SHEARMAN & STERLING LLP

CLIENT PUBLICATION

LITIGATION, SANCTIONS | April 18, 2016

Sanctions Round Up: First Quarter 2016

OFAC amends the Cuban Assets Control Regulations to ease Cuban sanctions in response to President Obama's policy changes announced on December 17, 2014. These revisions have major implications for the banking and financial services sector. OFAC and the United Nations levy sanctions against North Korea for its missile testing exercises. Additional, the European Council continues to impose sanctions against Russia and encourages other countries to sanction the country for its annexation of Crimea and disruptive activities in eastern Ukraine.

Included in this Quarter's Sanctions Round-Up:

- OFAC amendments to the Cuban Assets Control Regulations ease sanctions on financial services, commerce and trade and travel;
- The Council of the European Union continues sanctions against Russia for its activities in eastern Ukraine;
- OFAC and the United Nations issue sanctions against North Korea for its ballistic missile exercises;
- US authorities continue to enforce sanctions through settlements;
- Other notable developments.

Iran Nuclear Deal

On February 19, the United States government cleared The Boeing Company to begin talks with approved Iranian airline carriers regarding their flight needs, a first step toward entering the country's resurgent aircraft market. Boeing has been noticeably absent from the re-opening of Iran's aviation market, skipping a January aviation gathering in Tehran. The company cited US sanctions regulations and licensing requirements as the cause of their hesitance, stating "[w]e understand that the situation in the region is complicated and ever changing and we will continue to follow the US government's guidance." Boeing hopes that its entrance into the Iranian market will revive its stock which dropped more than 20 percent in 2016.

On March 24, OFAC issued General License I titled "authorizing certain transactions related to the negotiation of, and entry into, contingent contracts for activities eligible for authorization under the Statement of Licensing Policy for activities related to the export or re-export to Iran of commercial passenger aircraft and related parts and services." This general license authorizes US persons to enter into all transactions incident to contracts for commercial passenger aircraft and related parts and services to Iran. However, all contracts must be made expressly contingent upon an issuance of a specific license by OFAC. OFAC also published four FAQs related to the new general license.

TIMETABLE FOR UNWINDING SACTIONS	
8 years after Adoption Day or upon report from IAEA that nuclear program is peaceful ("Transition Day")	▪ EU terminates additional nuclear-related sanctions and ballistics-related sanctions ▪ US seeks legislation to terminate nuclear-related sanctions, including financial and energy sanctions, and removes individuals from the SDN and Foreign Sanctions Evaders lists
10 years from Adoption Day ("Termination Day")	▪ UN Security Council's endorsement of JCPOA expires ▪ EU terminates remaining provisions of nuclear sanctions

Cuban Related Sanctions for Q1 of 2016

On February 16, the US Department of Transportation ("DOT") signed an agreement with the Cuban Ministry of Transportation and the Cuban Civil Aviation Institute ("IACC") which provides for the re-establishment of scheduled air services between the United States and Cuba. Following the signing, the DOT invited US air carriers to apply for a license to provide scheduled passenger and cargo flights. The agreement provides both the United States and Cuba with the opportunity to operate up to twenty roundtrip flights between the United States and Havana. Additionally, each country may provide up to ten roundtrip flights between the United States and the additional nine international airports in Cuba.

On March 15, OFAC amended the Cuban Assets Control Regulations (the "CACR") to implement additional revisions consistent with President Obama's policy changes announced on December 17, 2014. The changes further ease sanctions related to, among others, financial services, commerce and trade and travel. Treasury Secretary Jacob J. Lew states "we are building on…progress by facilitating travel for additional Americans looking to engage with Cubans, allowing Cuban citizens to earn a salary in the United States, and expanding access to the US financial system as well as trade and commercial opportunities."

