

**Authors:****Lindsay B. Meyer**lbmeyer@Venable.com
202.344.4829**Ashley W. Craig**awcraig@Venable.com
202.344.4351**William (Widge) Devaney**whdevaney@Venable.com
212.983.8204**Carrie A. Kroll**cakroll@Venable.com
202.344.4574

Recent Crackdown on U.S. Export Compliance for Logistics Providers

If you are a logistics provider, take notice. Logistics providers are increasingly the target of U.S. export control enforcement actions by both the U.S. Department of Commerce, Bureau of Industry and Security ("BIS"), and the U.S. Department of Treasury, Office of Foreign Assets Controls ("OFAC"). The exporting companies that have traditionally been the focus of export compliance investigations, are now increasingly joined with actions targeting logistics providers. Freight forwarders, consolidators, third-party logistics providers and carriers are seen by the Government as the last, best place to stop unlawful U.S. exports and reexports.

On August 6, 2009, the latest in a series of joint BIS and OFAC enforcement actions was made public when the agencies announced a joint settlement agreement with DPWN Holdings (USA), Inc. (formerly DHL Holdings (USA), Inc.) and DHL Express (USA), Inc. ("DHL"), for over \$9.4 million in civil penalties -- the largest joint settlement to date against a freight forwarder -- as well as mandated third-party external audits through 2011.

The allegations are that DHL made hundreds of shipments to Iran, Sudan and Syria from approximately 2002 through 2007, and failed to comply with recordkeeping requirements in violation of U.S. export controls and sanctions laws. Many of the subject shipments were intercepted and reported by U.S. Customs and Border Protection ("CBP").

BIS alleged that:

- On eight occasions between June 2004 and September 2004, DHL caused, aided or abetted the export of items prohibited by the Export Administration Regulations ("EAR"), from the United States to Syria; and,
- DHL had failed to comply with recordkeeping requirements with regard to 90 exports, also to Syria, by failing to maintain air waybills and other export control documents, retention of which is required for five years after shipment. 15 C.F.R. Parts 730 *et. seq.*

And, OFAC alleged that:

- Between August 2002 and March 2007, DHL made more than 300 shipments to Iran and Sudan in violation of the Iranian Transactions Regulations ("ITR"); the Sudanese Sanctions Regulations ("SSR"); and the Reporting, Procedures and Penalties Regulations ("RPPR");
- Between December 2002 and April 2006, the company failed to maintain required records with respect to other shipments to Iran, in violation of the RPPR; and,
- Charged DHL with violations for: 63 unlicensed shipments of merchandise to Iran; one imported unlicensed shipment of merchandise from Iran; four unlicensed exports or attempted exports to Sudan; and 32,228 exports to Iran between August 2002 and August 2007, for which DHL did not maintain shipping records.

In settling the case, OFAC mitigated the recordkeeping violations to 3% of the total, since approximately 97% involved exports of "informational materials," which are not prohibited by the ITR. Nonetheless, OFAC sought the maximum civil penalties available for the export- and import-related transactions. OFAC noted that DHL had "reason to know" that its conduct gave rise to these violations, that it did not have an effective OFAC compliance program, and that the violations exemplified a "pattern of misconduct."

In their press releases of Aug. 6, 2009, both BIS and OFAC emphasized the importance of complying with recordkeeping requirements for all exporters, and especially for logistics companies. OFAC Director Szubin warned that the "joint enforcement actions signal the U.S. Governments' commitment to ensuring that sanctions laws -- including recordkeeping requirements -- are followed carefully." BIS echoed this sentiment and further focused its message on freight forwarders, stating that "[l]arge-scale compliance breakdowns lead to significant sanctions aimed at ensuring that freight forwarders put into place and maintain necessary measures to meet their compliance responsibilities." See Press Release, BIS, "DHL Signs \$9.44 Million Joint Settlement Agreement with BIS and OFAC," (Aug. 6, 2009); Press Release, OFAC, "U.S. Treasury and Commerce Departments Announce \$9.4 Million Settlement with DHL," (Aug. 6, 2009).

In this era of increased U.S. Government scrutiny of export compliance and enforcement actions, civil penalties of up to \$250,000 per shipment and potential criminal penalties up to \$1 million and 20 years imprisonment per violation, it is essential that logistics companies implement effective internal compliance programs. Even at a mitigated percent of the total, OFAC's proposed civil penalty to DHL was over \$10 million for recordkeeping violations alone.

Whether your company requires assistance navigating extensive U.S. export control laws and regulations; building up and/or modernizing of its internal export compliance program; or a review of its U.S. exports and reexports, Venable can help. For more information regarding U.S. export controls and compliance issues for U.S. companies, please contact a member of Venable's [International Trade and Customs](#) team.

CALIFORNIA MARYLAND NEW YORK VIRGINIA WASHINGTON, DC

1.888.VENABLE | www.Venable.com

©2009 Venable LLP. The International Trade and Export Compliance News E-Alert is published by the International Trade and Customs Practice of Venable LLP. Venable publications are not intended to provide legal advice or opinion. Such advice may only be given when related to specific fact situations that Venable has accepted an engagement as counsel to address. This e-alert may be reproduced without the express permission of Venable LLP, as long as it is reproduced in its entirety, including the Venable name and logo.