



OFAC Sanctions: Overview and Update

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Office of Foreign Assets Control (OFAC)

- Administers and enforces economic and trade sanctions
- Based on US foreign policy and national security goals
- Against targeted countries, terrorists, narcotics traffickers, and proliferators of weapons of mass destruction.



COMPREHENSIVE SANCTIONS

- **CUBA**



- **IRAN**



- **SUDAN**



- **MOST TRANSACTIONS BY US PERSONS IN COUNTRY OR WITH GOVERNMENTS PROHIBITED**
- **FACILITATION OF ACTIVITIES OF FOREIGN PERSONS PROHIBITED**
- **NO EXPORTS OR TRANSHIPMENTS OF U.S. GOODS OR FROM U.S.; NO IMPORTS**
- **REEXPORTS OF U.S. GOODS BY FOREIGN PERSONS LIMITED TO EAR 99, 10% DE MINIMIS CCL OR TRANSFORMED CCL ITEMS; NO ITAR COMPONENTS**

Specific to Cuba



- Most restrictive
- Includes Cuban nationals outside Cuba; must block funds
- TWEA – Foreign companies owned or controlled by U.S. person subject to restrictions
- Reexports by foreign persons not subject to policy of denial if < 20 percent U.S. content

Specific to Iran



- Rejection vs. blocking of government assets (except SDNs)
- U.S. person may export with knowledge specifically for Iran if ascertain all four conditions are present:
 1. NLR (EAR 99)
 2. Incorporated into foreign good and <10% or substantially transformed
 3. No prohibited end-use under EAR
 4. Foreign items not intended or uniquely suited for use in petroleum or petrochemical industry
- Imports of carpets and foodstuffs may be authorized

Specific to Sudan



- Southern Sudan excluded from Sanctions:
Southern Sudan, Southern Kordofan/Nuba Mountains State, Blue Nile State, Abyei, Darfur
Marginalized areas in and around Khartoum
(official camps for internally displaced persons: Mayo, El Salaam, Wad El Bashir, and Soba)
- Oct. 31, 2007 Revisions – Discussed Below

Limited Sanctions

- BURMA (MYANMAR)
 - No financial services to Burma
 - No imports of Burmese goods
 - Exports and transactions unrelated to financial services allowed



Limited Sanctions

- **SYRIA**



- **NORTH KOREA**

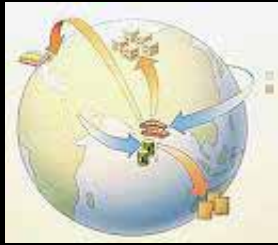


- **No exports or reexports of U.S. origin goods; even EAR 99**
- **General policy of denial (only applies to luxury goods and certain CCL items for North Korea)**
- **North Korean imports restricted**
- **Most services allowed**
- **No “facilitation” issues**

Other Sanctions

- Balkans
- Côte d'Ivoire (Ivory Coast)
- Congo
- Diamond Trade
- Iraq
- Lebanon
- Liberia
- Narcotics Trafficking
- WMD Nonproliferation
- Terrorism
- Zimbabwe

LARGELY ENFORCED THROUGH SDN LIST



Risks – Foreign Subs

- **Facilitation Risks**

- Approval/facilitation of acts prohibited to U.S. persons
- U.S. persons working at foreign sub; recusal?

- **Blocking Statutes**

- Cuba
- Legislation pending to extend Iran sanctions to entities owned or controlled by U.S. persons

- **Reexports**

- Possible presumption of knowledge of specific destination
- Involvement of U.S. logistics support

Risks – Foreign Parents



- **Reexport Risks**

- Unlawful reexports
- Parent liability for procuring transshipment (innocent dupe)
- “General inventory” versus transshipment
- Knowing violations - U.S. subsidiary liability and/or conspiracy
- No EAR99 reexports to Syria or North Korea (unless 10%)

- **Facilitation Risks**

- Advice on Cuba, Iran, Sudan, Burma transactions that are illegal for U.S. persons.