1. Travel and Related Transactions

    a. <u>People-to-people Educational Travel</u>: Individuals are authorized to travel to Cuba for individual people-to-people education travel, provided the traveler will engage in a full-time schedule of educational activities which result in a meaningful interaction between the traveler and individuals in Cuba. Previously, educational travel to Cuba was only permitted under the auspices of an educational institution and required a representative of the sponsoring organization to be present. Travelers must retain records of their educational exchanges and the statutory prohibition on tourist travel remains in place.

    b. <u>Payment of Salaries</u>: Cuban nationals in the United States under a non-immigrant status will be authorized to earn a salary or compensation consistent with the terms of their visa. Additionally, US companies are permitted to sponsor or hire Cuban nationals to work or perform in the United States similar to nationals of other countries, provided no payments are made to the government of Cuba as a condition of employment or performance.

    c. <u>Cuban-origin Merchandise</u>: OFAC will authorize personal consumption of certain Cuban-origin merchandise by individuals while in a third-country. For example, Americans traveling in Europe will be permitted to purchase and consume certain Cuban-origin alcohol and tobacco products while abroad. This authorization is similar to travel exemptions in other sanctions regimes.

2. Banking and Financial Services

   a. U-turn Payments through the US Financial System: US financial institutions will be authorized to process U-turn transactions in which Cuba or a Cuban national has an interest. The update will allow funds transfers to pass through one or more US financial institutions before being transferred to a bank outside of the United States. Neither the originator nor the beneficiary may be a person subject to US jurisdiction.

   b. Processing of US dollar monetary instructions: US financial institutions will be authorized to process US dollar monetary instruments presented indirectly by Cuban financial institutions. Correspondent accounts at third-country financial institutions used for these transactions may be denominated in US dollars.

   c. US bank accounts for Cuban nationals: US financial institutions will be authorized to open and maintain bank accounts in the United States for Cuban nationals in Cuba to receive payments in the United States for authorized transactions. Cuban nationals will also be permitted to remit such payments to Cuba.

3. Trade and Commerce

   a. Physical and Business Presence: OFAC will expand the definition of "physical presence" to include entities that engage in humanitarian projects, entities that engage in authorized non-commercial activities, and private foundations or educational institutes engaging in certain authorized activities.

      OFAC will also expand the definition of "business presence" to include exporters of goods that are authorized for export or re-export to Cuba, entities providing mail or parcel transportation services, and providers of travel services to facilitate authorized transactions.

   b. Importation of Software: The CARC currently authorizes the importation of Cuban-origin mobile applications. OFAC will expand this authorization to allow importation of Cuban-origin software.

   c. Shipping: The Bureau of Industry and Security ("BIS") will authorize vessels to transport authorized cargo from the United States to Cuba and then sail to other countries with any remaining cargo that was loaded in the United States.

   d. Cuban Private Sector: BIS will permit a case-by-case licensing process for exports and re-exports of items that would enable or facilitate exports from Cuba of items produced by the Cuban private sector.

4. Grants and Awards

   a. Educational Awards: OFAC will authorize educational grants and awards. This authorization will apply to the provision of grants and awards for humanitarian projects authorized by OFAC.

Russian-Related Sanctions for Q1 of 2016

On January 22, United States Secretary of State John Kerry stated that Russian sanctions could be removed in the next few months. During a speech given at the World Economic Forum in Davos, Switzerland, Secretary Kerry said "I believe that with effort and with bona fide, legitimate intent to solve the problem on both sides, in is possible in these next months to…get to a place where sanctions can be appropriately…removed." He reiterated that the sanctions would only be lifted once both Russia and Ukraine follow through on their commitments to peace and stability, including a complete ceasefire in eastern Ukraine. The original ceasefire was signed in Minsk, Belarus in September 2014.

France echoed these comments on January 23 when the French Finance Minister, Emmanuel Macron, hinted that his country would support an end to sanctions when they come up for renewal in July. Le Figaro, a French daily newspaper, quoted the Finance Minister as saying “the objective we all share is to be able to lift sanctions next summer because the process has been respected.” For EU sanctions to be extended beyond July, all members of the European Union would have to be in agreement.

However, this move towards lessening sanctions appears to have been short-lived. On March 10, the European Council extended an asset freeze and travel restrictions on Russian individuals and entities. For their responsibility for actions which undermine or threaten the territorial integrity, sovereignty, and independence of Ukraine, 146 people and 37 entities are subject to an asset freeze and travel ban until September 15, 2016. EU sanctions against Russia were initially introduced in 2014 over the country’s involvement in the conflict in eastern Ukraine and Crimea. The EU sanctions targeted Russia’s financial, energy and defense sectors.

