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National Oilwell Varco, Inc., Fined $25 Million for Sanctions and Export Control Violations Involving Willful Blindness and Approval of Overseas Operations

By David Mortlock and Miriam A. Bishop*

The authors of this article discuss a recent export control violations settlement that demonstrates that willful blindness and token compliance efforts can lead to criminal investigations and produce substantial fines.

The U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC") recently announced that it had reached a settlement with National Oilwell Varco, Inc., a Houston-based oil and gas company, and two of its Canadian subsidiaries, Dreco Energy Services, Ltd. ("Dreco") and NOV Elmar ("Elmar") (collectively, "NOV") for alleged violations of the Cuban Assets Control Regulations, the Iranian Transactions and Sanctions Regulations, and the Sudanese Sanctions Regulations. Almost all the sales to Iran, Cuba, and Sudan occurred outside the United States. Nonetheless, NOV faced an enforcement action because U.S. executives "willfully blinded" themselves and approved exports from the United States that were ultimately destined for Iran. OFAC also fined the company's Canadian subsidiaries for exporting non-U.S.-origin goods to Cuba.

The OFAC settlement was entered into concurrently with a settlement between NOV and the U.S. Department of Commerce's Bureau of Industry and Security ("BIS") to resolve investigations by the BIS, OFAC, the U.S. Department of Justice, and the U.S. Immigration and Customs Enforcement regarding NOV's compliance with U.S. export and trade laws. NOV entered into a Non-Prosecution Agreement with the U.S. Attorney's Office for the Southern District of Texas and agreed to pay a fine totaling $25 million, including OFAC's fine of $5,976,028. BIS assessed a separate fine of $2.5 million.

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SETTLEMENT WITH OFAC FOR SALES TO IRAN, CUBA, AND SUDAN

OFAC found that NOV approved four commission payments made by Dreco to a UK-based entity for the sale and exportation of goods, directly or indirectly, to Iran. These payments had a value of $2,630,091. OFAC found this to be an egregious violation because senior finance executives at Dreco approved the payments. Additionally, OFAC found that NOV "willfully blinded itself" to the consequences of approving the payments by allowing the deliberate nonidentification of Iran in communications between Dreco and NOV. OFAC also found that NOV had reason to know the payments involved Iran and that, over the course of three years, the company ignored warning signs that the conduct was prohibited.

OFAC found additional violations by NOV involving the indirect exportation of goods to Iran, as well as transactions involving the sale of goods to Cuba. OFAC determined that Dreco engaged in 45 transactions with a total value of $1,707,964, involving the sale of goods to Cuba, and Elmar engaged in two transactions worth a total of $103,119 involving the sale of goods to Cuba. Dreco and Elmar appear to have been fined for exporting non-U.S. origin equipment to Cuba, as these sales are not discussed in the BIS settlement.

OFAC also found that NOV engaged in a transaction involving the exportation of goods from the United States to Sudan worth $20,928.

OFAC listed several aggravating factors that were taken into consideration against NOV. NOV did not voluntarily self disclose the violations and was found to have been acting with at least a reckless disregard for U.S. sanctions requirements. Senior management knew or had reason to know that the Dreco transactions involved Iran. Furthermore, OFAC determined that the conduct caused harm to the U.S. sanctions program by providing economic benefits to the petroleum industries in Iran, Cuba, and Sudan. OFAC found NOV's compliance program to be "wholly inadequate," especially given that it is a large and sophisticated company, operating in many high-risk regions around the world.

SETTLEMENT WITH BIS

NOV agreed to a settlement with BIS for alleged violations of the Export Administration Regulations ("EAR"). BIS found that NOV "caused, aided and/or abetted" the export of U.S. origin oil and gas equipment to Iran. BIS also found that NOV exported items to Oman without the required licenses. In addition, BIS found that NOV acted "with knowledge that a violation of the Regulations was about to occur or intended to occur in connection with the items." NOV had obtained a BIS license for only a portion of the items shipped.

CONCLUSION

These enforcement actions underscore the importance of implementing and maintaining adequate compliance procedures for companies that operate in high-risk regions. As demonstrated by this settlement, companies can face potential liability for sales of products outside the United States when U.S. persons, subsidiaries of U.S. persons, or U.S.-origin goods are involved. Companies with global operations should confirm that they have appropriate procedures to ensure compliance with U.S. sanctions and export controls. This case demonstrates that willful blindness and token compliance efforts can lead to criminal investigations and produce substantial fines.