



CLIENT ALERT:

U.S. DESIGNATES SYRIAN PORT OPERATORS AND SHIP'S AGENTS AS SDNs

August 26, 2015

On August 3, 2015, the U.S. Department of Treasury's Office of Foreign Assets Control ("OFAC") designated, among others, six Syrian entities as property in which the Government of Syria has an interest. Those six entities are now identified on the Specially Designated Nationals ("SDN") List with the "Syria" program tag. The six entities are involved in maritime commerce and consist of the following: the General Directorate of Syrian Ports, Lattakia Port General Company, Tartous Port General Company, Syrian General Authority for Maritime Transport, Syrian General Shipping Agencies Company ("Shipco"), and the Syrian Chamber of Commerce. The designations were made pursuant to Executive Order ("E.O.") 13582, and as a result of the designations, any property of those entities in the U.S. is blocked and U.S. persons are generally prohibited from engaging in transactions with them.

THE IMPACT OF THE DESIGNATIONS ON NON-U.S. PERSONS

Because the designated entities include two port operators and a major shipping agent (i.e., Shipco), the question arises as to how these designations affect non-U.S. persons/entities, particularly those involved in the maritime trade. Specifically, the question raised is whether non-U.S. entities can transact routine business with these port operators and Shipco. As explained herein, we believe that routine trade to these ports and ordinary transactions with Shipco by non-U.S. persons will not violate U.S. sanctions, although a regular liner service may be problematic depending on the cargoes carried. For example, if a liner service regularly delivers petroleum products or steel products to Syria, those cargoes might attract scrutiny from OFAC, as those cargoes might benefit the regime. On the other hand, if a liner service carries food, clothes and other consumer goods, then it is very unlikely that any sanctions issue would arise.

It should be noted, however, that payments in U.S. dollars in respect to *any* Syrian transactions should not be made, as such payments must be processed by U.S. banks and the sanctions prohibit the banks from doing so (absent a license). Furthermore, caution should also be exercised in any transaction involving the transportation or delivery of LPG or gasoil as these could impact U.S. sanctions. A further discussion of these points follows.

U.S. SANCTIONS AGAINST SYRIA: E.O. 13582 AND "MATERIAL" ASSISTANCE

The U.S. has long maintained trade sanctions against Syria, although until 2011 none were designed to have extraterritorial effect (i.e., on non-U.S. persons or transactions). A new round of Syrian sanctions commenced in 2011, and while, for the most part, these sanctions are not designed to have direct extraterritorial effect as is the case with the extensive Iranian sanctions, some do have the potential to apply extraterritorially to non-U.S. persons.

In particular, E.O. 13582, under which the recent Syrian SDN designations were made, provides for the blocking of property located in the U.S. of "any person" (which includes non-U.S. persons) who is determined by the Secretary of the Treasury, in consultation with the Secretary of State:

...to have *materially* assisted, sponsored, or provided financial, material or technological support for, or goods and services in support of, any person whose property and interests in property are blocked pursuant to this order.

(Emphasis added.) The term “materially” is not defined and presumably there would have to be a factual determination on a case-by-case basis as to whether a transaction with an SDN designated pursuant to this E.O. was material.

An example of the type of activities that have been found to implicate the “material” assistance section of E.O. 13582 can be found with the other designations made by OFAC on August 3. In particular, on August 3, in addition to the six entities described above, eight other entities and seven vessels (all of which are non-U.S. persons) were designated pursuant to E.O. 13582. OFAC’s stated reasons for those designations make clear that the said entities were named to the SDN list for far more than simply calling at Syrian ports. In each case, the entities and vessels were found to have played a material role in supplying the Government of Syria, or government-owned entities, with significant quantities of LPG or gasoil by regularly shipping those products to the port of Banias, described by OFAC as a “government-controlled port.”

