U.S. Economic Sanctions and Their Impact on Payment Services

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Joel Feinberg
David Teitelbaum
Why Should Money Transmitters Care About U.S. Economic Sanctions?
Penalties vary but can be substantial under all programs

Criminal penalties:
- Fines ranging from $50,000 to $10,000,000
- Imprisonment ranging from 10 to 30 years

Civil penalties:
- Can range from $250,000 or twice the amount of each underlying transaction to $1,075,000 for each violation

Individuals may be fined and/or imprisoned

Debarment from government contracts
Major Penalties for Sanctions Violations In Recent Years

- BNP Paribas: $964 million (June 2014)
- HSBC: $875 million (Dec. 2012)
- ING Bank: $619 million (June 2012)
- JPMorgan Chase: $88.3 million (Sept. 2011)
- Credit Suisse: $536 million (Dec. 2009)
What Is the Legal Framework for U.S. Economic Sanctions?
Delegation of Authority to President

- Congress has delegated authority to the President:
  - Trading with the Enemy Act (TWEA)
  - International Emergency Economic Powers Act (IEEPA)
Direct Congressional Action

- Congress also legislates directly:
  - Comprehensive Iran Sanctions, Accountability, and Divestment Act (CISADA)
  - Iran Sanctions Act (ISA)
  - Sudan Accountability and Divestment Act
  - Burmese Freedom and Democracy Act
  - Cuban Democracy Act
  - Cuban Liberty and Democratic Solidarity (Libertad) Act, a/k/a Helms-Burton
  - Trade Sanctions Reform Act (TSRA)
Direct Presidential Action

- Multilateral sanctions begin with a UN resolution, usually followed by an Executive Order under U.S. law
- Unilateral sanctions can begin with an Executive Order (or statute)
- Both types of sanctions are typically followed by implementing regulations
Responsible Agencies

- Treasury Department’s Office of Foreign Assets Control (OFAC): administers a different set of regulations for each program
- Commerce Department’s Bureau of Industry and Security (BIS): administers the Export Administration Regulations (EAR)
- State Department’s Office of Terrorism Finance and Economic Sanctions Policy provides policy guidance
What Is the Vocabulary Used in U.S. Economic Sanctions?
Blocking

• Also known as “freezing”
• Applies to “property,” which is broadly defined to include almost anything of value, including services
• Blocked property must be reported to OFAC within 10 business days and annually thereafter
• Certain kinds of property (e.g., funds, undisputed and liquidated debts) must be placed in an interest-bearing account at a U.S. financial institution
  – Other kinds of property must be secured: letters of credit, contracts, agreements evidencing IP rights
Rejecting

- Transactions that are prohibited but are not subject to blocking must be rejected
- U.S. financial institutions are required to report rejected funds transfers
  - No reporting obligation for rejected transactions other than funds transfers
Specially Designated Nationals (SDNs)

- Persons designated by the President or the Secretary of the Treasury/State as acting on behalf of sanctioned governments or entities
- Prevents sanctions targets from evading sanctions by operating through third parties
- U.S. persons are prohibited from having any financial dealings with SDNs and in most cases their assets are blocked
- The OFAC website contains a master list of SDNs against which all transactions must be screened
Facilitation

- Implied even when not express
- No U.S. person may facilitate a transaction by a non-U.S. person that a U.S. person could not undertake directly
- Facilitation includes almost any involvement other than purely clerical activities, e.g., referral of business opportunities to a non-U.S. person
Embargoes

• Complete trade embargo
  – Cuba (affects GoC and Cuban nationals wherever located)
  – Iran (does not affect Iranian nationals outside Iran)
  – Sudan (does not affect nationals outside of Sudan)
  – Syria (does not affect nationals outside of Syria)

• Limited trade embargo
  – North Korea (prohibits importsExports of items (but not services), transactions involving North Korean-flagged vessels)
Licenses

• **General license**
  - A regulation authorizing a specific activity, subject to specific conditions
  - Generally, no duty to notify OFAC
  - No expiration date, BUT can be revoked
  - Example - personal remittances under Cuba, Iran, Sudan, Syria regulations