On March 18, the European Union called for more countries to impose sanctions on Russia for its annexation of Ukraine’s Crimea region. This announcement came on the second anniversary of the formal absorption of Crimea into Russia. The EU also stated that it would maintain sanctions that ban European companies from investing in Russian Black Sea oil and gas exploration. In a teleconference with reporters, a Russian spokesman stated “our position is known: this is a region of the Russian Federation. Russia has not discussed and will never discuss its regions with anyone.”

Libyan-Related Sanctions for Q1 of 2016

On March 11, French Foreign Minister Jean-Marc Ayrault called for sanctions to be put in place for any Libyan officials holding up plans for a unity government. Ayrault stated “[Europe] can’t let the Libyan situation continue. It’s not only a danger for the Libyans, but the region and it threatens Europe…I do not exclude threatening [Libyan politicians] with sanctions.” Libyan lawmakers continue to refuse a UN-backed deal to merge rival administrations due to resistance from hardliners in both parties.

On March 17, the Foreign Ministers of the US, France, Germany, Italy, and the UK and the High Representative of the EU held a meeting to discuss Libyan sanctions. From this meeting, it is believed that the EU will impose sanctions on three Libyan leaders including Nouri Abusahmain, President of Libya’s rival parliament to the General National Congress in Tripoli, Khalifa al-Ghwell, Prime Minister of the Government in Tripoli, and Aguila Saleh, President of the internationally recognized parliament in Tobruk. Sanctions are to be imposed on these individuals for opposing the Western-backed unity government in Libya. Legal measures imposing the new sanctions are expected to be published in the next few weeks.

Sudan-Related Sanctions for Q1 of 2016

On February 10, the United Nation’s Security Council renewed its mandate of the Panel of Experts monitoring sanctions imposed in Darfur until March 12, 2017. The Council expressed its regret that members of the Sudanese government, as well as armed groups, continued to disregard its demands. The Council also directed the Panel, along with the Joint African Union/United Nations Mediation, to provide the Committee with the names of any individuals, groups, or entities which meet the sanctions listing criteria. Additionally, the Council, expressing concern that Member States were refusing to implement the travel ban and asset freeze, requested the Panel share any information it received regarding possible non-compliance.

On February 16, the Sudanese Foreign Ministry reiterated its rejection of American conditions to normalize bilateral relations, and Ahmed Omer, the speaker of the Sudanese parliament, hinted that Sudan may stop counter-terrorism cooperation with Washington. Jerry Lanier, US Chargé d'Affaires to Sudan, stated that the US would not remove Sudan from the list of State Sponsors of Terrorism before the end of the armed conflict in Darfur to which Kamal Eddin, Sudan state minster, responded "The government [of Sudan does] not accept any precondition and will stick to its rejection of any conditions that do not take into account Sudan's interests."

Syrian-Related Sanctions for Q1 of 2016

On February 12, members of the International Syria Support Group ("ISSG") came to an agreement on the cessation of hostilities in Syria. The countries of ISSG also agreed to provide humanitarian support to Syria stating that "[h]umanitarian access to those more urgent areas [of Syria] will be a first step toward full, sustained, and unimpeded access throughout the country." The agreement does not apply to extremist groups including ISIS and al-Nusra Front.

While an important step towards the Syrian peace process, the ISSG agreement lacks many of the elements believed necessary to stop the Syrian civil war. Primarily, the agreement is a cessation of hostilities rather than a ceasefire. A formal ceasefire would require international monitoring and verification. Secretary of State John Kerry described the distinction by stating "[a] ceasefire in the minds of many of the participants…connotes something far more permanent and far more reflective of sort of an end of conflict…This is a pause that is dependent on the process going forward." Additionally, the agreement contains no clear commitment to end Russian airstrikes. James Sadri, director of the Syria Campaign, called this exclusion "absurd," stating "[t]his year Russia has become the number one killer of civilians in Syria, killing more than the Assad regime, al-Qaida and ISIS combined."

Myanmar-Related Sanctions for Q1 of 2016

On February 16, Myanmar's Minister of Information, Ye Htut, called on the United States to lift the remaining sanctions on Myanmar following the country's successful elections. While attending the US-ASEAN Summit in California, Ye Htut said "[a]t a time when Myanmar has reached another stage in the transition process, proven by the election results, the best way that the US can help Burmese citizens is by unconditionally lifting all economic sanctions." Ye Htut was accompanying Vice President Nyan Tun at the February 15-16 Summit where Myanmar requested the continued assistance of the US and ASEAN nations.

