U.S. EXPORT CONTROLS AND SANCTIONS,
INCLUDING RECENT DEVELOPMENTS IN U.S. SANCTIONS AGAINST IRAN AND RUSSIA/UKRAINE

LAW962-10

COURSE SYLLABUS

Class 1, January 21, 2016
(Professors Christensen & Linney)

Overview of the course and course materials. Introduction to the major policy goals of export controls and sanctions, including national security and foreign policy, and the focus on certain sensitive countries such as Iran and China.

Introduction to the statutes, agencies and regulations that embody U.S. export controls and sanctions, as well as the multilateral export control regimes. Overview of the jurisdictional lines among the federal agencies that administer export controls and sanctions.

Reading Assignment:


2. Export Administration Regulations (“EAR”) Section 734.3 (15 C.F.R. § 734.3)

3. International Traffic in Arms Regulations (“ITAR”) Sections 120.2 to 120.5 (22 C.F.R. §§ 120.2 to 120.5)

Class 2, January 28, 2016
(Professor Christensen)

Survey of the nature and scope of the extraterritoriality concept and its implementation under U.S. export control and sanction laws. Discussion of Constitutional reach and limitations.

Reading Assignment:

1. L. Christensen, Extraterritorial Reach of U.S. Export Controls and Sanctions, 16 WORLD ECR 22 (October 2012)

2. Restatement (Third) of Foreign Relations Law of the United States, §§ 402-403


5. *United States v. Pulungan*, 569 F.3d 326 (7th Cir. 2009)

6. *Al Haramain Islamic Foundation, Inc. v. United States*, 660 F.3d 1019 (9th Cir. 2011)

7. *Iran Air v. Kugelman*, 996 F.2d 1253 (D.C. Cir. 1993) [skim only]

**Class 3, February 4, 2016**

(Professor Linney)

**Overview of the ITAR.** Focus on: (a) the ITAR’s statutory authority, the Arms Export Control Act; (b) types of items and activities regulated by the ITAR, including defense articles and services, the transfer of technical data, reexports, intra-country transfers, and brokering; (c) the ITAR’s requirements, structure (including the U.S. Munitions List), and relationship to multilateral export control regimes; (d) the role of DDTC in administering the ITAR; (e) types of authorizations under the ITAR (i.e., licenses, agreements, exemptions) and corresponding conditions for use; (f) prohibited destinations; (g) violations; and (h) the ITAR’s “see-through” policy and extraterritoriality.

Reading Assignment:


2. Scan ITAR Parts 120 (22 C.F.R. Part 120) and 129 (22 C.F.R. Part 129)

3. ITAR Section 120.1 (22 C.F.R. § 120.1)

4. ITAR Section 126.1 (22 C.F.R. § 126.1)

5. Scan ITAR Section 121.1, Categories VIII and XII (22 C.F.R. § 121.1) [only Categories VIII and XII]

6. Scan ITAR Section 121.16 (22 C.F.R. § 121.16)


8. DDTC Proposed Charging Letter to Alpine Aerospace Corporation and TS Trade Tech Incorporated
9. United States v. Lee, 183 F.3d 1029 (9th Cir. 1999)

10. M. Burton, et al., How Non-U.S. Companies May Become Subject to U.S. Re-Export Controls (or Already Are without Realizing It), 20 WORLDEC R 28, 31-35 (March 2013) [only the Introduction and sections on the ITAR on pages 31-34]

Class 4, February 11, 2016
(Professor Linney)

Overview of the ITAR (cont’d). Basic principles of the commodity jurisdiction process, which entails the mixed question of law and fact for determining which export control rules apply (e.g., the ITAR or the EAR, with a focus on the jurisdiction of the U.S. Department of State, Directorate of Defense Trade Controls (“DDTC”) over defense articles and services.

Overview of the Export Control Reform Initiative. Focus on: (a) reasons for reform; (b) the Initiative’s goals, achievements, and current status; (c) new classification approach; (d) new definitions of “specially designed” (ITAR and EAR) with emphasis on “catch and release” approach; and (e) the new “600 series” ECCNs.

Reading Assignment:

2. White House Fact Sheet on the President’s Export Control Reform Initiative (April 20, 2010)
3. ITAR Section 120.41 (22 C.F.R. § 120.41)
4. EAR Section 772.1 [definition of “specially designed” only] (15 C.F.R. § 772.1) [definition of “specially designed” only]
5. Scan ITAR Section 121.1, Category VIII (22 C.F.R. § 121.1) [only Category VIII]

Class 5, February 25, 2016
(Professor Linney)

Review of ITAR jurisdictional reach and “catch and release” classification exercises.

