

United States Suspends Sudan Sanctions

January 13, 2017

International Trade Controls

In response to “positive actions” taken by the Government of Sudan over the past six months, the U.S. Department of the Treasury’s Office of Foreign Assets Control (“OFAC”) announced today [an amendment](#) to the Sudanese Sanctions Regulations (“SSR,” 31 C.F.R. Part 538) that effectively suspends virtually all of the U.S. sanctions against Sudan by authorizing through a general license (hereinafter, the “General License”) all transactions otherwise prohibited by the SSR and two related executive orders (13067 and 13412). The General License will take effect when it is published in the Federal Register, which is scheduled to occur on Tuesday, January 17, 2017.

OFAC’s issuance of the General License accompanies a [new Executive Order that President Obama signed today](#), which revokes, effective July 12, 2017, key provisions of the two executive orders that established the Sudan sanctions, provided that Sudan sustains the “positive actions” of the last six months. Such revocations, if they were to take effect, would result in the termination of the U.S. sanctions against Sudan.

The General License authorizes a broad range of export and import activity with Sudan, and investment in Sudan, by U.S. persons. Such activities had been prohibited by U.S. sanctions for nearly two decades. In addition, the General License unblocks frozen assets of the Government of Sudan. OFAC has published a [fact sheet](#) and [frequently asked questions](#) to provide additional information and guidance on the operation of the General License.

Importantly, the General License and President Obama’s Executive Order do not affect the limited sanctions regimes in place with respect to the Darfur region of Sudan and the separate country of South Sudan, the existing U.S. arms embargo against Sudan, or the general export controls applicable to Sudan maintained by the U.S. Commerce Department’s Bureau of Industry and Security (“BIS”). As a result, U.S. persons continue to be prohibited from dealing with individuals and entities whose property and interests in property are blocked pursuant to the separate U.S. sanctions regimes relating to Darfur and South Sudan, and BIS authorization will still be required for the export or reexport to Sudan of certain items that are subject to U.S. jurisdiction.

Improved Cooperation by the Government of Sudan

Today’s actions reflect a sea change in U.S.-Sudan relations. A comprehensive trade embargo was first imposed against Sudan in 1997 by President Clinton on the grounds that Sudan was a sponsor of international terrorism. In addition, the sanctions have been intended to pressure Sudan to improve its human rights record.

In issuing the new Executive Order and the General License, the Obama Administration indicated that the suspension of U.S. sanctions is intended to support and sustain positive

actions taken by Sudan over the past six months, including enhancement of U.S.-Sudan bilateral counterterrorism and security cooperation; a reduction in offensive military activity by Sudan, including a pledge to maintain a cessation of hostilities in areas of conflict in Sudan (including Darfur, Southern Kordofan state, and Blue Nile state); cooperation on addressing regional conflicts, such as efforts to resolve the civil war in South Sudan; and efforts to improve access for humanitarian assistance in Sudan.

As described further below, Sudan remains on the U.S. government's State Sponsors of Terrorism List, and neither the General License nor the Executive Order will have an impact on that listing, or on certain export/reexport restrictions related to Sudan. Further, Sudanese President Omar al-Bashir's indictment by the International Criminal Court on charges of genocide is not affected by these changes. However, the Obama Administration's actions essentially normalize much commercial activity between the United States and Sudan.

The General License

The General License broadly authorizes U.S. persons to engage in trade and other business dealings with Sudan. "U.S. persons" for these purposes are (i) companies organized under U.S. law and their non-U.S. branches and offices; (ii) U.S. citizens and lawful permanent residents ("green-card" holders), regardless of where they reside or by whom they are employed; and (iii) any person physically present in the United States. U.S. financial institutions may now participate in and facilitate such transactions (as well as the Sudan-related transactions of non-U.S. persons), and are authorized to take any actions necessary to unblock the property or interests in property of the Government of Sudan that were blocked under the SSR.

Under the General License, the property and interests in property of the Government of Sudan, and any entity owned or controlled by the Government of Sudan, that are or come into the United States or the possession or control of a U.S. person no longer must be blocked. Additionally, the importation of goods or services of Sudanese origin into the United States is now permitted, as is the exportation or reexportation to Sudan of goods, technology, or services from the United States or by a U.S. person (wherever located), subject to obtaining any required export licenses. U.S. persons also are permitted to facilitate transactions with Sudan by non-U.S. persons.

The General License also supersedes prior Sudan general licenses that OFAC had issued, which authorized certain limited activities with Sudan (such as the exportation and reexportation to Sudan of certain food items and certain services, software, and hardware incident to personal communications), as well as any specific licenses pertaining to Sudan. This means that U.S. persons are no longer required to comply with the conditions that OFAC had imposed in these prior general or specific licenses (except to the extent that such conditions were based on other statutes or regulations, such as the U.S. Export Administration Regulations ("EAR") administered by BIS), and specific licenses will not need to be renewed.

Due to existing statutory authority, however, some minor conditions will remain in place under the General License regarding the exportation and reexportation to Sudan of agricultural commodities, medicine, and medical devices that are subject to the EAR and are classified as EAR99. Although such items may be exported and reexported to Sudan pursuant to the General License, they must be shipped within 12 months of the date on which the relevant contract is signed.

Remaining U.S. Trade Controls Restrictions Relating to Sudan

The General License does not affect restrictions imposed by other U.S. sanctions programs. For example, U.S. persons, as defined above, still may not engage in transactions or dealings with, and must block the property and interests in property of, individuals or entities identified on OFAC's List of Specially Designated Nationals and Blocked Persons ("SDN List") pursuant to authorities other than the SSR and Executive Orders 13067 and 13412. This includes transactions or dealings with SDNs designated pursuant to the Darfur Sanctions Regulations (31 C.F.R. Part 546) or the South Sudan Sanctions Regulations (31 C.F.R. Part 558) and their related executive orders, among others.

Additionally, BIS has not announced any relaxation of the export controls it administers relating to Sudan. As a result, although it will be permissible to export and reexport to Sudan items subject to the EAR and classified as EAR99 (as well as items that qualify for export or reexport under an EAR license exception, such as certain personal communications equipment and software), a BIS authorization still will be required to export or reexport to Sudan any item subject to the EAR (including U.S.-origin items and non-U.S.-origin items that incorporate more than 10% controlled U.S.-origin content by value) that is on the U.S. Commerce Control List ("CCL"). This includes items controlled on the CCL only for anti-terrorism reasons. The U.S. government has not made any announcement indicating an intention to remove Sudan from the State Sponsors of Terrorism List. End-use and end-user controls in the EAR also continue to apply, and could restrict the export/reexport to Sudan of even some EAR99 items.

Additionally, the export and reexport to Sudan of defense articles and defense services controlled on the U.S. Munitions List of the International Traffic in Arms Regulations ("ITAR") continue to require authorization from the U.S. State Department, and license applications are subject to a policy of denial (subject to very limited exceptions pertaining to the United Nations and peacekeeping operations).

Finally, neither the General License nor President Obama's Executive Order is retroactive. OFAC will continue to pursue enforcement actions for proscribed conduct that pre-dates the effective date of the General License.

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Covington has deep experience advising clients concerning international sanctions, including with respect to Sudan. We will continue to monitor developments in this area, and are well-positioned to assist clients in understanding how these recent announcements may affect their business operations.

If you have any questions concerning the material discussed in this client alert, please contact the following members of our International Trade Controls practice:

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