

THE WORLDECR EXPORT CONTROLS AND SANCTIONS FORUM 2023 WASHINGTON, DC

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16-17 October 2023, at the offices of Hogan Lovells US LLP, Washington DC

Welcome



Tom Blass,
Editor,
WorldECR

Eighteen months into Russia's war on Ukraine, there remains a heightened focus on sanctions and export controls as a tool of national and international security, with continuing debate around scope, relevance and the need for change. All these dynamics are reflected in this year's Forum program, during which panelists – and delegates – will discuss issues such as:

- The broadening scope of sanctions legislation as it looks to curb evasion and circumvention
- The perspective of non-G7 aligned countries and their sanctions policies
- Sanctions' new boundaries: at the edge of the rule of law?
- Business' responsibility at the 'frontline' of trade controls

As has become established practice, this year's Forum brings together government, industry, policy and legal private practice, to lead the trade compliance debate with sessions on:

- Enforcement: learning from others' mistakes; understanding government expectations
- State-of-the-art compliance and organization in changing times
- Evasion, circumvention and diversion: new red flags and detection best practice
- Voluntary disclosure: how, why and when

The world of sanctions policy, law and best practice changes fast – perhaps never with such rapidity as the past 18 months have witnessed. The WorldECR Forum is the right time, and the right place to take stock of developments in the company of other practitioners – and prepare for the changes that are sure to come.

As in previous years, you can enjoy an **optional dinner** on the first evening of the Forum, following a networking drinks reception. To date, this relaxed and informal dinner for speakers, panelists and delegates, held in a local restaurant, has proven a great success. It is optional – there is an additional charge – but it is always a fun end to a long day and a great opportunity to build new contacts.

Key dates and offers

Please allow me to draw your attention to the following:

- If you register by 22 September 2023 you can save \$200
- Additional delegates from the same organization can save an additional \$200
- *WorldECR* subscribers and past Forum attendees, along with subscribers to *WorldECR's* sister journal, *Export Compliance Manager*, can claim a 10% discount

You'll find all the registration information at the end of this document, but if you do have any questions please don't hesitate to contact my colleague Mark at mark.cusick@worlddec.com

Join us in DC this October. We're very much looking forward to seeing you.

Tom Blass
Editor, WorldECR



Matthew S. Axelrod – Enforcing for good: BIS priorities, business best practice

If you're in the business of export controls on dual-use items, you keep a keen eye on the enforcement, lawmaking, and guidance-related activities of the US Bureau of Industry and Security (BIS) at the Department of Commerce. So, we're delighted to announce that Matthew Axelrod, Assistant Secretary for Export Enforcement at BIS, will be present at the Forum to update delegates on the Bureau's recent work and priorities, lending key insights into how BIS agents seek to counter national security threats, and to discuss the measures that US companies and their subsidiaries should be taking to ensure they take their part on the compliance front line.

Mr. Axelrod leads a team of agents and analysts who protect and promote US national security and foreign policy objectives by stopping exports of sensitive goods and technologies that can be put to malign purposes, like weapons-of-mass-destruction proliferation, military and military-intelligence applications, terrorism, and human rights abuses. He has also previously served as Special Counsel in the Office of the White House Counsel, and as a partner in an international law firm.



Aleksandar Dukic, Lourdes Catrain and Aline Doussin – Voluntary disclosure: key developments and best practice

In April of this year, BIS issued new guidance to incentivize voluntary disclosure “when industry or academia uncovers significant violation of the EAR,” setting out the circumstances in which it was appropriate to do so, and how best to go about it.

Many compliance organizations are kept on their toes by the need to assess potential disclosure situations: how, when, and where? And, of course, that pertains not just to the EAR, but in the US, OFAC and DDTC programs, while non-US companies must be mindful of further, multijurisdictional regimes.

In this session, lawyers from the firm Hogan Lovells take stock of the current guidance and best practice for the key programs, alongside related enforcement lessons from both sides of the Atlantic.





Barbara Linney – Walking the line: Sanctions, representation, compliance advice, and the rule of law

Since Russia launched its invasion of Ukraine, businesses have had to pay heed to the many sanctions subsequently imposed against Russia, and also make ethical/business decisions relating to corporate partners, clients and counterparties.

Among the sanctions are restrictions on the extent to which service providers – including lawyers, management consultants and other professionals – can represent, advise, or act on behalf of certain persons. Difficult times force difficult choices, but is there a risk that lawmakers' attempts to constrain circumvention will jeopardize the very rule of law that they seek to uphold as a bulwark against autocracy? And what processes should businesses and service providers establish to ensure an ethical, compliant – and sustainable – approach to cross-border relations?

These are not easy questions to answer, but in her presentation, Barbara Linney, partner at the law firm BakerHostetler and Adjunct Professor at Georgetown University Law Center, sets out the considerations.



