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Publications

U.S. Sanctions Laws Reach as far as China

11.03.14 Garvey Schubert Barer News Alert

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November 3, 2014-The U.S. government has increased its enforcement of sanctions against countries such as Iran, and has enacted sanctions against certain Russian companies and individuals. Could this affect Chinese companies doing business with the U.S.?

Yes. Recent U.S. enforcement actions against businesses in China show the ability and growing resolve of the U.S. to enforce its export control laws against foreigners outside the U.S. Here are examples:

- On September 19, 2014, the U.S. Commerce Department fined a Hong Kong businessman and his companies for violating the Department's export control rules, and prohibited them for five years from importing any item from the U.S. subject to the Department's export rules.
- In September, 2014, the U.S. Commerce Department began investigating information from the U.S. military that China's Huawei Technologies Co., Ltd. was illegally providing Cuba with U.S.-made communications equipment in violation of U.S. export control laws.
- In May, 2014, the U.S. government charged another Chinese electronics firm, Shandong Sheenrun Electronics Co., with violating U.S. export control laws by reexporting U.S.-made cameras to Iran.

These examples demonstrate that the U.S. is becoming increasingly aggressive in reaching out to sanction individuals and companies in foreign countries, including China, for violations of U.S. law. This includes the antitrust laws and the Foreign Corrupt Practices Act, as well as laws restricting U.S. exports and imposing economic sanctions on certain countries, such as Iran. On August 29, 2014 the Treasury Department announced in a press release concerning sanctions against Iran its "determination to take action against anyone, anywhere, who violates our sanctions." It warned that any foreign persons facilitating illegal transactions with Iranian entities would be subject to sanctions themselves. U.S. law enforcement agencies have increased their scrutiny of activities in foreign countries that violate U.S. export laws, using aggressive investigatory methods including wiretaps and sting operations.

Businesses and persons in China should never assume that they are beyond the reach of U.S. agencies investigating actions taken outside the United States. And when U.S. investigators identify such violations, the U.S. Government moves aggressively to apply penalties. This can include time in U.S. prisons, as well as civil or criminal fines, in the case of any foreign suspect whom the U.S. Government can catch in the U.S. by monitoring entry at U.S. orders, or otherwise. Punishments vary according to the statute, but can in some cases involve for each criminal offense up to 20 years in jail and/or a fine of up to $1 million per offense, or a civil penalty which is the greater of $250,000 per offense or twice the amount of the transaction.

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So it is important for anybody in China importing items from the U.S. to understand U.S. export laws. In many cases, an individual in China cannot-without risking penalties-purchase U.S. goods or technology and reexport them without obtaining first U.S. Government approval. Nor in many cases can someone in China, without U.S. permission, use U.S. origin technology or components to manufacture an item for export to a third country. This may be so even if Chinese law would consider the manufactured item "Made in China." It does not matter that under Chinese law an export of the goods from China to the third country would be perfectly legal. U.S. law may still require the person in China to obtain U.S. government approval before reexporting. These reexport restrictions apply in some cases to civilian items with obvious military applications, but in other cases the reason for U.S. restrictions on reexport may not be so obvious.

In the case of reexport to some countries, such as Iran, no U.S. origin item can be reexported regardless of what the item may be, and regardless of Chinese law. While Iran is the most visible country subject to comprehensive U.S. embargoes, other countries subject to broad restrictions on reexports include Cuba and North Korea. In
September 2014, the U.S. Government placed a number of Russian defense and energy companies on an expanding sanctions list, which means that a growing variety of U.S. origin goods cannot be reexported from China to those Russian entities, without serious consequences for the Chinese exporter.

What to do?

(1) Be aware of the laws governing imports from the U.S. and reexports to a wide range of third countries, that are subject to U.S. sanctions and export controls;

(2) Be aware of the risks of violating these laws: the U.S. actively enforces its sanctions and similar laws against companies and people outside the U.S.;

(3) Be particularly careful about reexporting any item containing U.S. origin content to Iran, Cuba, North Korea, or Syria. This may be increasingly true for exports to Russia as well as U.S. sanctions develop.

Remember: an ounce of prevention is worth more than a pound of cure.

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