1. Review reading assignments for Class 4 [items 3-6 only]
2. Classification exercises (Handouts)

Class 6, March 3, 2016
(Professor Christensen)

Overview of the EAR. Focus on: (a) the EAR’s statutory authority, the International Emergency Economic Powers Act and status of the Export Administration Act the; (b) types of
items and activities regulated by the EAR, including reexports, intra-country transfers, and deemed exports and reexports; (c) the EAR’s requirements, structure, and relationship to multilateral export control regimes; (d) the EAR’s ten General Prohibitions; (e) authorizations under the EAR (i.e., licenses, exceptions) and corresponding conditions for use; (f) the Commerce Control List and the basics of classification and determining license requirements; (g) reasons for control; (h) end use- and end user-based controls, including restrictions involving transactions with “blacklisted” parties and new Russia oil and gas end-use restrictions; (i) country-based restrictions; (j) violations; and (k) the EAR’s de minimis rule and extraterritoriality.

Reading Assignment:

1. Larry E. Christensen and Abigail E. Cotterill, Export Controls and Economic Sanctions: Counterterrorism, Nonproliferation, National Security, and the Foreign Policy of the United States (2015) (draft) [only pages 8 to 17]

2. BIS Proposed Charging Letter to University of Massachusetts at Lowell

3. M. Burton, et al., How Non-U.S. Companies May Become Subject to U.S. Re-Export Controls (or Already Are without Realizing It), 20 WORLD ECR 28-31 (March 2013) [only the sections on the EAR starting on page 28 and ending on page 31]

4. United States v. Lachman, 521 F.3d 12 (1st Cir. 2008) and 380 F.3d 42 (1st Cir. 2008)

5. Iran Air v. Kugelman, 996 F.2d 1253 (D.C. Cir. 1993)

Class 7, March 17, 2016
(Professor Christensen)

Overview of the EAR (cont’d).

Begin exercises regarding classification, catch, and release.

Reading Assignment:

1. Review Class 6 reading assignment
2. Review ITAR Section 120.41 (22 C.F.R. § 120.41)
3. Review EAR Section 772.1 [definition of “specially designed” only] (15 C.F.R. § 772.1) [definition of “specially designed” only]
4. Exercises (Handouts)

Class 8, March 24, 2016
(Professor Christensen)

Continue exercises regarding classification, catch, and release.
Format of answers for Question 1 of the exam.

Reading Assignment:

1. **Review Class 7 reading assignment** [items 2-3 only]
2. **Classification Exercises (Handouts)**

**Class 9, March 31, 2016**

(Professor Linney)

**Overview of the U.S. sanctions regime.** Focus on: (a) the aim of sanctions; (b) different types of sanction statutes and regulatory programs, with a particular emphasis on comprehensive sanction programs (i.e., Cuba, Iran, North Korea, Syria, Sudan, Crimea region of Ukraine) and sanctions on entities involved in certain types of activities (e.g., proliferation of weapons of mass destruction, support of international terrorism); (c) how sanction measures are applied (e.g., prescriptive jurisdiction, territorial sanctions); (d) jurisdictional scope of sanctions (e.g., extraterritoriality, U.S. persons); (e) activities subject to sanctions (e.g., dealings, exports, reexports, facilitation), including the export and reexport of information and technology; (f) administration of sanctions by the U.S. Department of Treasury, Office of Foreign Assets Control (“OFAC”); (g) types of authorizations (i.e., exemptions, general and specific licenses) and corresponding conditions for use; (h) agency jurisdiction over sanctions and authority to issue licenses (i.e., split jurisdiction between OFAC and BIS); (i) the blocking statutes of non-U.S. countries, (j) current developments (e.g., Cuba, Russia and Ukraine related sanctions), (k) property interests, (k) the 50% ownership rule, and (l) standard of care.