GENERAL INVENTORY GUIDANCE (July 7, 2002)

- U.S. EXPORTER AWARE OF REEXPORTS TO IRAN FROM GENERAL INVENTORY OF DISTRIBUTOR; CONCERNED MAY HAPPEN AGAIN
- **OFAC DID NOT SAY LAWFUL OR UNLAWFUL:**
MUST NOT EXPORT GOODS TO A THIRD PARTY IF HAVE REASON TO KNOW INTENDED SPECIFICALLY FOR IRAN.
- **NUMEROUS WAYS TO HAVE REASON TO KNOW;
FACTS INDICATING:**
 - PURCHASED SPECIFICALLY TO FILL IRANIAN ORDER
 - BUYER DEALS EXCLUSIVELY OR PREDOMINANTLY WITH IRAN
 - OTHER FACTORS: COURSE OF DEALINGS, GENERAL KNOWLEDGE, ETC.

CAUTION: NOT AN OFAC “EXCEPTION”



Information & Informational Materials Exemption

- Berman Amendment: IEEPA § 1702(b)(3); TWEA § 5(b)(4)
 - Includes but not limited to publications, films, posters, phonograph records, photographs, microfilms, microfiche, tapes, compact disks, CD-ROMs, artworks, news wire feeds in any format or medium of transmission even if commercial products
- No CCL Items (e.g., no controlled technology or software)
- Traps for the unwary. OFAC interpretations may prohibit many related activities such as development of materials, marketing, distribution, and other activities without a license. Stricter restrictions may apply to actions with government entities and/or products that are not “written”

SDNs and Blocked Persons

- **Person designated under various OFAC sanctions programs**
- **Over 3,000 persons/entities all over globe**
- **Transactions with an entity on the SDN List are prohibited**
- **Blocking (seizing) required; reports must be submitted to OFAC**



IEEPA Penalties Increased

- IEEPA Penalties (Iran, Sudan, Burma, Syria)
 - Max fine **increased** from \$50,000 **to \$250,000** per violation
 - Max confinement still **20 years**
 - Apply to violations where enforcement action was pending or commenced on or after October 16, 2007
- TWEA Penalties (Cuba and North Korea)
 - Max fine **\$1 million** for entities; \$100,000 for individuals
 - Max confinement **10 years**





OFAC – 2007

Major Changes

- 01/30/07 Global terrorism definition
- 04/03/07 New diplomatic pouch exception
- 06/20/07 Palestinian Authority General License
- 08/30/07 Publishing activities augmentation
- 10/25/07 More Iranian Bank SDNs
- 10/31/07 Sudan Sanctions Regulations amendments

Clarification of Global Terrorism Sanctions Regulations

- What does it mean “to be otherwise associated with” terrorists?
 - Own or Control
 - Act for or on behalf of or conspire with
 - Provide financial, material, or technological support

72 Fed. Reg. 4206 (Jan. 30, 2007); 31 C.F.R. 594.316



Diplomatic Pouch Exception Sudan and Iran

- Authorizes exportation or reexportation of all goods or technology from the U.S. or by U.S. persons to third-country government or its contractors or agents, for shipment to Sudan or Iran via diplomatic pouch.
- Must still observe BIS restrictions to third country government.

72 Fed. Reg. 15831 (Apr. 3, 2007);
31 C.F.R. 560.521(b), 31 C.F.R. 538.516(b)



Palestinian Authority General License No. 7

- Election of Hamas: Sanctions extended to the PA
- Six licenses had authorized some transactions with the PA
- New License: Recent events led to general license **authorizing “all transactions otherwise prohibited by the terrorism sanctions programs with the Palestinian Authority”**
- **Dealings with Hamas remain prohibited** (Gaza de facto government)

72 Fed. Reg. 61517 (Oct. 31, 2007);
Gen. Lic. No. 7 (June 20, 2007)

Publishing Activity Change

- Certain transactions “necessary and ordinarily incident to publishing and marketing of [written materials]” that previously required license were authorized in 2004-2005 if not with government
- **Aug 2007 Expansion**
 - Authorized augmentation of written publications in e-format through embedded software for reading, browsing, navigating, or searching and exportation of such software under conditions
 - Written publications include those only in e-format
 - Other minor changes

72 Fed. Reg. 50047 (Aug. 30, 2007);
31 C.F.R. §§ 515.577, 537.526, 538.529 & 560.538



Iran Designations

October 25, 2007

- Touted as new sanctions but actually designation of new global terrorism & WMD SDNs
- “Rejection” under ITR; “blocking” required for SDNs
- Added to previous designations, most Iranian banks now blocked and past licenses are not valid

