

Guidance Paper on Trade Sanctions and Export Risk Mitigation

The IATA Cargo Customs Working Group has noted increasing challenges for airlines' compliance with a variety of rules, sanctions and subsequent penalties for non-compliance relating to the export of certain goods as cargo. Failure to address such challenges can lead to criminal penalties for airlines and their staff, removal from trusted trader programs, serious loss of reputation, etc. Risk mitigation at acceptance and during transportation and preventive actions to comply with export sanctions are therefore a priority for airlines which are all doing their utmost to develop appropriate due diligence procedures to manage shipments of so-called dual use goods, military cargo or embargoed/prohibited/restricted items.



In order to assist IATA member airlines in addressing the current challenges, recognizing these challenges and following the request of IATA airline members and of the IATA Cargo Committee, IATA has decided to issue this guidance document to raise awareness of the main principles and regulations applicable to export sanctions, with non-exhaustive examples of such sanctions from some of the most prominent governing administrations.

Background



Trade sanctions and export controls are put in place by governments and intergovernmental organizations around the world. Of particular relevance and importance for airlines are the related regulations imposed by the United Nations (UN), European Union (EU), United States (US) and how these regulations are applied in practice. These regulations consist of two primary purposes:

- (1) Regulate trade restrictions with certain countries, entities and individuals linked with human rights violations, weapons proliferation, terrorism or other criminal activity; and
- (2) Control the trade of goods, services and information considered to be of strategic importance to national security and foreign policy interests.

Most national administrations in charge of planning and execution of **economic and trade sanctions** in support of their national security and foreign policy objectives make lists publicly available. In addition, many governments issue **embargoes**, prohibiting or restricting transportation of certain goods with a certain country due to political reasons such as government orders, wars and conflicts. Any activity with countries, individuals, entities, goods or services subject to sanctions or trade and export controls can only occur where appropriate approvals, licenses or exemptions are in place.

Airlines must manage a number of embargoes, due to country restrictions, customs restrictions, aircraft limitation, and ground handling agent's limitations etc. Embargoes can be temporary or permanent. Those restrictions may impact inbound, outbound or transit movements. Finally, airlines must also be vigilant to identify dual-use items, i.e. items including software and technology which can be used for both civil and military purposes, including goods which can be used for both non-explosive uses and assisting in any way in the manufacture of nuclear weapons or other nuclear explosive devices.

Notwithstanding these restrictions, transactions with a sanctioned country, entity or person may occur or involve controlled goods. Scenarios likely to occur include, but are not limited to:

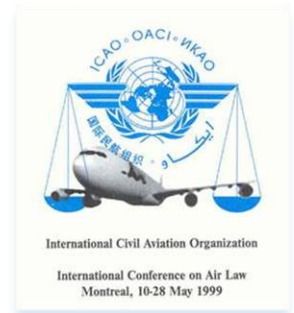
- Flights to/from/via a sanctioned country.
- Payment of overflight charges to a sanctioned country
- Payments to suppliers or vendors in a sanctioned country, or who are subject to sanctions themselves
- Purchasing, selling, leasing, trading, importing or exporting trade-controlled aircraft, aircraft parts, technology, services or other cargo.

In addition, international instruments like the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies are also relevant to airlines because of the resulting imposed export controls on certain items, such as for example those set forth in the Wassenaar Arrangement's lists of Dual-Use Goods and Technologies or of Munitions: the numerous Participating States to this Wassenaar Arrangementⁱ are implementing decisions to transfer or deny the transfer of the concerned items – however, while the scope of export controls in Participating States is determined by Wassenaar Arrangement lists, the practical implementation varies from country to country in accordance with national procedures.



Scope of the problem

According to the Montreal Convention for the Unification of Certain Rules for International Carriage by Air of 1999ⁱⁱ, it is the consignor's responsibility to furnish necessary information in order to meet the formalities of government administrations before the cargo can be delivered to the consignee. This is further evidenced in the IATA standard Conditions of Carriage for Cargo (cf. Section 5.4.3 of the IATA Cargo Services Conference Recommended Practice 1601ⁱⁱⁱ). Nonetheless, despite the responsibility of the parties contracting with carriers to provide accurate information, the consequences of sanction violations are often imposed on the carriers.



