportation of valves controlled under 2B350 and the disclosure of the same;
- Advising an engineering company about the export controls applicable to flight control components associated with military aircraft;
- Advising a medical device manufacturer on adherence to TSRA licence requirements regarding the sale of medical devices to Iran;
- Advising a large chemical company which failed to recognise the export control and sanctions implications of its re-domiciliation to the United States, until questioned by the Securities and Exchange Commission. After a thorough review of all transactions, the case was closed without penalty.

DC export controls and sanctions law firms

Arent Fox
Berliner, Corcoran & Rowe, LLP
Covington & Burling LLP
Crowell & Moring
Dechert LLP
Fried, Frank, Harris, Shriver & Jacobson LLP
Goodwin Procter LLP
Holland & Hart LLP
Jacobson Burton PLLC
Latham & Watkins
Miller & Chevalier
Nixon Peabody
Sidley Austin LLP
Thompson Coburn LLP
Trade Pacific PLLC
Zuckerman Spaeder LLP

This list does not purport to be exhaustive

The International Trade group at **Crowell & Moring**, headed up by partner Jeff Snyder, fields three partners, including export controls and sanctions contact Cari Stinebower, plus six associates, whose combined expertise covers anti corruption/anti-bribery; CFIUS; anti-money laundering; anti-dumping/ countervailing duties and customs. It has particular experience advising financial institutions (banks, (re)insurance, broker-dealers, private equity), government contractors, publishing companies, trade associations, manufacturers, retailers, shipping companies, exporters and technology companies.

Amongst recent client instructions the team has:

- Provided OFAC compliance guidance to a multinational corporation with expansive dealings in Russia with respect to maintaining compliance with U.S. and EU sanctions while continuing business in the region. Guidance included identifying potential touch-points to sanctioned parties, the establishment of formal global sanctions recusal policies, and sanctions exclusions clauses in contracts;
- Participated in export controls, anti corruption/anti-dumping, imports and sanctions due diligence where a private equity fund was acquiring a U.S. tech company with global sales;
- Counselled a well-known consulting firm in connection with compliance with OFAC's regulations as they relate to travel transactions;
- Assisted a commodities contract broker-dealer with compliance with U.S. sanctions regulations;
- Provided compliance counseling to a global health insurance and health services company on OFAC and FCPA issues.

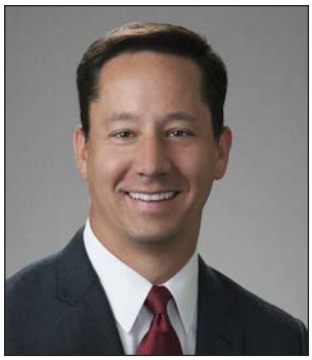
Zuckerman Spaeder LLP is a specialist litigation firm, home to a nationally recognised white-collar criminal defence and investigations practice. It was founded in Washington, DC in 1975. Practice areas include appellate, bankruptcy, business counselling, civil litigation, class actions, food and drug, government ethics and election law, insurance, legal profession and ethics, Native American law, plaintiff's litigation, real estate, securities litigation, tax litigation, and, as mentioned above, white-collar criminal defence and government investigations.

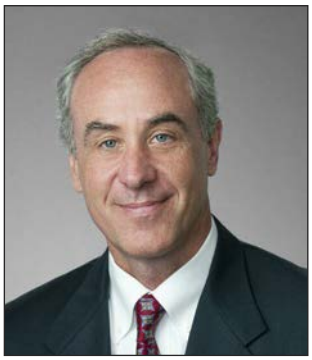
Export control and sanctions-related work is conducted by lawyers in the white-collar practice: Amit Mehta and Aitan Goelman in DC, along with Sandy Weinberg and Marcos Hasbun in Tampa, are all experienced in dealing with issues of export controls and sanctions. The same department is also responsible for covering the full range of white-collar and civil enforcement defence work, including, of particular interest to international clients, Foreign Corrupt Practices Act and cartel enforcement. Since the practice primarily handles criminal and civil enforcement matters, it does not have a particular industry focus.

In recent times, the firm has:

- Represented U.S. citizen Yaming Hanson on charges of criminal violation of export control regulations – the matter was resolved with the dismissal of the export control charges;
- Defended Robert Quinn, criminally charged with violating the Iran sanctions regulations – the matter was resolved with the dismissal of the sanctions breach charges;
- Defended U.S. company Myus.com in a criminal investigation of violations of export control regulations;
- Defended a U.S. citizen charged with violation of the Sudan sanctions regulations;
- Defended a South African aviation company in administrative proceedings before the U.S. Department of Commerce.

Arent Fox's International Trade Practice, headed by partner Kay Georgi, is an integral part of the firm's Washington, DC office, which was first opened in 1942 and still serves as its


Les Carnegie,
Latham & Watkins


William McGlone,
Latham & Watkins


Rich Matheny,
Goodwin Procter


Kay Georgi,
Arent Fox

main headquarters. Today, a team of four partners and five associates offers counsel to clients on a broad swathe of trade-related issues.

The practice is experienced in working with the sectors of defence, security, oil & gas, energy equipment and services (including exploration), sensors, lasers, navigation (e.g. GPS, IMUs, INS), encryption, information security, computers, processors, memory, aircraft/aviation, crime control, nuclear, machinery and equipment of all sorts, health care/medical devices and financial and insurance services. Clients of the team have included 3M, Dover, Leidos/SAIC, G4S and Topcon. Recently, the firm has dealt with matters including:

- Advising a manufacturer and exporter of amplifiers in simultaneous voluntary and directed disclosures with the departments of Commerce and State and related criminal proceedings;
- Assisting a well-known manufacturer of crime-control devices to obtain favourable classification determinations eliminating all potential violations related to the exports of technology;
- Conducting pre- and post-acquisition due diligence for a company making multiple acquisitions, including investigations and voluntary disclosures to the departments of State, Commerce, and Treasury (OFAC);
- Advising a Europe-headquartered geophysical services company on defence and dual-use export controls and economic sanctions issues; and
- Investigating violations of a global diversified manufacturer related to unintended trade with U.S. embargoed countries.

