

# Table of Contents

<b>Preface</b>	<b>xiii</b>
<b>Acknowledgements</b>	<b>xv</b>
<b>About the Authors</b>	<b>xvii</b>
<b>Chapter 1. U.S. Economic Sanctions Law</b>	<b>1</b>
1.1 Overview	1
(a) Statutory Authority	2
(b) Regulated Persons	4
(c) Implementation	4
(d) Executive Orders	5
(e) OFAC Regulations	5
1.2 Common Types of Restrictions	6
(a) Blocking of Property	6
(b) Vesting of Property	7
(c) Prohibitions on Targeted Transactions	8
1.3 Country-Based Economic Sanctions Programs	9
1.4 List-Based Economic Sanctions Programs	11
1.5 Prohibitions on the Exportation of Services and Facilitation	12
(a) Application	12
(b) Exceptions	14
(c) Considerations for Financial Institutions	16
(d) Considerations for Multinational Companies	16
1.6 Exemptions, Exceptions, and Licenses	18
(a) The Berman Amendments	19
(b) OFAC Licensing	21
1.7 Compliance Program Development	22
(a) Compliance Controls	22
(b) Resources	24
(c) Special Compliance Program Considerations for Non-U.S. Persons	25
1.8 Voluntary Self-Disclosures, Enforcement, and Penalties	25
(a) Voluntary Self-Disclosures	26
(b) Enforcement	27
(c) Penalties and Non-Penalty Outcomes	28
1.9 Conflicts with Non-U.S. Laws	29
<b>Chapter 2. International Traffic in Arms Regulations</b>	<b>31</b>
2.1 Overview	31
2.2 Administration and Enforcement of the ITAR	32
2.3 Scope of the ITAR	33
2.4 Determining What Is Subject to the ITAR	36

2.5	Registration Requirements	41
2.6	Exportation of Defense Articles	44
2.7	Exportation of Defense Services and Technical Data	49
2.8	Brokering Under the ITAR	52
2.9	ITAR Requirements Concerning Fees, Commissions and Political Contributions	57
2.10	Penalties and Enforcement	60
2.11	Voluntary Disclosures	61
2.12	Conclusion	63
<b>Chapter 3. Export Administration Controls</b>		<b>65</b>
3.1	Introduction	65
3.2	Structure of the Export Administration Regulations	66
3.3	What Is Regulated? Scope of the EAR	67
3.4	Who Is Regulated?	69
3.5	Classification: The Export Control Classification Number	69
3.6	General Prohibitions	71
3.7	Reasons for Control	73
3.8	License Exceptions	77
3.9	Licensing	78
	(a) License Application	78
	(b) License	78
	(c) 764.5(f) Authorizations	78
3.10	Penalties and Enforcement	80
3.11	Special Topic: Export Control Reform	81
3.12	Recent Export Enforcement Matters	83
	(a) Recent Enforcement Matters: Individuals	83
	(b) Recent Enforcement Matters: Entities	83
<b>Chapter 4. Anti-Money Laundering Controls</b>		<b>85</b>
4.1	Overview	85
	(a) The International AML Organizations	86
	(b) The Financial Actions Task Force	86
	(c) The Egmont Group	89
	(d) The Wolfsberg Group	89
4.2	U.S. Anti-Money Laundering Laws and Regulations	90
4.3	Complying with U.S. AML Laws and Regulations	91
	(a) The Risk Assessment	91
	(b) The Compliance Program	93
	(c) Compliance Program Pitfalls	95
	(d) Financial Intelligence Unit (FIU) Inquiries	96

(e) Recordkeeping	97
(f) Sample Industry-Specific Risks	97
4.4 Representative Enforcement Actions	102
(a) Representative FinCEN Fines During 2011	102
(b) Other Significant AML Cases	103
<b>Chapter 5. Antiboycott Measures</b>	<b>105</b>
5.1 Overview	105
5.2 U.S. Antiboycott Laws	106
(a) The Commerce Department's Antiboycott Law	107
(b) The Treasury Department's Antiboycott Law	108
(c) Distinctions between the Two U.S. Antiboycott Laws	109
5.3 Application of U.S. Antiboycott Laws	109
(a) Part 760	109
(b) Section 999	110
5.4 Reporting Requirements	111
5.5 Reporting a Boycott-Related Request	112
5.6 Penalties and Enforcement	112
(a) Commerce Department	112
(b) Treasury Department	115
5.7 List of "Boycotting" Countries	115
5.8 Legal Resources/Where Can I Find Additional Information?	115
5.9 Compliance Tools and Analytical Framework	116
<b>Chapter 6. Handling Violations: Internal Investigations, Voluntary Disclosures, Global Settlements, and Possible Defenses</b>	<b>119</b>
6.1 Overview	119
6.2 Export Control Enforcement Overview	119
6.3 Internal Investigations	121
(a) Preliminary Steps	121
(b) Conducting the Investigation	125
6.4 Remediation	128
6.5 Voluntary Self-Disclosure	129
(a) OFAC	131
(b) BIS	132
(c) DDTC	133
6.6 Global Settlements	135
6.7 Possible Defenses and Mitigation	136
(a) Challenges to the Charges	137
(b) Culpability Challenges	139
(c) Mitigating Circumstances	141