Another problem is that the consignor is not always aware of its shipment's exact routing due to multiple reasons, such as the use of ACMI/wet-lease, BSA, interline agreements, codeshare flights and the risk of rebooking / rerouting after a RCS (Ready for Carriage Status) message has been issued^{iv}.

For example, here are illustrations of the practical outcomes in those situations:

1. *Shipment originating in China, transferring through the EU with a final destination in Russia: There is no sanction between China and Russia. The consignor might not be aware of the routing via the EU. In EU, the shipment will be blocked and the airline fined on the basis of the EU sanctions impacting goods destined to Russia. Moreover the airline might be liable for compensation to its customer because of the interrupted routing.*
2. *Spare parts for a military aircraft originating in the US, transferring through the EU with a final destination in Kuwait: In EU, the spare parts could be considered as military goods whereas in the US they could be considered as civil spare parts. In EU, the shipment will be subject to a military transit license and in the absence of such will be blocked and the airline will be fined.*



As a consequence, airlines remain obliged to know the content of all shipments on board of their aircraft (albeit only on the basis of the information provided to them by the consignor) and to check that content as well as the persons involved in the transportation against the applicable legislations, in particular those related to (i) sanctioned entities or persons and (ii) restricted commodities. Such obligation should however not exceed the application of best efforts to know, in a risk-based approach and due diligence.

The applicable standard of care is in fact a notion that is not defined objectively nor homogeneously. In many occurrences the limits of such a notion are left to local courts to define, thus creating a level of uncertainty as to how airlines may best address the matter in their daily practice. Whilst the airline liability is directly linked to the consignor providing the correct information, it remains in practice problematic for the airline to request specific documentation and/or raise specific questions to the consignor. The consignor may be subject to or protected by specific laws or regulations which may not be applicable in the same way to the airline. Moreover, airlines cannot examine in practice the actual content of each shipment and consequently rely on the information provided by the consignor. The validation of the shipment by the airline is based on documentation and messaging.

The liability of airlines in respect to specific type of shipments, such as diplomatic cargo and postal mail is particularly unclear, which make especially difficult any type of control.

Violations of sanctions and trade and export controls could subject airlines and their staff to civil and criminal penalties (including imprisonment), the loss of export privileges and loss of business.

Requirements of prominent governing administrations

Different governing administrations provide diverse requirements and types of information and various types of export risk mitigation. This document is focusing on the following administrations:

A. European Union

The practical implementation of the rules regulating the export of goods within/via the EU varies from EU Member State to EU Member State in accordance with national procedures. They may be classified into two different categories (those categories can be combined depending on the commodity involved and the country of destination or the consignee):



1) Nature of the commodity:

- The main (but non-exhaustive) legislations for the below commodities (which are subject to various authorizations for the import, export and transit in the EU territory) can be found with the below hyperlinks:
 - Military goods: [Common Military List of the European Union](#)
 - EU Dual Use Goods: [EC Regulation No 428/2009](#)
 - EU Torture Goods: [EC Regulation No 1236/2005](#)
 - Monitoring of the Trade between the Community and Third Countries in Drug Precursors: [EC Regulation 1259/2013](#)

2) Country of destination / consignee:

- The below restrictions are targeting specific individuals or specific commodities per country (not exhaustive):
 - [EU CFSP Sanctions in Force](#) listing the EU restrictions country per country
 - [EU Russian Sanctions](#) (one example of country specific restrictions)
 - [Sanctions Risk List Countries](#) (this database enables a worldwide insight at embargoes and sanctions)

B. United States

1) Sanctions

The **Office of Foreign Assets Control (OFAC)** is a financial intelligence and enforcement agency of the U.S. Treasury Department charged with planning and execution of economic and trade sanctions in support of U.S. national security and foreign policy objectives. Under Presidential national emergency powers, OFAC carries out its activities against foreign states as well as a variety of other organizations and individuals, like terrorist groups, deemed to be a threat to U.S. national security.

- OFAC's Sanctions List: <https://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/Other-OFAC-Sanctions-Lists.aspx>

As part of its enforcement efforts, OFAC publishes a list of individuals and companies owned or controlled by, or acting for or on behalf of, targeted countries. It also lists individuals, groups, and entities, such as terrorists and narcotics traffickers designated under programs that are not country-specific. Collectively, such individuals and companies are called "Specially Designated Nationals" or "SDNs." Their assets are blocked and U.S. persons are generally prohibited from dealing with them.