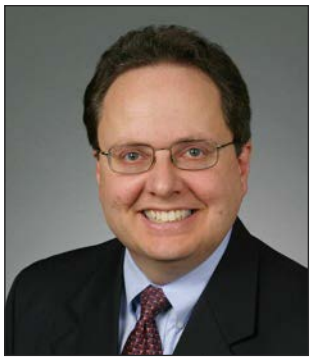
Covington & Burling, headquartered in Washington, DC since 1919, also has offices in Beijing, Brussels, London, New York, San Francisco, Seoul, Shanghai, Silicon Valley and San Diego. Alongside advising on issues related to export controls and sanctions, the International Trade Practice Group, which is home to eight partners and 20 associates, regularly acts in a variety of other areas of practice such as anti corruption, anti-money laundering, CFIUS, customs, cybersecurity, government contracts, international investment disputes, international public policy, privacy and data security and trade policy and proceedings.

In particular, the team is sought out for representation by clients in the oil and gas, software and high-technology, pharmaceutical and biotechnology, aerospace and defence sectors, including ExxonMobil, Bristol-Myers Squibb and Hewlett-Packard, as well as financial institutions.

Recent matters have included:

- Advising major international companies and financial institutions – including an international oil and gas company, a multinational financial services holding company, a multinational conglomerate corporation, an American bank and securities firm, two leading pharmaceutical companies, and manufacturing companies, among others – on U.S. and EU sanctions relating to the unrest in Ukraine;
- Assisting a leading non-U.S. energy company in a major internal review of sanctions compliance triggered by enforcement inquiries from the U.S. government about financial transactions involving certain U.S.-sanctioned markets. The firm is also advising on the EU sanctions dimensions of these transactions, and the matter has involved engagement with the U.S. departments of State and Treasury;
- Advising a subsidiary of a Fortune 50 aerospace company regarding many facets of its compliance with U.S. export control laws and regulations, particularly the defence trade control regulations of the ITAR. Covington has led around a dozen internal investigation matters for this client and developed export compliance plans for several of the company's high-profile international projects;
- Advising a major non-U.S. financial institution in connection with its processing through U.S. financial institutions of U.S. dollar transactions on behalf of U.S.-sanctioned clients. Other major non-U.S. banks have already resolved similar claims by U.S. federal and state enforcement authorities and have paid penalties in the hundreds of millions of dollars;
- Advising an international logistics company in connection with shipments to Syria of U.S.-origin computer equipment that the U.S. government alleges has been used by the al-Assad regime to interfere with Internet access and repress the Syrian people.

Key members of the DC team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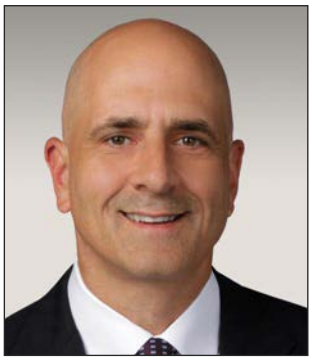
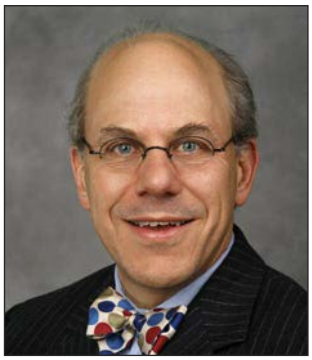
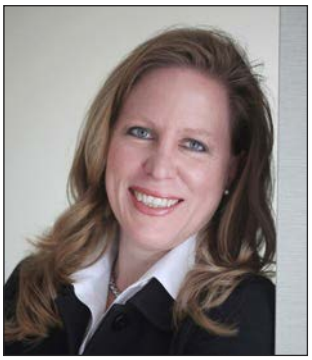

Steve Pelak,
Holland and Hart


Robert Shapiro,
Thompson Coburn


Cari Stinebower,
Crowell & Moring

include Kim Strosnider, Peter Flanagan, Peter Lichtenbaum and Corrinne Goldstein.

Fried, Frank, Harris, Shriver & Jacobson LLP opened its Washington, DC office in 1949. The sanctions and export controls practice is based within the firm's International Trade & Investment group. It is led by the Hon. Mario Mancuso, a former member of the President's national security and economic leadership teams, and comprises two partners, one of counsel and six associates.

The team advises on the full range of U.S. and EU legal requirements affecting international trade and investment, including: economic sanctions, defence, trade and dual-use export controls, anti corruption and anti-boycott, CFIUS and cross-border investment clearance, as well as anti-money laundering. Clients include companies in the aerospace and defence, energy, manufacturing, high-technology, software and industrial sectors, and financial institutions and investment funds, among others.

In addition to DC, the firm has offices in New York, Frankfurt, London, Paris, Hong Kong and Shanghai.

Recent illustrative instructions include:

- Advising a large non-U.S. (global) telecommunications infrastructure company on the preparation of licence applications to OFAC and the European host country export control authority in relation to certain particularly sensitive economic sanctions programmes;
- Advising a leading U.S. oilfield equipment and service company through a U.S. export control commodity jurisdiction and classification review of its entire product and technology portfolio;
- Advising a leading global satellite company in connection with a sensitive ITAR investigation by the U.S. government;
- Advising a major multinational energy company on compliance with U.S. economic sanctions regimes regarding a number of oil-producing countries, including the impact of both direct and extra-territorial U.S. sanctions on the company's business activities;
- Advising a Top 5 European aerospace, defence and security company in connection with CFIUS advice with respect to its potential acquisition of a U.S. company.

Well known for its corporate and securities practices, complex litigation, real estate, financial services and asset-management expertise, **Dechert LLP** also offers counsel on export controls and sanctions compliance as part of its International Trade and Government Regulation department, headed up in Washington, DC by Jeremy Zucker. The team brings together ten individuals: two partners, five associates, one senior director, one director and one trade and regulatory advisor.

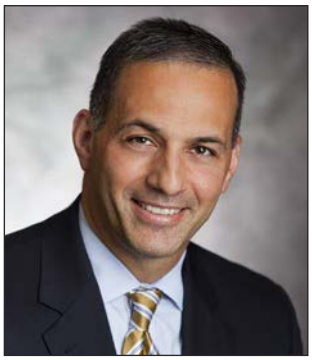
Clients are from a wide range of industry sectors, including technology, banking and financial services, logistics, defence, telecommunications, financial information, software, energy, manufacturing, private equity and data protection and privacy.