It is our view, based on the language of the sanctions, the policies underlying same, and the history of the enforcement, that routine transactions with the designated SDNs (i.e., the port operators and Shipco) would not implicate this provision of E.O. 13582, or similar provisions of other E.O.’s setting forth sanctions against Syria, provided that the routine shipping transactions do not otherwise implicate activities specifically prohibited by the E.O.’s and, of course, have no U.S. nexus whatsoever. Caution should nevertheless be exercised to ensure that the transaction cannot be considered “material”, an analysis which will be driven by the facts. Liner services with regular calls to these ports or in which Shipco is involved will not, generally, implicate the sanctions because the volume of regular calls should not raise the activity to the level of materiality. However, OFAC has indicated its interest in Syrian transactions involving petroleum products, steel or industrial goods as these goods can have dual uses that might benefit the Syrian government, which concerns OFAC. Hence a liner service which regularly delivers such products may find itself subject to greater OFAC scrutiny.

SYRIAN TRANSACTIONS INVOLVING LPG OR GASOIL

Apart from the above, and in light of the other August 3 designations made by OFAC of entities and vessels involved in providing LPG and gasoil to Syria, any non-U.S. shipowner or charterer carrying LPG or gasoil for discharge at Banias should very carefully consider whether that transaction could be considered as material support, goods or services supplied to the Syrian Government. The Syrian Company for Oil Transport (“SCOT”) is a Syrian Government-owned entity which is also listed on the SDN list. According to its website, SCOT “...is the main operator of transportation activities of petroleum to and from Syria” and operates two Syrian pipeline networks that service Banias and Tartous. OFAC has also described Banias as a “Syrian Government-controlled port.”

Under the circumstances, the discharge of LPG and gasoil through the SCOT terminal for delivery to an independent receiver, not owned or controlled by the Syrian government, should not technically violate the sanctions. However, the recent SDN designations referred to above (which were based on the supply of LPG and gasoil to the Syrian Government or to government owned/controlled entities) suggest that OFAC is interested in transactions involving the delivery of these commodities, particularly at Banias, as there is a concern that these commodities could ultimately end up in the hands of the Syrian government. As such, even if LPG and gasoil is being delivered to receivers who are independent from the Syrian government, OFAC may nonetheless examine the transaction, in part because the state of civil war that exists in Syria can cloud the ultimate uses and users of imported cargoes. Due diligence should therefore be exercised in any transaction involving the supply of LPG

and gasoil to Syria, and in particular at Baniyas, to ensure, to a reasonable degree, the identity of the receiver and potential end use, as the ultimate supply of LPG and gasoil to the Syrian government or government-controlled entities may be considered a violation of U.S. sanctions.

U.S. DOLLAR PAYMENTS NOT PERMITTED

One should also remember that no U.S. dollar payments should be made in connection with any trade to Syria, even routine, permissible maritime trade by non-U.S. persons. There is a broad prohibition under E.O. 13582 against exporting any services from the U.S. to Syria. This means that U.S. banks, and branches of foreign banks located in the U.S., cannot process financial transactions which ultimately convey a benefit in Syria, even if the underlying transaction is one by a non-U.S. party which is permissible. Thus, even if a transaction is otherwise permissible, if there is any tie to Syria, no payments should be made in U.S. dollars in connection with the transaction. By way of example, freight should not be paid in U.S. dollars in relation to a shipment of permissible cargoes to Syria by a non-U.S. shipowner. If so, then, for instance, the payment may be blocked by the U.S. bank or the transfer of the funds not completed.

SUMMARY

The designation by the U.S. of two Syrian port operators and a Syrian shipping agent to the SDN list does not, in our view, mean that routine maritime transactions with those operators or agent by a non-U.S. entity will necessarily violate U.S. sanctions. As long as the transactions have no U.S. nexus, and as long as they cannot be construed to be material support, goods, or services, we do not believe that U.S. sanctions come into play, with the understanding that a liner service which delivers dual use products on a regular basis may find itself subject to OFAC scrutiny. However, no U.S. dollar payment can be effected in respect of any such transaction. Finally, any carriage of LPG or gasoil to Syria should be carefully considered, since that may be a violation of U.S. sanctions if the Syrian Government, or a government-owned/controlled entity, is the actual receiver of the cargo.

FREEHILL HOGAN & MAHAR LLP
80 Pine Street
New York, NY 10036
212-425-1900
www.freehill.com

William L. Juska, Jr. Gina M. Venezia William J. Pallas
juska@freehill.com venezia@freehill.com pallas@freehill.com
