AIMU Marine Insurance Issues Seminar
Trade Sanctions –
Impact on Marine Insurance

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May 14, 2015
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AIMU Marine Seminar
Trade Sanctions

• Topics for today
  - Trade Sanctions Basics
  - Office of Foreign Assets Control
  - Impact on Marine Insurance
  - Hot Topics and Current Trends
  - Mitigation Techniques
  - Resources
Trade Sanctions Basics
What is a Trade Sanction?

• Trade Sanctions
  – “The sanctions can be either comprehensive or selective, using the blocking of assets and trade restrictions to accomplish foreign policy and national security goals.”
  - According to the U.S. Department of Treasury, Office of Foreign Assets Control
Who imposes Trade Sanctions?
How do Trade Sanctions work?

• Trade sanctions prohibit:

  1. **Doing business or engaging in transactions** with or related to targeted countries, organizations, individuals, vessels and aircraft; and

  2. **Helping its clients**, even indirectly, to do business in targeted countries or with sanctioned governments, organizations, individuals, vessels, and aircraft.

• Different governments maintain different trade sanctions, and each sanctions law or program is unique.

• Trade sanctions could include:
  
  - Arms embargoes
  - Asset freezes
  - Prohibitions on exports, imports of goods, services and technology
  - Bans on travel-related transactions
What do Trade Sanctions target?

Key sanctioned countries
- Iran
- Sudan
- Syria
- North Korea
- Cuba

Organizations/deposed governments

Individuals

Vessels

Aircraft

These are targeted because they are associated with:
- Sanctioned countries or
- Weapons of mass destruction proliferation or
- Terrorist activity or
- Criminal activity (e.g. drug trafficking) or
- Human rights violations
What is OFAC and its Targets?
Office of Foreign Assets Control (“OFAC”)

What is it?
As part of the U.S. Department of the Treasury, OFAC administers and enforces economic and trade sanctions based on U.S. foreign policy and national security goals against targeted foreign countries, terrorists, international narcotics traffickers, and those engaged in activities related to the proliferation of weapons of mass destruction.

Strict liability standard

Who must follow OFAC?
All U.S. Citizens and Permanent Residents (Green Card holders), regardless of where they work or for whom they work, even if they are also citizens of another country.

All employees of non-U.S. companies who have an employment contracts with U.S. domiciled entities

Every person in the world while they are physically in the U.S. or on U.S. territory.
Sampling of U.S. Trade Sanctions Laws and Executive Orders

**Laws**

- **Iran**
  - Iranian Transactions and Sanctions Regulations
  - Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010
- **Iran and Sudan**
  - Trade Sanctions Reform and Export Enhancement Act of 2000 Program
- **Russia**
  - Russia and Moldova Jackson-Vanik Repeal and Sergei Magnitsky Rule of Law Accountability Act of 2012
- **Cuba**
  - Cuban Democracy Act of 1992

**Executive Orders**

- Blocking Property of Certain Persons and Prohibiting Certain Transactions With Respect to the Crimea Region of Ukraine
- Blocking Sudanese Government Property and Prohibiting Transactions With Sudan
Who/What Does OFAC Target?

• Designated Countries
  – Entire nation
  – Targeted individuals or industries in the country

• Specially Designated Nationals—include
  - Individuals
  - Organizations
  - Entities
  - Vessels
OFAC Designated Countries

- There are over 25 active sanctions programs
- Most familiar:
  - Cuba
  - Iran
  - Sudan
  - North Korea
  - Syria
Specially Designated Nationals (“SDNs”)

- OFAC’s SDN list targets individuals, organizations, or entities (or their property) and vessels, such as:
  - Those acting for or owned/controlled by a target country’s government,
  - Terrorists: Individuals, groups, financiers or affiliates
  - Narcotics traffickers: Individuals, groups, financiers or affiliates
  - Proliferators of weapons of mass destruction: Individuals, groups, financiers or affiliates
- Samples of SDNs
  - Companies
    - Blue Marine Shipping Agency, S.A.
  - Vessels:
    - Iran Hormuz 12
    - Sand Swan
What is “Facilitation” under OFAC?

If you are prohibited from performing an activity, you are also prohibited from:

- Helping or enabling someone else perform that activity
- Asking a third party to perform that activity on your behalf
- Referring the opportunity to a colleague in another office, country, or to another firm or individual
- Approving, guaranteeing, or providing advice regarding that activity
- Modifying processes or procedures to enable someone else to perform that activity
What are the Penalties?