While focusing on international trade, specialist lawyers at Derchert have also advised clients on other areas of practice such as: anti-boycott compliance, anti-bribery/anti corruption (FCPA, UK Bribery Act), anti-money laundering (USA Patriot Act), customs procedures and supply chain management, economic sanctions and trade embargoes, EU regulation and government affairs, EU internal market policy, Foreign Intelligence Surveillance Act (FISA), infringement of European regulation, export controls, national security reviews of foreign direct investment (CFIUS), negotiation of EU free trade agreements and EU preference schemes, policy development within the European Union, trade defence measures, trade legislation and policy, and working effectively in the European Union.

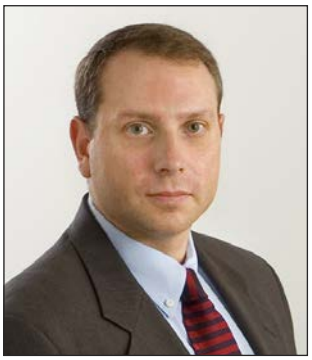
Recent instructions for the team include:

- Conducting an internal investigation into activities of a publicly traded high-technology client's Chinese subsidiary regarding potential sales in violation of the Export Administration Regulations;
- Conducting an internal investigation into the activities of a Middle Eastern airline regarding violations of U.S. export controls and economic sanctions applicable to Iran, and negotiating a settlement with U.S. enforcement authorities;
- Defending multiple officials of a major European financial institution in connection with an investigation by the U.S. departments of Justice and Treasury and the District Attorney of New York regarding potential violations of U.S. economic sanctions laws;
- Conducting an internal investigation into violations of U.S. and Brazilian anti-bribery laws by Brazilian distributors of a publicly-traded medical device company;


Jeremy Zucker, Dechert


Mario Mancuso, Fried Frank


Amit Mehta, Zuckerman Spaeder


Michael Burton, Jacobson Burton

- Representing a sovereign wealth fund before CFIUS in connection with its investment in a U.S. software company.

Latham & Watkins LLP was established in 1934 in Los Angeles, California, but the firm's largest office is today in New York City. The Washington, DC office was opened in 1978; today it counts 280-plus lawyers.

The firm's Export Controls, Economic Sanctions & Customs team is composed of 16 partners, three counsel and 17 associates, practising in the fields of anti-boycott laws, anti-terrorism controls, anti-money laundering regimes, customs and import regulations, export control laws, foreign investment in the U.S., FCPA, UK Bribery Act, and trade and economic sanctions. Key contacts include William McGlone, Les Carnegie and Kevin DiBartolo.

Latham's export controls team has been very involved with clients in the aerospace and defence, energy (particularly oil & gas), satellite/communications, and semiconductors sectors, representing clients such as Genzyme, Honeywell International, Schlumberger Limited, Stratasys, and United Technologies Corporation.

Recent instructions have included:

- Representing a Fortune 50 multinational in the energy sector in multiple grand jury investigations, SEC investigations and related administrative investigations and enforcement actions, and internal compliance reviews focusing on potential violations of U.S. sanctions against Iran, Sudan, Cuba and Syria;
- Representing various business units of a Fortune 50 aerospace and defence company in multiple internal investigations, voluntary disclosures and corrective actions/compliance enhancements in connection with pre- and post-settlement of export controls criminal/administrative settlements of U.S. government enforcement actions;
- Advising a well-known aircraft original equipment manufacturer in the development and implementation of automated logic trees for export jurisdiction and classification of aircraft parts and components;
- Representing CARE USA regarding its compliance with U.S. sanctions against Syria, Cuba, Sudan and Somalia. Matters have involved securing licensing from the U.S. Treasury Department's Office of Foreign Assets Control as well as the U.S. Commerce Department's Bureau of Industry and Security to carry out humanitarian activities in countries subject to U.S. sanctions.

Sidley Austin's Washington, D.C. office opened its doors in 1963 with just three lawyers. Since then, it has has grown to be one of the city's largest, home to more than 300 lawyers and policy professionals who provide regulatory, policy and litigation services to domestic and international clients.

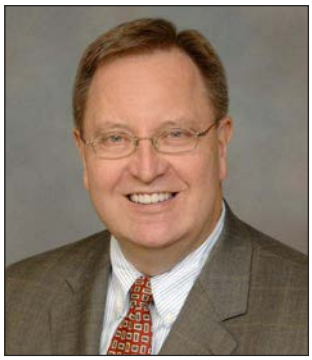
Its International Trade department, headed up Andrew W. Shoyer, sees six other partners and 10 associates advising on issues of antidumping, countervailing duties and trade remedies, CFIUS, customs, export controls and economic sanctions, international intellectual property, market access and regulatory barriers, trade policy and negotiations and WTO disputes, particularly in the agribusiness, chemicals, financial services energy insurance/reinsurance, investment funds, pharmaceuticals/life sciences, manufacturing, and technology industry sectors.

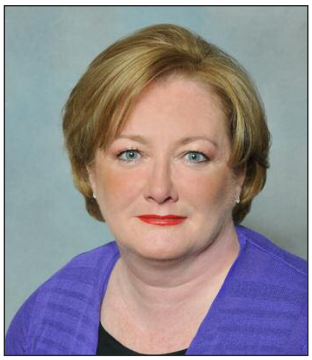
In the recent past, the International Trade team has:

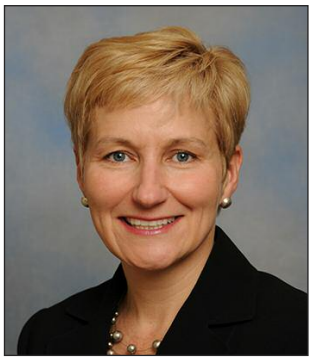
- Represented a Fortune 100 manufacturer in concurrent investigations by five federal agencies relating to compliance with dual-use export controls and economic sanctions laws;
- Conducted export control and sanctions compliance due diligence in large M&A transactions;
- Advised a U.S. defence contractor in connection with ITAR jurisdiction and licensing issues;
- Presented export control and sanctions training programmes to 40 domestic and foreign subsidiaries of a large U.S. diversified industrial company;
- Conducted an internal investigation of economic sanctions compliance and prepared voluntary disclosures for a large pharmaceutical company.

