

# THE **WORLDECR** EXPORT CONTROLS AND SANCTIONS FORUM **2019** **WASHINGTON, DC**

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CONSULTING

**15-16 October 2019, at the offices of Hogan Lovells US LLP, Washington DC**

## Welcome



**Tom Blass,  
Editor,  
WorldECR**

We're back in London and DC in October this year, and what a busy (and challenging) 15 months it will have been since the 2018 Forum last June. Since then we've seen

- The return of big-ticket OFAC settlements
- The ramping up of sanctions against Venezuela;
- Further divergence between the United States and its international partners on Iran;
- Reactivation of Title III of Helms-Burton, calling time on Cuba détente;
- Attempts to get to grips with export controls on emerging technologies;
- China relations deteriorate in the wake of ZTE, the Huawei story, and trade war;
- Continuing uncertainty in Asia as presidents Kim and Trump fail to move forward on sanctions and denuclearisation.

Of course, the WorldECR Forum is not only a place for discussion of the impact on trade of geopolitical developments – there's enormous benefit to be gained from shared experiences in practical issues and questions, such as:

- The interplay between compliance and corporate reputation: What's the dynamic? Where are the risks?
- Ensuring compliant exports when a non-US entity is the buyer and the seller;
- Appropriate immediate responses to wind-down notices (Don't panic. But don't relax!);
- Investigations: allocating roles, working with third parties, managing costs;
- Auditing your export control function;
- Factoring national security considerations into corporate activities like divestment and mergers.

The WorldECR Forum in DC is the place to share thoughts upon the fast-changing world of strategic trade compliance and learn and discuss, with speakers from Rockwell Automation, Marsh & McLennan, Textron, Walmart, the Pacific Northwest National Laboratory, the Canadian Border Services Agency, as well as with leading lawyers from around the world and experts from international institutions.

Past attendees of WorldECR Forum events know that they provide an unparalleled opportunity to make contacts, learn from peers and mentors, share ideas and concerns, broaden horizons – and take the lead in the increasingly demanding and complex domain of sanctions and export control compliance.

As in previous years, you can enjoy an **optional dinner** on the first evening of the Forum, following the drinks reception. To date, this relaxed and informal dinner for speakers, panellists 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 1 September you can save \$300
- Additional delegates from the same organisation can save an additional \$200
- *WorldECR* subscribers and past Forum attendees can claim a 15% discount.

Join us in DC this October. We look forward to seeing you. Booking forms and logistics are at the end of this document.

Tom Blass  
Editor, WorldECR



### **Gonzalo Suarez – The Trump Administration’s approach to non-proliferation and national security**

Gonzalo Suarez, Acting Deputy Assistant Secretary of State for Counterproliferation, Sanctions Enforcement, and Regional Affairs, will give a keynote speech, outlining the current trajectory of US nonproliferation and security policy and how that should be understood by industry and reflected in best practice.

Mr Suarez oversees three offices in the ISN bureau (Counterproliferation Initiatives, Regional Affairs, and Strategic Communications and Outreach) and a Task Force dedicated to implementing Section 231 sanctions of the Countering America’s Adversaries Through Sanctions Act (CAATSA). Before assuming the role of Acting DAS, Mr. Suarez was the Director of the Strategic Communications and Outreach Office in ISN.

Mr Suarez worked in the private sector prior to joining the State Department. Mr Suarez earned a B.A. in Political Science from Florida International University and a M.A.L.D from the Fletcher School of Law and Diplomacy at Tufts University.



### **Inna Tsimerman and Brad Brooks-Rubin – Exploring the sanctions/human rights calculus**

Whether they’re imposed for human rights-related reasons, or impact on the rights of their targets or others, sanctions and human rights are intrinsically entwined – a connection now elevated by Magnitsky-type measures, and an apparent willingness to use them.

At the same time, compliance is increasingly linked to corporate reputation and ethical decision making. In sum, companies are now expected, not only by government but by peers and other stakeholders, to engage intelligently with these closely inter-related issues.

