

PRESENTED AT

9th Annual Government Enforcement Institute

September 28-29, 2023
Dallas, TX

**The Evolution of US Export Controls and Sanctions on Russia:
How Extraterritorial Jurisdiction Works in Practice**

Michelle Schulz

Author Contact Information:

Michelle Schulz
Schulz Trade Law
Dallas, TX

michelle@schulztradelaw.com
214.643.6150

The Evolution of US Export Controls and Sanctions on Russia: How Extraterritorial Jurisdiction Works in Practice

By Michelle Schulz

International businesses are often surprised when they realize just how far U.S. export controls and sanctions can reach. The US export controls and sanctions can follow products, services, and technology across borders, international waters, and airspace. They can reach beyond research, design, manufacturing, and production to storage and distribution. Following the evolution of US export controls and sanctions on Russia and Crimea in recent history as an example, US jurisdiction has become relevant at virtually any stage of an international transaction.

A. Background

1. What is Extraterritorial Jurisdiction?

In large part, export controls exist to protect the national security and foreign policy interests of the United States. US laws and regulations cover business deals abroad in a variety of scenarios – for example:

- foreign subsidiaries of US entities;
- partial or complete ownership of a foreign company by a US entity;
- agents acting on behalf of a US company;
- distributors of US goods;
- resellers of US goods; and
- other types of business where a US company or US origin goods, services, and technology are involved or traded internationally.

Of course, extraterritorial jurisdiction has been the subject of significant pushback. In 2016, the International Chamber of Commerce (ICC) issued a policy statement urging the international community and policy makers to focus renewed attention on the negative impact of extraterritorial jurisdiction on international commerce.¹ The ICC has established a task force to examine this subject. According to the ICC, the broad reach of these rules is a barrier to cross-border trade and investment. The ICC stated, in part:

The increasing globalization of business and expanding regulation of commerce by states have led to a significant rise in the extraterritorial application of national laws, with states frequently applying or seeking to apply their laws and regulations to persons or conduct outside national borders.

¹ <https://iccwbo.org/news-publications/policies-reports/extraterritoriality-and-business/>. *Extraterritoriality and Business* (November 11, 2016.)

Although in some instances this extraterritoriality is an outgrowth of states' efforts to combat terrorism, crime, corruption, cartels, and other concerns on a cross-border basis, ICC believes that the extraterritorial application of national laws and attempts by states to exercise jurisdiction extraterritorially can and does have significant negative effects on international trade and investment.²

2. The Roles of Two US Government Agencies

By no means are these agencies the only ones monitoring international trade, but for everyday commercial transactions (i.e., civil or dual-use), there are two primary government licensing agencies that administer controls on commercial items.

a. US Department of Commerce Bureau of Industry and Security (BIS)

First, the US Department of Commerce Bureau of Industry and Security (BIS) aims to advance US national security, foreign policy, and economic objectives by ensuring an effective export control and treaty compliance system and promoting continued US strategic technology leadership. Under BIS, export licensing is determined according to the sensitivity of the item and the country of end use.

The BIS is primarily responsible for implementing and enforcing the Export Administration Regulations (EAR), which regulate the export and re-export of most commercial items. BIS regulates items considered "dual-use" — those items that have both commercial and military applications. Additionally, purely commercial items without an obvious military use are subject to the EAR.

The EAR applies to all products and technologies created in the US or by US persons as well as foreign products that are exported from the US. In addition, foreign items incorporating more than a minimal amount of US parts, materials, or technologies are also covered.

Certain end-use and end-user controls apply to any item under the EAR. These controls require an exporter to submit an export license application if the exporter "knows" or "is informed" that an export is intended for end-uses such as those involving nuclear, chemical, and biological weapons, or related missile delivery systems, to certain destinations listed in the EAR. End-user controls apply to individuals and entities restricted or prohibited from receiving US exports. These restrictions apply to all exports, regardless of whether a license is required.

Certain individuals and organizations are prohibited from receiving US exports. Those individuals and entities that have been denied export privileges are listed on the Denied Persons List.³ Any dealings with a party on this list that would violate the terms of its denial order are prohibited.

² <https://iccwbo.org/news-publications/policies-reports/extraterritoriality-and-business/>

³ The Denied Persons List can be found at: <http://www.bis.doc.gov/index.php/policy-guidance/lists-of-parties-of-concern/denied-persons-list>.

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](https://utcle.org/elibrary)

Title search: The Evolution of US Export Controls and Sanctions on Russia

Also available as part of the eCourse

[2023 Government Enforcement eConference](#)

First appeared as part of the conference materials for the
9th Annual Government Enforcement Institute session
"Doing Business Extraterritorially"