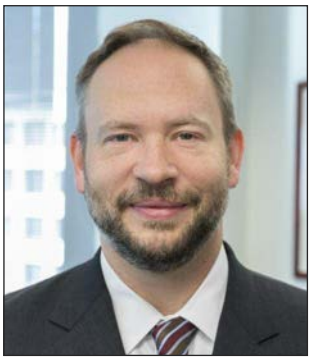
Trade Pacific PLLC is a DC-based international trade law firm, formed in 2004, that provides legal services to a wide array of clients who wish to navigate U.S. trade laws. Its export controls and economic sanctions practice is run by three partners within the firm, an affiliated partner in Vietnam, and a government advisor in Washington, DC partner Corey Norton, who recently joined the firm from Keller and Heckman, is the firm's export controls and sanctions contact.

Also active in the areas of anti corruption, antiboycott, trade remedies (antidumpuing, countervailing duties and safeguards), customs and FDA food safety for imports, particularly


Larry E. Christensen, Miller & Chevalier


Barbara M. Linney, Miller & Chevalier


Kathryn Cameron Atkinson, Miller & Chevalier


Grayson Yeargin, Nixon Peabody

seafood, Trade Pacific has worked closely with contractors from the industrial processing (oil and gas, chemicals etc.), energy, biotech, electronics, automotive, chemicals and other sensitive materials and defence industries.

Recently, the firm has:

- Defended a global automotive company in an enforcement action involving exports of production equipment, revising and implementing compliance procedures in connection with the same;
- Obtained commodity jurisdiction determinations for a defence contractor manufacturing a range of weapons systems, military vehicles and related components and collective protection equipment, advising on licence requirements and available exceptions;
- Conducted an international trade due diligence for a global Fortune 50 company acquiring and selling companies;
- Advised U.S. and non-U.S. companies on the legality of dealing with embargoed countries and how to prepare for and react to new sanctions arising in places such as Ukraine and Libya;
- Conducted anti corruption investigations in Asia for a number of global companies.

Jacobson Burton PLLC is one of the newer practices in DC – formed in January of this year and bringing together the experience of Michael Burton (formerly of Arent Fox and Joiner Burton) with Douglas Jacobson, who had previously been sole name partner of his own firm.

A specialist trade law practice, in addition to export control and sanctions work, the firm handles anti-boycott compliance; FCPA and anti corruption compliance; U.S. customs and import regulatory matters; antidumping and countervailing duty proceedings; international aviation and U.S. Department of Transportation enforcement proceedings; and international trade policy matters (including GSP and free trade agreements).

The partners advise clients across a wide spectrum of sectors, including oil and gas, chemical, automotive, electronics, defence, medical, agricultural, software, aviation, engineering, financial services, e-commerce, and insurance.

Recent instructions include:

- Advising a Fortune 10 company on export controls and economic sanctions compliance and licensing;
- Advising a multinational law firm in conjunction with OFAC voluntary disclosure, resulting in a warning letter;
- Obtaining numerous OFAC and BIS licences authorising the export and payment for sales of agricultural commodities and medical devices to embargoed countries;
- Preparing technical assistance agreements (TAA) for a U.S. subsidiary of a European defence contractor to manufacture next generation ITAR-controlled optical equipment;
- Preparing voluntary disclosures to BIS, OFAC and DDTC in connection with e-commerce transactions involving embargoed countries resulting in warning letters from all agencies.

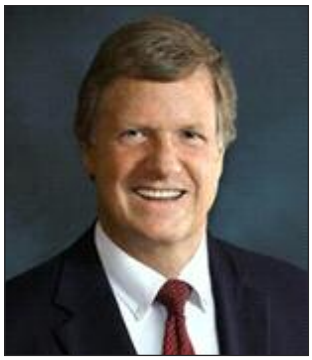
Berliner, Corcoran & Rowe, which opened in DC in 1990, is home to an export control and sanctions practice which boasts four partners and three counsel/associates practising full time – and others when occasion demands.

Key contacts are Ben Flowe, Wayne Rusch, John Ordway and Dan Fisher-Owens. The team is active for clients on EAR, ITAR and sanctions matters; foreign trade regulations; nuclear export controls; anti-boycott, anti corruption/bribery; CFIUS; extradition; software licensing; international tax disputes; cross-border business transactions; customs; and represents foreign governments and advises on government procurement-related work.

Clients are from a broad range of specialised industries including, but not limited to: advanced materials, aerospace, automotive, ceramics, chemical and biological agents and processing equipment, computers and software, defence, electronic test equipment, encryption, financial and insurance, geographic information systems, geophysical instruments, industrial lasers, infrared devices, irrigation equipment, international shipping and logistics, machine tools, medical devices, microelectronics, networking/ cloud computing, nuclear and oilfield tools.

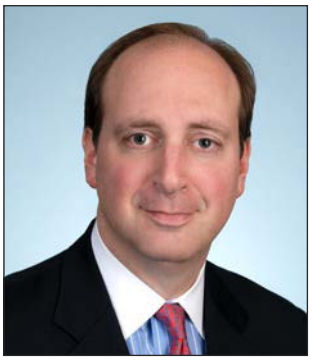
Indicative instructions include:

- Working to improve the remote sensing satellite licensing function for an allied government;
- Obtaining export authorisation for a leading U.S. think tank to advise a close U.S. ally on a shipbuilding programme for a new class of warship;
- Advising U.S. and non-U.S. companies on compliance with new Russia/Ukraine sanctions and on their application to a variety of fact patterns;


Ben Flowe,
Berliner, Corcoran & Rowe


Corey Norton,
Trade Pacific


Kim Strosnider,
Covington & Burling


Mark Plotkin,
Covington & Burling

- Working with OFAC and BIS to clarify the application of controls to cloud computing and other forms of e-commerce, internet and other high-tech communications and products;
- Advising on whether, when, and how to voluntarily disclose clear violations and gray area applications of EAR, ITAR, and sanctions;
- Training clients on applying Export Control Reform regulatory revisions to products and compliance programmes.

Holland & Hart LLP, which opened its DC office in 2001, has an Export Control/Trade Sanctions Defense and Compliance Group (lead by partners Steven Pelak and Triplett Mackintosh) that includes three partners, four of counsel and an associate. Between them, team members undertake alongside export control and sanctions law: customs law/import control, government investigations and white-collar defence, aerospace, international trade, FCPA and anti corruption laws, and CFIUS work.

Clients come from numerous sectors, including defence manufacturers and service providers, aerospace, mining, munitions and firearms, high-technology and software.