**Bank Markazi Jomhuri Islami Iran (Central Bank of Iran);
Bank Mellat; Bank Melli; Bank Saderat; Bank Sepah; Bank Tejarat;
Bank Maskan; Bank Kargoshaee; Bank Sanat Va Madan;
Deutsch-Iranische Handelsbank; Europaeisch-Iranische Handelsbank;
Bank Josiaiwi Keshahvarzi; Bank Refah Kargaran;
Bank Taavon Keshavarzi Iran; Iran Overseas Investment Bank Ltd**

- **IMPORTANT:** Includes branches outside Iran

2007 Designations of Interest

- BURMA – Sr. officials; most banks previously listed
- BELARUS – Includes Sr. officials; Belarusian State Concern for Oil and Chemistry; Belneftekhim USA
- COLOMBIA – Licenses allowed for two SDNTs taken over by government
- DEM. REPUBLIC OF CONGO
- SYRIA/LEBANON
- SUDAN – Includes a number of businesses

Revised Sudan Sanctions



- Prohibits transactions relating to petroleum and petrochemical industries (P&PI). §538.210
- Conditionally exempts Specified Areas (BUT no Govt, PPI, TSRA items). §538.212(g)(1)
- Revises definition of Govt of Sudan to exclude Govt of Southern Sudan. §538.305
- Defines “Specified Areas” and “marginalized areas around Khartoum.” §538.320

72 Fed. Reg. 61513 (Oct. 31, 2007); 31 C.F.R. Part 538

Revised Sudan Sanctions (cont'd)

- Clarifies that goods may not transit Sudan. §538.417
- Exempts some financial transactions for activity permitted by SSA. §538.418
- New general licenses. §§538.530, 538.531, 538.532
 - Specific licenses under previous SSA expire June 30, 2008
 - Exempts official USG and UN business (includes contractors). Must see official contract and keep records. No CCL items or payments to SDNs.
 - Allows humanitarian transshipments through nonexempt areas

72 Fed. Reg. 61513 (Oct. 31, 2007); 31 C.F.R. Part 538



Enforcement Actions

TYCO VALVES & CONTROLS MIDDLE EAST, INC.

- Exported goods from outside the U.S. to Iran
- Violation was voluntarily disclosed
- Settled for \$450,905.50



Enforcement Actions (cont'd)

GUIDANT CORPORATION

- Exported medical supplies for ultimate resale to **Iran** and **Iraq** and provided training
- Vascular intervention and cardiac surgery business units
- Violation was voluntarily disclosed
- Settled for \$277,017



Enforcement Actions (cont'd)

VARIAN, INC.

- Exported U.S. origin software to **Iran** and **Iraq** without a license
- Violation was voluntarily disclosed
- Settled for \$114,958
- U.S. company settled on behalf of Swiss and German subsidiaries



Enforcement Actions (cont'd)

LOGICACMG INC.

- Predecessor provided technical support for and supplied a computer system it knew to be destined for **Cuba**
- Predecessor knew that the exports were prohibited
- Violation was not voluntarily disclosed by predecessor
- Settled by successor LogicaCMG for \$220,000



Enforcement Actions (cont'd)

TRAVELOCITY.COM

- Provided travel-related services involving **Cuba** or **Cuban nationals** on 1,458 occasions between January 1998 and April 2004
- Violation was not voluntarily disclosed
- Settled for \$182,750



Enforcement Actions (cont'd)

NATIONAL AUSTRALIA BANK LTD.

- Processed transactions through NYC branch or through correspondent accounts held by it at other U.S. banks in violation of **Burma**, **Sudan** and **Cuba** sanctions
- Settled for \$100,000
- 90% mitigation: NAB voluntarily disclosed and implemented significant remediation.



Compliance

- Screening for SDNs/countries
 - New business – before contract
 - Pre-transactions or continuous
 - Use of vendors
- Foreign Sub Policies
 - Evaluate/limit integration or parent approval
 - Cuba compliance
 - Recusal policy for U.S. persons – OFAC position?
 - Recognize SEC Office of Global Risk Inquiries
 - Risk-based corporate compliance program may avoid blocking statute issues
 - Note: Branches are subject to U.S. law



Compliance

- Foreign Entities with U.S. Operations
 - Actions of non-U.S. persons while in the U.S. subject to sanctions
 - No assistance from U.S. offices
 - SDN screening for U.S. operations
 - Cannot keep U.S. offices ignorant – ABN AMRO

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