David Albright and Alex Bashinsky – Transshipment, evasion, and Peddling Peril

Transshipment refers to the method of shipping goods to an intermediate destination prior to the goods being delivered to their end destination – and is an everyday part of global trade, indeed a necessity. But it has always been a potential source of diversion, and in the light of recent export controls and trade restrictions on Russia and Belarus, and changes to historical transshipment routes, such as the shift from traditional transshipment hubs in the EU to third countries with less strict export regulations and enforcement, exacerbates the risk considerably.

In this joint session, David Albright, of the Institute for Science and International Security, will outline the findings – and key learnings from the – the 'Peddling Peril Index', for 2021/2022, which assesses a total of 31 countries identified by their respective roles in the transshipment of restricted goods or the supply of dual-use goods used by the Russian military.

Complementing David's presentation, sanctions compliance professional Alex Bashinsky will give the lowdown on how Russian sanctions evaders particularly might be looking at opportunities and weak spots arising out of transshipment centres and related red flags.

This session will provide critical insights for company compliance functions against the backdrop of continuing conflict and resulting loss of life in Ukraine.





Naama Margolis – Balancing Act? Israel, trade controls – and its response to the Ukraine crisis

The State of Israel boasts a highly sophisticated technology sector and plays a critical role in the wider economy of its region. As such, it takes trade control seriously. A small but wealthy state, Israel is mindful of its reliance on complex alliances within the community of nations, while maintaining autonomy in sanctions decisions.

Naama Margolis, of Tel Aviv law firm Shibolet & Co., will first give an update on the evolving Israeli trade control framework, with a focus on both recent and planned changes by the relevant ministries. Naama will follow that with an overview of Israel's response to the G7 sanctions push against Russia and consider the balancing act it creates for Israel, as the country seeks to maintain diplomatic relations with Moscow while actively discouraging circumvention/evasion efforts.

Naama is head of the Trade Controls practice at Shibolet & Co. She is a seasoned participant in government-industry dialogue around Israel trade control frameworks and has been involved in the Israeli government's outreach efforts to raise awareness of G7 sanctions and their implications for the Israeli industry.



Alexandra Baj and Pete Jeydel – Foreign Direct Product rules in the spotlight: new and updated regulations, and unprecedented enforcement

In recent months, BIS has put out several new FDP rules and updated the pre-existing regulatory structure around the FDP rules. The unprecedented enforcement action against Seagate underscored the risks and complexities underlying these rules. What does this action and the changed rules tell us about the direction of export control policy for the future? Are companies going to (or can they even) “design out” US inputs in light of this increasing global reach? What else may be on the horizon in terms of BIS's expanding jurisdiction?



Getting into the nuts and bolts, how are manufacturers, software developers, and others with R&D or production outside the US to deal with these rules? How do the FDP rules interact with the de minimis rules, along with new and existing controls on activities by US persons? The “knowledge” standard in the FDP rules is critical from a risk management perspective, and companies will need to think carefully about how to adjust their compliance approach around that standard. Compliance teams around the globe need to understand and implement these rules in their processes to avoid inadvertent violations of US export controls.

Alexandra Baj and Pete Jeydel from Steptoe's DC office will shine a light on this increasingly critical and complex area of the EAR.



Panel discussion led by Sue Gainor: Learning from others' mistakes

High-profile compliance settlements and enforcement cases – such as 3D Systems' \$20m consent agreement with the Directorate of Defense Trade Controls (DDTC) under the ITAR, Microsoft's payment of \$3m to settle multiple violations of OFAC sanctions programs, or Seagate's \$300m penalty by BIS to resolve alleged violations of the EAR's Foreign Direct Product Rule – are salutary lessons for the companies directly involved.

They also provide the trade control community with valuable insights not only into regulators' priorities, but also into supply chain and oversight weaknesses, how management failings occur, and other compliance pitfalls.

So what are the appropriate steps the community should take in response to the government's release of enforcement actions and settlements? How can organizations internalize and maximize lessons from these regulatory actions to improve their compliance programs?

We are delighted that Sue Gainor, former DDTC compliance director and former Boeing VP of global trade controls, will be leading what promises to be a lively and enriching conversation with other thought leaders on a topic which, though sometimes sidelined, ought to be at the top of everyone's compliance agenda.

Sue is a Principal with Grey Point Consulting, providing trade compliance and other services the aerospace and defence industry. Sue will be joined on this highly experienced panel by Alexis Wetzler, Assistant General Counsel, Export Compliance at Honeywell, Hillary Doll, Vice President, Global Trade Program and Operations at Raytheon Technologies, and David Ring, Partner at law firm Wiggin & Dana.





