

DEALING WITH THE CHANGING SANCTIONS LANDSCAPE



The sanctions landscape has surely never been more complex and volatile, with escalating sanctions against Russia (and threats of more measures to follow), the ongoing Iran suspension (with uncertainty about the status after 30 June 2015) and mixed messages from the United States about a softening of the American position on Cuba.

This complexity and uncertainty presents something of a “curate’s egg” for shipowners, operators and traders, as well as their banks and insurers. The threats (in terms of financial and criminal penalties, reputational damage, etc) are well known, but there are also opportunities for those who understand what trade is permitted, and position themselves to perform that trade (while still ensuring compliance with all relevant regulations).

The recent changes in respect of Cuba, Russia and Iran provide a useful opportunity to consider these issues, as well as some practical steps to ensure compliance.

Cuba

On 17 December 2014, President Obama announced the relaxation of US sanctions against Cuba as part of a package of diplomatic and economic measures designed to “normalize relations” between the US and Cuba.

The US embargo against Cuba is set out in a host of different legislative measures, some of which can be amended pursuant to the authority of the President, but many of which need Congressional approval. The partial lifting of sanctions which took place in January 2015 was limited to selective amendments to regulations promulgated by the Department of Commerce and the Department of the Treasury, and left the majority of the US embargo against Cuba unaffected.

Most of the current changes will affect US persons, who can now:

- Travel to Cuba without a licence (provided the purpose of the travel falls within one of 12 categories).
- Use their credit cards in Cuba.



- Provide travel insurance for authorised travel to Cuba.
- Supply to Cuba certain goods which have been identified as supporting the Cuban people (eg telecommunications, building and agricultural equipment).

One of the most significant changes for non-US persons is a partial relaxation of the so-called “180 day rule”, which previously prohibited any vessel (whether or not US-flagged) which had called at a port in Cuba from calling at a US port for the next 180 days. Vessels which have engaged in certain trade with Cuba (including agricultural commodities and other authorised cargoes) will no longer need to wait 180 days before calling at a US port, although direct voyages from the US to Cuba still require an export licence.

We will be monitoring the situation closely, to see if further relaxations of the US embargo against Cuba are agreed.

Iran

The partial suspension of some EU and US restrictions against Iran, which were first issued in January 2014¹ has now been extended (twice) and the current suspension is due to expire on 30 June 2015.

Previous extensions have been agreed at the eleventh hour amid frantic diplomatic attempts to secure a wider accord with Iran, and it is therefore possible that the position which will apply after 30 June 2015 will not be known until shortly before that date.

As such, businesses have around four months left to engage in the limited trade which is currently permitted with Iran, but will need to carefully consider their position (and any obligations which have not been fully discharged) in the weeks leading up to 30 June 2015.

Russia

The difficulty of building consensus within the EU on further restrictions against Russia is well known, and the difficulties and divisions appear to be expanding, rather than reducing. Indeed it appears that Greece initially objected to the most recent measures, which were then postponed for a week “*in order to give space for ... diplomatic efforts*”².

That said, the EU has now published over 20 regulations imposing sanctions related to the Ukraine crisis in less than a year, and further restrictions are being discussed as the situation in Ukraine deteriorates.

Likewise in the United States there appear to be divisions between Congress on the one hand, and the President on the other. In late December Congress passed the Ukraine Freedom Support Act, which increased the scope for the US to impose sanctions against Russia and – for the first time – to impose penalties on businesses which are not otherwise subject to US jurisdiction for breaching certain US sanctions against Russia.

On the same day, President Obama indicated that his Administration did not intend to impose further restrictions on Russia at that time, saying the following:

“Signing this legislation does not signal a change in the Administration’s sanctions policy, which we have carefully calibrated in accordance with developments on the ground and coordinated with our allies and partners. At this time, the Administration does not intend to impose sanctions under this law, but the Act gives the Administration additional authorities that could be utilized, if circumstances warranted.”

The current position is that there is a complex package of EU restrictions in place, which include:

- An asset freeze directed at 22 individuals (designated for alleged misappropriation of Ukrainian state funds).
- An asset freeze directed at 132 individuals and 28 entities (designated for “*undermining or threatening the territorial integrity, sovereignty and independence of Ukraine*”).
- Broad restrictions on trade between the EU and Crimea/Sevastopol.
- Restrictions on supplies of oil and gas equipment and services to Russian businesses or for use in Russia.
- Restrictions on access by certain Russian businesses to EU debt, equity and loan markets.

We will continue to report on particular developments in respect of sanctions against Russia.