Recent instructions and ongoing matters for the firm include:

- Representing a non-U.S. manufacturing concern (over $60 billion in annual sales) with regard to global compliance with U.S. sanctions as to Iran and other markets. The matter involves close work concerning secondary Iranian sanctions and restrictions on certain industries;
- Representing a Fortune 100 publicly-traded U.S. technology firm with respect to compliance with Syria sanctions and resolution of those matters with the U.S. Treasury Department;
- Providing advice and counsel on export control issues to U.S. national laboratories;
- Defending a U.S. defence systems manufacturer in parallel criminal and administrative proceedings under the ITAR;
- Representing a publicly-traded global e-commerce service company with regard to U.S. sanctions and anti corruption compliance as to all international operations.

Miller & Chevalier opened its offices in DC in 1920. The export control and sanctions group practises out of the firm's International Department, led by Kathryn Cameron Atkinson – though key export control/sanctions contacts are Barbara Linney and Larry Christensen. Related areas of work undertaken by the firm include: Foreign Investment Review (CFIUS), defence security, merger and acquisition due diligence, Foreign Corrupt Practices Act (FCPA) and international anti corruption, anti-money laundering, customs and import trade, global compliance and risk management, internal investigations, international trade remedies, investment disputes and international arbitration, and trade policy and market access.

Illustrative recent instructions for the team include:

- Assisting multiple manufacturers in the preparation of commodity jurisdiction requests, and the development of procedures for determining the commodity jurisdiction of aircraft avionics and other products and components. The firm drafted self-jurisdiction analyses and provided comprehensive consulting on all export control and embargo programmes. The firm also has advised a client on a U.K. end-use 'informed' notice regarding weapons of mass destruction activity of a distributor.
- Defending several government-initiated export controls investigations and allegations stemming from voluntary disclosures that involved multiple alleged unauthorised exports. The investigations were settled with warning letters based upon substantial and comprehensive improvements in the clients' compliance plans, processes and procedures, automation, and training strategies.
- Representing a non-U.S. company and its president in defence of U.S. Department of Justice criminal charges and threats of extradition. Results achieved by the firm included a plea agreement with recommendation for no jail time, a relatively small criminal fine, and no administrative fines by OFAC or the U.S. Bureau of Industry and Security. All administrative matters have been completed, and the criminal case is resolved.
- Advising a major engineering firm on how to enter an ITAR-controlled field while preparing a voluntary disclosure to DDTC for the unauthorised release of ITAR-controlled technical data to foreign persons.

At **Nixon Peabody**, export controls and

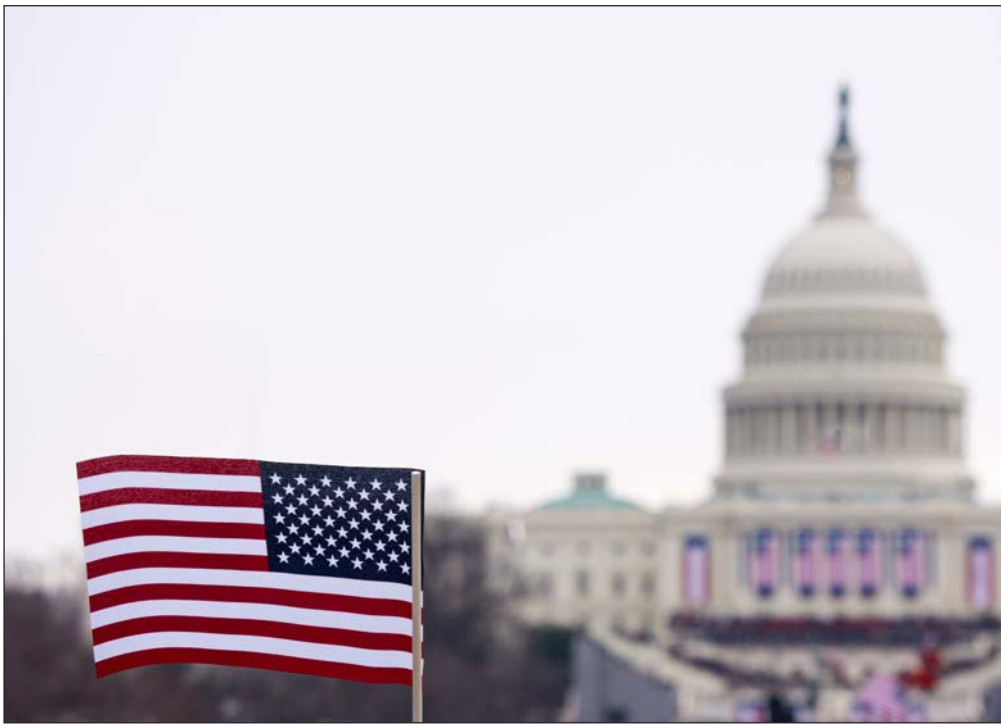
sanctions-related work is primarily handled by partners Grayson Yeargin and Peter Durant, working alongside counsel Alexandra Lopez-Casero. Typical clients for the firm are government contractors, defence and security companies, military suppliers, software developers, information technology providers, outsourcing companies, medical device companies, health care organisations, universities, research organisations, software-as-a-service providers, tech companies, banks, financial institutions, small business innovation research participants and law enforcement suppliers.

Instructions include undertaking internal investigations, preparing voluntary disclosures and defending against civil and criminal enforcement actions, as well as conducting due diligence and assisting in negotiating language for clients engaged in global M&A activity to avoid violations of U.S. export controls and sanctions.

Other areas of practice for Yeargin, Durant and Lopez-Casero include advising on government investigations of government contractors and contractor compliance, including False Claims Act (FCA) compliance, Foreign Corrupt Practises Act (FCPA) and Foreign Agents Registration Act (FARA) related work, and advising companies on the legal and regulatory compliance requirements that arise in the national security and defence industries.

Recent instructions include:

- Successfully negotiating a favourable plea agreement for a client who was indicted by the United States government for exporting sensitive dual-use items;
- Co-ordinating the internal investigation of a public company that discovered that some of its products were transshipped to an embargoed country – the matter involved an investigation into issues handled by the Office of Foreign Assets Control, U.S. Department of Treasury;
- Assisting in the coordination of an internal investigation of a large, public company concerning potential Foreign Corrupt Practices Act issues;
- Providing advice to companies and lobbying firms concerning laws governing lobbying and registration under the Foreign Agents Registration Act.



