E-ALERT | International Trade Controls

September 2, 2011

EU SYRIA AND LIBYA SANCTIONS

EU ACTS TO IMPOSE ADDITIONAL ECONOMIC SANCTIONS AGAINST SYRIA WHILE EASING LIBYA SANCTIONS AND UNBLOCKING CERTAIN LIBYAN ASSETS

On August 23, 2011, the Council of the European Union ("EU Council") adopted Council Regulation (EU) No 843/2011, imposing additional restrictive measures against Syria in view of the government's ongoing repression of protestors. Regulation 843/2011 added 15 Syrian individuals and five entities to the list of designated parties set out in Annex II to Regulation (EU) No 442/2011. These newly designated parties are subject to asset blocking and other restrictive measures (as described in our May 25, 2011 e-alert).

On September 2, 2011, the EU announced adoption of further sanctions against Syria, including a prohibition on the purchase, import or transportation from Syria of crude oil and petroleum products, and the freezing of funds and economic resources of further persons and entities supporting Syrian president Bashar al-Assad and his regime. The regulation imposing these new sanctions will be published on September 3, 2011.

In addition, following a high-level Paris meeting of the Libya Contact Group -- attended by officials from over 60 countries as well as the UN and other international organizations and senior officials of Libya's Transitional National Council ("TNC") -- the EU and other authorities are moving to address existing Libyan sanctions regimes to enable more commercial and financial interaction with the TNC. On September 1, the EU Council adopted Council Regulation (EU) 872/2011, removing a number of entities from the list of the designated parties set out in Annex II to Regulation 204/2011. The delisted entities include six Libyan ports, as well as a number of Libyan oil companies and financial institutions. This has not yet been matched by similar action on the part of the United States government.

In Paris this week, U.S. Secretary of State Clinton urged other nations to join the 70-plus countries that have already formally recognized the TNC and pressed for UN sanctions on Libya to be lifted "in a responsible way" while calling for the TNC to be given Libya's UN seat. At the same time, Secretary Clinton urged the TNC to make further concrete progress on stability and democracy. While the US government stopped short of joining the EU and Canada to lift unilateral sanctions, it sought and achieved UN support to unblock $700 million for the TNC, of which at least $300 million has been disbursed, with another $800 million potentially to follow. The pace of such efforts with respect to funds blocked by US sanctions may be hampered, however, by U.S. Congressional pressure to condition any release of funds by the US government on the TNC's agreement to extradite convicted Lockerbie bomber Abdelbaset al-Megrahi.

The United States and others are also seeking UN Security Council support for: (1) broader approval for Member States to release frozen Libyan assets to the TNC, (2) a mandate for a UN role in Libya and (3) a partial lifting of the arms embargo to permit, *inter alia*, arms exports into Libya for protection of foreign assistance providers. There will be challenging negotiations in the UN Security Council to pass such a resolution and its prospects for success remain unclear. For example, only 18 African countries have recognized the TNC's authority to date and the attitudes of some countries, including Security Council members South Africa, India and Lebanon, will be an obstacle to gaining broader UN Security Council support for lifting international sanctions.

Although the pace for change to Libya sanctions remains somewhat uncertain, interest is high and diplomatic attention is intense. Once sanctions are lifted, US and EU companies should find themselves in a strong position in the Libyan market given the TNC's publicly stated interest in re-engaging economically with its friends and reluctance to award contracts and concessions to countries it views as having been less supportive of the TNC such as India, Russia (which yesterday recognized the TNC) and China.

ADDITIONAL ECONOMIC SANCTIONS AGAINST SYRIA

The newly-designated parties now subject to EU blocking sanctions have all been involved in the repression and violence against civil population in Syria or supported the regime of Bashar al-Assad financially. Regulation 843/2011 freezes all funds and economic resources that belong to or are owned, held or controlled by these newly-designated parties. In parallel, the Regulation prohibits making available any funds or economic resources, directly or indirectly, to or for the benefit of the designated persons. The Member States are authorized to release frozen funds in certain circumstances, including as necessary to satisfy the basic needs of the designated persons.

The prohibition on making funds or economic resources available effectively bars any business dealings with the designated persons, subject to certain narrow exceptions. The ban extends to entities owned or controlled by the designated persons. There is no uniform threshold for "control" that Member State authorities apply when interpreting the above provision. In case of doubt, we advise clients to consult Member State authorities prior to any transaction with entities in which a designated person owns a stake of 25% or above.

The sanctions against these newly designated persons apply:

- within the territory of the EU, including its airspace;
- on board any aircraft or vessel under the jurisdiction of the EU;
- to all EU Member State nationals whether within or outside the territory of the EU;
- to any legal person, entity or body incorporated under the law of an EU Member State; and
- to any legal person, entity or body in respect of business done in whole or in part within the EU.

The EU is also acting to prohibit the purchase, import and transport of oil and other petroleum products from Syria, although it appears that these sanctions are likely to contain a grandfathering provision or grace period to give companies until November 15, 2011 before they must comply. Regulations with the details of these prohibitions on trade in oil and other petroleum products from Syria, and related financial and insurance services, as well as the names of the further designated parties will be published in the EU Official Journal and become effective on September 3, 2011.

PARTIAL REMOVAL OF EU SANCTIONS AGAINST LIBYA

The entities removed from the EU list of Libyan designated parties include *inter alia* six Libyan ports (Tripoli, Al Khoms, Brega, Ras Lanuf, Zawia and Zuwara), as well as the following entities:

- Economic and Social Development Fund (ESDF)
- National Commercial Bank
- Gumhouria Bank
- Sahara Bank
- Azzawia (Azawiya) Refining
- Ras Lanuf Oil and Gas Processing Company (RASCO)
- Brega
- Sirte Oil Company
- Waha Oil Company
- Tamoil Africa Holdings Limited
- First Gulf Libyan Bank
- National Oil Wells and Drilling and Workover Company
- North African Geophysical Exploration Company
- National Oil Fields and Terminals Catering Company
- Mabruk Oil Operations
- Harouge Oil Operations
- Mediterranean Oil Services Company
- Mediterranean Oil Services GMBH
- Libyan Arab Airlines and
- Al-Sharara Oil Services Company.

As a result, the funds and economic resources that belong to or are owned, held or controlled by these entities are no longer frozen. Similarly, the parallel prohibition on making available funds or economic resources to these entities no longer applies.

However, the EU sanctions continue to apply with respect to individuals and entities which remain listed and in particular, the entities designated by the UN Security Council (UNSC), i.e.,

- Central Bank of Libya
- Libyan Investment Authority
- Libyan Foreign Bank
- Libyan Africa Investment Portfolio and
- National Oil Corporation.

The EU can only remove the sanctions with respect to these entities upon a relevant decision of the UN Security Council.

Earlier this week, following an authorization by the UN, a number of EU Member States including the UK, France and Italy began releasing frozen Libyan funds and transferring them to the TNC. Other Member States, as well as Switzerland, are currently seeking UN permission to release the Libyan funds. In the coming weeks, the EU will continue to unfreeze Libyan funds, which reportedly amount to some EUR 12 billion in the UK, EUR 7.6 billion in France, EUR 7 billion in Germany and SFr 650 million in Switzerland.

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Our EU and US offices are deeply involved in advising clients concerning the application of the EU and US sanctions and we would be pleased to help clients navigate the requirements affecting trade and investment in Syria and Libya.

If you have any questions concerning the material discussed in this client alert, please contact the following members of our International trade controls practice group:

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