Albeit through the prisms of quite different roles, Inna Tsimerman and Brad Brooks-Rubin have both looked closely at the rights/sanctions nexus, and in this presentation will share valuable insights into how these connections should be approached by forward-thinking companies, along with the decision-making processes they might adopt.

Brad, former Special Advisor for Conflict Diamonds at the US Department of State, is Managing Director of the Enough Project, a group that campaigns for the end of atrocities in sub-Saharan Africa. Inna is Chief Privacy & International Trade Counsel at the Marsh & McLennan Group of companies.





### **Matt Bell – Case-study: The life, death and export controls of a cryptoprocessor**

An encryption chip – or crypto-processor – is a microchip that possesses dedicated cryptographic operations. It lies at the heart of the modern age and its super-smart technological applications: cellphones, ticketing, smartcards, ATMs...

Ubiquitous they may be, but only thanks to a complex global supply chain. And there are checks along the way.

Here, Matt Bell, Senior Managing Director, Practice Leader Export Controls and Sanctions at FTI Consulting, explores an encryption chip's journey from birth to death, development of the technology, its design in the United States, manufacture in Taiwan or Singapore, incorporation in China and onward sale anywhere...and the export control and sanctions challenges it encounters on the way.

A fascinating insight into the compliance travails of an ubiquitous product – with multiple lessons for everyone in the technology 'eco-system'.



### **Satish Kini and Robert Dura – Vet that debt! Exploring the difference between the debt restrictions in the Venezuela and Russia sanctions regimes**

The sanctions imposed against Russia, and the sanctions imposed against Venezuela include – indeed, are in part premised upon – restrictions on debt.

In the case of both, there are restrictions on debt which include loans, guarantees and extensions of credit. How and when these restrictions apply is contingent on entity, sector – and the nature of the transaction, and can be complex to analyse (despite the best efforts of OFAC FAQs).

What's more, there are areas of dissonance between the US and the EU regimes (indeed, a significant underlap in some respect).

Given that it impinges on everyday transactions including payment terms, this is an area that demands the compliance function and finance to be working hand in hand to avoid misunderstanding – as Satish Kini and Robert Dura of Debevoise & Plimpton explain in this practical presentation that makes sense of the complexities attendant on debt and sanctions.





### **Barbara Linney – National security laws and due diligence: preparedness and conduct**

Renewed emphasis in recent years has elevated national security laws – sanctions, export controls, restrictive investment regimes including CFIUS and the FDI regulation – to the suite of prime considerations for companies contemplating acquisitions or divestments (whether as targets, acquirors or sellers).

But there's a tension: the commercial side wants the deal done and the champagne corks popping. Compliance wants to see the i's dotted and the t's crossed. Is there a happier medium?

Barbara Linney of the DC office of law firm BakerHostetler walks delegates through the areas of national security law that can impact deal-making – including those which are routinely ignored, but shouldn't be – and, crucially, explains how long-term preparedness is as critical as due diligence attendant on the deal itself.



### **Rachel Weise and Georgia Adams – Essential links: proliferation finance and export controls**

Despite increasing focus on 'proliferation finance' as the key to stopping North Korea and other proliferators, the link between financial information and export control compliance is often overlooked and misunderstood.

As a Legislative and Regulatory Affairs Specialist at the Pacific Northwest National Laboratory in Seattle, Rachel Weise and Georgia Adams, Project Manager, National Security Directorate, researched the intersection of financial and export controls in great depth, and also have been developing a market-based approach to non-proliferation. In this session they will share their findings and analysis.

And, in that vein, Rachel and Georgia will also be outlining a trade compliance insurance product concept that may protect against inadvertent exports: another tool in the war against proliferation!





### **Amie Ahanchian and Steve Brotherton – Auditing the trade function: What, When and How?**

Developing a robust export audit programme can be a gamechanger for companies navigating the increasingly complex world of global trade. But a well-executed audit doesn't happen overnight – it requires planning, performing, reporting and implementing improvements based on the results.

But what to audit, when, and how?