Practical steps to mitigate the risks

Given the complexity of the restrictions, and the fact that they change in response to political developments, businesses which are engaged in trade involving sanctioned countries need to ensure that they are carefully monitoring developments and fully understand the extent of the restrictions which apply to them.

Much of the risk associated with sanctions violations stems from dealing with prohibited persons (i.e. the targets of the EU and US asset freezes, referred to as Specially Designated Nationals or SDNs in the US), which includes not only the individuals and entities on the lists, but also companies they own or control.

As a result, businesses need to conduct due diligence on their counterparties and other entities they engage with, to ensure they are not dealing directly or indirectly with prohibited persons.

¹ See our January 2014 Briefing at <http://www.hfw.com/Suspension-of-Iran-sanctions-January-2014>

² Statement from Federica Mogherini (High EU Representative for Foreign Affairs and Security Policy) 9 February 2015



Another key risk stems from supplying, shipping or insuring prohibited goods. As well as bans affecting military and quasi-military goods (such as dual use goods – i.e. goods which are restricted because of potential military end use), there are bans affecting purely commercial goods, which have been selected because restrictions on their trade will put pressure on the sanctioned country.

As a result, the prohibited goods vary across sanctions programmes and businesses engaged in the supply, or transport of goods or equipment to or from sanctioned countries (or the provision of related insurance or reinsurance) should carefully consider the nature (and use) of the goods.

Businesses should also carefully document the checks which they have performed, so that they are able to demonstrate to regulators the due diligence which they carry out. In appropriate cases it may also be worthwhile to have a specific written policy on trade with sanctioned countries, so that everyone in the organisation is aware of the issues, and the processes which need to be followed.

Having taken steps to ensure compliance with sanctions regimes, businesses need to ensure that they contract on suitable terms so that, in the event the sanctions change, their position is protected. They should also consider obtaining suitable warranties from counterparties, to support their own due diligence.

Finally, businesses need to work closely with their banks, to ensure that those institutions are able to support the transaction, in compliance with the laws and internal policies which apply to them.

For more information, please contact the author of this Briefing:

Daniel Martin
Partner, London
T: +44 (0)20 7264 8189
E: daniel.martin@hfw.com

HFW's London office is part of an international network of 13 offices in 11 countries. For further information about international commerce related issues in other jurisdictions, please contact:

Anthony Woolich
Partner, London
T: +44 (0)20 7264 8033
E: anthony.woolich@hfw.com

Robert Follie
Partner, Paris
T: +33 1 44 94 40 50
E: robert.follie@hfw.com

Konstantinos Adamantopoulos
Partner, Brussels
T: +32 (0) 2643 3401
E: konstantinos.adamantopoulos@hfw.com

Jeremy Davies
Partner, Geneva
T: +41 (0)22 322 4810
E: jeremy.davies@hfw.com

Dimitri Vassos
Partner, Piraeus
T: +30 210 429 3978
E: dimitri.vassos@hfw.com

Simon Cartwright
Partner, Dubai
T: +971 4 423 0520
E: simon.cartwright@hfw.com

Mert Hifzi
Partner, Singapore
T: +65 6411 5303
E: mert.hifzi@hfw.com

Paul Hatzer
Partner, Hong Kong
T: +852 3983 7666
E: paul.hatzer@hfw.com

Henry Fung
Partner, Shanghai
T: +86 21 5888 7711
E: henry.fung@hfw.com

Gavin Valley
Partner, Melbourne
T: +61 (0)3 8601 4523
E: gavin.valley@hfw.com

Stephen Thompson
Partner, Sydney
T: +61 (0)2 9320 4646
E: stephen.thompson@hfw.com

Hazel Brewer
Partner, Perth
T: +61 (0)8 9422 4702
E: hazel.brewer@hfw.com

Jeremy Shebson
Partner, São Paulo
T: +55 (11) 3179 2903
E: jeremy.shebson@hfw.com

Lawyers for international commerce

hfw.com

© 2015 Holman Fenwick Willan LLP. All rights reserved

Whilst every care has been taken to ensure the accuracy of this information at the time of publication, the information is intended as guidance only. It should not be considered as legal advice.

Holman Fenwick Willan LLP is the Data Controller for any data that it holds about you. To correct your personal details or change your mailing preferences please contact Craig Martin on +44 (0)20 7264 8109 or email craig.martin@hfw.com

São Paulo London Paris Brussels Geneva Piraeus Dubai Shanghai Hong Kong Singapore Melbourne Sydney Perth