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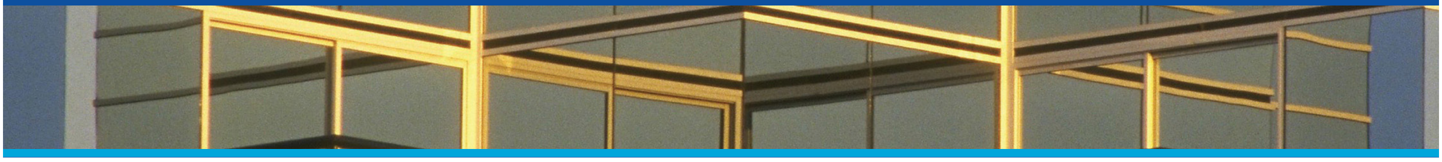

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International Trade

After a busy 2014 for sanctions, what can we expect in 2015?

Introduction

2014 was a very eventful year for sanctions, with both the European Union (EU) and United States (US) making extensive use of trade sanctions to attain foreign policy goals. Certain sanctions measures against Iran were (and continue to be) suspended, while a new and significant, though targeted, sanctions regime against Russia and Crimea/Sevastopol was imposed in response to events in Ukraine. Then, right at the end of the year, the US announced the liberalization of its sanctions policy with respect to Cuba. Finally, and perhaps the most significant from a geopolitical perspective, was the fact that 2014 was the year when there was consistent broad alignment between the EU and the US on sanctions.

At the start of the new year, we summarize the most significant developments in 2014 and make certain observations for 2015. We anticipate further sanctions developments in 2015, with the summer of 2015 likely to be particularly busy notably for Iran and Ukraine-related sanctions as there are important expiry dates then. Decisions will have to be made whether to reduce or increase the sanctions or continue with the status quo. On the other hand, many other sanctions (e.g., against Syria) are expected broadly to remain the same this year (with possible changes to asset freeze lists). But the lesson from 2014 is to expect the unexpected. Sanctions regimes can change quickly to reflect geopolitical shifts, as seen with the recent liberalization by the US of the Cuba sanctions regime.

2014 – where we are now

Ukraine-related sanctions – Russia/Crimea

In response to the political situation in Ukraine, the annexation of Crimea and Sevastopol, and the destabilization of Eastern-Ukraine, the EU and the US have since March 2014 imposed sanctions against a growing number of parties and certain industry sectors in Russia and Ukraine. Until mid-2014, sanctions had a relatively limited overall business impact, as they only consisted of a trading ban/ asset freeze targeting certain Russian and Ukrainian parties, and (as far as EU sanctions were concerned) an **import ban on certain products originating in Crimea or Sevastopol**. But since then, the sanctions have been expanded considerably and their impact has been significantly increased. At the moment, both the EU and US have comprehensive sanctions in place for Crimea/Sevastopol and far-reaching, but targeted sanctions in place for Russia.

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The list of parties subject to an **asset freeze has gradually been extended.** The EU's asset freeze currently targets 154 natural persons and 28 entities in Russia and Ukraine in total.[1] The US List of Specially Designated Nationals and Blocked Persons (SDN List), which is administered by the US Department of the Treasury's Office of Foreign Assets Control (OFAC), currently includes 74 individuals and 43 entities designated pursuant to the US sanctions targeting Russia and Ukraine. All property and interests in property of these persons within the United States or the possession or control of a US Person[2] are blocked and may not be dealt in, directly or indirectly. In addition, any entity owned 50% or greater, directly or indirectly, by one or more blocked persons also is deemed "blocked by operation of law", and that entity's property is also blocked if within the United States or the possession or control of a US Person and may not be dealt in, directly or indirectly. Although many parties will feature on both the EU and US lists, this is not always the case, so it remains important for businesses to carefully check both in transactions involving both an EU and US nexus.

The EU and US both have adopted **'sectoral' sanctions against Russia**. Broadly speaking, both regimes aim to restrict access of certain Russian banks and energy/defense companies to the capital markets of the EU or US and to limit Russia's access to certain specified oil & gas related equipment and technology and associated services. They also entail restrictions on arms and military equipment destined for Russia, and they restrict or prohibit access to dual-use items for military use or certain end-users or listed companies. The EU and US lists of parties subject to sectoral sanctions largely overlap but are not exactly the same. The EU's list for capital market restrictions currently contains 6 Russian banks and 5 energy/defense companies, while it has listed 9 defence companies for the dual-use related restrictions.

