

## **D.C. Circuit Affirms OFAC's Broad Enforcement Authority, but Demands Increased Transparency in its Decision-Making Process**

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Last week, the U.S. Court of Appeals for the D.C. Circuit issued a decision in *Epsilon Electronics, Inc. v. U.S. Dept. of the Treasury, Office of Foreign Assets Control et al.*, No. 16-5118, \_\_\_ F.3d \_\_\_ (D.C. Cir. 2017), which largely affirms the lower court's granting of summary judgment in favor of the government defendant. The D.C. Circuit Court, however, remanded the matter for consideration of five of the 34 alleged sanctions violations and a recalculation of the total \$4,073,000 civil monetary penalty arising from alleged Iran sanctions violations. This decision continues the recent trend of increased judicial scrutiny of national security-related actions by the Executive branch. Foreign and domestic companies that are the subjects of OFAC enforcement investigations should consider seeking judicial review of administrative records that do not clearly explain the agency's consideration of potentially exculpatory information.

OFAC announced its assessment of a civil monetary penalty against Epsilon Electronics in July 2014. According to the OFAC penalty announcement, Epsilon allegedly violated the Iranian Transactions and Sanctions Regulations (ITSR) by sending 39 shipments of car audio and video equipment to a Dubai-based distributor that the agency concluded it had reason to know would be reexported to Iran. Following a thorough analysis of the ITSR prohibition of certain sales and exports to persons in third countries, the court held that OFAC may assess penalties for violations of the embargo without showing that those exports actually entered Iran. The court determined, however, that OFAC was arbitrary and capricious in discrediting potentially exculpatory information.

It is important to note that since the administrative assessment of this penalty in 2014, OFAC has resolved all but one<sup>[1]</sup> of its civil monetary penalty enforcement actions through settlement agreements. Following this opinion, exporters may be increasingly less willing to settle potential civil liability for apparent sanctions violations.

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[1] On July 29, 2015, OFAC issued an \$82,260 penalty against Blue Robin, Inc. for alleged violations of the ITSR.

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