



ATTORNEYS AT LAW

CANAL SQUARE 1054 THIRTY-FIRST STREET, NW WASHINGTON, DC 20007-4492
TELEPHONE: 202/342-5200 FACSIMILE: 202/342-5219

CANADA eMANIFEST AND US EXPORT CONTROLS

by
Edward D. Greenberg

The Canada Border Services Agency (CBSA), implementing legislation enacted last year, has established a requirement that all parties arranging for transportation of cargo into Canada are required to provide advance manifest information, electronically, at set time frames before the goods reach the Canadian border. This is what is called the eManifest reporting system. Essentially, this appears to be the functional equivalent of US Customs and Border Protection's 24-hour rule for providing advance manifest data on shipments inbound to the U.S.

There is ample information available on the CBSA website concerning the required data elements and time line for implementation, so that there is no need to go over those details here. Instead, this is intended to bring to your attention an important, but perhaps overlooked, issue that could lead to violations of the US export control laws.

Traffic destined to Canada from the U.S. is, with certain exceptions (e.g., licensed cargo or cargo destined for third countries), are exempt from AES filing requirements of Census, BIS and DDTC. As such, US forwarders and other companies that typically are involved in the movement of Canada bound cargo might conclude that it is not necessary to screen the parties for this traffic against the various denied party/entity lists maintained by OFAC and BIS.

That would be a mistake. The fact that a particular transaction involves only a US exporter and a Canadian company does not necessarily ensure that those parties are not sanctioned parties. To the contrary, there have been a number of investigations and prosecutions of US and Canadian companies that are on the various sanction lists, and any participation by third parties of export transactions involving those companies could be problematic.

The new eManifest requirements, while providing an additional service that forwarders and customs brokers might be able to provide to US or Canadian shippers/receivers, accordingly also carries the potential for running afoul of US export control requirements. It is not unlikely that US authorities could take the position that any company making eManifest filings with the CBSA is facilitating export transactions.

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And, if those transactions involve parties on the various sanction lists, merely doing the eManifest filings - - even if the filer is not otherwise involved in the actual transportation arrangements - - could implicate a company in an investigation and possible prosecution. Whether or not this results in imposition of a penalty, being caught up in a BIS, DDTC or ICE investigation is extremely time-consuming, costly and of course risky.

For this reason, it is prudent for companies to screen *every* transaction against the sanction lists without regard to whether you are limited to making transportation arrangements. The concept of facilitation, as defined by OFAC, is very broad and amorphous, so that the mere submission of eManifest data to CBSA might be viewed as contravening US export control laws if the parties to the transaction are on the sanction lists.