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U.S. Economic Sanctions & Export Controls

By **Barbara D. Linney, partner,**
Blank Rome LLP

Last year's update on economic sanctions and export controls appeared in the April 2008 issue. Since that time, the United States has taken several significant steps to tighten the existing restrictions on trade with Iran, and these measures have had a considerable impact both on the global maritime industry generally and its ability to support offshore development in Iran in particular. Our 2009 update will focus on these developments, the current status of the Cuba and Sudan embargos, and recent multi-agency enforcement actions that led to the imposition of \$9.4 million in penalties against a single company for violations of U.S. economic sanctions and export controls in connection with unauthorized trade with Iran, Sudan and Syria.

Iran

Last year we noted the designation of Iran's Bank Mellat, Bank Melli, and Bank Saderat (in addition to previously designated Bank Sepah and Bank Sepah International) and their respective branches and designated subsidiaries (including Persia International Bank and Arian Bank) as subject to blocking of property and interests under Executive Orders blocking property of proliferators of weapons of mass destruction and persons who commit, threaten, or support terrorism, and prohibiting transactions with such persons. Since last year's update, the Office of Foreign Assets Control ("OFAC") of the U.S. Department of the Treasury has stepped up its efforts to block property of Iranian supporters of proliferation, adding numerous additional offices of the blocked banks and over fifty (50) Iranian entities and individuals to its list of Specially Designated Nationals and Blocked Persons (the "SDN List") as designated supporters of proliferation. Nearly half of the entities added were attributable to the September 10, 2008 designation of the Islamic Republic of Iran Shipping Lines ("IRISL") and its affiliates. OFAC also expanded the list of Iranian entities designated on the SDN List as owned or con-

trolled by the Government of Iran to include several additional entities, including the National Iranian Oil Company.

The September 10, 2008 designation of IRISL and its affiliates also added 123 IRISL vessels to the SDN List. U.S. banks and their overseas branches are now required to reject transfers referencing such blocked vessels and must notify OFAC that funds have been returned to the remitter due to the possible involvement of an SDN in the underlying transaction or if the name of a designated vessel appears in shipping documents presented



under a letter of credit. OFAC guidance cautions that U.S. freight forwarders and shippers may not charter, book cargo on or otherwise deal with the designated vessels.

Additional measures designed to tighten the Iranian embargo were implemented on November 10, 2008, when OFAC amended the Iranian Transactions Regulations (the "ITR") to substantially reduce the scope of the longstanding general license under which U.S. banks were permitted to process certain U.S. dollar transactions for foreign banks that benefited persons in Iran. Under the amended terms of the general license, such transactions may be processed only if the underlying transaction has been authorized by an OFAC general or specific license or is exempt from or not prohibited by the ITR.

These developments have greatly increased

the need for awareness of the U.S. sanctions against Iran even among non-U.S. members of the maritime and offshore industries, particularly if they are engaging in transactions payable in U.S. currency.

Sudan

On May 28, 2009, OFAC published the Darfur Sanctions Regulations (the "DSR"). The DSR supplement the existing Sudanese Sanctions Regulations ("SSR"), which limit trade with the Government of Sudan (but not the regional government of Southern Sudan) and within most geographic regions of Sudan (except for certain exempt geographic regions – i.e., Southern Sudan, Southern Kordofan/Nuba Mountains State, Blue Nile State, Abyei, Darfur, and the Mayo, El Salaam, Wad El Bashir, and Soba official camps for internally displaced persons near Khartoum). The DSR implement Executive Order 13400 of April 26, 2006 ("Blocking Property of Persons in Connection with the Conflict in Sudan's Darfur Region"), and authorize blocking of property and interests in property of persons posing a threat to the Darfur peace process or stability in the region by a variety of means, including provision of support for military activities to the Government of Sudan. The DSR significantly expands OFAC's ability to name additional SDNs operating in the region, and thereby further increase the complexity of OFAC compliance for companies operating in exempt areas of Sudan or otherwise engaged in activities not prohibited in the SSR.