The US maintains the Sectoral Sanctions Identifications List (SSI List), which is administered by OFAC. SSI entities are identified under "Directives" on the SSI List and US Persons may not engage in the types of transactions or activities specified in the Directives with an SSI or with any entities in which SSIs, either individually or in the aggregate, hold a 50% or greater ownership interest. Currently, the SSI List includes 3 entities in the Russian financial services sector pursuant to Directive 1 (restrictions on new debt and equity transactions), 4 entities in the Russian energy sector pursuant to Directive 2 (restrictions on new debt transactions), one entity in the defense and related materiel sector pursuant to Directive 3 (restrictions on new debt transactions), and 4 entities in the Russian energy sector pursuant to Directive 4 (restrictions on goods, services (except financial services), technology in support of certain Russian energy projects). The US Commerce Department's Bureau of Industry and Security (BIS) also has added 5 entities operating in the Russian energy sector and 5 Russian defense companies to the Entity List. While the EU and US sanctions are closely aligned, there are some important differences between the two regimes. For example the EU has a grandfathering clause for the oil & gas restrictions allowing for licenses to be granted based on pre-existing contractual obligations. There are also some differences in product lists and events triggering licencing obligations.

President Obama signed into law on December 18, 2014 the Ukraine Freedom Support Act of 2014, which authorizes the President to impose additional sanctions related to Russia's defense, energy, and financial sectors. The President indicated that he did not intend to impose sanctions under this law at the time.

In view of the wide impact and the **often unclear/ambiguous drafting/scope of the sanctions**, during 2014 businesses often found themselves in limbo (and some still are today) over important ongoing or planned transactions, trying to interpret the rules (in particular in the EU, where interpretation and enforcement resides with the 28 Member States).

Both the US and EU (the latter, disappointingly slowly) have issued **guidance** to clarify their respective 'sectoral' sanctions against Russia, e.g. by providing definitions related to the oil sector sanctions and capital market restrictions. This guidance has typically been helpful and has generally narrowed the scope of the sanctions or expanded certain exceptions. In the US, OFAC guidance has been ongoing and periodically has been updated to reflect market questions and realities and to address any newly implemented measures. BIS also has issued guidance related to export control restrictions targeting Russia. The EU was slower: while some individual EU Member States (notably the UK) provided limited guidance relatively quickly after the imposition of sanctions, a number of basic but very important questions (e.g. how deep is "deepwater"?) remained unanswered for months until the EU finally published important clarifications in December, with the publication of an amending Regulation on 5 December 2014[3] and an updated guidance document just before Christmas.[4]

1 Our client alerts on Ukraine-related measures are available here

2 "US Person" is defined to include all US citizens and permanent resident aliens regardless of where they are located, all persons and entities within the United States, all US incorporated entities and their foreign branches.

3 Our latest client alert on EU sectoral sanctions against Russia is available here.

4 See http://europa.eu/newsroom/files/pdf/c_2014_9950_en.pdf.

The new licensing regime for oil & gas exports put in place by the EU sanctions has to date been too slow. In particular, the time to get clearance for what were supposed to be non-targeted transactions (for which authorisation "shall" be granted according to the EU) has been disappointing. Obtaining US export licenses from BIS and OFAC also can be a lengthy process.

The EU already in July adopted **trade and investment restrictions on Crimea and Sevastopol** which initially primarily targeted the infrastructure and natural resources exploitation sectors, but in December were expanded to impose a broad ban on investment, exports and tourism as well.[5] In December 2014, the US also introduced Crimea-related sanctions, prohibiting essentially all transactions relating to Crimea, including new investment by a US Person in Crimea, the direct/indirect importation into the United States of goods, services, or technology from Crimea, and the direct/indirect exportation, re-exportation, sale, or supply of goods, services, or technology from the United States to Crimea.[6] In effect, the sanctions against Crimea/Sevastopol are now so broad that they have important similarities to the sanctions imposed against Iran in effect placing the region off limits for EU and US companies.

Iran

In January 2014, both the **US and the EU decided to suspend certain sanctions against Iran** for a six-month period in order to implement the Joint Plan of Action reached in November 2013 between the so-called P5+1[7] and Iran. Once again, EU and US sanctions are generally aligned in terms of timing and objective.

