

## E-ALERT | International Trade Controls

April 27, 2012

### DEVELOPMENTS IN EU AND US TRADE CONTROLS

#### EU AND US EASE BURMA SANCTIONS, IMPOSE NEW MEASURES TARGETING IRAN AND SYRIA

As widely reported, the EU and US authorities recently took steps to ease sanctions on Burma (Myanmar) in response to Burmese parliamentary elections in which the main opposition party won 43 out of 45 available seats and as a result of other incremental measures by the Burmese government to permit the development of civil society.

On April 26, 2012, the EU Foreign Affairs Council (“EU Council”) adopted Decision 2012/225/CFSP suspending until April 30, 2013, all EU sanctions on Burma except the arms embargo and the embargo on equipment that might be used for internal repression. This move came a week after the visit to Burma by British Prime Minister David Cameron. The EU High Representative for Foreign Affairs and Security Policy, Catherine Ashton, is visiting Burma on April 28, 2012, in order to formally announce the suspension of the sanctions and open an EU delegation in Yangon.

Depending on the political developments in Burma, the EU Council will decide prior to April 30, 2013, whether to continue the suspension, remove the sanctions, or reinstate them.

In the United States, Secretary of State Hillary Clinton announced on April 4 that the United States would soon nominate an ambassador to Burma, ease travel restrictions on some senior Burmese government officials, and permit some exports of financial services to Burma. On April 17, the US Treasury Department’s Office of Foreign Assets Control (“OFAC”) issued General License No. 14-C, authorizing the exportation and reexportation of financial services to Burma in support of certain not-for-profit activities. Although these steps may be minor relative to the robust US sanctions still in place against Burma, they do open certain, specific opportunities for further trade with Burma and signal that further easing of the sanctions may occur in the future.

In an unrelated action, on March 23, 2012, the EU Council implemented the oil embargo and a number of additional restrictive measures against Iran adopted in January 2012. It also extended the ban on providing to Syria items that can be used for internal repression and adopted a ban on providing a range of luxury items to Syria.

In addition, US President Barack Obama issued an Executive Order on April 23, 2012 tightening sanctions against the Iranian and Syrian telecommunications industry in an attempt to curtail the ability of the Iranian and Syrian governments to monitor and suppress their own citizens’ freedom of speech.

## DEVELOPMENTS INVOLVING BURMA

### EU SANCTIONS AGAINST BURMA

#### Overview of EU Sanctions Against Burma

The EU has had robust sanctions in place against Burma for over 20 years. A 1996 EU “Common Position” consolidated previously imposed EU sanctions – which included an arms embargo imposed in 1990, the suspension of defense cooperation in 1991, and the suspension of most bilateral aid – and introduced a suspension of high-level government visits to the country along with a visa ban on a number of Burmese persons. A year later, the EU withdrew from Burma the Generalised System of Preferences (“GSP”) privileges.

From 2000 onwards, the EU regularly expanded its sanctions against Burma. In May 2000, [Regulation 1081/2000](#) added an export ban on any equipment that might be used for internal repression and imposed a freeze of funds and economic resources of certain designated Burmese persons and the parallel prohibition on making funds and economic resources available to these persons (“asset freeze”). In October 2004, [Regulation 1853/2004](#) introduced a ban on investment in certain Burmese state-owned enterprises. And in July 2007, [Regulation 830/2007](#) banned the import to the EU of Burmese gems, timber, and metals.

#### Current Relaxation

An easing of sanctions against Burma began in Europe in January 2012, when the EU Council announced that “historic changes” were underway and lifted the visa ban on a number of Burmese officials and their relatives, including the Burmese President, the Vice-Presidents, the Members of the Cabinet, and the Chairs of the two houses of Parliament.

Subsequently, in a [meeting on April 23, 2012](#), the EU Council agreed to suspend for one year all the EU sanctions against Burma, with the exception of the arms embargo, the embargo on equipment that might be used for internal repression, and the prohibition on providing related technical assistance, brokering services, financing, or financial assistance. The EU Council also removed 31 Burmese officials from the list of parties subject to the visa ban and asset freeze. This political decision was formally adopted by [Decision 2012/225/CFSP](#) of April 26, 2012. Importantly, under EU law, Council Decisions only bind Member States. Thus, the suspension will apply to private parties only after the Decision is implemented by the European institutions through a Regulation (expected to be published shortly).

Significantly, because the status and scope of the suspension remains under review, companies will want to monitor developments. In deciding to ease the sanctions, the EU Council announced that it will watch the situation in Burma closely and will review its decision to suspend sanctions prior to April 30, 2013. The Council listed the unconditional release of remaining political prisoners and additional efforts to end the internal conflict and to improve the access for humanitarian assistance in Burmese conflict zones as conditions for further relaxation of the EU sanctions.

The EU Council also announced that the EU will support the Burmese government by co-financing crisis management in the conflict zones; assisting the Government in developing and restoring Burmese administrative structures; encouraging Europe’s private sector to invest in Burma; reinstating the Burmese GSP; and supporting efforts by the Burmese government to ensure sustainable forestry and harvesting of timber.