OFAC administers a number of different sanctions programs. The sanctions can be either comprehensive or selective, using the blocking of assets and trade restrictions to accomplish foreign policy and national security goals.

- Active Sanctions Programs and Country Information: <https://www.treasury.gov/resource-center/sanctions/Programs/Pages/Programs.aspx>



In respect to US legislation, it is worth mentioning that many of these rules have an extraterritorial applicability, in the sense that they tend to apply to cargo containing certain percentage of elements or components manufactured in US, without relevance of the final place of assembly of those goods or their location at the time of the acceptance by the airline.

2) Military goods

The main regulations and legislations that require compliance are:

- ITAR - International Traffic in Arms Regulations: this is a US regulatory regime to restrict and control the export of defense and military related technologies to safeguard U.S. national security and further U.S. foreign policy objectives. ITAR contains a United States Munitions List (USML, which can be found in Part 121 of Title 22, Foreign Relations, of the Code of Federal

- Regulations (CFR), as amended by rules published in the Federal Register) of restricted articles and services which:
- Covers military items or defense articles
 - Regulates goods and technology designed to kill or defend against death in a military setting
 - Includes space related technology because of application to missile technology
 - Includes technical data related to defense articles and services
 - Strict regulatory licensing - does not address commercial or research objectives.
- EAR – Export Administration Regulations: this contains a Commerce Control List (CCL) of regulated commercial items, including those items that have both commercial and military applications. EAR contains a Commerce Control List (CCL) of regulated commercial items, including those items that have both commercial and military applications. The EAR:
- Regulates items designed for commercial purpose which could have military applications such as computers or software.
 - Covers both the goods and the technology.
 - Combines commercial and research objectives with national security.

Additional, indirect requirements with an impact on the airline industry

Some regulations have an indirect yet severe effect on airlines although these regulations are not specifically directed at air transportation. For example, the UK Export Control Order 2008 is impacting all modes of transport insured or re-insured via the UK insurance market. This means that even if airlines, their aircraft or the routing of a flight is not subject to UK laws, their UK insurers have to comply with the obligations foreseen under this Order. If airlines do not inform their insurers in advance in case of a transport of goods targeted under this law and insurers do not apply for a license before the transportation of such goods, the entire insurance coverage of the airline (hull, acts of war, third party, passenger and cargo legal liability insurance) may become void.

Conclusion

Trade sanctions and export controls put in place by governments and intergovernmental organizations around the world require active management, oversight and compliance by airlines and their partners in the supply chain. The current trade sanction and export control environment is unlikely to change, meaning that the industry must remain vigilant in this regard and actively engaged with government administrations and other industry stakeholders.

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ⁱ Currently, 42 countries are Participating States to the Wassenaar Arrangement: Argentina, Australia, Austria, Belgium, Bulgaria, Canada, Croatia, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, India, Ireland, Italy, Japan, Latvia, Lithuania, Luxembourg, Malta, Mexico, Netherlands, New Zealand, Norway, Poland, Portugal, Republic of Korea, Romania, Russian Federation, Slovakia, Slovenia, South Africa, Spain, Sweden, Switzerland, Turkey, Ukraine, United Kingdom and United States.



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- ii “Montreal Convention of 1999, Article 16 - Formalities of Customs, Police or Other Public Authorities:
§1. The consignor must furnish such information and such documents as are necessary to meet the formalities of customs, police and any other public authorities before the cargo can be delivered to the consignee. The consignor is liable to the carrier for any damage occasioned by the absence, insufficiency or irregularity of any such information or documents, unless the damage is due to the fault of the carrier, its servants or agents.
§2. The carrier is under no obligation to enquire into the correctness or sufficiency of such information or documents.”
- iii “The Shipper guarantees payment of all...fines, penalties... and other sums that Carrier may incur or suffer by reason of the inclusion in the Shipment of article the Carriage of which is prohibited by law...”.
Note that “Shipper” is defined in this same IATA CSC RP 1601 as follows: “Shipper (which is the equivalent of the term Consignor): the person whose name appears on the Air Waybill or Shipment Record, as the party contracting with Carrier for the Carriage of Cargo”.
- iv As per IATA Recommended Practice 1683 and the related Industry Master Operating Plan Document, checks on export clearance are generally performed before the RCS message is issued.