For the EU, suspended sanctions include those relating to (re) insurance and transport services for Iranian crude oil, supply of petrochemical products, and trade in gold and precious metals. The EU also eased certain restrictions on financial transactions with Iran.[8] The asset freeze and other restrictions have remained firmly in place. In 2014, following recent EU court judgments annulling several Council decisions to impose an asset freeze against certain Iranian parties, the EU reintroduced such asset freezes based on new statements of reasons. In addition, certain other existing asset freezes have been updated.[9]

For the US, sanctions were suspended with respect to the purchase by non-US persons of specified petrochemical products from Iran, and any services, including any insurance, transportation, or financial service ordinarily incident to the underlying activity, the sale by non-US persons of certain goods and services to Iran's auto sector, and the sale to and purchase from Iran of gold and other precious metals by non-US persons. These transactions are not permitted if SDNs are involved other than with specified entities. The US suspension also authorizes that US persons, US-owned or controlled foreign entities and non-US persons involved in the export of US-origin goods may seek a specific license that will permit the export of goods and services, including repairs, to ensure the safe operation of Iranian commercial passenger aircraft, including Iran Air, but excluding all other SDNs. The US temporary sanctions relief also provides for a pause in the otherwise obligatory reduction of purchases of Iran's crude by certain countries. Finally, the US established mechanisms to facilitate the purchase of, and payment for, the export of food, agricultural commodities, medicine and medical devices to Iran, as well as to facilitate Iran's payments of UN obligations and for medical and tuition expenses incurred abroad by Iranian citizens.

In an attempt to secure the prospects of a nuclear deal, this suspension was extended by the EU and the US and is currently scheduled to expire on 30 June 2015.

Cuba

In December 2014, President Obama **announced the relaxation of certain aspects of the US' comprehensive trade embargo against Cuba** that it has maintained since the early 1960s. The changes announced by the White House included review of Cuba's status as a State Sponsor of Terrorism, facilitation of certain remittances to Cuba, authorization for US banks to open correspondent accounts at Cuban financial institutions, authorization for the use of US credit/debit cards in Cuba by travelers, authorization of certain exports of goods and services to Cuba, authorization of limited imports from Cuba by licensed US travelers to Cuba, and facilitation of certain travel to Cuba. The US also began the process to re-establish diplomatic relations with Cuba, which were severed in January 1961.

The changes were implemented by OFAC and BIS through amendments to their regulations. Although the measures signal the most significant change in US economic and trade policy towards Cuba to date, the Cuba embargo remains in place and most transactions between the United States or persons subject to the jurisdiction of the United States and Cuba continue to be prohibited.[10]

5 Our latest client alert on EU Crimea sanctions is available here.

6 Our client alert on US Crimea sanctions is available here.

7 China, France, Germany, Russia, the UK, and the US, coordinated by the EU's High Representative.

8 See our client alert of 21 January 2014, available here.

9 Our latest client alert on EU Iran sanctions can be found here.

10 Our client alerts on the easing of Cuba sanctions can be found here and here.

Venezuela

On December 18, 2014, President Obama signed into law the *Venezuela Defense of Human Rights and Civil Society Act of 2014* (the "Act").[11] The legislation authorizes the United States to impose sanctions against certain Venezuelan government officials and individuals if they are determined to be responsible for human rights abuses related to recent anti-government protests in Venezuela. In addition, on November 7, 2014, the United States implemented restrictions on the export, re-export, or in-country transfer of certain items for military end-use or to military end-users in Venezuela.

Sudan

On April 3, 2014, President Obama signed Executive Order 13664 ("EO 13664") related to the situation in South Sudan and targeting those responsible for the conflict in that country.[12] EO 13664 allows the US to impose sanctions against any individual or entity that threatens the peace, stability, or security of South Sudan; commits human rights abuses against persons in South Sudan; expands or extends the conflict in South Sudan or obstructs reconciliation or peace talks or processes; or undermines democratic processes or institutions in South Sudan.

2015 – where we are heading

Russia/Crimea

It is a safe prediction that the sanctions situation in Ukraine and Crimea will remain high on the political agenda. One element that will be debated is whether and how the current sanctions should be altered: should the sanctions be tightened, loosened, or permitted to lapse?

As far as the EU is concerned, the Council Decisions adopting EU sanctions against Russia and Crimea are set to expire on 31 July 2015 and 23 June 2015 respectively. The 28 Member States would need to adopt a decision before those dates if they wish to continue or amend the relevant Council Decision. This decision would require unanimity amongst the 28 Member States. If they do not reach unanimity, then the sanctions should automatically lapse.

