

Doing Business in Houston for British Investors

U.S. Investment and Trade Laws

**UK Trade and Investment Webinar
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Presenter: Doreen M. Edelman

BAKER DONELSON
BEARMAN, CALDWELL & BERKOWITZ, PC



EXPAND YOUR EXPECTATIONSSM

Outline

- Introduction
- Foreign Investment Laws
- Importing into the United States
- Exporting from the United States
- Recordkeeping Requirements
- The U.S. Foreign Corrupt Practices Act and UK Bribery Act
- Informed Compliance
- Taxation



Foreign Investment Laws

- The U.S. places very few restrictions and requirements on foreign investment.
- The five sources of restrictions and requirements are:
 1. International Investment and Trade in Services Survey Act
 2. Exon-Florio Amendment—Committee on Foreign Investment in the United States (“CFIUS”)
 3. Department of Defense Security Program
 4. Bank Secrecy Act
 5. State Laws



Foreign Investment Laws

International Investment and Trade in Services Survey Act **(IITSSA)**

- Acquisition of a 10% or greater voting interest in a U.S. enterprise by a foreign person
- Required to file quarterly balance of payment reports, annual reports, and quinquennial reports
- Fines for failure to file required reports

Foreign Investment Laws

Exon-Florio Amendment (CFIUS)

- Committee on Foreign Investment in the United States (CFIUS)
- System for voluntary notification to CFIUS
- Acquisitions of businesses related to national security should be reported.



Foreign Investment Laws



Defense Department Requirements

- Special requirements for foreign bidders on defense contracts
- Requirements only apply to protect the information
- Other government procurement restrictions related to trade

Foreign Investment Laws

The Bank Secrecy Act

Reporting requirements apply to:

- anyone who transports or sends \$10,000 into or out of the U.S. or receives more than \$10,000 in cash from outside of the U.S. and
- any U.S. business or any business operating within the U.S. that receives more than \$10,000 in cash.



Foreign Investment Laws

Texas

- In Texas, reporting requirements and regulations apply to foreign insurance companies and banks
- Foreign nationals may own real estate on the same terms as citizens of the United States



Importing into the U.S. - The Four Questions

1. What is the classification of the goods entering the U.S.?
2. What is the value of the goods? How is this value determined?
3. What is the country of origin of the goods for duty purposes, marking purposes, special treatment purposes?
4. What U.S. departments or agencies regulate my goods or products? Do they have special registration or licensing requirements for imports?

Importing into the U.S. - Classification

Source of Classifications:

Harmonized Tariff Schedule of the United States (HTSUS)
<<http://hts.usitc.gov>>

Purpose:

- Shows the rate of duty for any import.
- Shows the applicability of quotas/antidumping duties/countervailing duties
- Gives effect to WTO, bilateral, and regional (NAFTA) commitments



Importing into the U.S. - Value of Goods

Determining the Value:

- Tariff/Duty rates are usually percentages of the values of goods
- Calculation of the Value of Goods
 - Transaction Value: The total price paid to the foreign vendor when it is sold for exportation to the U.S., excluding actual international freight and insurance costs, but including commissions, royalties, assists, proceeds, and packing
 - Transaction Value of Similar Merchandise
 - Transaction Value of Identical Merchandise
 - Deductive Value



Importing into the U.S. – Country of Origin

Determining Country of Origin:

- Country of manufacture, production, or growth of the good
 - If a good is not clearly a manufacture, production, or growth of one country, the country of origin is usually the place of the last substantial transformation into a “new and different article of commerce.” This requires case-by-case legal analysis.
- Mark products with the accurate legal name of or abbreviation for the country of origin, legibly, in English (e.g., “Product of the UK” or “Made in England,” if true).

Introduction - Do Export Controls Apply to You?

Top 5 reasons why a company would need to worry about export controls:

1. You export goods from the U.S.
2. You have foreign national employees or contractors
3. You have military customers
4. You manufacture or sell military products
5. Customers or end users are located in a sanctioned country



Definitions - Who is a Foreign Person?

Any Person who is not:

- A U.S. Citizen
- A U.S. Lawful Permanent Resident
- A Person Granted Asylum
- A Refugee
- A Temporary Resident Granted Amnesty



What is an “Export”?

Transfer of goods, technology or software to a foreign location or to a foreign person in the U.S. or abroad including:

- actual shipment or transmission outside U.S.
- visual inspection in or outside U.S.
- written or oral disclosure
- training outside of the U.S.



What is a “Re-export”?

- Re-exports of U.S. products, technology, and software already abroad
- Re-exports from locations outside the U.S. of non-U.S. made products incorporating more than a de minimis amount of U.S. content
- Re-exports from locations outside the U.S. of non-U.S. made products which are derived from U.S. technology



What is a “Deemed Export”?

- The release or transfer of technology or technical data to a foreign person **IN** the United States.
- It is **NOT** required for the data or technology to be exported outside of the U.S.

The Rule

Releasing controlled technology to a foreign person is
DEEMED to be an export to the person’s country or
countries of nationality.