• **Specific license**
  - Issued in response to an application by an interested party
  - Non-transferable
  - Generally have an expiration date
U.S. Person

- U.S. citizens or residents, wherever located
- Entities organized under U.S. law
- All persons in the United States (e.g., branch office of a European bank)
- In the case of Cuba and Iran, the relevant term is “person subject to the jurisdiction of the United States,” which includes the foregoing as well as any entity owned or controlled by the foregoing
  - Thus, a wholly-owned subsidiary of a U.S. company is a person subject to the jurisdiction of the United States and must comply with the U.S. embargoes of Cuba and Iran
What Are the U.S. Economic Sanctions Regimes?

Rules
1. You can....
2. You can’t...
3. You can....
4. You can’t
Overview of Programs

• Country-Based Programs
  – Burma (mostly lifted by licenses)
  – Cuba
  – Iran
  – North Korea
  – Sudan
  – Syria

• SDN-Based Programs
  – Target specific individuals and entities

• Miscellaneous Programs (e.g., Rough Diamonds)

All programs are different and increasingly complex
Examples of SDN-Based Programs

- Balkans
- Belarus
- Cote d’Ivoire
- Democratic Republic of the Congo
- Iraq
- Lebanon
- Liberia
- Libya
- Zimbabwe

- Terrorism Sanctions Regulations
- Global Terrorism Sanctions Regulations
- Foreign Terrorist Organizations Sanctions Regulations
- Weapons of Mass Destruction Proliferators Sanctions Regulations
- Western Balkans Stabilization Regulations
- Narcotics Trafficking Sanctions Regulations
- Foreign Narcotics Kingpin Sanctions Regulations
SDN List

- U.S. persons are prohibited from dealing with SDNs and their property interests are blocked.
- Any entity that is owned 50% or greater in the aggregate by one or more SDNs also blocked.
- OFAC website contains a master list of SDNs against which all transactions must be screened.
  - Program under which an SDN is designated is noted at the end of each record on list (e.g., “NPWMD,” “SDNT”).
- All screening software tools should screen against OFAC’s SDN list.
How Can U.S. Economic Sanctions Risk Be Mitigated?
Develop Formal Compliance Program

- State policy clearly
- Identify compliance personnel
- Assess risks
- Distribute compliance manual
- Screen against restricted party lists
- Create and use communication channels
- Train all relevant personnel
- Audit regularly
Develop Screening Procedures

• What is screening?
  – Review of information to identify involvement of prohibited and restricted parties

• Why screen?
  – Most practical way to ensure compliance with SDN-based sanctions
  – U.S. law does not require screening per se
  – Enforcement agencies expect companies to screen
Parties To Be Screened

- Customers
- Vendors
- Business partners
Compliance Risks

- Facilitation by U.S. persons
- Identifying and screening all parties involved in a transaction
- Determining ownership structure
- Adhering strictly to all terms and conditions of a specific or general licenses, or license exemptions
- New sanctions programs
- Complexity of rules
- Banking transactions are key because financial institutions report directly to OFAC
  - Never re-submit a payment that has been halted by a financial institution, until the matter has been resolved
Particular Considerations for Money Transmitters

- Decentralized business models – challenges of training, monitoring and auditing
- Addressing false positives, particularly regarding funds recipients
- Handling transactions in process
- Potential for thorny issues arising from foreign policy actions (e.g., Ukraine-related sanctions)
What Does the Future Hold for Economic Sanctions?
General Trends

- Increased emphasis on transparency of enforcement actions driving industry-wide changes
- Large settlements involving global companies to achieve a chilling effect
- Emphasis on accuracy and completeness of subpoena responses
- Greater inter-governmental cooperation
Most Important “Take-Aways”

- U.S. economic sanctions apply very broadly (even extraterritorially), often in ways that are not intuitive
- Each economic sanctions program is different
- Programs are complex and nuances are not easily captured in compliance procedures
- Penalties and sanctions for non-compliance are severe
- Create blanket rules for clearly delineated situations and escalation mechanisms for everything else