6.8	Case Studies	142
	(a) <i>United States v. BAE Systems PLC</i>	142
	(b) <i>United States v. ITT Corporation</i> and <i>United States v. TW Metals</i>	144
	(c) <i>United States v. Latifi</i> and <i>United States v. Roth</i>	146
	(d) <i>United States v. PPG</i>	148
	(e) <i>United States v. Pulungan</i>	149
	(f) <i>United States v. United Technologies Corporation</i>	150
6.9	Conclusion	152
<b>Chapter 7. Reexport Controls—Intersection of EU and</b>		
	<b>U.S. Measures</b>	<b>153</b>
7.1	Introduction	153
7.2	Overview	153
7.3	EU Objections to Reexport Controls	154
7.4	The European Union (EU)	155
7.5	Military Goods	156
7.6	Dual-Use Goods	157
7.7	To Whom Do the Rules Apply?	158
7.8	Transit and Transshipment	158
7.9	Brokering	160
7.10	Licensing	160
7.11	EU End-Use Undertakings	160
7.12	National End-Use Undertakings	161
	(a) U.K.	161
	(b) Germany	162
	(c) Belgium	163
	(d) Spain	163
7.13	Union General Export Authorizations (UGEA)	163
7.14	Internal Reexport Controls	164
7.15	EU Sanctions	165
7.16	EU Conclusions	166
<b>Chapter 8. Reexport Controls—Intersection of Canadian and</b>		
	<b>U.S. Measures</b>	<b>167</b>
8.1	Overview	167
8.2	Introduction to Canadian Trade Controls	167
8.3	Export and Import Permits Act	168
	(a) Export Control List	168
	(b) Area Control List	169
	(c) General Export Permits	169

8.4	United Nations Act and Special Economic Measures Act	169
8.5	Freezing of Corrupt Foreign Officials Act	170
8.6	Defense Trade Controls	171
8.7	Other	171
8.8	Current Export Enforcement Issues	171
	(a) Dealings with “Designated Persons”	172
	(b) Information Security Items	172
	(c) “Catch-All” Controls	173
	(d) Iran	174
	(e) Syria	174
	(f) Cuba	174
	(g) Belarus and Burma (Myanmar)	175
	(h) Other Destinations of Concern	175
8.9	Mitigating Risk and Sensitivities to U.S.-Canada Issues	175
8.10	Specific U.S.-Canada Trade Control Issues	176
	(a) Export of U.S.-Origin Goods and Technology	176
	(b) Exports of Controlled Items to the United States	179
	(c) Goods and Technology in Transit from the United States	180
	(d) U.S. ITAR Dual and Third-Country National Rule	180
<b>Chapter 9. Extraterritoriality and Foreign Blocking Statutes</b>		<b>183</b>
9.1	Overview	183
9.2	U.S. Extraterritorial Measures	184
	(a) Extraterritorial Cuba Sanctions	184
	(b) Extraterritorial Iran Sanctions	185
9.3	Canada—The Foreign Extraterritorial Measures Act	185
	(a) Overview of the FEMA	185
	(b) The Principal FEMA Countermeasures	185
	(c) The FEMA Order	186
	(d) Enforcement of and Penalties under FEMA	188
	(e) The Interaction of FEMA and the Extraterritorial Measures	189
	(f) Shielding Companies from Liability	194
9.4	European Union: The EU Blocking Regulation	195
	(a) Overview	195
	(b) Rationale of the EU Blocking Regulation	195
	(c) Scope of Application	196
	(d) The Principal Countermeasures	197
	(e) Penalties and Enforcement	199
	(f) The Blocking Regulation, CISADA and the Threat Reduction Act	200

<b>Chapter 10. Export Compliance in the M&amp;A Context</b>	<b>203</b>
10.1 Introduction	203
10.2 Enforcement	204
(a) Overview	204
(b) Department of Commerce	204
(c) Department of State	206
(d) Office of Foreign Assets Control	207
(e) Conclusions on Enforcement	207
10.3 Due Diligence	208
(a) Overview	208
(b) Conducting the Review	209
(c) Conclusions on Due Diligence	213
10.4 Notification Requirements	213
(a) Department of State	213
(b) Department of Commerce	215
10.5 Possible CFIUS Review	216
10.6 Applying Export Controls and Economic Sanctions Policies to Newly Acquired Companies	217
(a) Identifying and/or Appointing Transaction Point Persons	217
(b) Identifying Policies and Procedures That Will Be Applied to the Acquired Company	218
(c) Providing Compliance Training	219
(d) Performing Benchmark and Periodic Compliance Audits	220
10.7 Conclusion	220
<b>Chapter 11. Nuclear Export Controls</b>	<b>225</b>
11.1 Introduction	225
11.2 International Nuclear Export Control Regime	225
11.3 United States: Export Controls	227
(a) Overview	227
(b) Federal Statutes and Authorities	227
(c) NRC Export Controls	228
(d) DOE's Part 810 Regulations	229
(e) Retransfer Controls in 123 Agreements	231
(f) Penalties and Enforcement	232
11.4 Canada: Nuclear Export Control Policy	233
(a) Statutes and Federal Authorities	234
(b) Import and Export Licensing of Nuclear and Nuclear-Related Items	235
(c) Import and Export Licenses for Risk-Significant Radioactive Sources	236

(d) Export and Import Permits Act	238
(e) Judicial Consideration: <i>R. v. Yadegari</i>	239
<b>Appendixes</b>	<b>241</b>
Appendix A to Chapter 1	241
Appendix B to Chapter 1	255
Appendix A to Chapter 5	259
Appendix B to Chapter 5	271
Appendix C to Chapter 5	273
Appendix D to Chapter 5	275
Appendix E to Chapter 5	277
Appendix F to Chapter 5	279
Appendix G to Chapter 5	281
<b>Index</b>	<b>283</b>

<http://www.pbookshop.com>