Committing a trade sanctions violation could lead to reputational damage and to severe criminal and civil penalties for the individual and/or sponsoring company.

For the Company

- A company can face fines and penalties of up to US$250,000 for each violation of trade sanctions laws, whether the violations were intentional or not. Criminal fines of up to US $1,000,000 per violation
- Civil fines of up to $250,000 or twice the value of the transaction, whichever is higher

For the individual

- Company employees, officers, and directors who knowingly commit or assist with sanctions breaches can face fines of up to US $1,000,000 per violation and up to 20 years imprisonment, depending on the jurisdiction
- Internal disciplinary action (e.g., termination)

Collateral consequences

- Damage to the company’s reputation
- Substantial legal defense costs
- Substantial costs of an investigation
- Significant amounts of remediation work
- Diversion of management’s time and attention away from the business
OFAC and the Marine Industry
Back to Basics

• OFAC plays a significant role in the marine/shipping industry
• The vessels have been an easy and common target for OFAC
  – Is the vessel in question subject to OFAC?
    - The owner?
    - The charterer?
  – If so, will the vessel maintain compliance with OFAC?
    - Planned route
    - Unplanned ports of call due to extreme circumstances (e.g., vessel damage)
• Facilitation and the strict liability standard play a role:
  – “Charterer of a ship to another company that is using the ship to supply Iran with gasoline, diesel, jet fuel, or aviation gasoline. The shipowner may still have engaged in sanctionable activity even if it does not have full control of the ship under the charter agreement.”
OFAC through its monitoring of vessels, ship-owners, forwarders, etc. has a significant impact
- Energy (e.g., oil and parts for oil industry)
- Shipping
- Raw materials, not just oil
- Sanctionable cargo
- Shipbuilding

The shipping restrictions alone have not been effective

Effectiveness dramatically increased when combined with measures against insurers/reinsurers
- Increased pressure on international insurance/reinsurance has been significant
- Greater and growing awareness among owners and insurance industry

Costs associated with OFAC penalties are keeping owners and the insurance industry away from risks

The overall result is an effective trade sanctions program
Hot Topics & Current Trends
Hot Topics & Current Trends

• Sanctions against Iran and Russia have increased in the recent past
• Change is constant
• Expect to see developments with Cuba, Iran and Russia
  – Cuba - U.S. removal of Cuba from the State Sponsors of Terrorism list
  – Iran – recent Iranian Nuclear Agreement
  – Russia – increasing tensions over Crimea and Ukraine
• Current events will dictate future actions, as well as resources dedicated to enforcement of existing regimes
Hot Topics & Current Trends

• Iran
  – Trade with Iran is still severely hampered by current trade sanctions
    - No other country is more likely to be targeted than Iran
      - Crucial for the marine industry because Iran’s largest export is oil which is primarily shipped to the world market
  – The EU and U.S. are not alone
  – Other countries have joined:
    - Australia
    - Korea
    - Japan
    - Malaysia
    - New Zealand
    - Singapore

• Unintended consequences of trade sanctions
Mitigation Techniques
Reduce the Risk

**Written policy in regard to OFAC**

- Maintain OFAC compliance point person to run OFAC checks and handle OFAC related inquiries
  - Identify all parties and property involved in a transaction
  - Screening via OFAC site or commercially available software
  - Separately track transactions involving restricted countries or persons
  - Monitor the OFAC country and SDN lists for additions/changes

- Require special clearances/pre-approvals for any restricted transaction

- Determine if transaction implicates restricted person, property or region

- Seek guidance from Legal or Compliance BEFORE entering into the questionable transaction

**Training**
- Updated annually

**Wording**
- Limitations
- Exclusion
Reduce the Risk

Cargo Cover
• Consider information about the “customers” and where they are located for open cargo cover
  – “Know Your Customer” due diligence
• Be mindful of destination, origin and transshipments
• Consignee of goods and commodity type

Ship Owners or Charterers
• Does client have any knowledge of voyages to a sanctioned country or have they had any voyages to a sanctioned country in the past
• Vessel IMO Number
Resources
Resources

1. Office of Foreign Assets Control
http://www.treasury.gov/about/organizational-structure/offices/Pages/Office-of-Foreign-Assets-Control.aspx
   A. Sanctions Regimes of the United States
   B. SDN List
   C. Summary of Enforcement Actions
2. European Union – external action

3. Australian Department of Foreign Affairs and Trade

4. Singapore Customs
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The details provided herein are believed to be accurate as of May 14, 2015, but are subject to change without warning or further notification.