Keeping up the pace: U.S. sanctions post a busy second quarter


Iran certainly stole the headlines, but other sanctions programmes continued to keep practitioners on their toes. Thad McBride and Cheryl Palmeri report.

Since our update in May (*WorldECR*, issue 40), the U.S. government has continued to aggressively modify and enforce its various sanctions programmes. And this trend shows no signs of slowing in the months to come.

As in the first quarter of 2015, the following three months were marked by a combination of broad policy changes, individual designations and removals, and various enforcement actions. While recent developments did not include the overhaul of any sanctions programme akin to the Cuba amendments in January, they did set the stage for significant changes in the future. Here, we consider notable U.S. sanctions developments in the second quarter of 2015, and offer our thoughts on what is to come.

Iran

No sanctions update would be complete without mention of the historic nuclear accord between Iran and the so-called P5+1 (the United States, the United Kingdom, France, China, Russia, and Germany) – and the European Union – that was reached on 14 July. Under the deal, known as the Joint Comprehensive Plan of Action ('JCPOA'), global sanctions against Iran will be eased in exchange for Iran placing limits on its nuclear programme.

While the deal could lead to the eventual elimination of certain UN, EU and U.S. sanctions, it effects no immediate change to the U.S. sanctions programme. Iran must meet specific milestones before any U.S. sanctions are lifted. And – as noted below – the United States is hedging even further: several parties were designated for blocking under the Iran sanctions while the negotiations, promising potential sanctions relief, were underway.

Moreover, most U.S. sanctions relief would be for non-U.S. companies under the U.S. 'secondary sanctions' programme. Most of the restrictions that currently prohibit U.S. persons and entities from transacting in Iran or with Iranian entities will remain in place indefinitely.

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That said, if Iran meets its obligations, the United States should ease restrictions on exports of commercial aircraft and related parts and services. Similarly, the United States has committed to license non-U.S. persons that are owned or controlled by U.S. persons to engage in activities that are consistent with the JCPOA and to remove certain Iranian parties from the List of Specially Designated Nationals ('SDNs') and Blocked Parties.

Finally, it is likely that U.S. export policy eventually will be amended to reflect the elimination of the UN arms embargo against Iran – though UN action, and the corresponding U.S. revisions, probably will not occur for many years.

While U.S. companies will largely still be prohibited from conducting business in Iran, the potential changes should facilitate Iran's participation in the world economy. Assuming all goes well, we think there is a good chance that the United States could further expand sanctions relief – even beyond that required by the JCPOA.

Cuba

Compared to the historic amendments to U.S. sanctions against Cuba earlier this year, the last few months seemed relatively quiet. The Office of Foreign Assets Control ('OFAC') has issued some helpful guidance on the January amendments [1] and on travel to Cuba [2].

The United States also officially dropped Cuba from the List of State Sponsors of Terrorism. This should lead to the liberalisation of U.S. foreign assistance, exports, and sales to Cuba, and certain financial transactions with the country. OFAC also continued the process of removing Cuban parties from the SDN List. This action paves the way for future business with those parties if current broad restrictions on transacting in Cuba are removed in the future.

Ukraine/Russia

The United States' Ukraine-/Russia-related sanctions programme also has remained relatively stable over the last few months. OFAC did, however, issue a new general licence ('GL') related to Crimea. The GL permits exports of certain services and software incident to the exchange of personal communications over the Internet, such as instant messaging, chat, email, and web-browsing. Those exports were previously prohibited by an executive order that banned most exports of goods, services, or technology to Crimea.

OFAC also issued a sanctions

Links and notes

1. http://www.treasury.gov/resource-center/sanctions/Programs/Documents/cuba_faqs_new.pdf.
2. http://www.treasury.gov/resource-center/sanctions/Programs/Documents/cuba_faq_ferry_05042015.pdf

advisory, which highlights some of the practices that have been used to circumvent the U.S. embargo on Crimea. According to OFAC, certain transaction partners have omitted originator or beneficiary address information from financial telecommunications messages and have obscured references to Crimea in agreements and documentation.

To mitigate the risks presented by these practices, OFAC recommends:

- Ensuring that transaction-monitoring systems search terms that correspond to major geographic locations in Crimea (e.g., cities and ports);
- Requesting additional information from parties that previously violated or attempted to violate U.S. sanctions; and
- Clearly communicating U.S. sanctions obligations to international partners.

Venezuela

This quarter, the U.S. solidified sanctions against Venezuela. In particular, in mid-July, OFAC issued regulations to implement the Venezuela Defense of Human Rights and Civil Society Act of 2014 and Executive Order 13692. The order blocks the property and suspends entry into the United States of certain persons deemed to have engaged in harmful acts in Venezuela or to be current or former officials of the Venezuelan government. Notably, when issuing the regulations, OFAC committed to implement more comprehensive Venezuela sanctions in the future.

Designations

OFAC also actively updated the SDN List this quarter. New parties were designated pursuant to the Iran, North Korea, South Sudan, Syria, and Yemen sanctions programmes. At the same time, certain parties previously designated pursuant to the Balkans-related, Burma, and Cuba programmes were removed from the SDN List and thereby, at least ostensibly, transformed into legitimate U.S. business partners.

Enforcement actions

Lest you think OFAC focused only on policy this quarter, the number of OFAC enforcement actions would prove you wrong. One particularly significant action involved an $82,260 penalty against a cloud computing developer for allegedly importing web development services from an Iranian company. (Again, with respect to Iran, the U.S. government both giveth and taketh away.)

Among the factors that OFAC considered in imposing the penalty was that at least one co-owner and manager of the company knew about the transactions. Moreover, OFAC asserted, the company continued the activities after discovering they constituted sanctions violations, did not have a sanctions compliance programme, and engaged in only limited remedial actions.

OFAC also imposed various penalties under its Foreign Narcotics Kingpin Sanctions Regulations, Global Terrorism Sanctions Regulations, and Weapons of Mass Destruction Proliferators Sanctions regulations. Those penalties, which ranged from less than $25,000 to close to $400,000, related to the improper provision of services or shipments to prohibited parties.

Parting thoughts

Economic sanctions developments, whether large or small, occur frequently and often with minimal warning. Essential to any sanctions compliance programme, therefore, is its ability to monitor and respond to change. An effective programme must identify potential violations with respect to both ongoing business and prospective transactions. Anything less will be crippling as sanctions evolve, which they surely will in the coming months.

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