Overview: Coping with Rapid Changes in Economic Sanctions

• Landscape of economic sanctions is changing rapidly
• Identifying trends can help companies
  – The interconnection of sanctions compliance and business risk management
• Focus on the U.S. rapid escalation of sanctions against Russia (Ukraine-related Sanctions)
Trends in Economic Sanctions

• The last several years have witnessed dramatic changes in the scope, complexity, and enforcement of economic sanctions.

• Rapidly Changing Landscape
  – Between March 6, 2014, and today – three new Executive Orders on Ukraine-related Sanctions, new legislation, and four rounds of designations, with more threatened
  – Suspension of certain U.S. sanctions on Iran put in place in January 2014 will expire July 20, 2014, unless extended or replaced

• Expanded Use by U.S. of Extraterritorial (Secondary) Sanctions
  • Sanctions against non-U.S. entities for engaging in significant transactions with or providing material goods, services to in certain product sectors (e.g., carrying refined petroleum products to Iran; or to certain Specially Designated Nationals (“SDNs”), even where there is no U.S. nexus.
  • Specifically targeting non-U.S. financial and insurance industries for sanctions.
  • Expanding sanctions to cover U.S. “owned or controlled” subsidiaries.
Trends in Economic Sanctions

• Targeted versus “countrywide” sanctions

• Multilateral v. Unilateral sanctions

• Uncoordinated U.S. Approach to Sanctions
  – Iran sanctions 4 major statutes, 9 executive orders, and regulations do not form cohesive body of law – no one source.
  – Ukraine-Related sanctions have overlapping Executive Orders and legislation
  – Makes even understanding the law difficult (particularly with respect to secondary sanctions)

• Sanctions and Securities Disclosures
  – Affects non-U.S. companies trading in the U.S.
  – SEC Office of Global Security Risk letters to issuers
  – Mandatory reporting under the Iran Threat Reduction Act of certain Iran-related transactions
Trends in Economic Sanctions

• No Longer Just OFAC to Worry About
  – The U.S. State Department administers and enforces many of the secondary sanctions programs
  – U.S. Commerce Department’s Bureau of Industry and Security ("BIS") enforces export/re-export of U.S.-origin goods
  – The New York Department of Financial Services ("DFS") has brought enforcement actions against banks and sent letters to insurers registered to do business in New York
  – Leads to higher penalties for primary sanctions
    • HSBC settled alleged sanctions violations for $1.92 billion with the Department of Justice, the Federal Reserve, OFAC, and FINCEN
  – Potential for bureaucratic gridlock – for example, in issuing guidance

• Insurance, Finance, and the “Penumbra” effect of U.S. Sanctions
  – Internal risk management policies of banks, insurers, and other entities often broader than the law requires
    • Sogaz Insurance
    • Banks unwilling to wire funds relating to food sales to Iran, even though “safe harbor applies”
    • Banks “firing” clients doing business in high risk areas
Ukraine Crises Related Sanctions - Overview

• Rapid imposition and changes to sanctions since March 6, 2014.
• To date there have been four rounds of designations “targeting” certain Russian oligarchs (and individuals associated with the takeover in Crimea), but these oligarchs own major entities which have been designated as SDNs.
• Very real possibility of “sectoral” sanctions against Russian financial and energy sectors.
• Difficult risk analysis for companies doing business in Russia.
U.S. Sanctions to Date – Designation of Individuals & Entities as SDNs

- To date approximately 45 individuals (most Russian oligarchs associated with President Putin’s inner circle) have been designated SDNs.
- To date approximately 19 entities have been designated as being owned or controlled by such individuals including:
  - Investcapitalbank
  - JSB Sobinbank
  - SMI Bank
  - Zest Leasing
  - Rossiya Bank
  - Chernomorneftegaz
  - Transoil
- Entities “owned or controlled” by such persons is a major issue
Who May Be Sanctioned?

• U.S. Sanctions Authority
  – Executive Orders 133660, 133621, and 133622 issued in March 2014

• Persons who may be sanctioned
  – Are officials of the Russian Government
  – Operate in sections of the Russian economy designated by the U.S. Government such as financial services, energy, metal and mining, engineering and defense/arms
  – Are involved in destabilizing Ukraine, misappropriating state assets, or asserting authority of portions of Ukraine without authority
  – Contribute to corruption in the Russian Federation
What Are the Sanctions Against Persons Designated under these Ukraine-related Sanctions?

