

Notice to Mariners

Imagine a vessel transporting a shipment from South America to various ports-of-call along the Atlantic seaboard. The vessel is northbound for a final destination at a large Mid-Atlantic port in the United States. As the vessel makes its way through the Caribbean, it stops in various locations, including Santiago de Cuba in order to perform minor repairs.

Upon leaving Santiago de Cuba, the vessel continues north, for its primary destination in the United States. In accordance with U.S. law, the vessel provides advanced identification to the final port of entry. Upon learning that the vessel has just left Cuban territory, the vessel is instructed that it will not be allowed to enter any U.S. port for a period of 180 days.

The captain of the vessel unsuccessfully appeals to U.S. customs officials that the vessel contains a full shipment of produce that requires unloading within ten days.

The end result: a container ship full of spoiled produce, a financial loss for the importers and exporters, a captain that must answer for his or her actions, and a ship that will be barred from further commerce in the United States for the next six months. Furthermore, if the ship is owned or managed by a U.S. citizen or company, penalties could be assessed for having scheduled the stop in Cuba.

This is but one example of the potential consequences of disregarding U.S. economic and trade sanctions. These sanctions are based on U.S. foreign policy and national security goals and are administered and enforced by the U.S. Treasury Department's Office of Foreign Assets Control, or "OFAC." Currently, OFAC administers sanctions programs against certain targeted foreign countries, as well as terrorists, international narcotics traffickers, proliferators of weapons of mass destruction and others.

This part of NTM No. 1 provides an overview of OFAC, including a review of current sanctions programs, enforcement and licensing regimes and reporting procedures and requirements. U.S. sanctions programs are subject to change, and this overview serves merely as a "snap-shot" of current programs. For additional information or questions on sanctions, including program updates and changes, we recommend visiting the OFAC website at: www.treas.gov/ofac or contact the Office of Compliance Outreach and Implementation at: 1-800-540-6322.

OFAC Jurisdiction

So who, exactly, is subject to OFAC jurisdiction?

OFAC regulations apply to the following groups: *All U.S. citizens and permanent resident aliens located anywhere in the world, any individual located in the United States, U.S.-registered vessels and other vessels subject to U.S. jurisdiction, all companies organized in the United States, all foreign branches and representative offices of U.S. companies, as well as all individuals and entities located in the United States (including domestic affiliates of foreign companies). Foreign subsidiaries of U.S. companies are also subject to the U.S. sanctions against Cuba and North Korea. As was seen in the example above, however, all shipping companies are potentially affected by OFAC regulations.*

OFAC's jurisdiction is broad and individuals or companies subject to OFAC jurisdiction are generally prohibited from providing trade facilitation, maritime transportation, vessel chartering, brokerage services, and maritime insurance or reinsurance involving the following:

- Shipments of goods or technology where the country of origin is subject to trade sanctions;
- Shipments of goods to or from countries or targets subject to trade sanctions;
- Export of U.S.-origin vessels to countries subject to trade sanctions;
- Carriage of passengers to or from Cuba;
- Carriage of passengers who are blocked Cuban nationals;

- Shipments of goods or technology in which there is an interest of a target government or a Specially Designated National (SDN) or, in the case of Cuba, an interest of any Cuban national;
- The purchase of services or bunkering at ports located within the territory of a country subject to trade sanctions;
- Transshipments through the United States of cargo from or destined for countries or targets subject to trade sanctions;
- Shipments aboard vessels owned or controlled by sanctioned countries or targets.

Now, you might say to yourself: “I’ve read the definitions, and I’m not sure they apply to me.” In this respect, it is important to note that U.S. sanctions programs vary, and what may be prohibited with regard to one sanctions target may be permitted or licensable for another. Sanctions programs are subject to frequent change. To ensure continued compliance, it is important that individuals and entities remain up-to-date on the latest prohibitions.

