COVINGTON

COVINGTON & BURLING LLP

E-ALERT | Foreign Trade Controls

February 28, 2011

NEW US AND INTERNATIONAL SANCTIONS AGAINST LIBYA TARGET LIBYAN GOVERNMENT AND QADHAFI

US Sanctions are Broader than UN and EU Sanctions Measures

On February 25, 2011, President Obama announced unilateral economic sanctions against Libya's government, its agencies, instrumentalities and controlled entities, Muammar Qadhafi and his immediate family, and other senior Libyan government officials. Licenses for the sale of defense articles to Libya are also suspended. These sanctions were imposed in response to last week's bloody crackdown on protesters seeking to overthrow Qadhafi.

On February 26, the United Nations Security Council unanimously adopted a resolution obligating member states to freeze the assets of Muammar Qadhafi and identified members of his immediate family; imposing an arms embargo on Libya; and establishing a travel ban against Qadhafi and identified relatives and Libyan government officials.

Today the European Union announced action to impose its own sanctions against the Libyan regime to carry out its obligations under the UN resolution. The EU's measure also prohibits trade in equipment useful for internal repression and targets additional individuals with asset freezes and travel bans. The details of these EU sanctions measures are not yet clear. What is clear is that the UN and EU sanctions restricting arms trade and targeting individuals are narrower than the US sanctions, which go further to prohibit almost all dealings with any agency or entity controlled by the government of Libya.

DESCRIPTION OF THE US SANCTIONS AND RELATED MEASURES

The US economic sanctions, announced in an Executive Order and effective immediately, block the assets of:

- the government of Libya;
- agencies and instrumentalities of the Libyan government and entities it controls, including the Central Bank of Libya; and
- Qadhafi and four of his children.

The Executive Order also blocks the assets of any person determined by the Secretary of Treasury, in consultation with the Secretary of State, to be:

- "a senior official of the Government of Libya,"
- a person "responsible for or complicit in . . . human rights abuses related to political repression in Libya,"
- a person who materially assisted in such abuses,
- a person owned or controlled by, or acting on behalf of, persons blocked under the Order, and

- any spouse or dependent child of a person blocked under the Order.

Such persons will be identified by being added to the List of Specially Designated Nationals and Blocked Persons.

Like other asset-blocking measures, the sanctions require that property and interests in property of a blocked person that are in the United States or that come into the United States or into the possession or control of a US person must be frozen. This means that such property and property interests cannot be transferred, paid, exported, withdrawn, or otherwise dealt in. For these purposes, "US persons" are defined as (i) US citizens and permanent residents (so-called green-card holders), regardless where located, (ii) legal entities organized under the laws of the United States (including their foreign branches), and (iii) persons or entities physically located in the United States.

Section 5 of the Order makes clear that the new sanctions prohibit US persons from contributing or providing any funds, goods, or services to or for the benefit of any blocked person. US persons also are prohibited from receiving any funds, goods, or services from a blocked person.

The Order excepts from its prohibitions transactions for the conduct of official US government business by its employees, grantees, or contractors.

The Treasury Department's Office of Foreign Assets Control immediately issued a General License authorizing all transactions with banks that are owned or controlled by the government of Libya, but organized under the laws of a country other than Libya. Notwithstanding the use of the term "financial institutions" in the text of the General License, we are informed that the License authorizes only transactions with banks organized outside of Libya — as the title of the General License suggests — not other Libyan owned or controlled financial institutions such as insurance or securities companies.

In a letter sent to Congress advising of the new economic sanctions, President Obama stated that the Secretary of State also is "suspending all existing licenses and other approvals for the export of defense articles and services to Libya."

Prior to the imposition of the sanctions, the Treasury Department's Financial Crimes Enforcement Network also had issued guidance to financial institutions concerning dealings with Libyan assets.

DESCRIPTION OF THE UN AND EU SANCTIONS MEASURES

Immediately following the US action, the United Nations Security Council, noting the "gross and systematic violation of human rights in Libya," unanimously adopted UNSC Resolution 1970 on February 26, 2011. In addition to referring the ongoing situation in Libya to the International Criminal Court, the Resolution requires member states to observe an arms embargo against Libya. The Member states are also obligated to freeze the assets of Muammar Qadhafi and five identified members of his immediate family, and to observe a travel ban against Qadhafi and 15 additional family members and Libyan government officials.