## US SANCTIONS AGAINST BURMA

### Overview of US Sanctions Against Burma

US sanctions against Burma were first imposed in 1988, in the wake of a violent crackdown against peaceful protesters by the Burmese military. Over the next 25 years, as the Burmese military regime continued to restrict civil liberties and commit human rights violations, an array of statutes and regulations gradually increased US sanctions against Burma.

The sanctions, implemented primarily through the Burmese Sanctions Regulations (“BSR”), [31 C.F.R. Part 537](#), and administered by OFAC, impose a range of prohibitions, including five of particular note:

- First, the property and property interests of certain Burmese entities and persons identified on OFAC’s List of Specially Designated Nationals and Blocked Persons (“SDN List”) are blocked. US persons<sup>1</sup> are prohibited from dealing in the property or property interests of, or otherwise doing business with, blocked parties. Such blocked parties include a number of senior Burmese government officials, financial institutions, mining companies, and other private companies. The State Peace and Development Council (“SPDC”), the now-dissolved body through which the military regime controlled the Burmese government, is also listed as an SDN, though the Burmese government, its subdivisions, and agencies do not appear to be blocked.
- Second, the exportation or reexportation to Burma of most financial services from the United States or by US persons is prohibited. This prohibition sweeps broadly, but does not prevent a US company from exporting or reexporting goods or services, other than financial services, to Burma or from appointing an in-country distributor. A general license specifically authorizes transactions that are ordinarily incident to the export of goods, technology, or services (other than financial services) to Burma.
- Third, US companies and other US persons are prohibited from making certain new investments in Burma, particularly related to the economic development of resources located in Burma.
- Fourth, the importation into the United States of most products of Burma is prohibited.
- Finally, with limited exceptions, US persons (including those employed by non-US entities) may not approve, authorize, facilitate, or guarantee a non-US person’s transaction if the activity would be prohibited if performed by a US person or within the United States.

Taken together, these sanctions impose significant restraints on the ability of US parties to undertake business in, or related to, Burma. While US persons may sell most non-sensitive commercial goods and services to non-blocked Burmese parties pursuant to normal commercial terms, the blocking of a number of Burmese entities and the prohibitions on the exportation of financial services to Burma, new investment in Burma, the importation of Burmese-origin items, and facilitation greatly reduce the possible avenues for lawful US-Burma trade and investment.

### Improved Relations and Recent Changes

Although the US sanctions detailed above are still in force, change appears to be on the horizon. Relations between the United States and Burma are improving as the Burmese government relaxes restrictions on political participation and civil society.

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<sup>1</sup>For purposes of the BSR, the term “U.S. person” includes US citizens and permanent residents, regardless of where they are located or employed; all persons and entities within the United States; and all US incorporated entities and their non-US branches.

On April 4, 2012, Secretary of State Clinton announced that the US government was considering permitting some previously prohibited exports of financial services to Burma. She also indicated that the United States would begin easing travel restrictions on some Burmese senior government officials and would soon nominate an ambassador to Burma, with subsequent media speculation identifying Derek J. Mitchell, currently the administration's special representative and policy coordinator for Burma, as the most likely nominee to serve as ambassador.

Shortly thereafter, on April 17, OFAC issued [General License No. 14-C](#), authorizing the exportation and reexportation of financial services to Burma from the United States or by a US person in support of certain not-for-profit activities, related to meeting basic human needs in Burma; democracy building and good governance; educational, sporting, and religious activities in Burma; and non-commercial development projects directly benefiting the Burmese people.

While the financial services authorized for export by General License No. 14-C are fairly limited, the General License does allow US financial institutions to provide loans, insurance, and other banking services in support of a wide range of activities, including certain medical, food, sanitation, educational, and infrastructure projects.

### Preparing for the Possibility of Further Changes

These changes are relatively modest in comparison to the EU's sweeping suspension of sanctions and a similarly far-reaching recent easing of sanctions by the Canadian government.<sup>2</sup> However, the US government appears poised to continue rolling back sanctions if the Burmese government continues down the path of reform. In her April 4 address, Secretary Clinton affirmed that the United States is committed to meeting "action with action" in Burma and continuing the "policy of engagement that has encouraged" the Burmese government to undertake reforms. The Administration has also raised the prospect of a tiered easing across various sectors of the Burmese economy, deferring certain sectors where the risks of diversion or corruption may be higher.

Of course, any such further easing would presumably be contingent on further reforms by the Burmese government, as Secretary Clinton and the other foreign ministers of the Group of Eight ("G8") made clear in a joint statement released on April 12. The statement promised that "[t]he Ministers will consider the easing of sanctions," but "[a]t the same time. . . called on the Government of Burma/Myanmar to continue reform and reconciliation efforts." The statement suggested that particular actions—such as releasing all remaining political prisoners; removing legal conditions placed on those already released; ending all violence in ethnic minority regions; allowing humanitarian groups access to conflict zones and internally displaced persons; and severing military ties with North Korea—might induce further easing of the sanctions.

