Fast-Moving Developments in Middle East Prompt Changing Trade Sanctions

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Fast-moving developments in the Middle East and North Africa have resulted in the swift imposition of new U.S. and EU trade sanctions. Companies doing business in the region must be aware of the sanctions and should carefully screen all parties and terms of transactions in order to avoid risking substantial penalties and significant damage to their reputations.

Popular uprisings throughout the Middle East and North Africa have prompted efforts by the United Nations and by governments, including the United States and European Union, to support democratic principles by imposing trade sanctions against autocratic regimes and affiliated parties. Sanctions against parties in Syria and Libya have been imposed broadly and quickly this year and, to address continual changes effected by the popular uprisings, the sanctions have been relaxed and/or expanded accordingly. Companies doing business in or with parties in this region should be aware of the ever-changing sanctions landscape and carefully screen all parties to transactions to ensure compliance with the rules. Failure to do so can result in significant penalties and considerable reputational damage.

Libya

Background

In February 2011, following actions by the government of Muammar Qadhafi against the people of Libya, the United Nations sanctioned Libya. Several countries imposed their own sanctions against Qadhafi, his government and affiliated parties. Pursuant to President Obama's Executive Order, the U.S. government blocked the property and interests of the Government of Libya, its agencies and senior officials, including Qadhafi, as well as his family and close associates, and the Central Bank of Libya, including its subsidiaries. The U.S. Department of the Treasury Office of Foreign Assets Control (OFAC) added these parties to its list of Specially Designated Nationals, prohibiting any U.S. person from dealing with them. OFAC issued new Libya sanctions regulations and guidance on these sanctions, as well as a number of general licenses authorizing certain transactions with the sanctioned Libyan parties.

Similarly, the EU Council of Ministers adopted a raft of legislative measures against Libya. Given the perceived gravity of the situation in Libya the EU froze funds and prohibited making funds or economic resources available to designated persons associated with Qadhafi and his regime. The EU also imposed an arms embargo and prohibited the sale, supply, transfer or export, directly or indirectly, of any equipment that might be used for internal repression to any person, entity or body in Libya or for use in Libya.

Recent Developments

In September 2011, following the ouster of the Qadhafi regime by the popular uprising and the advent of the Transitional National Council of Libya as the recognized government of Libya, U.S. and EU sanctions have been substantially relaxed. OFAC has issued several general licenses authorizing U.S. persons to engage in transactions with the Libyan National Oil Corporation and its subsidiaries, with the new Government of Libya (*i.e.*, the Transitional National Council), its agencies, instrumentalities and controlled entities, and with the Central Bank of Libya, as well as other parties. These general licenses contain various qualifications and conditions, however, and parties engaging in business in the country must pay close attention to these conditions and specific elements of all transactions to ensure compliance.

Similarly, the EU has relaxed its sanctions by agreeing to lift sanctions against Libyan ports, banks and oil companies. The rationale behind the move was to provide the necessary financial resources to support an interim government and to help rebuild Libya's economy. For example, in addition to removing a multitude of entities from the asset freeze sanction, the asset freeze in respect of the Central Bank of Libya, the Libyan Arab Foreign Bank (or Libyan Foreign Bank), the Libyan Investment Authority and the Libyan Africa Investment Portfolio has been modified so that only funds, other financial assets and economic resources belonging to, owned, held or controlled by, directly or indirectly, those entities as of September 16, 2011, which were held outside Libya on that date, shall remain frozen.

Syria

Background

In response to the escalating unrest in Syria, U.S. President Obama issued a series of executive orders earlier this year blocking the property of specified parties in Syria, including senior government officials, culminating in sanctions against virtually the entire Government of

Syria and blocking of its property and assets. The latest U.S. executive order prohibits new investment in Syria by U.S. persons; the export, re-export, sale or supply of services to Syria from the United States or by U.S. persons; the importation or dealing in Syrian petroleum or petroleum products by U.S. persons; and any facilitation by U.S. persons of prohibited transactions.

The EU imposed similar sanctions against Syria. The EU sanctions are broad in scope and in general include an arms embargo, a ban on sales of materials that may be used against the citizens of Syria and the imposition of an asset freeze on all accounts in European banks held by senior government individuals accused of involvement in internal repression and certain entities. EU sanctions make it explicit that no funds or economic resources are to be made available, directly or indirectly, to or for the benefit of the individuals or entities subject to the asset freeze.

Recent Actions

Since August 2011, OFAC has issued numerous general licenses authorizing certain transactions that would otherwise be prohibited by the U.S. sanctions. The general licenses allow the exportation and re-exportation of items where authorized by the U.S. Department of Commerce under the U.S. Export Administration Regulations, as well as provision of services ordinarily incident to such exports. U.S. parties wishing to export to Syria should pay careful attention to the nature of the items being exported to be sure that they duly authorized under the general licenses. OFAC has been issuing specific licenses for transactions with Syria in certain circumstances, as well. Activities of financial institutions involved in transactions entail particular services that may be prohibited by the broad Syria sanctions, but may be allowed under the terms of one or more of the general licenses.

The EU has recently reinforced its sanctions against the Syrian regime, adding further entities and individuals to the list of designated persons. Recent legislative measures also prohibit the importation of crude oil or "petroleum products" into the EU if they originated in Syria or have been exported from Syria, the purchase of crude oil or petroleum products located or originated in Syria, and the transport of crude oil or petroleum products if they originated in Syria or are being exported from Syria to any other country. Furthermore, there is a prohibition on direct or indirect financing or financial assistance, including financial derivatives, as well as insurance and re-insurance connected to the abovementioned prohibitions.

Since August 2011, the EU has also added clarifying amendments with respect to the sanctions concerning Syria. As for licensing, in the EU licenses are granted by the relevant EU Member State authorities, who may also introduce their own sanctions rules. For instance, in the United Kingdom, HM Treasury has broad powers to issue general licenses. In practice, HM Treasury typically will issue licenses where the transaction for which the license is sought is consistent with the categories specified in the EU regulation. In the United Kingdom, this means that HM Treasury would typically only issue a general license for transactions that would otherwise be prohibited that relate to the relatively narrow categories envisaged by the EU regulation.

Conclusion

Any companies doing business in Syria, Libya or elsewhere in the Middle East and/or North Africa must be aware of the broadly applied trade sanctions of the United States and European Union. The fast-moving developments in the region prompted the swift imposition of legal restrictions on trade there, although the pace of change has also resulted in some of the sanctions being relaxed accordingly. Careful scrutiny of all parties and terms of transactions is advised in order to avoid the risk of substantial penalties and significant reputational damage for violating these rules. The above merely provides a general overview of the sanctions imposed on Libya and Syria. Please do not hesitate to contact us in the event that you have any queries as to how such sanctions may impact your company.