US Authorities Continue to Enforce Sanctions Through Settlements

On January 20, **WATG Holdings, Inc.** and its subsidiary, Wimberly Allison Tong and Goo, agreed to pay $140,400 in a settlement with OFAC over allegations that it violated the Cuban Assets Control Regulations. Specifically, WATG allegedly entered into a contract to perform architectural and design work for a hotel project in Cuba. WATG received $284,515 for the project from a Qatari company on or about October 13, 2009 through May 20, 2010. In reducing the penalty from the statutory maximum of $356,714, OFAC considered that WATG took remedial action by conducting a global compliance assessment, submitted a disclosure of other transactions to OFAC, appointed a compliance officer, conducted global training of its personnel, and instituted a compliance program to prevent future violations.

On February 4, OFAC issued a Finding of Violation to **Johnson & Johnson Middle East Inc.**, a wholly owned subsidiary of Johnson & Johnson, for violations of the Sudanese Sanctions Regulations (31 C.F.R. part 538). Specifically, between March 2010 and October 2010, JJME facilitated the exportation of goods to Sudan by coordinating and supervising shipments of goods from Johnson & Johnson Egypt S.A.E. to Khartoum, Sudan. In issuing a Finding of Violation, OFAC considered that JJME took remedial actions, including conducting an internal investigation, the fact that the harm of the sanctions was limited because the products exported were consumer hygiene products, and that JJME had no prior OFAC sanctions history.

On February 8, **Barclays Bank PLC** agreed to pay $2,485,890 in a settlement with OFAC over allegations that it violated the Zimbabwe Sanctions Regulations (31 C.F.R. Part 541). Specifically, Barclays allegedly sent transactions on behalf of three corporate clients of Barclays Bank of Zimbabwe Limited through US banks, including its New York branch, which, in turn, processed financial transactions which should have been "blocked" pursuant to OFAC regulations. This landmark enforcement actions is the first time a financial institution has been fined for processing payments for individuals who were not listed on the SDN list but were, nonetheless, blocked as a matter of law. The three corporate customers of Barclays Bank of Zimbabwe are owned 50 percent or more by the Industrial Development Corporation of Zimbabwe, a designated SDN entity. Under OFAC's "50 Percent Rule", any entity owned 50 percent or more by a blocked person or entity is itself blocked as a matter of law. The Barclays settlement is the first enforcement action which has utilized OFAC's 50 Percent Rule.

On February 22, **CGG Services S.A.**, formerly known as CGGVeritas S.A., agreed to pay $614,250 in a settlement with OFAC over allegations that it violated the Cuban Assets Control Regulations (31 C.F.R. part 515). Specifically, CGG allegedly provided services, spare parts, and equipment for oil and gas exploration and seismic surveys. From September 2010 through March 2011, CGG exported spare parts, equipment, and other US origin goods to various vessels being operated in Cuba's territorial waters.

On March 16, OFAC issued a Finding of Violation to **Mastercard International Incorporated** for violations of the Reporting, Procedures and Penalties Regulations (31 C.F.R. part 501). Specifically, Mastercard failed to report accounts held by Bank Melli and Bank Saderat following OFAC's designation of the banks. Although the accounts had already become dormant when OFAC designated these banks, MasterCard had subsequently failed to report the accounts as blocked. OFAC reiterated that primary sanctions against Iranian financial institutions are ongoing in contrast to secondary sanctions which were lifted on January 16. OFAC noted Mastercard's voluntary disclosure and did not fine the Company for the violation.

OFAC and United Nations Issue Sanctions against North Korea

On February 18, President Obama signed into law the "North Korea Sanctions and Policy Enhancement Act of 2016" (the "NKSPEA") which was passed by Congress by an overwhelming majority. NKSPEA sets out several new sanctions against North Korea including:

a. Blocking the Government of North Korea: The NKSPEA requires imposing a "blocking" order against the government of North Korea, the Worker's Party of Korea and certain persons designated on the SDN list.

