

**Summary of the Presentation:
Some Practical Issues of Risk Management under EC (and US) Export Control Law
By Attorney Dr. Harald Hohmann**

Case 1: The Konnichiwa Germany GmbH, a German subsidiary of the Japanese Konnichiwa Corporation, and his Turkish sales agent are exporting non-listed aluminum tubes to China, which are used for bicycle frames, lifts etc. Suddenly the German export agency BAFA sends a letter saying that this export might be regarded as sensitive, since the tubes could possibly be used for a gas ultra centrifuge in North Korea. What should Konnichiwa Germany do? And what precautionary risk management is recommended?

First result:

Goods which are listed on the general EC export list (Annex I of Dual-Use Regulation) always require an export license to each country in the world. Non-listed goods do require an export license only if a potential sensitive use (like: deviation of embargoes in 19 embargo countries, use for WMD anywhere, for military or nuclear uses in 19 + 2 + 10 countries) cannot be excluded; the license requirement is triggered by possible “awareness” of such red flags or by information from the export agency BAFA about such possible sensitive use. The export companies in Germany must organize and supervise the export risks inside their own company and vis-à-vis their international subsidiaries, sales agents etc, in order to prevent that the export company may be held criminally liable if an export risk is materializing. Fines up to 2 million EUR (for an administrative offence) or imprisonment or higher fines (for a criminal offence) for illegal exports are directed against the Board’s Export Director (CEO) and the export manager (and sometimes against the acting export clerk). The organization and supervision must be done by the Board’s Export Director, who is nominated to the BAFA; export instructions and instructions on screening existing and future employees, service-providers, customers etc. are urgently required. The risk management should cover: identification/assessment of risks, in-house seminars, written documentation of own risk minimization measures, attorney’s legal opinions, contracts for risk transfers (+ supervision of these risks), an export manual and binding BAFA decisions (export license, “zero decision”, classification of goods on the export list).

19 embargo countries EC: Armenia*, Azerbaijan*, Burma, PR China*, Dem. Republic Kongo (ex-Zaire), Dem. Republic Korea = North Korea, Cote d’Ivoire, Iran, Iraq, Lebanon, Liberia, Rwanda*, Serbia-Montenegro, Sierra Leone, Zimbabwe, Somalia, Sudan, Uzbekistan, Byelorussia (* only weapons embargo)

2 German K-countries: Cuba, Syria

10 German nuclear sensitive countries: Algeria, India, Iran, Iraq, Israel, Jordan, Libya, North Korea, Pakistan, Syria

Case 2: The Kompanwa Germany GmbH, a German subsidiary of the Japanese Kompanwa Corporation, wants to export cameras to Iran. Let us assume the clients are the following Iranian companies: Kala Electric and Hara & Co¹.

Second Result:

For exports to EC embargo countries like Iran in addition special export law (here: the EC Iran embargo regulation 423/2007) must be strictly complied with, leading to export prohibitions to Iran of goods listed on Annex I, to additional license requirements to Iran of goods listed on Annex II and to export prohibitions to Iran concerning persons/companies listed on Annexes IV and V of this EC Iran embargo regulation. The goods to be exported must be checked under this specific export law (annexes I and II of this embargo regulation), as well as under general export law (= under EC Dual-Use Regulation). Also all companies and persons involved must be checked under this specific export law (annexes IV and V of this embargo regulation) and under general export law (EC regulations on terror lists). If a company/person (like Kala Electric Co.) is listed there, any delivery to this person is prohibited. If a person/company is listed on an US sanction list, we must differentiate whether this

¹ Cf. Hohmann, Die hohen Risiken des Iran-Embargos nach EG- und US-Exportrecht, in: *FAZ Jahrbuch Außenwirtschaftsrecht 2009*, Frankfurt 2008, at pp. 106 et seq. The following solution of this case is an English translation of this quoted text.

listing must be complied with by a German/Japanese company: A listing only in 5 programs of the SDN list (SDT, SDGT, FTO, Iraq 2, and Burma) always triggers a license requirement from BIS, while all other listings on US sanction lists must only be complied with in case of (1) US re-exports (of goods "made in the US", or of goods "made in EC/in Japan" with 10% listed US components) or (2) for all exports from "US Persons". If a Japanese company is a foreign branch or a subsidiary of an US company, or if his CEO is US citizen or green card holder, or if an attorney concludes that there is similar influence from US companies on the Japanese company, then the Japanese company may possibly be regarded as "US Person". "US Persons" always have to comply with unilateral US embargoes and with US sanction lists. In order to minimize their risks, Japanese companies should scrutinize, whether the goods to be exported contain listed US components (with what value?) and whether some of their suppliers could possibly be regarded as "US Person".

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