Hdc Photo

In addition to its strong domestic footprint (offices in a dozen U.S. cities, including DC), the firm has a London office and offices in Hong Kong and Shanghai.

Founded in 1912 and with its corporate headquarters in Boston, **Goodwin Procter** has offices in six U.S. cities, and also in London and Hong Kong.

Sanctions/export control-related work is undertaken by the firm's National Security and Foreign Trade Regulation Practice which assists, amongst others, clients involved in cross-border transactions, 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.

The firm represents businesses in a range of sectors including technology, clean technology, financial services, transportation, real estate, energy, and defence manufacturing, among others. It sees six regulatory regimes as being at the heart of that practice: OFAC regulations, the EAR, ITAR, CFIUS, U.S. Patriot Act and anti-money laundering laws and the FCPA.

Richard Matheny III is the head of the practice; litigation partner Gus Coldebella is another key contact.

Recent experience includes:

- Defending a California resident and his company in a federal criminal prosecution involving the export of laptop computers to Iran through Dubai, U.A.E. (*United States v. Online Micro, D.D.C.*);
- Investigation and disclosure to OFAC of a U.S.-owned foreign subsidiary's transactions with airlines owned by the Cuban government and listed as specially designated nationals;
- Representing before the SEC Office of Global Security Risk a major travel website company in an investigation of travel-related services pertaining to Iran, Sudan and Syria; and of a test-preparation company in an investigation of a franchisee located in Syria;
- Advising on deemed exports relating to the disclosure of EAR-controlled ultraviolet LED technology to Chinese nationals and the disclosure of ITAR-controlled optoelectronics technology to Israeli nationals; and
- Advising on ITAR ramifications of carrying armed security personnel to defend against piracy in the Gulf of Aden (where the client was an ocean common carrier).

Arent Fox

Transacting international business while complying with the complex web of U.S. and international trade controls grows more difficult every day. Technology advances at an exponential rate, the structure of international business transactions is ever more complex, and international politics as well as the rules governing export trade and economic sanctions change on a near daily basis. At the same time, the compliance expectations of both governments and investors have reached new highs.

At Arent Fox, we assist our clients in anticipating and exceeding those expectations while maximising the return to the business. We offer a full-service practice advising clients 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 export controls, defence trade controls, economic sanctions, and antiboycott compliance 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 Department of Commerce Export Administration Regulations (EAR); the Department of State International Traffic in Arms Regulations (ITAR); the Department of Treasury Office of Foreign Assets Control (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

Berliner, Corcoran & Rowe, LLP

Berliner, Corcoran & Rowe, L.L.P. ('BCR') is a boutique international law firm with specialties in export controls and economic sanctions, international law, litigation, corporate, government contracts, and intellectual property. With offices in Washington and San Francisco, BCR serves clients worldwide, including foreign governments, multinationals, small to medium businesses, and individuals. BCR is respected for its expertise, creativity, and efficient service.

Seven BCR attorneys, with experience ranging from eight to over 30 years, practise full-time in this field. BCR attorneys are respected by regulators and enforcement officials for their substantive knowledge and integrity. The firm's advocacy and expert advice has included testifying before the U.S. Congress and in arbitration/litigation, and advising the U.S. Executive Branch on export control regulations, legislation, and policy.

BCR advises and represents clients on all aspects of export controls, embargoes and sanctions, and antiboycott laws, including those relating to the Export Administration Regulations administered by the Commerce Department's Bureau of Industry and Security; the International Traffic in Arms Regulations administered by the State Department's Directorate of Defense Trade Controls; sanctions programmes administered by the Treasury Department's Office of Foreign Assets Control, the U.N., and others; nuclear trade controls administered by the Department of Energy and the Nuclear Regulatory Commission; foreign trade regulations administered by the Census Bureau governing export documentation; U.S. Munitions Import List controls administered by the Bureau of Alcohol, Tobacco, Firearms and Explosives of the Department of Justice; antiboycott regulations administered by BIS and the Treasury Department; and multilateral export control regimes.

BCR attorneys have extensive experience with a variety of products and industries, including: advanced materials, aerospace, automotive, ceramics, chemical and biological agents and processing equipment, computers and software, defence, encryption, financial and insurance, focal plane arrays, geographic information systems, geophysical instruments, lasers, infrared devices, irrigation equipment, international logistics, machine tools, medical devices, microelectronics, networking/cloud computing, nuclear, oilfield tools, pharmaceuticals, satellites/spacecraft, security and surveillance, surreptitious listening devices, semiconductors and related production and inspection equipment, telecommunications, test and measurement equipment, trade associations, underwater remote operated vehicles, and unmanned aerial vehicles.

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BCR
BERLINER CORCORAN & ROWE LLP

Covington & Burling LLP

In an increasingly regulated world, we have an exceptional ability to help clients navigate their most complex business problems, deals and disputes. Covington has a preeminent international trade controls practice and deep expertise handling advisory and enforcement matters involving U.S. and international export controls, sanctions and antiboycott requirements. Covington likewise has a leading practice in handling reviews of cross-border investments, transactions and ventures conducted by the Committee on Foreign Investment in the United States (CFIUS).

In the international trade controls field, we advise clients across a wide range of industrial sectors on changes in the scope of trade control programmes; obtaining licences, export classification rulings, and other authorisations; advocating for changes in regulatory programmes and legislation; and defending clients in administrative and criminal enforcement cases. We assist clients in the development and implementation of internal compliance programmes (including training programmes) and the conduct of internal investigations.

Covington has handled many of the most complex CFIUS reviews, presenting myriad issues ranging from cutting-edge technology transfers to defence and homeland security contracting and novel compliance matters. Our experience spans virtually every sector subject to CFIUS review, including aerospace, defence, software, information and advanced technologies, telecommunications, energy, finance, ports, chemicals, and pharmaceuticals/bio-technology, and has included some of the largest Chinese, Middle Eastern, Russian and European acquisitions ever made in the U.S.

We have deep policy expertise, counting among our ranks some of the nation's most highly respected former senior trade and national security officials with the Departments of Commerce, Defense, State, and Treasury, as well as a former Secretary of the Department of Homeland Security.

