UK Continues Focus on Trade Sanctions Enforcement With Updates to Export Control Guidance

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On 10 April 2024, the UK government updated its guidance on export controls regarding breaches of relevant legislation. In addition to encouraging voluntary disclosures by businesses in respect of export control violations, the guidance now expressly recommends that disclosures also are made in respect of breaches of laws on trade sanctions.

Export controls restrict the transfer of certain goods, services, technology and information from the UK to other jurisdictions. The guidance provides general information on what controlled goods are and the licences required before they can be exported. A breach of the export control regulations may incur civil and potentially criminal liability.

The updates to the guidance are limited to its later section on 'Breaches of export control legislation' (the section), which sets out the procedure for making a 'voluntary disclosure' to HM Revenue & Customs (HMRC) for a suspected breach of export controls. Disclosures are encouraged, because any penalty imposed by HMRC on a business as a result of a violation may be mitigated if the offender has voluntarily come forward. Previously, the section only indicated that a voluntary disclosure should be made in respect of exports without an appropriate licence. However, businesses also are now encouraged to make voluntary disclosures where they have breached **trade sanctions** legislation.

Trade sanctions are supplementary controls related to the export or import of goods or the provision of services to specific jurisdictions. Trade sanctions are increasingly being deployed by governments across the world as a foreign policy tool and are subsequently becoming a more extensive part of their respective sanctions regimes. This can be seen in the growing number of trade sanctions being imposed against Russia in response to the ongoing war in Ukraine. In particular, a large number of trade sanctions and related restrictions are currently being enforced by the UK.

Lately, the UK has demonstrated an enhanced focus on enforcement of trade sanctions by announcing creation of the Office of Trade Sanctions Implementation (OTSI). Due to launch in the coming months, OTSI will be responsible for the civil enforcement of trade sanctions. As part of this remit, it will seek to investigate and prevent the breach and circumvention of trade sanctions. However, HMRC will retain responsibility for imposing criminal penalties in respect of trade sanctions, and it is anticipated that there will be a referral system between the two authorities.

Until OTSI is up and running, businesses can make voluntary disclosures by providing HMRC with the following information:

- Details of the export or breach of trade sanction and any relevant documentation.
- An explanation of how the breach was discovered and why it occurred.
- Details of any steps taken to remedy the breach and prevent further breaches.

This information can be sent to HMRC by post or to this updated email address.

Comments

Trade sanctions are a vital and expanding component of sanctions regimes worldwide and can involve complex compliance requirements. With more cross-border transactions being carried out than ever before, authorities are seeking more effective methods of investigation and enforcement in respect of those breaching or seeking to circumvent export control and trade sanctions legislation. In this context, it is important that businesses have well-designed policies and procedures in place, which are regularly reviewed in line with regulatory

developments. As part of this, businesses should take into account their ability to make voluntary disclosures to HMRC on breaches and the incentives in place for doing so.

If you have any questions, please contact the Cooley authors listed below, who can advise you on the export controls and trade sanctions which may affect you and your business – and how the voluntary disclosure process may apply to you.

Cooley trainee Amber Fisher also contributed to this alert.

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