One might mistakenly assume, based on the definitions above, that a foreign subsidiary of a U.S. company is *not* subject to OFAC sanctions programs against countries that do not concern them like Cuba and North Korea. This is a dangerous assumption. All foreign subsidiaries of U.S. companies must comply with sanctions against Cuba and North Korea. Additionally, any person or entity under OFAC jurisdiction is prohibited from facilitating or assisting foreign companies (e.g., as financiers, brokers, or other intermediaries) with transactions in which they themselves could not participate directly. Meaning, even if a foreign subsidiary is not under OFAC jurisdiction, the U.S. parent company could risk committing a violation if it uses the foreign subsidiary to broker, facilitate or engage in any transaction with a sanctions target.

“But what if I work for a foreign company? Aren’t I exempt from these sanctions?”

No. If you are a U.S. citizen or permanent resident alien, then you are prohibited from engaging in unauthorized transactions on behalf of your employer, regardless of whether the employer is a U.S. or foreign company.

Finally, a vessel may be subject to U.S. jurisdiction, depending on its ownership or location. If your vessel meets any of the following definitions it is subject to U.S. jurisdiction, and hence, OFAC regulations:

- It is a U.S. flag vessel;
- It is owned or controlled by any U.S. company or companies;
- It is within U.S. waters;
- In accordance with sanctions against Cuba and North Korea, the vessel is owned or controlled by foreign subsidiaries of U.S. companies.

OFAC Licensing

OFAC has the authority to authorize transactions that are prohibited by issuing licenses to allow certain transactions. For some sanctions programs, OFAC may license commercial exports of agricultural commodities, medicine and medical devices. Limited provisions also exist for licensing the exportation of other items, including civil aviation equipment. OFAC’s licensing unit generally reviews all license applications on a first-in, first-out, case-by-case basis and issues or denies licenses based on U.S. foreign policy and national security interests. The OFAC licensing unit can be reached by telephone (202) 622-2480 and by fax (202) 622-1657. If an export transaction is licensed by OFAC, then U.S. persons are authorized to engage in transactions incident and necessary to the licensed export. Incident and necessary transactions could include: brokering, freight forwarding, shipping, insuring and certain forms of financing.

General Trade Restrictions by Program

The sanctions administered by OFAC are imposed, modified, or lifted based on U.S. foreign policy and national security objectives, and therefore, each sanctions regime tends to have restrictions and nuances that vary in terms of the types of transactions prohibited and the scope of the program in general. The following summary provides a broad overview of trade sanctions administered by OFAC as of December 2005. While a few programs target entire countries, most of these sanctions programs target specific persons and do not include general restrictions on all cross-border trade.

For many sanctions programs the exportation or importation of information and informational materials, which includes most books, magazines, and other publications; prerecorded video and audio tapes; and CD-ROMs, is exempt from the scope of the prohibitions. In many cases humanitarian donations of articles, such as food, clothing and medicine, are also exempt. Note that certain transactions that are not prohibited by OFAC may be subject to licensing or notification requirements from/to other U.S. government agencies (e.g., the Departments of Commerce or State or U.S. Coast Guard).

Balkans- There are no comprehensive restrictions on exports to or imports from this region. Nevertheless, the sanctions prohibit exportation or reexportation of goods, services or technology to specifically designated persons, including indicated war criminals and those persons deemed to be destabilizing the Western Balkans region. Also prohibited are financial transactions, importation of goods, services or technology and brokering or other facilitation of trade with such designated persons; and dealing in property in which such designated persons have an interest. These individuals can be found on OFAC's list of Specially Designated Nationals and Blocked Persons (see below).

Burma (Myanmar)- The following are prohibited: new investment that includes the economic development of resources in Burma; importation into the United States of items of Burmese origin; exportation of financial services to Burma; dealing in property in which any listed Burmese entity (currently including the three main Burmese financial institutions) has an interest. These institutions can be found on OFAC's list of Specially Designated Nationals and Blocked Persons (see below). There are no general restrictions on the export of U.S. origin goods to Burma. Transactions that are incident and necessary to such exports, including payment and the export of financial services, are authorized by general license.