We provide clients with guidance in the following related fields:

- Anticorruption Practice
- Customs
- Cybersecurity
- Foreign Investment
- Government Contracts
- International Investment Disputes
- International Public Policy
- Privacy and Data Security
- Trade Policy and Proceedings

Our lawyers are recognised as leaders in the field of international trade and our group is rated among the best in the field by *Chambers*, *Legal 500*, and *Best Lawyers*.

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COVINGTON
COVINGTON & BURLING LLP

Dechert LLP

Dechert is a global specialist law firm focused on sectors with the greatest complexities, legal intricacies and highest regulatory demands. We advise on a comprehensive range of international trade matters arising before national governments, regional bodies and multinational entities.

Economic sanctions and trade embargoes
Compliance with economic sanctions and trade embargoes requires awareness of more than published guidance. Clients turn to us for advice regarding the future development, scope, interpretation, application and jurisdictional nuances of the rules as well as the discretion exercised by enforcement authorities on both sides of the Atlantic in this regard.

Export controls
We counsel clients regarding the requirements applicable to 'dual-use' items, defence-related items, and so-called 'end-use' or 'catch-all' controls. Our keen commercial judgement allows us to assist in the development of operational 'day-to-day' internal procedures that are tailored to a company's structure, resources and exposure to export-related risks and least burdensome on business objectives.

Foreign Corrupt Practices Act
Clients rely on our deep expertise to counsel in all phases of their compliance and risk mitigation programmes. We advise on anti-corruption implications in connection with mergers, acquisitions, strategic alliances and joint ventures involving international businesses and sales operations.

Committee on Foreign Investment in the United States (CFIUS)
We advise non-U.S. and U.S. clients ('buyers' and 'sellers', as well as third parties) regarding the CFIUS review process, helping clients determine whether to bring a transaction before the committee, to assemble the required information and materials for a voluntary filing, and then to negotiate national security agreements with CFIUS in a manner that minimises both delay and the imposition of conditions that might threaten the transaction.

Our uniquely qualified global team includes former regulators, compliance officers and enforcement agents, along with experienced practitioners. With multilingual teams in offices across the United States, Europe, Asia and the Middle East, we address complex, global trade issues, collaborate with internal legal and compliance teams, offer strategic advice on engagement with international regulators and enforcement agencies, and provide practical, commercial, relentlessly client-focused solutions.

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Fried, Frank, Harris, Shriver & Jacobson LLP

Fried, Frank, Harris, Shriver & Jacobson LLP is a leading international law firm. We counsel many of the world's leading companies, financial institutions and investment firms, and are recognised for deploying well-configured, cross-border teams that provide the expertise, experience and responsive service that clients require to meet their critical business objectives.

Fried Frank's International Trade and Investment Practice regularly counsels a broad range of global clients on U.S. and EU legal requirements affecting international trade and investment, including matters involving economic sanctions administered by the Office of Foreign Assets Control (OFAC) and the EU, the Export Administration Regulations (EAR), the International Traffic in Arms Regulations (ITAR), the EU Dual-Use Regulation, the Foreign Corrupt Practices Act (FCPA), the UK Bribery Act, U.S. anti-boycott requirements, the Committee on Foreign Investment in the United States (CFIUS), and anti-money laundering laws and regulations.

Our practice has deep, diverse and longstanding experience addressing these requirements in formal engagements around the world across a number of matter contexts, including:

- counseling clients on the implications of legal and regulatory changes on their business;
- representing clients in civil and criminal enforcement investigations by OFAC and the Bureau of Industry and Security (BIS);
- conducting multi-jurisdictional internal investigations in connection with possible violations of these legal requirements;
- designing and developing integrated, risk-based compliance and related training programmes; and
- conducting targeted due diligence in corporate transactions.

We opened our Washington, DC office in 1949. Today, our practice is unique among its kind: it draws upon the Firm's long tradition of senior U.S. government and diplomatic service to deliver timely, actionable advice to its clients that combines policy acuity, deep legal expertise and business judgement.

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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 2013, we worked with over 150 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 defence 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 licences 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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Holland & Hart LLP

From small privately held start-ups to publicly traded Fortune 50 companies, the export control, compliance, and trade sanctions attorneys at Holland & Hart have considerable experience in this complex area of law, including:

- **Export Controls**
- **Trade Sanctions**
- **Customs Law/Import Controls**
- **Foreign Corrupt Practices Act**
- **Homeland Security**
- **National Security Restrictions on Investment**

Compliance and Training
From body armour and computer chips to helicopters and space launch vehicles, Holland & Hart has assisted companies in developing and monitoring comprehensive export compliance programmes. We have also counseled senior management on navigating this complex area of law while reducing the impact of compliance on internal business processes. We have provided tailored online training tutorials for large multinational companies and personalised face-to-face training for company executives. Our trainees span the globe, from the United States to Asia, Europe, and the Middle East. We have extensive experience assisting companies in the exporter registration process, preparation and submission of export and brokering licences, and in preparing commodity classification or jurisdiction requests.

Investigations and Enforcement
In 2007, the Department of Justice began an export enforcement initiative that has led to a tremendous increase in the investigation and prosecution of export control and trade sanction violations. They now have more than 500 federal prosecutors and agents trained on investigating export control violations and more than 20 new regional export enforcement task forces. As a result, companies are subject to more scrutiny than ever before. Violations of these laws carry significant civil and criminal penalties and the associated loss of public goodwill. Therefore, Holland & Hart clients are those companies that recognise the need for robust compliance systems, employee training, proper internal investigations, and discreet resolution of export and trade sanction matters.

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HOLLAND&HART LLP

Miller & Chevalier

Miller & Chevalier is consistently ranked and recognised as one of the country's preeminent international practices. For more than three decades, the practice has advised and assisted clients – from start-up companies to *Fortune 10* corporations, trade associations and non-profit organisations – on a full range of international law matters. Our lawyers regularly provide guidance on export controls and economic sanctions, anti-corruption and anti-money laundering compliance, foreign investment review, trade policy issues, and national security and international tax matters. The firm's strength in internal investigations is reflected in the fact that six of its lawyers were recognised in the *Who's Who of Investigations Lawyers (2014)*.

Miller & Chevalier's Export Controls, Economic Sanctions and National Security practice includes leading lawyers who bring their considerable background in government, private practice, and in-house positions to the representation of their clients. They are experienced with the regulations of the U.S. Departments of State, Commerce, Treasury, Defense and Energy, and the Nuclear Regulatory Agency, and have been heavily involved in recent major regulatory and enforcement developments. Our lawyers have great depth in regulation, policy, and interagency processes. In the private sector, they have advised companies on a wide range of complex issues and are regular speakers at major export control seminars.

