Export Sanctions List: Know Your Customer

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If your company sells products to customers or distributors located in foreign countries during this time of sanctions and export controls, you should consider the surprising case of Cobham Holdings Inc. a cautionary tale.

The U.S. Treasury Department's Office of Foreign Asset Control ("OFAC") publishes a sanctions list of foreign individuals and entities to which U.S. companies may not sell goods or services without first obtaining an export license. OFAC may fine the U.S. companies that violate these sanction regulations. Prudent companies check the OFAC sanctions list before selling products to foreign customers. In fact, many companies have purchased software that searches the sanctions list for prohibited individuals and entities. If your foreign customer is not found on the sanctions list, your company is free to sell products to that customer.

That's what Cobham Holdings Inc. thought, but on November 27, 2018 they settled a case with OFAC that involved sales to a foreign customer that was not on the sanctions list. Cobham agreed to pay a fine of $87,507 for exporting approximately $745,000 worth of silicon switches to Almaz Antey Telecommunications LLC in Russia between 2014 and 2015 when that entity was not named on OFAC's list of "Specifically Designated Nationals and Blocked Persons". Cobham used software to search for OFAC sanctions, the customer came up clean, and Cobham shipped the goods.

Cobham used the software to search for "Almaz Antey Telecom" but not "Almaz Antey." If it would have searched for the latter, there were numerous hits for entities under the Almaz Antey umbrella, including the entity allegedly responsible for providing the missile that shot down Malaysia Airlines Flight MH17 over Ukraine in 2014. Upon further investigation, OFAC determined that Almaz Antey owned 51% of Almaz Antey Telecommunications LLC. As a result, OFAC initially informed Cobham that it would face potential fines up to $1.9 million.

Cobham was able to reduce the potential fine by agreeing to utilize new and improved screening software, along with a business intelligence tool and new internal checks for high risk transactions. Given that companies now know (or should know) of the potential pitfalls of using these software solutions as a stand-alone procedure, OFAC may not be so generous to the next company to run afoul of its sanctions and export controls through negligence or inadvertent software errors.

This case highlights not only the dangers of exclusively relying on software solutions to search the combined sanctions list, but the inherent risk of the vast number of related entities and the difficulty of understanding their ownership structure. Even if your customers come up clean on the sanctions search, if they are owned more than 50% by a sanctioned entity, then the transaction is still prohibited. Best efforts must be used to ensure that neither the foreign customer nor its majority owner is on the OFAC sanctions list, and a simple software solution or minimal approach may not be enough. A thorough analysis of all relevant facts and information related to your customers and sanctioned entities is vital to ensure your company will not run into the same snare as Cobham.

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