In this presentation, Amie Ahanchian, Managing Director, and Steve Brotherton, Global Export Controls and Sanctions Lead, at KPMG LLP, will walk delegates through leading practices for executing an export compliance risk audit, outlining key characteristics of audits by type: organisational self-assessments, corporate-level export compliance reviews, internal audits, external assessments, and government-directed audits.

Of course, there is no-one-size-fits-all 'blueprint' for auditing – but this thought-provoking presentation will take delegates a long way toward a plan of action that 'works' for their own organisation.



### **Nathan Eilers – Winding down fast: A real-time response to sanctions**

The US government, in response to a deteriorating situation in Venezuela under the leadership of President Maduro, has imposed increasingly restrictive sanctions targeting the Venezuelan government. In January 2019, state-owned oil company PdVSA was sanctioned and a notice issued giving most US companies 30 days to wind down activities.

A month is a short time in which to firstly undertake an analysis of which activities are prohibited, and then proceed to wind down contracts, third-party relationships, financial arrangements, and obligations to employees – and while there are laws to say what a company must do, they don't spell out the how-to's!

In this insight into the real-world impact of sanctions, Nathan Eilers, Director and Counsel of Global Trade Compliance at industrial automation and information technology manufacturer Rockwell Automation, talks through the steps that his company had to take (including internal communication and coordination) in response to the escalation of measures against Venezuela and subsequent events.



### **Ajay Kuntamakalla and Bryce Bittner – The Emerging Tech Review in review**

Back in November 2018, the Bureau of Industry and Security (BIS) published an Advanced Notice on Proposed Rulemaking (ANPRM) seeking public comment on criteria for identifying ‘emerging technologies’ that are essential to US national security in order to develop export controls on presently uncontrolled technologies. BIS has received a large number of comments from industry and is in the process of reviewing the comments and preparing a rulemaking that would implement new controls on certain emerging technologies.



Some of the 14 technologies identified in the ANPRM are arguably so nascent that they currently do not pose a significant threat to national security, while others, such as additive manufacturing and artificial intelligence, are very much on the radar of modern manufacturing. The ANPRM begs answers to a slew of questions – about the nature of ‘national security’, the long-term impact of export controls on global supply and R&D, and the role of ‘emerging technologies’ in everyday industries.

In this timely presentation, Ajay Kuntamukkala, a partner at law firm Hogan Lovells, and Bryce Bittner, Director of Global Trade Compliance at global conglomerate Textron (with a portfolio that spans everything from aerospace and defence, through to specialised vehicles, turf care and fuel systems) unpack the ANPRM and peer into their crystal ball:

- How will BIS attempt to balance innovation and R&D in the modern era with national security concerns?
- What options does BIS have to implement new controls?
- How will the regulations be structured?
- What will be the impact of new controls on industry?



### **Sanjay Notani and Jay Nash – Export controls in Asia**

Developments in Asian trade controls are continuing apace, with the established regimes fine-tuning their regulations in response to geopolitical and technological change, and newer regimes emerging.

In this joint presentation, Sanjay Notani of Indian law firm ELP will discuss recent changes to that country’s SCOMET list and the effect of recent multilateral memberships.

Joining Sanjay in the presentation, international export control consultant Jay Nash will draw attention to recent and forthcoming developments elsewhere in the wider region.

This is a key session for any business active within the region or reliant on supply chain elements within Asia.





### **Marian Niestedt and Dr. Gerd Schwendinger – Rocks, hard places, and little in between: the EU and the German blocking statues and their impact on compliance**

Since Donald Trump announced in May 2018 that the US would be pulling out of the JCPOA, the divergence between the US and the EU regarding Iran has only widened. At that time, the EU announced that it would be reactivating its ‘blocking statute’ – initially a response to sanctions imposed against Cuba in 1996.

Germany has its own ‘blocking’ law in the form of a provision of the Foreign Trade and Payments Ordinance that reads, ‘The issuing of a declaration in foreign trade and payments transactions whereby a resident participates in a boycott against another country (boycott declaration) shall be prohibited.’

Heightened disagreement between the two great spheres of influence in the West elevates the blocking laws well beyond the theoretical, creating genuine compliance dilemmas for EU companies and subsidiaries of US companies.