Exports - The Four Questions

1. What is the item's intended use?
2. Where is it going? What is the ultimate destination?
3. Who will receive it? Who is the end-user?
4. What will they do with it? Are there multiple uses?



Exports - Classification of Products

Source of Classifications:

- Commerce Control List (CCL)
- United States Munitions List (USML)

Purpose: The classification determines the level of controls for each product

Three ways to classify:

1. Get it in writing from the manufacturer
2. Request a classification
3. Self-classify, using the four questions



Exports: BIS/DDTC

Commerce Department (BIS)

- “Dual Use” Commercial/Military
- Controlled items appear on Commerce Control List
- A number of exceptions available
- Examples of EAR controlled items:
 - semiconductors
 - telecommunications
 - high speed computers
 - manufacturing equipment

State Department (DDTC)

- Designed, modified, adapted, or configured for military/space
- Controlled items appear on the USML
- Licenses typically required
- Examples of ITAR controlled items:
 - high altitude GPS receivers
 - cryptographic electronics
 - satellite components
 - guns over .50 caliber

What is OFAC?

Office of Foreign Assets Control (OFAC): in the Department of the Treasury administers a series of laws that impose economic sanctions against hostile targets to further U.S. foreign policy and national security objectives. These targets include:

- **foreign governments** (i.e., Iran, Sudan, and Cuba),
- **individuals** (i.e., terrorists and narcotics traffickers),
- **groups** (i.e., drug front companies and charities linked to terrorist groups), and
- **practices** (i.e., trade in non-certified rough diamonds and proliferation of weapons of mass destruction)



OFAC Sanctioned Countries

- Balkans
- Belarus
- Burma
- Cote d'Ivoire
- Cuba
- Democratic Republic of the Congo
- Iran
- Iraq
- Former Liberian Regime of Charles Taylor
- Lebanon
- Libya
- North Korea
- Somalia
- Sudan
- Syria
- Zimbabwe

*** OFAC sanction programs are in constant flux, countries may be added or removed at any time.**

OFAC continued

OFAC administers broad comprehensive sanction programs
in the following countries:

Burma, Cuba, Iran,
North Korea, Sudan, and Syria



Record Keeping Requirements

- Applies to:
 - Owners, importers, exporters, consignees, importers of record, declaration filers, entry filers, licensees
- Records to be kept:
 - entry documents (bills of lading, declarations of entry, importers of record, countries of origin)
 - documents regarding exports, due diligence requirements, license determinations
- How long must records be kept (generally)?
 - Five years from the date of entry



The Foreign Corrupt Practices Act (FCPA)

The FCPA prohibits U.S. companies and their agents and anyone present in the United States or using a facility of interstate or foreign commerce from:

- using a payment or the promise of a payment of anything of value to a foreign official, foreign political party, or candidate, directly or indirectly
- to influence his or her official actions in violation of his or her duty
- or to secure improper advantage or to induce the person to use his influence to affect official action.



The Foreign Corrupt Practices Act (FCPA)

- Increase in FCPA prosecutions
- Focus on a written compliance plan
- Training
- Due diligence
- Voluntary disclosure



Informed Compliance

- Conduct due diligence
- Use reasonable care
- Train employees
- Follow all recordkeeping requirements
- Learn applicable IP rights and trade restrictions



Document your compliance!

Taxation Considerations

- Decisions to invest often based on tax considerations
- U.S.-UK Double Taxation Treaty (DTT)
- No corporate income tax in Texas



Question and Answer



Thank you !

**Doreen M. Edelman
Shareholder**

dme@bakerdonelson.com

202-508-3460



BAKER DONELSON
BEARMAN, CALDWELL & BERKOWITZ, PC

As long-time practitioner in international business transactions and trade, Doreen helps companies come together in international joint ventures and then guides them through the process of obtaining financing and complying with customs, export and anticorruption laws. It is a multifaceted practice in which Doreen works with U.S. companies entering new markets and foreign companies setting up shop in the U.S. This includes drafting joint venture, licensing and distribution agreements for large and small companies. She helps companies prepare overseas business plans, set up overseas and offshore corporations, and obtain government and quasi-government financing and insurance.

Doreen has long guided clients in complying with export control laws. She was one of the first lawyers to develop a specialty in helping clients confidently certify compliance with export controls on Form I-29, which they now have to complete for certain categories of foreign workers. Doreen also handled successfully one of the largest sets of applications for licenses to export medical devices ever processed under the Ag-Med exception to the Iran sanctions.

Assisting clients with traditional customs problems is an important aspect of Doreen's transactional practice. "Customs is a critical element of international trade," she says. "Customs problems are, at their base, transactional problems." Doreen assists companies with matters such as product tariff classification and valuation and with foreign trade zone applications before the U.S. Department of Commerce. She is co-author of a comprehensive analysis of the North American Free Trade Agreement.

Doreen's work has carried her to all corners of the world, whether helping to establish a natural gas facility in Turkey, protecting a client's intellectual property in Japan, or watching out for the interests of a major fast-food franchisor in Latin America. Through all her work, Doreen offers her clients a combination of transactional expertise and business savvy, helping them establish strategic plans for entering new markets and intervening on their behalves with government regulators and policymakers.