In addition, the pace and nature of such easing may be constrained by the complex patchwork of statutes that establish the legal basis for the US sanctions against Burma. Unlike some other US sanctions programs, the Burmese Sanctions Regulations have been established and amended at the specific direction of Congress pursuant to statutes passed in 1997, 2003, and 2008, and certain of these measures prescribe the specific conditions that must be established to support the lifting of sanctions. The Administration has reportedly indicated that it has the authority to ease at least some of the key sanctions on the basis of a determination (and notification to Congress) that it is in the national interest to do so.

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<sup>2</sup> On April 24, 2012, the Canadian government [lifted](#) a number of sanctions, including prohibitions on imports from Burma, exports to Burma, the provision of financial services to Burma, and the acquisition of financial services from Burma. However, Canada continues to enforce an arms embargo against Burma and asset blocking against certain designated Burmese persons.

Companies subject to US law may want to consider positioning themselves to capitalize on any future easing of US sanctions against Burma. In taking even the most preliminary steps to prepare for such easing, however, US persons must take care not to violate the BSR. For example, the prohibition on new investment in Burma covers not just actual expenditures or other tangible investments, but also “entry into contracts” related to developing economic resources in Burma. As a result, some executory contracts or other agreements contingent on the lifting of sanctions may be prohibited. Similarly, because US persons are prohibited from facilitating activity by non-US persons that would be prohibited if undertaken by US persons, US companies positioning to expand into Burma after sanctions are lifted must be careful not to facilitate prohibited activity by non-US affiliates, business partners, or other third parties.

We are well-positioned to advise clients on US and EU law relating to Burma, and on preparing for the possibility that expanded trade and investment in Burma may soon be authorized.

## DEVELOPMENTS INVOLVING IRAN AND SYRIA

### EU SANCTIONS AGAINST IRAN AND SYRIA

On March 23, 2012, the EU Council amended its sanctions against Iran, updating the two key measures currently in place:

- The EU Council adopted [Regulation 267/2012](#), which replaces Regulation 961/2010 (the EU Regulation imposing sanctions targeting the Iranian Government’s nuclear proliferation activities). Regulation 267/2012 implements the oil and petrochemicals embargo and other provisions adopted by the EU on January 23, 2012 (as described in our January 25, 2012 [e-alert](#)). Regulation 267/2012 also consolidates prior amendments to the Iran sanctions.
- The EU Council also [amended](#) Regulation 359/2011 (by which the EU imposed sanctions for the Iranian government’s human rights violations). The amended Regulation introduces new restrictions on the sale, supply, transport, and export of telecommunications-monitoring equipment for use by the Iranian regime, and also designates additional parties subject to the asset freeze.

Finally, on April 23, 2012, the EU Council adopted [Decision 2012/206/CFSP](#) expanding sanctions against Syria. The new sanctions expand the list of prohibited items that can be used for internal repression, and also ban the provision of a range of luxury items (the specific items that are subject to the prohibition have yet to be listed).

### US SANCTIONS AGAINST IRAN AND SYRIA

In an unrelated sanctions development, President Barack Obama issued an [Executive Order](#) effective April 23, 2012 blocking the property of a number of parties responsible for using information technology to commit human rights abuses in Iran and Syria. Most notably, the Order blocks the property of Iranian internet service provider Datak Telecom, on the grounds that the company has collaborated with the government of Iran’s surveillance and repression of Iranian internet users. The Order also blocks the property of a number of persons already subject to blocking under other Executive Orders, including the Syrian General Intelligence Directorate and its Director, Ali Mamluk, the Syrian telecommunications company Syriatel, Iran’s Ministry of Intelligence and Security, Iran’s Islamic Revolutionary Guard Corps, and Iran’s Law Enforcement Forces.

In addition, the Order blocks the property of anyone determined by the Secretary of the Treasury, in consultation with the Secretary of State, “to have operated, or to have directed the operation of,

information and communications technology that facilitates computer or network disruption, monitoring, or tracking that could assist in or enable serious human rights abuses by or on behalf of the Government of Iran or the Government of Syria” or to have provided “goods, services, or technology to Iran or Syria likely to be used to facilitate” such repressive activities, along with any person who has assisted, sponsored, or supported such activities or who is owned or controlled by a blocked party. In light of the significant media and Congressional attention on internet surveillance and electronic speech suppression in Iran and Syria, it is likely that the Secretary of the Treasury will designate additional parties for blocking.

Virtually all dealings with blocked parties by anyone within the United States or by US citizens, US permanent residents, and US-incorporated companies, wherever located, are prohibited.

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The EU and US sanctions regimes against Burma, Iran, and Syria are fluid and may change again in the near future. We will circulate additional e-alerts concerning these developments as circumstances warrant.

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