The US sanctions do not specify an expiration date. However, they can be eased, tightened or lifted if circumstances are determined to justify such action. Recent reports have indicated that the US is considering imposing further sanctions measures targeting Russia.

The economic impact on Europe of the sanctions has to date been considerable. Compared to the US economy, the EU economy is far more interlinked with Russia; equally, some EU countries are far more interlinked (and thus more heavily affected by sanctions) than others. Many observers were surprised that the EU managed to reach unanimous decisions to impose, and subsequently extend, the sanctions in the second half of 2014. One interesting thread during 2015 will be whether this united front will continue or whether the increasing economic cost of sanctions will play a role. For this reason, if additional sanctions are imposed, it is more likely that they would consist in further additions to the list of persons subject to the asset freeze, on which consensus is more easily reached, rather than sectoral sanctions which have important ramifications for the European business and on which reaching consensus can be more difficult.

Another interesting question for 2015 will be whether there will be a divergence between the EU and US as to Russia and Crimea. The alignment between the EU and US in 2014 was remarkable, with very similar sanctions being imposed on the same day by the transatlantic partners and a reluctance by the US to act unilaterally.[13] Can that continue in 2015, especially with the key deadlines in the summer, given the different economic impact in the EU compared to the US and the potential for different political considerations given that Russia and Ukraine are neighbours for Europe?

While the deadlines in the summer are important milestones, events on the ground before then could lead to an earlier amendment of the sanctions. If the situation improves on the ground, the EU Council could at any time undertake a specific review based on changes to the political context and reduce the level of sanctions before the summer. Equally, if the situation deteriorates, there is a possibility that sanctions could be tightened, though doing so would require unanimity – and reaching consensus is a difficult task which depends on what is proposed and how it impacts the national concerns and interest of the 28 EU Member States.

One final point of interest for 2015: several Russian companies have filed appeals against the EU Russia Sanctions before the EU General Court and national courts. There will be hearings in a number of these cases during 2015, assuming the sanctions remain in force. How the courts react to the sanctions and the judicial guidance that emerges during 2015 and 2016 also will be instructive as to the direction of the EU sanctions going forward.

11 A link to our client alert is available here.

12 A link to our client alert is available here.

13 As an example, the US legislation was introduced in December 2014, but the President declined to use those sanctions at that time, citing in part the US commitment to "continue to work closely with allies and partners in Europe and internationally to respond to developments in Ukraine and will continue to review and calibrate our sanctions to respond to Russia's actions."

On the US side, one potential point of interest will be the extent of any coordination or rift between the legislative and the executive branches in connection with US sanctions policy on Russia (as well as Iran).

Iran

The talks between the P5+1 and Iran are continuing behind closed doors with limited information reaching the outside world. Despite optimism in the course of November 2014 that the parties were close to reaching an agreement, the negotiating parties acknowledged in late 2014 that significant gaps in the negotiations remained. It is not clear whether the P5+1 countries and Iran will indeed be able to reach a final agreement by 30 June 2015.

Summer 2015 is thus likely to be a very dynamic time for sanctions.

If the P5+1 do reach agreement, then we would expect a reduction in sanctions to be part of the deal. The currently suspended sanctions will not be reimposed and further sanctions will be removed, probably gradually. We will have to wait and see to know the exact details.

If there is no agreement amongst the P5+1 in the summer, then the EU and US face a difficult decision. Do they continue the suspension in the hope that a deal is attainable? Or do they decide that three suspensions are enough and reinstate the full set of sanctions again? These will be difficult decisions, which will have long term political consequences.

Until the outcome of the P5+1 talks becomes clear, businesses will need to remain cautious in planning for the future with Iran. The US authorities in particular have made it clear that any preparations for a future lifting of sanctions must be strictly in compliance with the current sanctions unless and until they are lifted.

Cuba

The steps taken by the US in December 2014 and January 2015 are the most significant changes in Cuba policy since the embargo was imposed. We expect that US sanctions could be eased further depending on how relations between the countries proceed. Given the changes to date and the potential for future developments, parties engaging in Cuba-related transactions must ensure they carefully monitor both US sanctions and export controls targeting Cuba.

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All these changes in law and regulation will put a premium on keeping informed and understanding to the extent possible which activities with respect to countries under sanctions are permissible and which are not. The legal consequences of non-compliance can be severe.

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