

CLIENT MEMORANDUM

D.C. Circuit Upholds Broad Application of Sanctions Prohibitions in *Epsilon* Case, Though Remands OFAC's Penalty Calculation

June 8, 2017

AUTHORS

David Mortlock | Miriam A. Bishop | Nikki M. Cronin

On May 26, 2017, the United States Court of Appeals for the District of Columbia Circuit issued its [ruling](#) in an appeal of a civil enforcement action brought by the U.S. Department of the Treasury, Office of Foreign Assets Control (“OFAC”) against Epsilon Electronics (“Epsilon”) for violations of the Iran Transactions and Sanctions Regulations (“ITSR”) in which OFAC imposed a \$4,073,000 civil monetary penalty. In a mixed ruling, the court applied a highly deferential standard of review and upheld OFAC’s conclusion that Epsilon violated U.S. sanctions laws by exporting goods from the United States with reason to know they were specifically intended for Iran. The court also remanded the case to OFAC to reconsider five possible violations and recalculate the penalty amount.

1. “Reason to Know” Sufficient to Impose Liability

This case turned on whether Epsilon had “reason to know” that shipments to third countries were intended for Iran. The ITSR prohibits the export, reexport or supply, directly or indirectly, from the United States, or by a U.S. person, wherever located, of any goods, services or technology to a person in a third country, having knowledge or **reason to know** that such goods are specifically intended for Iran (31 C.F.R. § 560.204). In 2014, OFAC issued a penalty notice and imposed the civil penalty against Epsilon for ITSR violations when it found that Epsilon had reason to know that 39 shipments of car audio and video equipment were intended for reexport to Iran.

.....

D.C. Circuit Upholds Broad Application of Sanctions Prohibitions in *Epsilon* Case, Though Remands OFAC's Penalty Calculation

Continued

Epsilon challenged OFAC in district court, seeking declaratory and injunctive relief against enforcement of the civil penalty. In *Epsilon Electronics, Inc. v. United States Department of the Treasury, Office of Foreign Assets Control*, the district court granted summary judgment in favor of OFAC. The court agreed with OFAC that Epsilon had reason to know the shipments of car audio and video equipment that it shipped to a distributor in the UAE were intended for reexport to Iran, because the distributor's English-language website indicated that the distributor sold only to dealers and sales agents in Iran. The D.C. Circuit affirmed OFAC's findings, noting that Epsilon had reason to know these facts because images from the distributor's website were displayed in a photo gallery on Epsilon's website. The appellate court also confirmed that OFAC did not need to show that the goods had actually arrived in Iran.

2. High Level of Deference to OFAC Enforcement Actions

The D.C. Circuit was deferential to the government's application of the sanctions, stating, "[a]s the Administrative Procedure Act requires, our review is 'highly deferential' to the agency, meaning we may set aside OFAC's action 'only if it is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.'" Nevertheless, the court found that OFAC did not adequately justify its determination for five of the 39 shipments. Epsilon had provided email evidence that suggested these five shipments were intended for a retail store in Dubai. The emails discussed the plans for the Dubai store and discussed the Dubai retail market. OFAC did not explain why it discounted this email evidence. Therefore, the D.C. Circuit remanded the case to the district court for OFAC to reconsider the five shipments and the calculation of the monetary penalty.

Despite the court's decision, Epsilon will likely still face a sizeable penalty, since 34 violations were upheld. Most important, the appellate court upheld OFAC's determination that Epsilon violated U.S. sanctions laws and that it had reason to know its products were intended for sale in Iran simply based on information on the distributor's website. Consequently, companies must continue to conduct adequate due diligence on all export transactions to identify any potential "red flags," to ensure they know where their customers are doing business, and to prevent the export of services from the United States that are intended for reexport to Iran or other jurisdictions subject to a comprehensive embargo.

If you have any questions regarding this memorandum, please contact David Mortlock (202-303-1136, dmortlock@willkie.com), Miriam A. Bishop (202-303-1126, mbishop@willkie.com), Nikki M. Cronin (202-303-1203, ncronin@willkie.com) or the attorney with whom you regularly work.

Willkie Farr & Gallagher LLP is an international law firm with offices in New York, Washington, Houston, Paris, London, Frankfurt, Brussels, Milan and Rome. The firm is headquartered at 787 Seventh Avenue, New York, NY 10019-6099. Our telephone number is (212) 728-8000 and our fax number is (212) 728-8111. Our website is located at www.willkie.com.

June 8, 2017

.....

WILLKIE FARR & GALLAGHER_{LLP}

D.C. Circuit Upholds Broad Application of Sanctions Prohibitions in *Epsilon* Case, Though Remands OFAC's Penalty Calculation

Continued

Copyright © 2017 Willkie Farr & Gallagher LLP.

This memorandum is provided by Willkie Farr & Gallagher LLP and its affiliates for educational and informational purposes only and is not intended and should not be construed as legal advice. This memorandum may be considered advertising under applicable state laws.