Reading Assignment:

1. **Panel Discussion: Does International Law Matter to Congress?** (Hufbauer, 1998)
4. **Overview and Operation of U.S. Financial Sanctions, Including the Example of Iran** (Carter & Farha, 2013)
5. **Sanctions on Russia Won’t Work** (Chicago Tribune, 2014)
6. **Tougher Russia Sanctions Can’t Wait** (Bloomberg View, 2014)

In addition, please **skim** the following materials (all of which may be found on your “Law of the Class” CD-rom):

1. **TWEA, Sections 5 & 16**
2. **IEEPA, 50 USC 1701-1706**
3. **National Emergencies Act, 50 USC 1601-1651**
4. **UN Participation Act, Section 5**
5. **UN Security Council Resolution 1572**
6. **Ukraine-Related Executive Orders, Directives, and General Licenses**
7. **Ukraine-Related Sanctions Regulations**
8. Guidance on Entities Owned by Persons Whose Property and Interests in Property are Blocked
9. Iranian Transactions and Sanctions Regulations (scan headings and subheadings only)

As noted, you need only scan these materials in preparation for class, but please be sure to bring printed or electronic copies to class with you as we will be going over them in detail during the class.

Class 10, April 7, 2016
(Professor Linney)

Overview of the U.S. sanctions regime (cont’d).

Reading Assignment:

1. Review Class 9 reading assignment
2. 50% Ownership Rule Exercises (Handouts)

Class 11, April 14, 2016
(Professor Linney)

Overview of U.S. sanctions against Iran. Focus on: (a) the rationale for Iran sanctions; (b) the major Iran sanctions statutory and regulatory regimes and distinctions thereof; (c) the role of the U.S. Department of State in Iran and other statutory sanctions; (d) activities permitted under the Iran (and other) sanctions programs, including agriculture, medicine, and medical supply exports under the Trade Sanctions Reform and Export Enhancement Act of 2000 (TSRA) Program; (e) practical issues that arise under Iran sanctions, including payments for authorized transactions; (f) effectiveness of Iran sanctions; and (g) current and future Iran sanction developments, including implementation of the Joint Comprehensive Plan of Action.

3. Joint Comprehensive Plan of Action and related contingent waivers, guidance and general licenses (see “Law of the Class” CD-rom)

Class 12, April 21, 2016
(Professors Christensen & Linney)

Overview of the nuclear export regime. Focus on: (a) statutes and regulations governing the nuclear export regime, including the items and activities covered by each; and (b) the role of the agencies involved in the nuclear export regime, i.e., the Nuclear Regulatory Commission and the Department of Energy.
Reading Assignment:

3. Atomic Energy Act of 1954, as amended (42 U.S.C. section 2011 et seq.), sections 126 to 134 (§§ 2155 to 2160(d))
4. 10 C.F.R. Part 110 (selected sections TBA)
5. 10 C.F. R. Part 810 (selected sections TBA)

Overview of CFIUS. Review of key economic control and economic sanctions issues under the regulations governing review of foreign investment in the United States by the Committee on Foreign Investment in the United States (“CFIUS”).

Reading Assignment:

2. 31 C.F.R. Part 800, Regulations Pertaining to Mergers, Acquisitions and Takeovers by Foreign Persons (Final Rule)

Class 13, April 28, 2016
(Professor Christensen and Professor Linney)

Student evaluation of course.

Overview of compliance and enforcement issues in export controls and sanctions. Focus on: (a) statutes and regulations related to compliance and enforcement; (b) compliance resources from the agencies; (c) industry best practices, including company processes, procedures, and policies; (d) role of agencies in enforcing export control and sanction laws; (e) the enforcement environment, including both criminal and administrative prosecutions; (f) agency-based penalty guidance, including mitigating and aggravating factors considered in enforcement actions; (g) extraditions; (h) submission of voluntary disclosures; and (i) compliance and enforcement in real-life, including internal investigations, how export control and sanction violations are discovered, implementing compliance-related corrective actions, successor liability and pre-transaction due diligence, and name-screening and conflicts with privacy, data protection, and anti-discrimination laws.

Discussion of Exam.

Reading Assignment:

2. EAR Sections 764.1-764.5 (15 C.F.R. §§ 764.1-764.5) (read) and Part 766 (15 C.F.R. Part 766) [scan only] (from “Law of the Class”)
3. DDTC Proposed Charging Letter to Intersil Corporation
4. DDTC Consent Agreement with Intersil Corporation

5. DDTC Proposed Charging Letter to United Technologies Corporation

6. U.S. Dep’t of Justice Indictment against United Technologies Corporation

7. Scan DDTC Consent Agreement with United Technologies Corporation (scan only)

8. Scan U.S. Dep’t of Justice Deferred Prosecution Agreement with United Technologies Corporation [scan only]

Additional Resources (scan if desired/time permitting but not required reading for class)

9. DDTC Compliance Program Guidelines

10. BIS Compliance Guidelines: How to Develop an Effective Export Management and Compliance Program and Manual, 1-12 (June 2011)
