E-ALERT | International Trade Controls

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RECENT DEVELOPMENTS IN EU AND US ECONOMIC SANCTIONS

Additional EU Sanctions Against Iran, Libya, Syria and Belarus; Additional US Sanctions Against Entities Dealing with Iran, Against Syrian Leaders, and Against Entities Involved in Weapons Proliferation Activities

On May 23, 2011, the Council of the European Union ("EU Council") adopted a set of amendments to the EU Regulations imposing sanctions against Iran, Libya, Syria and Belarus. These amendments added more than 150 newly designated parties to the previously announced sanctions measures, including notable financial institutions and shipping concerns in Europe and Iran, leading political figures in Syria (such as President Bashar al-Assad), and parties aligned with sanctioned regimes in Libya and Belarus.

On May 24, the Obama Administration announced the imposition of retaliatory measures under the Iran Sanctions Act ("ISA"), as amended by last year's Comprehensive Iran Sanctions, Accountability, and Divestment Act ("CISADA"), against seven companies, for activities in support of Iran's energy sector and for dealings with Iran's sanctioned state-owned shipping line. The designations include Venezuela's state oil company as well as energy and shipping concerns in the UAE, Singapore, Israel, Monaco, and Jersey. At the same time, the Obama Administration announced sanctions against sixteen non-US entities under the Iran, North Korea, and Syria Nonproliferation Act for proliferation activities, mostly related to Iran. These entities are located in Belarus, China, Iran, North Korea, Syria, and Venezuela.

Separately, the Obama Administration on May 18 issued an Executive Order sanctioning seven Syrian officials, including President Bashar al-Assad, for abuses related to the crackdown against anti-government protesters.

EU SANCTIONS DEVELOPMENTS

The EU's actions against Iran added five new individuals and 111 new entities to the EU list of designated parties under the 2010 sanctions regulation (EU Regulation 961/2010). These newly designated parties are subject to asset blocking and other restrictive measures (as described in our October 28, 2010 e-alert).

Most notably, the designated entities include a number of financial institutions operating in the EU and/or Iran (Europäisch-Iranische Handelsbank (EIH), Onerbank ZAO, Ansar Bank, and Mehr Bank). The sanctions also now reach a number of Iranian entities involved in or supporting the Iranian nuclear programme, and over 70 shipping companies affiliated with the Islamic Republic of Iran Shipping Lines ("IRISL") and incorporated in Germany, Isle of Man (the UK), Malta, Cyprus and Hong Kong.

The amendments to the EU sanctions against Libya (EU Regulation 204/2011, as amended) add one individual and one entity (Afriqiyah Airways) to the EU list of designated parties.

The amendments to the EU sanctions against Syria (EU Regulation 442/2011) add 23 individuals to the list of EU designated parties, including Syrian President Bashar al-Assad and leading members of his regime.

The amendments to the EU sanctions against Belarus (EU Regulation 765/2006, as amended) target 13 new individuals, principally members of the Belarusian judiciary, supporting President Lukaszenko.

The applicable Regulations freeze all funds and economic resources that belong to or are owned, held or controlled by the newly designated parties. In parallel, the Regulations prohibit making available any funds or economic resources, directly or indirectly, to or for the benefit of the designated parties. This prohibition effectively bars any business dealings with the designated parties, subject to narrow exemptions that can provide a basis for Member State licensing. Member States extend the prohibition to entities owned or controlled by the designated parties, but there is no uniform threshold for “control” across the various Member State authorities. We generally advise clients to consult Member State authorities prior to any transaction with entities in which a designated party owns a stake of 25% or more.

The Member States are authorized to release frozen funds in certain circumstances, including as necessary to satisfy the basic needs of the designated persons.

US Sanctions Developments

Imposition of Additional Sanctions Under the Iran Sanctions Act

On May 24, the Obama Administration imposed ISA sanctions against seven firms: Petrochemical Commercial Company International (PCCI, of Jersey/Iran), Royal Oyster Group (UAE), Speedy Ship (also known as Sepahan Oil Company, of UAE/Iran), Tanker Pacific (Singapore), Ofer Brothers Group (Israel), Associated Shipbroking (Monaco), and Petróleos de Venezuela (“PDVSA”, the state-owned oil company of Venezuela). All of the newly sanctioned companies either supplied refined petroleum products to Iran, such as gasoline or reformate, or provided tankers to the IRISL, itself a sanctioned entity for weapons proliferation activities. These new sanctions bring to nine the total number of firms targeted under ISA, supplementing prior action against Naftiran Intertrade Company and Belarusneft, in September 2010 and March 2011, respectively, for their activities in the Iranian oil sector.