Cuba- The following are prohibited: exportation or reexportation of goods, services, or technology to Cuba, except items licensed by the U.S. Department of Commerce (current Commerce licensing policy includes case-by-case licensing of agricultural and medical exports); importation of goods or services from Cuba; dealing in Cuban-origin goods or in property in which the Government of Cuba or a Cuban national has an interest; brokering of Cuban trade contracts; use, brokering, or insuring of Cuban-owned vessels. In addition, absent OFAC authorization, no vessel that enters a Cuban port to engage in an unauthorized trade of goods or the purchase of services may enter a U.S. port to load or unload freight for a period of 180 days following departure from Cuba. No vessel carrying goods or passengers to or from Cuba or carrying goods in which Cuba or a Cuban national has an interest may enter a U.S. port with such goods or passengers on board. Unauthorized travel-related transactions to, from, and within Cuba are prohibited.

Diamond Trading- This program restricts the direct or indirect import and export of rough diamonds not controlled through the Kimberly Process Certification Scheme (KPCS). Shipments of rough diamonds imported into the United States from a KPCS participating country or exported from the United States to a KPCS participating country must be accompanied by a Kimberley Process Certificate and sealed in a tamper-resistant container. For complete information on the KPCS certificate and other restrictions on the trade of rough cut diamonds, please review the information available at: <http://www.treas.gov/offices/enforcement/ofac/sanctions/t11diam.pdf>

Iran- In general, the following transactions are prohibited: exportation or reexportation of goods, services, or technology to Iran; direct or indirect importation of goods or services from Iran; dealing in Iranian-origin goods and transactions that involve the trading of Iranian oil or petroleum products, or transactions that would benefit the Iranian petroleum industry. In addition, facilitation of transactions with Iran and brokering of unauthorized Iranian trade contracts are expressly prohibited. Broad exceptions are made via general license for the importation of foodstuffs intended for human consumption (that are classified under

chapters 2-23 of the Harmonized Tariff Schedule of the U.S.) and carpets and other textile floor coverings (that are classified under chapter 57 or heading 9706.00.60 of the Harmonized Tariff Schedule of the U.S.). Exports of agricultural commodities, medicine, or medical equipment may be licensed by OFAC on a case-by-case basis.

Iraq- There is no general restriction on exports to or imports from Iraq. Nevertheless, the sanctions prohibit: exportation or reexportation of goods, services or technology to designated family members, supporters and members of the regime of former President Hussein; importation of goods, services or technology and brokering or other facilitation of trade with such designated persons; dealing in property in which such designated persons have an interest. These individuals can be found on OFAC's list of Specially Designated Nationals and Blocked Persons (see below).

Liberia- There is no general restriction on exports to Liberia. Nevertheless, the sanctions prohibit: exportation or reexportation of goods, services or technology to designated family members, supporters and members of the regime of former President Charles Taylor; importation of goods, services or technology and brokering or other facilitation of trade with such designated persons; dealing in property in which such designated persons have an interest. These individuals can be found on OFAC's list of Specially Designated Nationals and Blocked Persons (see below). The program also includes a specific ban on the importation of Liberian origin lumber.

Narcotics Trafficking- The sanctions prohibit the following: exportation or reexportation of goods, services or technology to designated narcotics traffickers; importation of goods, services or technology and brokering or other facilitation of trade with such designated entities; dealing in property in which such designated persons have an interest. These entities can be found on OFAC's list of Specially Designated Nationals and Blocked Persons (see below).

Nonproliferation- OFAC currently administers two separate sanctions programs against proliferators of weapons of mass destruction. The first level of sanctions prohibit the importation of goods, technology, or services produced or provided by certain foreign persons designated by Secretary of State for having promoted the proliferation of weapons of mass destruction. Additionally, on June 28, 2005, the President signed Executive Order 13382, designating several organizations and their supporters in Iran, North Korea and Syria as proliferators of WMD. Under these sanctions, the following transactions are prohibited: exportation or reexportation of goods, services or technology to designated proliferators of WMD technology; importation of goods, services or technology and brokering or other facilitation of trade with such designated entities; and dealing in property in which such designated persons have an interest. The entities designated under this program can be found on OFAC's list of Specially Designated Nationals and Blocked Persons (see below).