Having represented clients in Foreign Corrupt Practices Act (FCPA) matters for more than 30 years, Miller & Chevalier has one of the leading global anti-corruption practices. Our clients value the reduced costs of experienced advice and efficient problem solving, our on-the-ground knowledge of the myriad ways corruption risks arise in different industries and countries, and our team's ability to work in over a dozen languages.

Notable matters handled by the firm and its lawyers include:

- Deep experience in commodity jurisdiction and classification. We have been successful in 33 out of 34 recent commodity jurisdiction requests on behalf of our clients.
- Advising clients in the defense, aerospace, maritime, oil and gas, sensor producers, data security, software, pharmaceutical, medical devices, chemical, transportation, and other industries on difficult issues arising from the ever-changing sanctions environment and the ongoing export control reform initiative.
- Invited to brief congressional staffers and industry associations on Export Control Reform Initiative developments.
- Two Independent Compliance Monitorships.
- The first FCPA deferred prosecution agreement accepted by the government and the first deferred prosecution agreement that the government agreed to terminate before its term had run.
- A number of cases that resulted in declinations, including some that included lengthy government investigations.

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MILLER CHEVALIER

Sidley Austin LLP

Sidley is a leader in helping companies navigate the complex, overlapping and ever-changing export control and sanctions regimes in force across the globe. Our highly experienced export controls and economic sanctions team draws on extensive private sector and government experience and helps clients understand and shape export control laws, develop and implement compliance programmes, conduct internal investigations and defend against civil and criminal enforcement actions.

CLASSIFICATION • LICENSING • FINANCIAL TRANSFERS
COMPLIANCE • ENFORCEMENT PROCEEDINGS
TROUBLE SHOOTING

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Ten-time winner
'Global Trade & Customs Law Firm of the year'
Who's Who Legal Awards 2005-2014

'International Trade Group of the year.'
'Sidley Austin has earned an enviable reputation for success in trade matters – and a worldwide stable of governments and big-name corporate clients who rely on the firm when the stakes couldn't be higher.'
Law360 2013

'Their level of knowledge and service is outstanding.'
Chambers and Partners 2013

'Sidley Austin LLP "simply has incomparable experience" in trade matters.'
The Legal 500 EMEA 2013

Sidley Austin LLP is a global law firm committed to providing excellent client service, fostering a culture of cooperation and mutual respect, and creating opportunities for lawyers of all backgrounds. With more than 1,800 lawyers in 19 offices around the world, talent and teamwork are central to Sidley's successful results for clients in all types of legal matters, from complex transactions to 'bet the company' litigation to cutting-edge regulatory issues.

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Thompson Coburn LLP

Thompson Coburn's international trade attorneys focus on issues concerning the international regulation of trade. Our clients include major companies in the chemical and petroleum industries. While some of our trade attorneys have backgrounds in chemistry and other technical areas, we also regularly leverage the technical expertise of others within the firm for assistance as necessary.

We are well-versed in the various agencies, regulations and laws that affect companies involved in international trade, finance and transactions, and customs and export controls. We advise clients on issues related to economic sanctions implemented by the Office of Foreign Assets Control (OFAC), 'dual-use' goods under the Export Administration Regulations (EAR), munitions under the International Traffic in Arms Regulations (ITAR), and transactions that involve review by the Committee on Foreign Investment in the United States (CFIUS).

Our attorneys regularly represent clients before the Bureau of Customs and Border Protection (CBP), the U.S. Department of Commerce, the U.S. International Trade Commission, the U.S. Department of State, the Federal Maritime Commission, the Office of the U.S. Trade Representative, and the U.S. Congress. We also have extensive experience in transactions guaranteed or insured by the Export-Import Bank of the United States and the Overseas Private Investment Corporation.

Our trade group has developed several valuable resources, including the *Trade Compliance Handbook* and the *Checklists of Foreign Countries Subject to Sanctions*. Copies can be ordered at www.thompsoncoburn.com/tradepubs.

Thompson Coburn was named as one of the top 30 firms in the nation for client service in 2014 by BTI Consulting, which also named the firm among the nation's top firms at providing exceptional value. Our partners closely manage all aspects of each matter, including staffing, to achieve optimal results while reducing overall legal costs. We also recognise that the most important element in matter management is developing a close and collaborative relationship with the client; therefore, our strategies and solutions are developed and implemented with one goal in mind – to serve the interests of our clients as if they were our own.

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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.

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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Zuckerman Spaeder LLP

Zuckerman Spaeder LLP is a nationally recognised litigation firm that boasts one of the country's most highly regarded white-collar criminal defence and investigations practices. *The American Lawyer* called our firm 'a haven for clients in trouble' when it named us a finalist for its most recent 'Litigation Boutique of the Year'.

With offices in Washington, DC, New York, Tampa, and Baltimore, our lawyers have significant experience in defending businesses and individuals who have been the subject of investigations, prosecutions, and administrative proceedings for violating export control and sanctions laws involving commerce with countries such as Iran, China, Cuba, and Sudan. We are trial-ready litigators who have defended clients in criminal trials and on appeal, with many members of our Export Control team having served as former prosecutors and public defenders.

Our lawyers understand that export control and sanctions enforcement actions place unique demands on defence counsel. We have assisted clients navigate the web of statutes and regulations that govern commerce with foreign countries, including the International Emergency Economic Powers Act (IEEPA), International Traffic in Arms Regulations (ITAR), and regulations promulgated by the U.S. Department of State, U.S. Department of Homeland Security, U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC), Office of the Comptroller of the Currency (OCC), and the U.S. Department of Commerce's Bureau of Industry and Security.

National security issues often come into play in these cases, placing a heavy burden on defendants in the discovery and use of classified information. Our lawyers are knowledgeable about the special rules and procedures concerning classified information under statutes such as the Foreign Intelligence Surveillance Act (FISA) and the Classified Information Procedures Act (CIPA).

In addition, the firm has represented companies and individuals before both the U.S. Departments of Treasury and Commerce in regulatory enforcement investigations and actions. We understand and have experience with the rules and regulations that govern civil enforcement investigations and proceedings, including the factors that these federal agencies consider in settling such matters.

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When the lawyer you choose matters most.