

MARK K. NEVILLE, JR.

The Hearts and Minds Game

Who or what are the following, what do they have in common, and what do they have to do with trade and customs matters? (1) Voice of America (VOA); (2) Radio Free Europe /Radio Liberty; (3) @america; (4) Alan Gross; and (5) recent changes to Treasury's Office of Foreign Assets Control (OFAC) regulations at Parts 515, 538, and 560. The connection will be explained below but first some background on each.

The VOA had its origins as a World War II propaganda organ and later served the same function throughout the Cold War. The days of being jammed by the Soviet Union are long gone, as is the Soviet Union, but VOA lives on. Its broadcasts of news, information, and entertainment are conducted today in no less than 44 languages.

Radio Free Europe was founded in 1949, targeting the Soviet Union in the formative days of the Cold War. Radio Liberty was founded in 1951 and its broadcasts were aimed at the satellite countries behind

the Iron Curtain. The two were merged in 1976.

The Jakarta, Indonesia “@america” is an on-the-ground cultural center, the first of a planned wave of digital age centers, that serves the same function as its two media brethren. It is an updated version of American cultural centers, and its mission is the same—to get the word out on U.S. values and views. Judging by a New York Times story in early March, it has a lot of work to do. One Indonesian high school student who had visited the center held to her pre-visit opinion that the United States hates Muslims.¹

Alan Gross is the American subcontractor for the U.S. Agency for International Development, who was tried by Cuba behind closed doors in March 2011 on charges of distributing illegal satellite equipment to connect dissidents to the Internet as part of efforts to undermine the government. The prosecution was asking for a 20-year sentence for “acts

against the integrity and independence” of Cuba, but no verdict had been announced as of the date of this writing. The United States says that Gross was helping the small Jewish community (1,500 persons) in Cuba connect to the Internet and did not break any laws.

OFAC is the government agency responsible for enforcing the rules that govern sanctions and, to a great extent, formulating those rules. It is one of the federal agencies, along with Commerce's Bureau of Industry and Security (BIS) and State's Directorate of Defense Trade Controls (DDTC), with strong support from Customs and Border Protection and others, that has primary oversight of export compliance, although OFAC also enforces bans on some importations.

OFAC's mission is to curb or severely restrict transactions with specific countries or specially designated persons. The OFAC regulations are in Title 31 of the Code of Federal Regulations, Parts 500-599. The aim is to restrict access to U.S. goods and technology and, to an increasing extent, to the U.S. financial markets by

means of economic sanctions. These restrictions are targeted at either specific countries (e.g., Cuba, Iran, and North Korea) or specific activities including terrorism and narcotics trafficking. For persons subject to its jurisdiction, OFAC's rule can be stern and its grasp unrelenting.

Part 515 of 31 C.F.R. was revised in March 2010 to permit the furnishing of services connected to Internet communications to Cuba, if the services are provided free.² The export of devices to Cuba is not permitted in any direct fashion by this rule, which covers Internet-related services. The regulation states that “[t]he direct or indirect exportation of any items to Cuba” is not authorized. But the two compliance regimes are reconciled, because the note to this provision refers to another section in the Cuba sanctions regulations³ that does allow exports of goods as long as they fit within the BIS exception discussed below. Incidental travel to Cuba is also authorized.⁴

OFAC had earlier authorized the construction or establishment of facilities for telecommunications between

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