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Guidance on Scope of Blocking Orders and Regulations

These and other instances of the continuing trend towards use of blocking orders to impose trade restrictions highlighted the practical difficulties presented by guidance issued by OFAC in early 2008. The 2008 guidance stated that OFAC's blocking of property and property interests of an individual or entity extends to all interests of such persons in any entity in which such person owns, directly or indirectly,

a 50% or greater interest, regardless of whether the entity is itself designated as a blocked entity. On February 24, 2009, OFAC clarified that a U.S. intermediary bank processing transactions for non-account parties who are not SDNs need not conduct further research regarding the ownership of the non-account parties unless the bank knows or has reason to know the entity's ownership or other information demonstrating the blocked status of the entity's property. However, if a bank handling a wire transfer currently has information in its possession leading the bank to know or have reason to know that a particular individual or entity involved with or referenced in the wire transfer is subject to blocking, then OFAC will hold the bank responsible if it does not take appropriate steps to ensure that the wire transfer is blocked. In such cases, OFAC will consider the totality of the circumstances surrounding the bank's processing of the transaction in determining what, if any, enforcement action to take against the bank. In addition, OFAC will continue to expect U.S. banks and other businesses to conduct due diligence on the ownership structure of their own direct customers to confirm that those customers are not persons whose property and interests in property are blocked.

Cuba

Although the outcome of last year's Presidential elections was accompanied by a general increase in optimism about the outlook for improved U.S. relations with Cuba, to date the new Administration has implemented only minor changes to the Cuban embargo. On March 11, 2009 OFAC issued a general license loosening, but not entirely removing, the restrictions on family visits. In all other respects, the embargo remains in force. There are, however, four bills pending before various Congressional committees which propose either lifting the embargo entirely or removing all restrictions on travel to Cuba.

Recent Enforcement Actions

Recent enforcement actions by OFAC and the Department of Commerce's Bureau of Industry and Security ("BIS") culminated on August 6, 2009 in a \$9.4 million fine against various DHL entities for violations of the ITR, the SSR, related OFAC recordkeeping require-

ments, and the Export Administration Regulations ("EAR") administered by BIS.

Charges settled included 98 alleged violations of the EAR, several violations of the SSR, over 300 violations of the ITR, and more than 30,000 violations of OFAC's recordkeeping requirements. In addition to payment of the substantial civil penalty, DHL must undertake an audit (conducted by an unaffiliated third party) of its exports and re-exports to Iran, Syria and Sudan since March 31, 2007 that are subject to the EAR and/or OFAC regulations. The resolution in this case serves as a sobering reminder to those involved in international shipping that responsibility for compliance with U.S. economic sanctions and export controls extends to the transportation sector as well as to their customers who are the principal parties to the export transactions.

About the Author

Barbara Linney is a partner in the Washington D.C. office of Blank Rome LLP, practicing in the area of international trade and transactions. She regularly advises both U.S. and foreign clients regarding U.S. export controls and international economic sanctions, defense trade and security regulations, anti-corruption and anti-boycott regulations, and other international trade and business issues, including foreign investment review, mergers, acquisitions and financings. She represents clients before various federal agencies, including the Departments of Commerce, Defense, State, and Treasury (Office of Foreign Assets Control and Committee on Foreign Investment in the United States). Ms. Linney, who holds a masters degree in international law from Georgetown University, also serves as General Counsel to Women in Federal Law Enforcement and the Washington D.C. chapter of Women in International Trade, of which she is a past President.

*This article reflects developments through August 11, 2009, the date of submission for publication. The views expressed herein are those of the author, do not necessarily reflect the opinion of the firm or other members of the firm, and should not be construed as legal advice or opinion or a substitute for the advice of counsel. Please contact Barbara Linney (Linney@BlankRome.com) at (202) 772-5935 if you have questions or desire assistance.

² It is important to note that even in these areas, U.S. persons may not engage in activities that directly or indirectly involve Sudan's petroleum or petro-chemical industries, or transactions with the Government of Sudan.