We are delighted that Marian Niestedt and Dr Gerd Schwendinger, partners at German law firm Graf von Westphalen, will be presenting on how best to navigate EU/US contradiction, what can be learnt from the original implementation of the blocking statute in response to Helms-Burton, and how economic operators can best ensure compliance with export control and sanctions laws and regulation in times of increasing regulatory sanctions and intervention.



### **Roy Zou and Stephen Propst – Difficult but necessary: China and the United States’ trade in strategic goods**

Two behemoth economies, mutually suspicious, with competing visions of their own destinies and the world’s, yet also economically dependent upon each other.

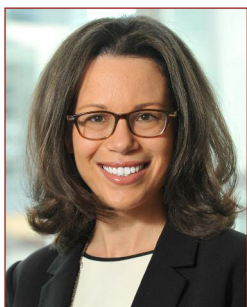
Since the onset of the Trump Administration, US-Chinese antipathy has reached peak levels with continuing reports of trade war, and against a backdrop of deep-seated mistrust in the United States of Chinese corporations and their intentions.

All this is manifest in the shape of export control restrictions on trade with China – and may yet be reflected back as China fine-tunes its own export control regime, posing myriad difficulties for companies for whom markets and opportunities in both are critical to their commercial success.

In this presentation, Roy Zou, managing partner of the Beijing office of Hogan Lovells, and fellow partner Stephen Propst explore the export control challenges to trade with China, and finds the keys to address them.







### **Jane Shvets and Robert Dura – OFAC through the prism of its enforcement actions**

For many companies (regardless of their nationality), ensuring adherence with the regulations imposed by the US Treasury’s Office of Foreign Assets Control (OFAC) is at the top of the list of their compliance concerns – reflecting not only the huge penalties by way of settlement that often arise out of OFAC allegations, but the speed with which the US sanctions landscape continues to change.

But – arguably a saving grace – OFAC enforcement actions do come with explicit descriptions of the reasons why a penalty was imposed, its size, mitigation and aggravating factors.

In this session, Debevoise & Plimpton lawyers Jane Shvets and Robert Dura look at sanctions through the prism of recent enforcement cases – and at how companies can improve their compliance processes and culture accordingly.

This is a session that translates the sometimes obscure language of the law into practical and potentially invaluable steps that every company can take.



### **Brian Fleming – Going deep: a masterclass on investigations best practice**

Much of the time, a company’s investigation into potential compliance failings results in little or nothing. But sometimes there’s a lead and the lead needs to be pursued further.

Investigations can be lengthy, complicated and expensive, and the way that they’re conducted can have a huge bearing on a company’s fortunes.

In this presentation, experienced investigator and white-collar crime attorney Brian Fleming of DC law firm Miller & Chevalier talks through best practice, including:

- When should an investigation be initiated?
- Defining its scope
- Allocating responsibilities and working with third parties
- Working with multiple, sometimes multijurisdictional, agencies
- Protecting employees’ rights and data
- Voluntary disclosure do’s and don’ts...

Prior to joining Miller & Chevalier, Mr. Fleming served as Counsel to the Assistant Attorney General for National Security at DOJ. This promises to be a must-attend session for compliance officers and others in the trade controls space.



### **Panel discussion – Not just saying ‘No!’ Trade compliance as a business enabler and accelerator**

Against a backdrop of increasing and ever more complex trade regulation in the fields of sanctions and export controls, some companies may be tempted to skimp on the compliance function – and just say ‘no’ to business opportunities.

But a strong compliance function is about more than saying ‘No’ – indeed, if incorporated wholly into the corporate fabric, it can enable business, empowering companies to take a pro-active, sure-footed approach to partners and opportunities, confident of understanding the risk terrain and potential liabilities.

Such an approach requires confidence in the compliance function from management and all other levels of the corporate hierarchy along with exemplary communication skills. But the return on investment – from the perspectives both of compliance and the bottom line – can be considerable.

We’re delighted that Nathan Eilers, Director and Counsel of Global Trade Compliance, Rockwell Automation, and Bryce Bittner, Director of Global Trade Compliance at Textron, will be talking through strategies to ensure that your company’s compliance function is seen as a business accelerator, not a drag...



