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Trade Sanctions Roundup: U.S. Closes Out 2014 with Major Actions on Cuba, Russia, and Syria

Action Item: Recent significant changes in sanctions relating to Cuba, Russia, and Syria create opportunities and risks for a variety of sectors, most notably in the maritime and energy industries. Businesses should carefully evaluate the new measures, take steps to reduce enforcement risks and commercial disruption, and look ahead to capitalize on market-opening opportunities.

The end of 2014 has seen major developments in U.S. foreign relations and sanctions policy with broad implications for the maritime industry. On December 17, President Obama announced a paradigm shift in relations with Cuba, including first steps in loosening the sanctions regime against the island nation. In other significant moves, the President announced that he will sign into law legislation creating new sanctions against Russia. The Treasury Department's Office of Foreign Asset Control ("OFAC") has also authorized new sanctions provisions against targets accused of aiding the government of Syria's Bashar Al-Assad.

Cuba

The White House announced yesterday that it is changing its stance regarding U.S. relations with Cuba. Noting that the United States' 50-year strategy of isolation thus far has failed to promote a stable, democratic Cuba, the White House outlined its updated approach to promote change and support the Cuban people. Most importantly, diplomatic relations will be re-established and a U.S. embassy will be restored in Havana. The United States will work with Cuba on issues such as migration, counternarcotics, environmental protection, and human trafficking, while continuing to support democratic reform and improved human rights in Cuba.

The White House outlined a limited variety of ways in which restrictions on the free flow of people, money, merchandise, and information will be lifted. General licenses for 12 categories of travel to Cuba will be authorized. However, travel for tourism will remain prohibited. Licensed travelers to Cuba will be able to return with up to $400 in Cuban goods, a quarter of which may be tobacco and alcohol products.

In an effort to support the Cuban people, certain items will be authorized for export, such as building materials for private residential construction, goods for use by private sector Cuban entrepreneurs, agricultural equipment, and consumer

communications products. Telecommunications providers will be permitted to set up the infrastructure required to improve Internet services in Cuba and communications with the United States. U.S. individuals that send money to Cuban nationals will now be able to send up to $2,000 per quarter. Also, donative remittances will no longer require a license.

To facilitate newly authorized transactions, U.S. institutions will be allowed to work with Cuban financial institutions. U.S. credit and debit cards will be permitted for use in Cuba. General licenses will unblock U.S. bank accounts held by Cuban nationals that have relocated outside of Cuba. U.S. persons will also be permitted to engage in meetings and conferences outside Cuba that are related to Cuba. Current restrictions on the financing of agricultural commodities and other authorized Cuban trade, requiring payment prior to shipment, will be reformed to allow payment against bills of lading.

In an important move for dry bulk operators, the White House announced that foreign vessels will be permitted to enter the United States after engaging in certain humanitarian trade with Cuba.

The Department of the Treasury issued an announcement stressing that none of the changes in sanctions policy are immediately effective. Rather, the changes will be put in place in the coming weeks by the Treasury and Department of Commerce, which administers the Cuba export licensing regime.

Although considerable changes are being made, it is important to note that the majority of sanctions are still in place. While the White House has some authority to waive or license certain transactions and exports, the bulk of the sanctions are enshrined in statute, requiring congressional action to repeal or modify. A number of lawmakers have criticized the policy changes, so the further lifting of restrictions may be slow to fruition.

Russia

President Obama announced this week that he will sign new legislation that includes significant new extraterritorial sanctions against Russia's energy and offshore exploration and production sector. Similar in design to the Iran Sanctions Act, the new law authorizes retaliatory U.S. measures against non-U.S. persons making a significant investment in projects to extract crude oil from shale formations in the Russian Federation, the Russian Arctic offshore locations, or in waters more than 500-feet deep in the exclusive economic zone of the Russian Federation. The bill gives the President flexibility in determining which and how many sanctions to impose. Further, the bill includes a national security waiver that would allow the President to forgo the imposition of additional sanctions if he determines that the waiver is in the national security interest of the United States. The new sanctions also target Rosoboronexport, a state-owned arms dealer, and other dealers of defense articles.

The new Russia sanctions confirm that the aggressive extraterritorial approach taken in recent years with regard to Iran sanctions—using so-called "secondary sanctions" to reach parties outside direct U.S. jurisdiction—represents the new template for U.S. sanctions policy generally, and this new approach will be applied to Russia and other targets in the future. Accordingly, non-U.S. persons (who in previous years were left relatively unaffected by U.S. sanctions policy) are increasingly placed at risk by the United States' new, more global vision of sanctions enforcement.

The White House clarified this week that while the President is expected to sign the Russia sanctions bill, he will not yet use the legislation to impose new penalties on Moscow, reiterating that the United States is prepared to roll back existing U.S. sanctions if Russia takes steps to ease tensions over its aggression against Ukraine.

Syria

OFAC designated 11 individuals and entities for violating and evading Syria sanctions. There were several particular actions that led to the sanctions. OFAC alleges, based on mislabeling of the cargo and its destination, that the sanctioned entities shipped aviation fuel and gasoil to the Syrian government by first transshipping the cargo through third-party countries, such

as Poland and Turkey. OFAC also alleges that sanctioned entities sought to transfer base oil to government-owned refineries, as evidenced by the fact that the cargo did not include a destination for the oil. Another entity was sanctioned in part because it was the charterer of a vessel that delivered the cargo to Syria and allegedly delivered the cargo to the government of Syria.

The entities and individuals are nationals of Syria, Switzerland, the Netherlands, and the United Arab Emirates. OFAC's goal in expanding the sanctions list was to target individuals and entities that provide energy supplies to the U.S. government. The sanctions also have the effect of putting maritime and energy companies on notice that trading energy with Syria comes with significant risk.

OFAC's action provides another reminder that conduct that is commonplace in much of the maritime industry, such as en route destination changes and incomplete or erroneous cargo documentation, may be used as support for finding that sanctions are being evaded.

Conclusions and Recommendations

The most significant changes to Cuban sanctions in decades creates opportunities for a variety of sectors, but especially the maritime industry. The expansion of Russian sanctions targeting the energy and offshore sectors increases the risk of doing business in Russia, even for companies and investors with no direct U.S. ties. The Syrian sanctions, in addition to the obvious risks of business with the Syrian government, also underscore the important compliance mechanisms to ensure that vessels operating in the Eastern Mediterranean are not improperly ensnared in OFAC sanctions. The costs associated with developing procedures for sanctions have a large return on investment when compared to the costs of penalties for violations and their aftermath.

U.S. relations with each of these countries, Cuba, Russia, and Syria, remain unsettled and will continue to evolve in 2015. Meanwhile, the U.S., along with the UK, Russia, China, France, and Germany, now have until July 2015 to reach a comprehensive accord with Iran, as the U.S. Congress raises the specter of additional Iran sanctions should talks falter. Accordingly, we expect that 2015 will be another active, dynamic year for U.S. sanctions policymaking and enforcement.

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