Today (February 28) the Council of the European Union reported that it has imposed its own sanctions against the Libyan regime. The Council's announcement specified the following actions to implement the UN Security Council Resolution:

- a ban on the supply to Libya of arms and related material to implement the UN arms embargo;
- a freeze of the assets of Muammar Qadhafi and the five members of his family identified by the UN Security Council; and

- a visa travel ban on 16 persons, including Muammar Qadhafi, members of his family and "other persons responsible for the violent crackdown on the civilian population" in Libya, as required by the UN Security Council Resolution.

The Council also adopted as "autonomous measures" these additional sanctions that go beyond the requirements of Resolution 1970 (2011):

- a ban on trade with Libya in equipment which might be used for internal repression;
- a freeze of assets of an additional 20 individuals identified by the EU as responsible for the violent crackdown on the civilian population; and
- a visa travel ban on an additional 10 individuals with responsibility for the violent crackdown.

The full scope of the EU's "autonomous measures" is not yet clear. The announcement does not identify the additional individuals who are subject to asset freezes and/or travel bans. Although the announcement does not provide specific details concerning what equipment might be considered useful for internal repression and therefore banned for export or export to Libya, it appears likely that these Libya sanctions will ban trade in the same types of products listed in Annex III to the recent EU Regulation imposing sanctions against Iran.

IMPLICATIONS

The new US sanctions effectively prohibit economic dealings between US persons and Libyan government agencies, instrumentalities, and controlled entities, including the Central Bank of Libya. The UN and EU sanctions are narrower in scope and mandate asset-blocking action against a more limited number of designated Libyan parties as well as a travel ban and arms embargo. The UN sanctions do require blocking of entities that are controlled by the listed Libyan parties, but it is still unclear how the EU authorities, or authorities of individual UN member states, will interpret this requirement.

The UN and EU sanctions do not ban all commercial trade with Libya by member states, and do not ban commercial trade with the government of Libya. The US sanctions do ban trade with the government of Libya and entities it controls; but the US has not re-imposed the prior comprehensive US sanctions against Libya that were largely lifted in 2004, and has not redesignated Libya as a state sponsor of terrorism. (Libya was removed from the list of state sponsors of terrorism in 2006.) Thus, aside from the suspension of the export of defense articles and services, the US sanctions do not affect the existing US controls on exports and reexports to Libya, **provided** that such exports and reexports do not involve listed persons or the government of Libya or its agencies, instrumentalities, or controlled entities. Further, the new measures do not provide for retaliatory sanctions for companies that make certain investments in Libya's energy sector, as was previously the case under the Iran and Libya Sanctions Act, which was amended to remove Libya in 2006.

NEXT STEPS

Additional guidance on the scope and application of the sanctions in the US and in the EU can be expected in the coming days. We are continuing to monitor developments and will circulate updates to our clients.

* * *

This memorandum is intended to provide only general guidance and not to advise as to the lawfulness of any particular activity. Covington & Burling LLP has extensive experience with US trade controls. We would be happy to assist our clients as they seek to track and navigate the intricacies of the policy and regulatory changes described above.

If you have any questions concerning the material discussed in this client alert, please contact the following members of our foreign trade controls practice group:

Peter Flanagan	202.662.5163	pflanagan@cov.com
Corinne Goldstein	202.662.5534	cgoldstein@cov.com
Peter Lichtenbaum	202.662.5557	plichtenbaum@cov.com
David Addis	202.662.5182	daddis@cov.com
Alan Larson	202.662.5756	alarson@cov.com
Eric Carlson	86.10.5910.0503	ecarlson@cov.com
Richard Mattick	+44.(0)20.7067.2023	rmattick@cov.com
Georg Berrisch	32.2.549.5240	gberrisch@cov.com
Lisa Peets	+44.(0)20.7067.2031	lpeets@cov.com