As a result all property and interests in property of such persons or entities should be “frozen” if it comes within the United States or the possession or control of a US person.

b. Government Procurement Ban: In addition to the blocking requirements, NKSPEA imposes a government procurement and contracting ban on any person designated under the Act.

c. “Jurisdiction of Primary Money Laundering Concern”: The NKSPEA requires the Obama administration to determine whether North Korea should be designated a “jurisdiction of primary laundering concern.” Such a designation would block North Korea from access to the US financial system and require the imposition of “special measures” against designated financial institutions.

d. Export Licensing Requirement: The NKSPEA imposes a new export licensing requirement for all items classified on the US Commerce Control List for anti-terrorism reasons. The effect of the new requirement is to remove the availability of certain license exceptions for various categories of anti-terrorism controlled exports including humanitarian donations, personal baggage and news media equipment.

On February 25, the United States and China, working through the United Nations, reached an agreement to impose tougher sanctions against North Korea in what appeared to be a diplomatic shift by Beijing. The agreement is the result of intense negotiations between the two countries which began after Pyongyang tested a nuclear weapon it claimed to be a hydrogen bomb. While specifics of the agreement have not been released, US officials stated that it would include a ban on the trade of conventional weapons, luxury goods like jet skis and Rolex watches and aviation fuel. Additionally, in what may be the toughest measure, all North Korean products entering or leaving a country must be inspected by that country. As an American official stated, “[i]f it is on your territory, in your port or in your airports, there’s a requirement to inspect cargo to and from [North Korea].”

On March 15, President Obama signed Executive Order 13722 entitled “Blocking Property of the Government of North Korea and the Workers’ Party of Korea, and Prohibiting Certain Transactions with Respect to North Korea.” The President cited North Korea’s February 7, 2016, missile launch using ballistic missile technology and its January 6, 2016 nuclear test as the events which precipitated the expanded sanctions. Pursuant to subsection 2(a)(1) of the E.O., the Secretary of the Treasury, in consultation with the Secretary of State, determined that persons operating in the transportation, mining, energy, and financial services industries in North Korea may be subject to targeted sanctions. OFAC issued nine general licenses for activities in North Korea including activities associated with: North Korean Missions to the United Nations, the provision of legal services, service charges on certain accounts, personal remittances, services in support of nongovernmental organizations, diplomatic and consular funds, transactions related to telecommunications, transactions related to patents and trademarks and emergency medical services

Other Notable Developments

On January 23, Chinese President Xi Jinping traveled to Iran to meet with Iranian President Hassan Rouhani to begin what President Jinping called a “new chapter” in relations between the two countries. This meeting came days after international sanctions against Iran were lifted under JCPOA. China is Iran’s largest trading partner, totaling $52 billion in trade in 2014, and continued purchasing oil from Iran after the nuclear-related sanctions were tightened despite US pressure. President Jinping stated “Westerners have never obtained the trust of the Iranian nation… [and t]he government of Iran has always sought expanding relations with independent and trustful countries like China." The Supreme Leader of Iran Ayatollah Ali Khamenei also signaled his support of Iran's relationship with China stating that "[t]he Islamic Republic will never forget China's cooperation during the sanctions era." During President Jinping's visit the two countries signed seventeen documents and letters of intent to broaden cooperation in the industry, tourism, transportation and energy sectors.

*****

Shearman & Sterling has long advised financial institutions and commercial businesses on the most complex sanctions issues. If you have any questions, please feel free to contact one of our partners or counsel.

CONTACTS

Philip Urofsky
Washington, DC
+1.202.508.8060
philip.urofsky@shearman.com

Danforth Newcomb
New York
+1.212.848.4184
dnewcomb@shearman.com

Stephen Fishbein
New York
+1.212.848.4424
sfishbein@shearman.com

Richard J.B. Price
London
+44.20.7655.5097
rprice@shearman.com

Brian G. Burke
Hong Kong
+852.2978.8040

Shanghai
+86.21.6136.5000
brian.burke@shearman.com

Christopher L. LaVigne
New York
+1.212.848.4432
christopher.lavigne@shearman.com

Barnabas W.B. Reynolds
London
+44.20.7655.5528
barney.reynolds@shearman.com

Mark D. Lanpher
Washington, DC
+1.202.508.8120
mark.lanpher@shearman.com

Susanna Charlwood
London
+44.20.76555907
susanna.charlwood@shearman.com