

DEBUNKING COMMON MYTHS IN TRADE COMPLIANCE

Myth 1: My company is not shipping products outside the U.S., so I don't need to worry about Trade Controls

Trade Compliance for U.S. Centric Companies

- Expanded application of export controls and sanctions in recent years can pull in more activities
- Analysis of CFIUS jurisdiction after CFIUS reform
- Export controls applying to U.S.-based activity
 - U.S. person activities under semi-conductor and advanced computing rules
 - Deemed exports and re-exports
 - ITAR registration
- More frequent contractual requirements related to trade compliance

Myth 2: My company only sells to the EU and Canada, so we don't face meaningful trade risks

Expanding Sanctions and Export Risks

- Russia sanctions and export controls have changed the game:
 - Presence of sanctioned parties in beneficial ownership of companies in allied countries
 - Risk of diversion to Russia from the EU, UK, even Canada
- Diversion risk related to China
 - Updated semi-conductor and advanced computing rules
 - New nuclear controls

Myth 3: My company developed a compliance program a few years ago, so we are all set now

Frequently Changing Landscape

- Need regular updates to account for changes in the regulatory landscape
- Just in the last two years there have been:
 - Newly sanctioned parties
 - New regional embargoes
 - Russia investment/services bans
 - Heightened export controls on Russia, Belarus, China
 - New export controls on specific technologies
 - Change to Venezuela sanctions
 - Changes to anti-boycott reporting requirements

Myth 4: Our compliance policies for U.S. laws only need to apply to U.S. operations

Broad Reach of U.S. Regulators

- Recent enforcement actions frequently involve foreign subsidiaries
- Foreign entities can be caught in the jurisdiction of U.S. sanctions
 - “Facilitation”
 - “Causing” of OFAC violations
 - “Secondary sanctions”
- Foreign entities may also need to comply with U.S. export controls
 - Recently expanded “foreign direct product” rules for Russia, Belarus, Huawei

**Myth 5: We are a U.S.-based company,
so foreign investment reviews do not
impact our acquisitions**

Foreign Investment Expanding Reviews

- CFIUS has jurisdiction over more activity than you may think
- States and even cities have been imposing restrictions on real estate transactions in the last few years
- Other countries are implementing comparable regimes
- New Outbound Investment Executive Order in August 2023
 - Forthcoming rules restricting U.S. outbound investment in China, Hong Kong, and Macau in particular tech sectors

THANK YOU!



Carrie Schroll
Special Counsel, International Trade
cschroll@kelleydrye.com