The ISA permits the President to select at least three from a menu of nine sanctions when persons are found to have engaged in sanctionable conduct. The seven companies sanctioned yesterday were subjected to varying sanctions, with PCCI, Royal Oyster Group, Speedy Ship and Associated Shipbroking being subjected to the most severe sanctions that prohibit them from US foreign exchange transactions, US banking transactions, and US property transactions. To implement these sanctions, the latter three entities were added to the List of Specially Designated Nationals and Blocked Persons (the “SDN List”) published by the Treasury Department’s Office of Foreign Assets Control (“OFAC”); PCCI was already on the SDN List. The ISA sanctions thus will block the assets of these four entities that are in the United States or that come into the United States or into the possession or control of a US person, and will prohibit all dealings by US persons with them.

Tanker Pacific and Ofer Brothers Group were sanctioned for failing to exercise due diligence in a transaction involving IRISL dating back to September 2010. The State Department fact sheet describing the action under ISA notes that these sanctions demonstrate that the US government will hold companies accountable when they "should have known" that they were providing sanctionable goods or services to Iran. The sanctions against Tanker Pacific and Ofer Brothers Group prohibit them from (i) securing any financing from the U.S. Export-Import Bank, (ii) obtaining loans or credits valued at over $10 million in a twelve-month period from US financial institutions, unless such loans are for activities to relieve human suffering, or (iii) receiving US export licenses. The third sanction pertaining to export licenses means that no person (whether a US or non-US person) may export or reexport to these entities any items that require US governmental export licensing, including but not limited to items that require licensing under the Export Administration Regulations ("EAR"), administered by the Commerce Department's Bureau of Industry and Security, or the International Traffic in Arms Regulations, administered by the State Department's Directorate of Defense Trade Controls. This sanction would not appear to prohibit exports or reexports of US-origin and US-content items classified as EAR99 under the EAR, because such exports do not require licensing.

The sanctions against PDVSA prohibit it from (i) competing for US government procurement contracts, (ii) securing financing from the Export-Import Bank of the United States, and (iii) obtaining US export licenses. As with the sanctions against Tanker Pacific and Ofer Brothers Group, the third sanction does not prohibit the export or reexport to PDVSA of US-regulated items that do not require export licensing, such as items classified as EAR99. The Administration also noted that the sanctions against PDVSA will not apply to PDVSA's subsidiaries (such as CITGO in the United States) or to PDVSA's sale of oil to the United States or other markets.

In a related move, President Obama also issued an Executive Order on May 23 requiring the Departments of State and Treasury to issue rules and regulations to implement ISA sanctions that require private-sector involvement, including the sanctions that prohibit US financial institutions from providing loans or credit to sanctioned entities, prohibit sanctioned entities from engaging in certain foreign exchange transactions, and prohibit payments between financial institutions that would assist a sanctioned entity.

New Non-Proliferation Sanctions

Also on May 24, the Administration announced sanctions against 16 individuals and companies under the Iran, North Korea, and Syria Nonproliferation Act for proliferation-related activities. The sanctions (i) ban the designated entities from US government contracting and from US government assistance programs, (ii) ban the provision of defense articles and services to these entities, and (iii) suspend/deny existing and new licenses involving these entities for the transfer of items controlled under the EAR. The sanctions do not apply to the entities' respective countries or governments. These entities are located in Belarus, China, Iran, North Korea, Syria, and Venezuela.

New Sanctions Against Syria

President Obama on May 18 issued an Executive Order imposing sanctions against Syrian President Bashar al-Assad and six other senior Syrian leaders for abuses related to the crackdown against anti-government protesters. President Obama had issued a similar Executive Order in late April 2011 against two of Assad's relatives, another Syrian official, and two Syrian government entities. Like other asset-blocking measures, these 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. All dealings by U.S. persons with these designated persons also are prohibited.

Legislative Developments

Finally, a number of new sanctions bills have been recently introduced in Congress, including two proposals in the House of Representatives to tighten aspects of the sanctions against Iran and a

Senate bill entitled the "Iran, North Korea and Syria Sanctions Consolidation Act of 2011." We are closely tracking the progress of these measures and will plan to alert clients to any meaningful developments.

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Our EU and US offices are deeply involved in advising clients concerning the application of the EU and US sanctions and would be pleased to help clients navigate the new requirements affecting trade and investment with the targeted countries, entities and persons.

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

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