Recent OFAC Settlement Highlights Due Diligence Expectations When Selling to Intermediaries

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Last week, the Office of Foreign Assets Control (OFAC) announced a settlement agreement with UniControl, Inc. (UniControl or "the company”) for shipping goods to European trading partners when UniControl knew or should have known that some of its products would ultimately be re-exported to Iran. The enforcement action is a reminder that OFAC expects U.S. companies to perform appropriate due diligence when exporting products to intermediary parties like resellers and distributors.

According to OFAC, the Cleveland, Ohio-based manufacturer of process control products made 21 shipments of airflow pressure switches with a total value of $687,189 to European trading partners that were ultimately reexported to Iran in violation of U.S. law. OFAC indicated that UniControl ignored or failed to respond to several red flags that its switches could be diverted to Iran by its European partners:

- **Intermediaries conveyed interest from Iran**: UniControl’s European trading partners inquired whether the company would supply products into the Iranian market, given the significant market opportunity there. Although UniControl declined the inquiry, the company did not later ensure that products sold to the European customers were not diverted to Iran.
- **Sales agreement included Iran:** Despite early warnings that its partners were interested in the Iranian market, UniControl and one of its European partners entered into a “Sales Representative Agreement” that listed Iran as a country where that trading partner could resell UniControl goods. (This is a reminder for all U.S. companies that distribution and sales agreements should exclude Iran and other sanctioned jurisdictions from the authorized sales territory specified in any agreement.)
- **Obscured end user identity:** A European trading partner rebuffed UniContol’s offer to drop ship products directly to a purported European end user when the trading partner was facing shipment delays. OFAC chided UniControl for failing to question the trading partner on its refusal to allow drop shipments or otherwise reach out directly to the end user, which presumably would have revealed that the end user was located in Iran, not Europe.
- **Meeting with prospective Iranian customers at trade show:** Between 2012 and 2017, UniControl management and employees attended trade shows in Europe. At a 2016 trade conference, UniControl managers met with Iranian visitors at a European trade partner’s booth. According to OFAC, UniControl did not question why Iranians were interested in the company’s products.

- **Removal of a “Made in USA” label:** In one instance, a European trade partner requested that UniControl remove its “Made in USA” label so that, as the European trade partner explained, an Iranian end user could avoid problems with the stated origin of the product. Although UniControl sought guidance from outside counsel, UniControl subsequently shipped switches to the same European trade partner that were ultimately re-exported to Iran.

Since UniControl voluntarily self-disclosed the apparent violations of OFAC’s regulations and the agency considered this to be a “non-egregious” case (e.g., the transactions did not involve willful or reckless conduct and did not present serious harm to sanctions program objectives), OFAC assessed a maximum civil penalty of one half the transaction value for each violation (i.e., each shipment). OFAC further found several mitigating factors, such as ceasing trade with its European trading partners and strengthening its compliance program, that decreased the penalty amount to $216,464. OFAC specifically cited UniControl’s adoption of end user certificates from secondary and tertiary buyers of its reexported products as well as the addition of a “Destination Control Statement” to documents like sales orders and invoices to remind end users of trade restrictions.

This case is a reminder that U.S. companies need to be vigilant for red flags of possible diversion to Iran or other sanctioned territories by intermediary parties. Furthermore, once red flags are identified, U.S. companies must take action to investigate and remediate the issue through enhanced compliance checks and due diligence requirements on intermediary parties.