

Something Borrowed, Something New: An Update on Recent Treasury and State Department Actions: Iran, Russia, Syria and the Kimberley Process (Rough Diamonds)

April 27, 2017

While much attention has been focused on the Trump Administration's recent actions targeting imports of metals, lumber, and other commodities, the Administration has also steadily ramped up its activities in the trade controls space, by ordering a review of the Iran nuclear deal, targeting a number of Syrian persons with additional sanctions, and staying the course on Russia. While some of these actions, such as the large number of Syrian designations, are intended to signal a break with the Obama Administration, others, such as publicly reconfirming that U.S. companies will not be allowed to engage in certain drilling activities in Russia, have continued existing policies. As with many other areas, the Trump Administration's policy direction is still up in the air, and companies need to ensure that they have plans in place for a variety of different scenarios. We summarize below a number of key actions that could impact businesses.

Iran

On April 18, the Trump Administration [certified](#) to Congress that Iran is complying with the Joint Comprehensive Plan of Action (JCPOA). In the same certification, however, the Administration announced that President Trump "has directed a National Security Council-led interagency review of the [JCPOA] that will evaluate whether suspension of sanctions related to Iran... is vital to the national security of the United States." The notification to Congress did not provide a timeline for the review, but White House Press Secretary Sean Spicer indicated that it would take place within the next ninety days during his press briefing on April 19.

The announcement of the review did not, as a legal matter, have any impact on the U.S. sanctions relief commitments under the JCPOA or their implementation. It has, however, added to the uncertainty over this Administration's position on the deal. Will it maintain the status quo in light of Iran's compliance, seek to renegotiate the deal, or perhaps least likely given other national security crises, pull out or scuttle the deal altogether? The next critical juncture arrives in mid-May when, according to a report from the Congressional Research Service, the Trump Administration will need to renew certain statutory waivers to continue the relief from U.S. nuclear-related secondary sanctions. Given this uncertainty, businesses engaged in or contemplating entering the Iranian market should incorporate sanctions exclusion clauses into any contracts to protect against a potential "snapback" of sanctions.

Russia

U.S. Treasury Secretary Steve Mnuchin [announced](#), on April 21, that “the Treasury Department will not be issuing waivers to U.S. companies, including Exxon, authorizing drilling prohibited by current Russian sanctions.” The Administration may have felt constrained to adopt this position as a result of the Russia-related controversies swirling around the Trump presidency.

Significantly, the Administration is now on record at the highest levels as upholding a key component of the sanctions against Russia for its activities in eastern Ukraine. Under Directive 4 of Executive Order 13662, U.S. persons are prohibited from providing goods, services, or technology to certain Russian energy companies in support of deepwater, Arctic offshore, or shale oil exploration or production projects. The EU has an analogous restriction in place. This sanction is intended to starve Russia of the resources it needs to develop its unconventional oil reserves. Had the Trump Administration opted to allow activity that otherwise would have been prohibited by Directive 4, the pressure on the EU to allow similar authorizations for European companies would have been immense. This could have led to the first serious trans-Atlantic split on Russia sanctions policy and potentially to the gutting of this particular sanction in both the United States and the European Union.

Syria

On April 24, OFAC designated 271 employees of Syria’s Scientific Studies and Research Center (SSRC) in response to the Assad regime’s sarin attack in Khan Sheikhou, Syria earlier this month. [According to the Treasury Department](#), the SSRC is the Syrian government agency responsible for developing and producing chemical weapons and the designated individuals “have expertise in chemistry and related disciplines and/or have worked in support of [Syria’s] chemical weapons program since 2012.” The action was taken pursuant to Executive Order 13582, an Obama-era Order that blocks the property of the government of Syria and its supporters and imposes broad prohibitions on investment in and trade with Syria.

The Trump Administration touted the size of this action, noting that the 271 designations is one of the largest actions in OFAC history, and more than doubles the number of designations pursuant to Syria-related executive orders. The main impact of the action may well be symbolic – an indication of the seriousness with which the Administration regards Syria’s use of chemical weapons. Given the comprehensive sanctions already in place against the Assad regime, it seems unlikely that this new action, despite its size, will have a significant impact on the course of the conflict. However, an unintended consequence of the designation of large numbers of individuals could be an increase in “false positives” generated by screening systems. Financial institutions and other businesses that process large numbers of daily transactions could see increased compliance costs as a result.

Kimberley Process

On April 26, the Department of State provided [notice](#) of the reinstatement the Central African Republic (CAR) and Venezuela, and their respective importing and exporting authorities, as Participants eligible for trade in rough diamonds for purposes of U.S. laws and regulations. This action reflects the lifting of the almost three-year suspension of CAR and the removal of the self-

suspension of Venezuela from the Kimberley Process Certification Scheme (Kimberley Process or KP). The Kimberley Process is a joint initiative among governments, industry, and civil society to stop the flow of conflict diamonds.

For CAR, the continued fragile security situation and risk of the use of diamonds to fuel conflict has required implementation of a special arrangement, blessed by the KP, to allow for the resumption of the export of rough diamonds. Under this arrangement, only diamonds from certain “compliant zones,” in which diamond production has been determined to meet minimum KP requirements, are eligible for KP certificates. Under Section 4 of the Clean Diamond Trading Act, Public Law 108-19, the President is required to prohibit the importation to or exportation from the United States of any rough diamond that has not been controlled through the KP. Accordingly, rough diamonds from CAR that are produced outside of the compliant zones are not be eligible for import into the United States.

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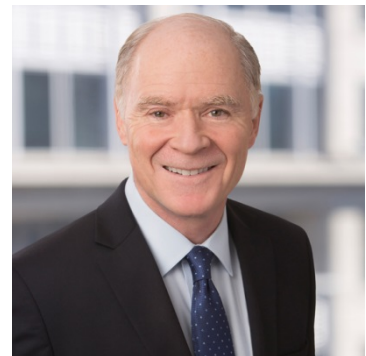
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