### **Cyndee Todgham Cherniak – Northern Exposure: Canada, export controls and enforcement update**

The distinctions between Canada and the United States – linguistic, legal, culinary – fascinate populations on both sides of the border. The differences in export control regimes are pertinent to a smaller band. Nonetheless, and despite centuries of close acquaintance, there’s a lot that’s misunderstood.

Experienced Canadian trade lawyer, Cyndee Todgham Cherniak will be on hand to shed light on areas of misunderstanding including:

- How some ITAR-controlled items (EAR 99) are not on Canada’s Export Control List;
- Differences between the US and Canadian catch-all;
- How some dual-use items are not controlled in Canada;
- Canada’s 2020 implementation of a mandatory electronic reporting system for exports; and
- general enforcement perceptions and misconceptions.

This presentation is essential for anyone in compliance whose company export to or from ‘north of the border’.



### **Kala Anandarajah – The convergence of export controls, sanctions and trade agreements: A multi-jurisdictional case study**

ABC Inc, a US-incorporated corporation, manufactures in a state-of-the-art facility in the US and supplies various components and equipment for the telecoms sector internationally. It has customers across the world, including in the US, the Middle East and Southeast Asia. ABC Inc also purchases supplies for its production in the US from various countries, including Vietnam, China, and Singapore.

With a growing customer base in Asia, ABC Inc decides to set up a regional joint venture. In determining where to do this, it considers the possibility of Singapore, of Indonesia, of Cambodia, of Malaysia, and even China, hoping to reduce its costs of production and so better compete with its competitors based in China and Vietnam.

ABC Inc's joint venture partner is a Singapore company (Singco) and together they form JV Co. Singapore is deemed the best place to be the hub for warehousing and logistics from which to export the products manufactured. As part of the agreement, JV Co is responsible for the manufacture, storage and delivery of critical components and spare parts to intended customers in Asia. Gradually, ABC Inc also shifts some of the manufacturing of the equipment to JV Co, and Indonesia is selected as the country to manufacture the equipment.

Given the nature of the products being manufactured, and the fact that technical drawings and various software would have to be brought out of the US (where it had been developed), a considerable number of IP and financing issues arose. Eventually, manufacturing was shifted to Malaysia. After about two years of having to deal with various other teething issues, JV Co finally (in January this year) started producing the equipment at full capacity at its factory in Malaysia.

To manufacture the equipment, JV Co sources parts from Vietnam, China and the US and assembles the parts and equipment in its facility in Malaysia. Depending on which country the customers are from, JV Co will either ship the completed products or various parts directly from Malaysia or tranship the parts and equipment via Singapore to the intended customers. The advantage of operating through South East Asia are the many free trade agreements that ASEAN as a block has with various countries, including Korea, India and the EU. This allows for preferential treatment, thus making the products cheaper to be exported from Singapore than from the US.

Then a few things happen.

- A key Chinese parts supplier is sanctioned by the US for sourcing parts from a North Korean company that is sanctioned by the UN.
- The encryption module which was regulated by the ITAR is now instead regulated by the EAR.
- Some of the equipment and parts exported out of Singapore were based on incorrect HS Codes provided by HQ, ABC Inc, which an audit picked up on.
- A separate audit by Korean Customs has found that the regional value content may not have been accurately calculated for all of the products, as not all parts were sourced from the regional countries. Now, Korean Customs is demanding access to enter JV Co in Singapore to undertake a more detailed audit.
- Amidst the above regulatory concerns, customers orders are being delayed.

Presented by Kala Anandarajah, a partner at leading Singapore law firm Rajah & Tann, this high-octane case study works through some hypothetical but all-too-possible export control and sanctions challenges to a modern supply chain, inviting delegates to share their experience and exercise their judgement and decision-making capability.

# THE WORLDECR EXPORT CONTROLS & SANCTIONS FORUM

15-16 October 2019, at the offices of Hogan Lovells US LLP,  
555 13th St NW, Washington, DC 20004

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