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Economic Sanctions

A major aspect of US foreign policy involves economic sanctions imposed on specific countries, organizations, or individuals. This area of international economic regulation presents major compliance challenges to US companies operating in the global market. The Executive Branch, Congress, and local governments are, with increasing frequency, imposing restrictions on US companies and US persons to prevent trade or financial transactions with targeted governments or entities.

Moreover, the regulatory risks associated with US embargo programs are increasing, as US companies are restricted from doing business with third-country entities and persons acting on behalf of a sanctioned government. Sanctions regulation involves a high degree of government discretion and unpublished interpretive guidance, further complicating compliance.

A hallmark of Steptoe's practice is advising corporate clients on the scope and subtleties of US sanctions regulations. With regard to embargoed countries, we have assisted clients with direct export, investment, and financial transactions, hiring of foreign nationals, third-party distributor relationships, joint ventures, mergers and acquisitions, licensing agreements, and parent-subsidiary relationships. Clients receive advice on the jurisdictional reach of sanctions regulations, the meaning of key regulatory terms, and the use of regulatory exceptions to achieve legitimate commercial or marketing objectives.

We have extensive knowledge of the regulations implementing each current sanctions program as well as those that have been in force during the last three decades. Our current and historical depth is central to advancing clients' interests because the interpretation of each sanctions regime depends on the foreign policy context in which the embargo is formulated, as well as the accumulated experience of US regulators in administering embargo programs. We are very familiar with the statutory framework, Executive Orders, regulations and case law of the Trading With The Enemy Act, International Emergency Economic Powers Act, UN Participation Act, National Emergencies Act, the Anti-Terrorism and Effective Death Penalty Act, and various "specialty" statutes directed at sanctioned countries and entities.

Internal Compliance and Due Diligence

Depending on the country involved, US economic sanctions can permit some activity with an embargoed country. For example, foreign subsidiaries of US companies may be able to transact business with a country subject to US embargo restrictions; however, the foreign subsidiary cannot involve US nationals, lawful residents, or its US parent, and the business opportunity cannot be referred to the subsidiary by the parent. A US company may be able to supply goods to a third-country company, even though that company may be

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using those goods for commercial activities in the embargoed country.

At the same time, US companies and US persons (even those employed abroad) must be wary of the regulatory pitfalls leading to corporate or personal exposure to enforcement proceedings.

The US government maintains a lengthy list of "Specially Designated Nationals," with whom US persons cannot do business. Many of the individuals and entities on this list are located in countries enjoying good relations with the United States. The US government also has developed expansive, yet informal, interpretations of the embargo prohibitions, many of which are not obvious from the regulatory language.

Step toe has developed internal compliance advice and mechanisms for clients attempting to navigate the shoals of US economic sanctions. We work closely with in-house counsel and key management personnel to understand the nature of a company's operations, its products and services, and its internal structure, to ensure that corporate compliance is thorough, yet not unnecessarily restrictive. We have extensive experience in tailoring compliance manuals and SOPs to accommodate decentralized organizations.

Step toe attorneys have a close familiarity with the Office of Foreign Assets Control (OFAC), which administers US embargo programs. We identify situations when advisory opinions or specific licenses from OFAC are needed, and then seek the authorization necessary to move forward with a proposed transaction.

Investigations and Enforcement

OFAC actively initiates investigations and brings administrative enforcement actions for transgressions of US economic sanctions. Step toe has extensive experience in handling investigation and enforcement proceedings, including routine information requests, pre-penalty contacts, negotiated settlements, and administrative proceedings arising from penalty actions.

We also have handled voluntary disclosures to the US government on terms that are favorable to our clients. Where appropriate, Step toe uses its white-collar enforcement capability to supplement its sanctions experience in dealing with US government prosecutors.

Areas of Experience

Our experience in the area of economic sanctions includes:

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- In-depth knowledge of the regulatory prohibitions applicable to countries sanctioned by the United States, the European Union, Japan, or the United Nations;
- Jurisdictional issues in the administration of US economic sanctions, including extraterritorial aspects of export, reexport, investment, and transactional controls;
- Formulation of compliance programs for multinational corporations and organizations with multiple levels of US management;
- Structuring transactions to permit commercial activity consistent with regulatory compliance;
- Advisory opinions, interpretations, license applications, and knowledge of regulatory exceptions and limitations;
- Negotiation, voluntary disclosures, and defense of enforcement proceedings; and
- Familiarity with US regulatory institutions and the interagency policy-making and licensing process.

Representative Engagements

Our clients span a wide spectrum of US industries, and include multinational corporations, small to mid-sized businesses, partnerships, trade associations, and individuals. A sampling of the industries we represent is as follows:

- Hydrocarbon exploration and production
- Refining
- Chemicals
- Construction
- Engineering
- Food and beverages
- Mechanical and industrial equipment
- Financial services
- Software

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- Telecommunications and data transmission
- Legal
- Data processing
- Airline services
- Electronics

Noteworthy

- Most recently, we have advised on all aspects of the US and multilateral sanctions against Iraq, in the context of the 2003 Iraqi Freedom engagement and the reconstruction effort.