North Korea- Although the sanctions against North Korea are still technically in place, nearly all transactions are authorized pursuant to various general licenses. However, goods of North Korean origin may not be imported into the United States either directly or through third countries, without prior notification to and approval from OFAC.

Sudan- In general, the following transactions are prohibited: exportation or reexportation of goods, services, or technology to Sudan; importation of goods or services from Sudan; and dealing in Sudanese-origin goods or in property in which the Government of Sudan has an interest. In addition, facilitation of foreign nationals' transactions with Sudan and brokering of Sudanese trade contracts is expressly prohibited. Exports of agricultural commodities, medicine, or medical equipment may be licensed by OFAC on a case-by-case basis.

Syria- The Department of Commerce enforces a ban on the unauthorized exportation of products of the United States to Syria. OFAC-implemented sanctions with respect to Syria prohibit the receipt of unlicensed donations from the Government of Syria by U.S. persons and participation in any financial transaction with the Government of Syria that poses a risk of furthering terrorist acts in the United States. In addition, the sanctions prohibit: exportation or reexportation of goods, services or technology to persons determined to be contributing to the Government of Syria's harboring of terrorists, its military presence in

Lebanon; its pursuit of weapons of mass destruction; and its undermining of stabilization efforts in Iraq; importation of goods, services or technology and brokering or other facilitation of trade with such designated persons; and dealing in property in which such designated persons have an interest. These individuals can be found on OFAC's list of Specially Designated Nationals and Blocked Persons (see below). There is no general ban on imports into the United States from Syria.

Terrorists- The sanctions prohibit the following: exportation or reexportation of goods, services or technology to designated terrorists and terrorist networks; importation of goods, services or technology and brokering or other facilitation of trade with such designated entities; dealing in property in which such designated persons have an interest. These entities can be found on OFAC's list of Specially Designated Nationals and Blocked Persons (see below).

Zimbabwe- There is no general restriction on exports to or imports from Zimbabwe. Nevertheless, the sanctions prohibit: exportation or reexportation of goods, services or technology to persons designated as undermining Zimbabwe's democratic processes or institutions; importation of goods, services or technology and brokering or other facilitation of trade with such designated persons; dealing in property in which such designated persons have an interest. These individuals can be found on OFAC's list of Specially Designated Nationals and Blocked Persons (see below).

Specially Designated Nationals And Blocked Persons (SDNs) - As part of its enforcement efforts, OFAC designates individuals, entities and companies owned or controlled by, or acting for or on behalf of, sanctions targets. OFAC publishes a list of these designations, as well as of individuals, groups, and entities, such as terrorists, narcotics traffickers and proliferators of WMD technology designated under programs that are not country-specific. Collectively, such individuals and companies are called "Specially Designated Nationals" or "SDNs." U.S. persons are generally prohibited from dealing with SDNs and any property or assets in which an SDN has an interest must be blocked if under the control of a U.S. person. OFAC also publishes a list of vessels owned or controlled by sanctioned countries or other targets.

Keeping Current on OFAC Sanctions Programs

OFAC's public information documents are updated whenever there is a change to an existing program, or when a new program is announced. Although OFAC does not maintain a mailing list, a "starter kit" of essential OFAC information is available on the OFAC website and from OFAC's fax-on-demand service. This information can be very helpful to a company in the initial stages of developing or incorporating OFAC compliance procedures into existing export controls. Corporations may keep current with OFAC sanctions programs via the following user-friendly electronic resources:

- **On the Internet** - All of OFAC's program "brochures," as well as SDN information, are available free in downloadable Adobe Acrobat PDF format on the OFAC website. Under the "Contents" heading, the date of OFAC's last change is displayed next to the "Financial Operations Bulletin" heading and the "SDN and Blocked Persons" heading. Additionally, the "Recent Actions" file summarizes the latest sanctions developments. Access is also provided to statutes, United Nations resolutions, Executive orders, and regulations under the "Legal Documents" heading. Users have the opportunity to subscribe to Listserv Operations and Actions Bulletins. OFAC's website is www.treas.gov/ofac.
- **OFAC Fax-on-demand Service** - OFAC operates a free automated fax-on-demand service, which can be accessed 24 hours a day, seven days a week, by dialing 202-622-0077 from any touch tone phone and following voice prompts. The index lists all of the documents OFAC makes available by fax, and indicates the date each document was last updated.
- **OFAC File Transfer Protocol server** - OFAC maintains many of its critical files, such as the SDN list in a variety of formats, on a File Transfer Protocol (FTP) server run by the Government Printing Office. This server can be accessed at: <ftp://fedbbs.access.gpo.gov>. OFAC also maintains its own FTP server, accessible at: <ftp://ofacftp.treas.gov>. Both servers will accept anonymous logins.

Sanctions Enforcement

OFAC's outreach to the public is a fundamental element in deterring violations of economic sanctions as well as educating exporters on the current status of OFAC programs. OFAC works to encourage public compliance with these programs through public speaking engagements and by providing updated, publicly-available sanctions information.

Any U.S. person who believes that a violation of the sanctions has occurred is encouraged to report these transactions to OFAC. Self-disclosures of violations may be submitted to:

Office of Foreign Assets Control
Attn: Enforcement
U.S. Department of the Treasury
1500 Pennsylvania Ave, NW
Washington, DC 20220

If a member of the public learns of possible violations of sanctions, OFAC will extend confidential treatment to an incoming report. Calls may be placed to OFAC's Enforcement unit at (202) 622-2430.

In the event a violation has occurred, OFAC will take enforcement action at a level deemed appropriate to the circumstances. Not every sanctions violation is equal and there are numerous mitigating circumstances taken into consideration when making enforcement decisions. Warning letters may be used in lieu of civil or criminal penalties in instances where the transaction may be of a technical or other low-level impact to overall sanctions policy or the circumstances surrounding the occurrence warrant no further OFAC action. More serious violations may result in civil and/or criminal penalties.

The existence of a sanctions compliance program at the time of a violation or the implementation of one after detecting a violation is a mitigating factor for OFAC to consider in resolving a civil enforcement case. Other factors such as self-disclosure, first-time or inadvertent violations are also considered and may reduce the amount of a penalty. At the same time, aggravating factors such as second or repeat offenses, willful blindness, negligence or the lack of a compliance policy are taken into consideration in determining a penalty.

Questions (the OFAC Hotline)

OFAC does not require your company to establish any particular internal OFAC-related compliance procedures, but the potential damage to national security, the substantial civil and criminal penalties, as well as the company's reputation should alert you to the importance of incorporating an appropriately tailored OFAC compliance program into your company's existing compliance program. If your company has any questions regarding OFAC-administered sanctions programs, OFAC compliance, or questions about specific trade transactions (past, present, or future); please call OFAC's Compliance Hotline at 1-800-540-6322. Compliance Officers are available to help you on weekdays from 7:00 a.m. until 7:00 p.m. eastern time. Comments or questions may also be posted via OFAC's website. OFAC has a Miami branch office with a special bi-lingual hotline relating to information on the Cuban sanctions, which can be reached at 786-845-2829. If you have questions regarding this article or OFAC regulations, you may contact the Compliance Division of the Office of Foreign Assets Control at 1-800-540-6322 or fax at 202-622-2426.

NOTE: *This overview is meant to alert mariners to potential issues arising under U.S. sanctions and does not have the force of law. Reference should be made to the controlling legal authorities to determine the applicability of specific prohibitions, exceptions, and licensing provisions. The regulations governing OFAC sanctions programs are found in chapter V of title 31, Code of Federal Regulations. Prior to the issuance of regulations, a new OFAC sanctions program is governed by the relevant Presidential Executive order imposing sanctions and delegating implementation authority to the Secretary of the Treasury.*

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