New Sanctions Against Libya

March 4, 2011

In response to the increasingly violent response by the Qadhafi regime to the protests and revolution occurring in Libya, the international community has responded with a series of new trade sanctions against Libya aimed at Colonel Qadhafi, his family and associates, and his government. Companies are now advised to consider very carefully the impact of the new sanctions before proceeding with any business dealings with Libya.

In rapid succession, the United Nations, United States, European Union and countries including the United Kingdom and Canada, have adopted wide-ranging sanctions against Libya. These sanctions respond to recent violence in Libya by the government of Colonel Muammar Qadhafi, and include export restrictions, asset freezes and travel bans, among other things.

These sanctions mainly focus on financial transactions and trade in materials that could be used to promote violence. At the same time, the sanctions are broadly drafted and have the potential to affect virtually any company that does business in Libya directly or indirectly. Companies doing business in Libya must therefore be aware of—and adapt to—a rapidly changing legal environment.

United Nations

On 26 February 2011, the United Nations Security Council adopted Resolution 1970 in response to the use of force against civilians by the Libyan government. The UN sanctions mainly comprise three parts: an arms embargo, a travel ban and an asset freeze.

The arms embargo prohibits the direct or indirect supply, sale or transfer to the Libyan government of "arms and related material of all types" with certain limited exceptions. This prohibition broadly applies to weapons, ammunition, military vehicles and equipment, paramilitary equipment and spare parts. This prohibition also forbids directly or indirectly providing technical assistance, training, financial or other assistance relating to military activities or the provision or maintenance of arms or related material, including the provision of armed personnel. The arms embargo also bar countries from procuring any of these items *from* Libya.

The UN sanctions also include a broad asset freeze. This requires countries to freeze all funds, financial assets and other economic resources which are directly or indirectly owned or controlled by Colonel

Qadhafi and his sons and daughter. This also means that countries must not only freeze these assets, but also prevent any funds, financial assets or economic resources from being made available to—or for the benefit of—any of these individuals.

Finally, the UN sanctions include a travel ban. This requires countries to prevent the entry into or transit through their territories of certain individuals, including Colonel Qadhafi, his children and individuals associated with his regime.

United States

The day before the UN sanctions were adopted, US President Barack Obama issued an Executive Order imposing sanctions on Libya. This Executive Order took effect on 25 February 2011.

The US sanctions seek to freeze property and assets and prohibit certain transactions related to Libya. More specifically, the US sanctions broadly prohibit the transfer, payment, export, withdrawal of property, or interests in property, of designated individuals. The US sanctions also prohibit any other dealings in property or interests in property with any such individuals, or any contribution to—or for the benefit of—any person covered by the sanctions. The individuals covered are specified in the US government's specially designated and blocked parties lists, and generally include Colonel Qadhafi, members of his family or those otherwise affiliated with him.

Despite these far-reaching prohibitions, the US Office of Foreign Assets Control issued a general license on 1 March 2011 enabling the provision of goods and services for the "conduct of official business" by Libya's diplomatic missions to the United States and United Nations. Notably, Libya's ambassadors to the United States and United Nations have reportedly broken with Qadhafi. This does not appear to represent a relaxation of the sanctions, but more constitutes a reaction to the evolving political situation.

European Union

Following the United Nations and United States, on 28 February 2011, the European Union adopted a Council Decision, 2001/137/CFSP, adopting new sanctions in view of the situation in Libya. Certain aspects of this decision were implemented in Council Regulation (EU) No. 204/2011, published on 3 March 2011.

The scope of the EU sanctions mirrors the UN sanctions, but goes farther in imposing tougher rules concerning export restrictions, asset freezes and travel bans.

The EU export restrictions prohibit the direct or indirect sale, supply, transfer or export of equipment used for "internal repression." This equipment and related services are covered by the Common Military List, as well as equipment listed in an annex to the EU restrictions, and is broad in scope.

The EU asset freeze is also broader in scope than the UN sanctions. While the UN imposed asset ban applies only to Colonel Qadhafi and his children, the EU financial sanctions target a number of additional individuals.

With respect to the travel ban, the Council Decision adds several other individuals to the UN list, discussed above. The individuals subject to the travel ban will be prohibited from entering into or transiting through the territories of the EU.

United Kingdom

The United Kingdom has also taken steps to initiate tough sanctions on Libya, implementing and going beyond the UN sanctions. In particular, on 27 February 2011, the UK government implemented The Libya (Financial Sanctions) Order 2011, 2001 No. 548. This order implements the UN asset freeze, but suggests a broad scope for its application. Beyond designated individuals, the government acknowledges that the Qadhafi family has a significant influence over the assets of the Libyan state itself that could fall within the definition of "control." Thus, the financial sector is advised to conduct proper due diligence over transactions involving Libyan state assets to determine whether they are subject to the asset freeze.

Also on 27 February 2011, the UK government signed an Order under the UK Export Control Act 2002 which prohibits the export of uncirculated Libyan banknotes from the UK. The UK has also implemented the UN arms embargo export ban.

The UK has adopted a travel ban required by UN sanctions and also removed the exemption from normal UK immigration controls that previously applied to Colonel Qadhafi and members of his family.

Canada

In addition to the UN sanctions, which Canada formally implemented on 27 February 2011, Canada has imposed additional financial restrictions on Libya. In particular, Prime Minister Stephen Harper announced that the Canadian government will freeze the assets of the government of Libya and its institutions and agencies, including the Libyan Central Bank.

Complying with the New Sanctions

In this fast-moving environment, the global imposition of sanctions on Libya have the potential to affect companies that conduct business in Libya. Because of their broad reach, the impact has the potential to be significant. Companies based in or having affiliates in the United States, European Union or Canada should carefully monitor all business activities that might involve Libya—even indirectly. Companies producing products or services that could even remotely be associated with defence or finance must be especially vigilant and scrutinise their own activities carefully, as well as the activities of their counterparties.

Companies should also be aware of differences between the different sanctions regimes. For example, the United States and United Kingdom handle payments owed to designated individuals under pre-existing contracts differently. While US sanctions simply prohibit transfers to designated individuals notwithstanding any prior obligation, the UK sanctions require that such payments be made into a frozen account and that the HM Treasury is informed.

Even with the imposition of these sanctions, however, it is entirely possible that companies may continue to do business in Libya, either under a license or because they are outside the scope of the sanctions. At the same time, given the current environment, the new sanctions are likely to create reluctance among shippers and financial institutions to be involved in Libya-related transactions.

All companies are well-advised to review and understand the details of these new restrictions as they continue to evolve, or face substantial adverse consequences and penalties