Dr. Gerd Schwendinger and Marian Niestedt – The EU sanctions regime: developments in the past year

Since February 2022, the European Union, in concert with G7 allies, has steadily ratcheted up restrictive measures against Russia. Indeed, some observers say we're seeing the EU's sanctions mechanisms finally coming of age, with successive "packages" of sanctions (11 to date) reflecting that resolve and introducing new tools, including but not restricted to:

- Special measures to combat sanctions evasion and circumvention
- Mandatory criminalization of sanctions breaches for all EU Member States
- Enhanced export controls and categories of controlled "battlefield" products



While each Member State will implement the sanctions in its own way and with varying degrees of commitment, recent developments clearly represent a turning point – with consequences potentially long outliving the current war in Ukraine. In this key presentation, GvW Graf von Westphalen sanctions and trade law experts, Gerd Schwendinger and Marian Niestedt set out the new EU sanctions landscape, in particular the restrictive measures imposed by the EU on Russia, focusing on enforcement, end-use controls, prevention of circumvention of existing measures – and possible future developments.

This is a must-attend session for all US businesses with activities in the EU.



Satish Kini, Konstantin Bureiko and Robert Dura – An energy sector focus on sanctions

Oil, gas, and other major sectors of the energy industry have long been a target of economic and trade sanctions. With oil and gas a critical source of leverage in the relationship between Russia and the West, it is no surprise that conflict with Ukraine has pushed energy-related sanctions to the fore – not least in the form of the prohibition on the G7's maritime services ban and oil price cap.

The sanctions apply to both upstream and downstream aspects of the energy industry, with implications not only for industry players, but for shipping, insurance and finance – and their impacts extend well beyond trade with Russia.

In this session, Debevoise & Plimpton sanctions experts, Satish Kini, Konstantin Bureiko and Robert Dura talk through the nature of the sanctions in place, the compliance-related consequences, the scope of bans, and wider repercussions, including but not limited to secondary sanctions, third-country risks, and horizon scanning.





Steven Brotherton – Responding to change: rethinking the trade compliance function in changing times

In response to the copious number of recent regulatory changes, how should companies best organize their export compliance function? This is a question many organizations are asking themselves in the face of new challenges, evolving business models, and fluid supply chains.

In this presentation, KPMG's Steven Brotherton sets out a state-of-the-art vision of the way that the function should be organized that includes a division between strategic vs. operational responsibilities, use of shared service centers and outside support for classification and alert reviews, and improved structures for career development (leading to higher staff retention).

Against a backdrop of impactful change – such as increased end-use restrictions, expansion of the Foreign Direct Product rule, ever-increasing classification challenges – having a fit-for-purpose compliance function is a necessity not a luxury.



Sahra Park-Su, Lawrence Koh, Stephen Propst and Aline Doussin – Eastward view: Asia horizon scanning

While the art of actual clairvoyance is denied most of us, the practice of horizon scanning – assessing and evaluating potential and emerging risks and opportunities – is within the gift of everyone. In the trade compliance context, this means taking stock of the regulatory developments corresponding to changes in the geopolitical landscape.

Against the backdrop of fast-moving geopolitical change and uncertainty – e.g., US-China tensions, North Korean nuclear military ambitions, secondary sanctions risks resulting from Russia's continuing aggression in Ukraine – Sahra Park-Su leads this invaluable panel discussion, which explores some of the potential changes in legislative and policy landscape that might accompany significant events in the Asia-Pacific region, foreseeable or otherwise.

Sahra is Lead Senior Legal Counsel, Global, for Export Control and Trade Sanctions at SAP, and a former Senior Counselor within the Bureau of Industry and Security at the Department of Commerce. Joining Sahra will be Lawrence Koh, Chief Export Compliance Officer at ZTE Corporation in Singapore, and Hogan Lovells partners Stephen Propst and Aline Doussin.





Matt Silverman – Talent, technology and compliance: strategies for success

In March of 2023, the Department of Justice’s Evaluation of Corporate Compliance Programs was revised to include for the first time a recommendation that companies consider developing “champions networks” to support a culture of compliance as well as to spread and support compliance ideas, programs, and initiatives across organizations.

In this session, Matt Silverman – CEO and Founder, The Blueprint Organization, Global Trade Director and Senior Counsel, VIAVI Solutions and author of the book *The Champions Network* – discusses his blueprint for building and sustaining a trade compliance champions network within any organization, including the following steps:

- Gaining buy-in and support from leadership
- Developing a structure for the network
- Recruiting the right champions
- Training your champions, both substantively and behaviorally
- Implementing the network and adjusting along the way
- Developing metrics that demonstrate network success



Emily Benson – Emerging tech, geostrategy and export controls: future threats and opportunities

Against a backdrop of intense geostrategic competition (and conflict), technological innovation, and the erosion of the authority of the multilateral regimes, where does the future of export controls lie?

