

SPEAKER INTERVIEW: BUILDING A SUSTAINABLE SUPPLY CHAIN

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**OIL & GAS
SUPPLY CHAIN
COMPLIANCE**

First, a bit of background: why is the Oil & Gas Supply Chain Compliance meeting relevant to your work?

For the last 15 years, I have worked with a variety of large companies to identify and manage their global enforcement and compliance risks under U.S. government foreign trade restrictions, including U.S. sanctions and export controls. Because many of the regimes with which the U.S. is at odds rely on petroleum revenues, the energy sector is a principal target of U.S. sanctions policies and criminal and civil enforcement actions. Suppliers to the oil and gas industry are directly impacted by U.S. laws restricting or prohibiting upstream and downstream activities in countries targeted by sanctions. The rules and policies are country-specific, often complex, and rapidly changing.

Why do conflicts arise between different trade sanctions for internationally-based oil & gas companies?

U.S. sanctions laws are increasingly enforced extraterritorially, as evidenced by a string of cases over the last 10 years against non-U.S. companies and banks, as well as the trend of imposing “secondary sanctions” on companies that engage in targeted business in Iran and Russia. This extraterritorial focus derives from America’s control of the U.S. dollar-based payments system, which it uses as leverage to ensure other country’s cooperate with U.S. sanctions policies or else risk losing access to the U.S. financial system.

Meanwhile, other countries may not see eye-to-eye with these policies or may employ different sanctions methodologies to achieve the same policy goals. So a multinational oil and gas company must be attuned to U.S. sanctions risks wherever it is doing business in the world, while at the same time complying with the laws of other countries which may permit activity that would be sanctionable under U.S. law or may even prohibit compliance with U.S. law, e.g. through “anti-sanctions” or sanctions “blocking” regulations. A clear example of this is in Russia, where U.S. law restricts U.S. person support for certain upstream activities while Russian law does not recognize these restrictions.

How do you see companies responding to these conflicts – is there anything they could be doing differently?

Most companies are too reactive to the swiftly changing winds of U.S. sanctions laws. From one diplomatic crisis to the next, they are caught on their heels, unprepared to react as swiftly as law and business demand. A more proactive approach is called for, which means knowing the company's exposure to U.S. extraterritorial sanctions generally, monitoring where the problem areas and "hot spots" are, and developing policies and contingency plans that are based on macro-economic and "big picture" political trends.

What do you see as being the big trends in international trade over the coming year?

The January 28th sanctions against Petróleos de Venezuela have already rocked the U.S. oil and gas sector this year. U.S. companies working in the upstream sector of Venezuela are operating under a U.S. general license that is set to expire on July 27th. If Maduro is still effectively in power at that time, they may not be able to stay, which would hasten the already steep declines in Venezuelan production, perhaps doing lasting damage to that country's oil resources. U.S. sanctions requiring the blocking of payments for Venezuelan crude purchases have resulted in a fall-off in U.S. Venezuelan crude imports which means that more of that crude will be used to pay off debts to Russia, and China and that U.S. refiners will be looking for other sources of heavy crude in Canada..

At the same time, there is a strong U.S. enforcement appetite to go after shippers and traders who deal with Iran's oil sector, including through front companies and disguised transactions, many originating in Russia and China. The Iran waivers for China and India are up for renewal in May. Meanwhile, the U.S. will continue to pursue global efforts to enforce controls on terrorist and proliferation-financing by the Iranian regime, by applying financial pressure through Iran's touch points with the global energy and financial sectors.

Finally, we can expect to see continued efforts by Congress to force the Administration to hold the line on Russia sanctions and probably to expand those sanctions. Many options are on the table, including expansion of energy sector sanctions as well as sanctions on transactions in Russian sovereign debt.

What changes do you think companies need to make to their workflows to stay ahead of the curve?

A large multinational company which does not screen or relies on sporadic manual party screening is a problem waiting to happen. Party screening needs to occur automatically as a precondition to new business and should be done on a continual basis rather than just at the onset of a third-party relationship.

Non-U.S. companies also need to come to grips with their risks under U.S. extraterritorial and “secondary” sanctions. Compliance with U.S. sanctions needs to be a global effort, keeping in mind a company’s exposure to U.S. sanctions jurisdiction through dealings with U.S. banks, U.S. suppliers and U.S. person employees.

What are you most looking forward to about attending Oil & Gas Supply Chain Compliance this year?

I look forward to hearing about the strategies and workflows skilled compliance professionals are developing to confront head-on the challenges of today’s trade control landscape.

It will be interesting to learn more about the specific challenges companies are facing.

Finally, a question for the leaders out there: why do general counsel and heads of supply chain need to care about supply chain compliance?

As would-be sanctions-busters become more creative and opportunistic, compliant companies must be more vigilant in spotting and avoiding sanctions exposure. A sanctions designation or enforcement action can materially impact a company’s global reputation and financial position and can present ongoing strategic challenges, in the form of steep penalties, court-appointed compliance monitors or difficulty in obtaining financing from risk-averse financial institutions. By the same token, a flexible, proactive, well-resourced, effectively implemented, and regularly updated sanctions compliance program can provide a competitive advantage for companies in today’s global economy.