• U.S. Persons must block the assets of such person (e.g., U.S. banks would block any USD transaction by such person)
• U.S. Persons may not provide or receive goods, services, or funds from such person.
• Individuals designated cannot enter the U.S. (visa ban).
• “Any person” including a non-U.S. person that materially assists such person by providing financial, material, or technological support, or goods or services may itself be designated an SDN.
• For entities designated on the “Entity List” administered by the U.S. Department of Commerce’s Bureau of Industry and Security, No Person can export or re-export U.S.-origin goods or technology to such person.
Entities “Owned or Controlled” by a Person Designated under Ukraine-related Sanctions

- If an SDN owns 50% or more of the entity then:
  - The entity is an asset of the SDN, and U.S. persons must treat that entity, as a matter of law, as if it were an SDN (e.g., block property, not do business, etc).
  - OFAC will look at corporate ownership in cascading manner and if at any point the 50% ownership is not met entity is not blocked
  - No aggregation (e.g., where multiple SDNs collectively hold 50% or more interest)
- If an SDN owns less than 50% or otherwise has indicia of control then:
  - U.S. Persons do not have the authority to block such entities assets
  - U.S. Persons should use diligence in determining whether to do business with such entity
  - The U.S. Government will look at other indicia of control to determine if or whether the entity is effectively controlled by an SDN
This Owned or Controlled Issue the Biggest Issue for Companies Doing Business in Russia

• Sogaz Insurance
  – Owned by Rossiya Bank, but Rossiya sold its interest below 50%
  – OFAC has provided informal guidance

• Gunvor Group - Swiss Oil Trading Entity
  – Mentioned in White House Press briefing as having links to Putin
  – Timchenko sold his entire stake in Gunvor the day before he was designated an SDN
  – OFAC has provided informal guidance
Have there Been General Sanctions on Russia?

- BIS (civil export licenses) and DDTC (military export licenses) ceased processing licenses to Russia in early March 2014.
- April 28, 2014, agencies announced they would deny pending licenses, and revoke existing licenses for “high technology” items to Russia that have military utility.
What is the Likelihood of Expansion of Sanctions Against Russian Sectors?

• To date sanctions have been measured:
  – Probably all designations are made at a very high level
  – OFAC’s willingness to engage on the “owned or controlled” issue is telling that the U.S. Government is carefully measuring sanctions
  – Notwithstanding broad language in Executive Orders, sanctions have been targeted

• However, a White House Press Release April 28 made numerous references (threats) to “sectoral sanctions” being considered if Russia does not take appropriate action, mentioning the Russian financial and energy sectors in particular

• Will the U.S. Target:
  – Gazprom (one of largest natural gas companies in the world)
  – Roszneft
### Why Expanding Sanctions Against Russia Is Difficult

### Major Shareholders OGISPY

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<th>Name</th>
<th>Shares Held</th>
<th>% Total Shares Held</th>
<th>Shares Change</th>
<th>% Chg from Prior Port</th>
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What Can Tanker Companies Do to Mitigate Risk?

• **Existing Business Relationships:**
  – Identify your business activities in or related to Russia and Crimea (e.g., vessels on long-term charter to Russian entities)
  – If you have major trading parties determine who owns these entities
  – Develop contingency plans if additional Russian entities are designated or sectors are targeted (e.g., the energy sector)
  – Review contractual provisions/consider additional contractual language in new charters

• **New Charters**
  – Length and parties to charter agreement
  – Revisit sanctions clauses
  – What currency is payment made in?
  – Is there a way to structure the deal to reduce risk? Primarily an issue for buyer/seller/broker, but . . .
    • If third country buyer/broker buys FOB Russia and is voyage charterer, perhaps better situated than other scenarios, in the event the Russian seller is designated an SDN
What Can Tanker Companies do to Mitigate Risk?

• Stay current – as the situation is rapidly changing
• Unlike Iran – real possibility that Russia will retaliate with countermeasures
• Take into consideration third-party actions (e.g., insurers, financers) who may be making their own assessments and decisions as to whether to enter into a particular transaction
• Document your diligence.
Advising on Sanctions Issues in Particular Transactions

• Determinations
  – Fact specific
    • Import versus export/nature of product
    • When was the contract entered into?
    • Who are the parties involved
  – Apply facts to various U.S. laws (contract sanctity, scope differ)
  – Consider U.S. Government interpretation versus strict legal reading of laws
    • “directly” and “significantly” under CISADA and EO 13599
    • “significant financial transaction” under NDAA

• Recently collecting diligence about Russian entities (native language research –to make ownership determinations).

• Advice may be couched as:
  – “risk” of sanction versus “black letter” legal opinion
  – Discussion of non-legal practical risk and consideration (e.g., Insurance coverage, ship mortgages, banking restrictions)
Conclusion

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