In this important presentation, Emily Benson looks to the future, reimagining export controls, especially as they relate to “emerging” and other sensitive technology classes, including quantum mechanics, AI, semiconductors, and biotechnology, asking:

- What is the likely direction of travel of new controls, and what are the economic costs to industry?
- What is the future of the traditional multilateral export control regimes?
- How can industry keep pace with developments, both in technology but also the rules that govern?

As director of the Project on Trade and Technology at the Center for Strategic and International Studies (CSIS), Emily focuses on trade, investment, and technology issues primarily in the transatlantic context. Prior to joining CSIS, she managed transatlantic legislative relations at a European foundation, focusing on trade relations and emerging technologies such as artificial intelligence.



Bethany Nelson – Academic standards: universities, research and compliance

Recent years have seen increased agency scrutiny of universities and similar establishments' compliance programs, given the potential for research, collaboration and teaching to lead to inadvertent sanctions and export control exposures.

It is usual for technology and other companies to draw on universities' expertise through partnering and R&D, but universities have a different approach from industry in a lot of areas and cannot always implement measures the same way.

In this session, Bethany Nelson, Export Control Coordinator at the University of Wisconsin-Madison, sets out the lay of the land from a university point of view, including the relevance of, for example,

- Fundamental research, deemed exports, publication and personnel restrictions
- Universities' approach to control lists and "in-house" compliance
- Expressing compliance issues in contracts, and crafting clauses regarding restricted parties, access to controlled equipment, and EAR99...

... and importantly, how to make sure you're speaking with the "right" person about export controls within a university setting.



John Pisa-Relli and Matt Henson – Zero Trust = Maximum Security: taking a leaf from the NIST book

In the world of government procurement, the benchmark for cybersecurity compliance is set by NIST 800-207, which describes a strategy, the goal of which is to (1) prevent unauthorized access to data and services and (2) make access control enforcement as granular as possible.

This "zero trust" strategy stands for the principle "never trust, always verify". Or, as the Department of Homeland Security's CISA has it: "An approach where access to data, networks and infrastructure is kept to what is minimally required and the legitimacy of that access must be continuously verified."

Can and should the export control function take the "zero trust" leaf out of the cybersecurity book? John Pisa-Relli and Matt Henson certainly think so. In this presentation, John and Matt walk through the seven key tenets of the zero trust approach, setting out how they can be best applied in the trade compliance context – and employed to maximum effect.

John advises on all aspects of organizational ethics and compliance, with a focus on global trade compliance (especially economic sanctions, export controls, and foreign direct investment). For the past ten years, he directed the internal global trade compliance program at Accenture. Matt is Global Trade Solutions Orchestrator at software company Trade Collaboration Engine.



Washington, DC 2023: Speakers and their Sessions



Robert Monjay and Sanjay Notani – New understandings, new opportunities: India, semiconductors, and security

Back in March, the US and Indian governments signed a Memorandum of Understanding on a Semiconductor Supply Chain and Innovation Partnership, to establish “a collaborative mechanism between our two countries on semiconductor supply chain resiliency and diversification.”

The month previously, India and the European Union agreed a new Trade and Technology Council, noting that in a “rapidly changing geopolitical environment [they have] a common interest in ensuring security, prosperity and sustainable development based on shared values.”

What principles underpin such agreements? Do they represent a relaxation of export controls? How should the compliance functions of semiconductor and other ITC companies in India, the US and the EU respond appropriately to such developments?

We are delighted that Robert Monjay, a senior compliance professional with public and private sector experience, and Sanjay Notani, head of the International Trade and Customs Practice at the Mumbai office of ELP (Economic Laws Practice), will be setting out the backdrop to these agreements, and the repercussions for industry and compliance.



Neena Shenai and Barbara Linney – Waivers, licenses and exceptions for medical and humanitarian goods

Perhaps the most controversial aspect of sanctions is the potential of the tool to hit those least deserving of punishment – by interrupting flows of medicine, food, or other humanitarian necessities to countries under unilateral or UN-mandated trade restrictions. (The February 2023 earthquake impacting Turkey and Syria brought the debate starkly to the fore.)

Sanctions-imposing states and regulators contend that there are significant safeguards, in the form of general licenses, waivers and other exemptions, that such supplies should not be hindered. Observers have long noted the phenomenon, however, of “over-compliance”, where the export of crucial goods is held back by fear of sanctions on the part of others in the supply chain, e.g., banks.

In this important session, Neena Shenai, Senior Legal Director & Chief Counsel for Global Trade at medical device manufacturer Medtronic, and Barbara Linney, partner at law firm BakerHostetler, consider the issue, identifying compliance bottlenecks, solutions, latest developments, guidance and best practice, in what has emerged as a key issue in trade compliance practice and policy.



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16-17 October 2023, at the offices of Hogan Lovells US LLP,
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