



Sanctions – US Overview

Carol Fuchs

Sr. Counsel, Int'l Trade Controls

General Electric

carol.fuchs@ge.com

ACC Europe

Amsterdam

14 May 2012

Scope of US Economic Sanctions

- Comprehensive economic sanctions, such as are in place against State Sponsors of Terrorism (SST countries), prohibit virtually all business and financial dealings by covered entities/persons with:
 - Sanctioned countries – Cuba, Iran, Sudan, Syria (Myanmar, North Korea)
 - May include their governments, residents, nationals, and entities organized under the laws of or operating from the sanctioned country
- Prohibited activities may include some or all of the following, depending on the program:
 - Financial transactions, including the movement of funds
 - Investment in a sanctioned country
 - Dealing in property of a sanctioned country or Specially Designated National (SDN)
 - Export/import trade with sanctioned country/SDN (including reexports)
 - Importation of and/or dealing in goods originating in the sanctioned country
 - Otherwise providing services to or procuring services from the sanctioned country
 - Facilitation by US persons of prohibited activity by a foreign subsidiary or person



Cuba

- The Cuban Assets Control Regulations (31 C.F.R. Part 515) prohibit:
 - Nearly all transactions “by, or on behalf of, or pursuant to the direction of” **Cuba or a Cuban national**; and
 - Nearly all transactions involving property in which **Cuba or a Cuban national** currently has, or has had at any time since 1963, “any interest of any nature whatsoever, direct or indirect.”
- If the transaction:
 - **Involves a person subject to US jurisdiction**; or
 - Relates to property subject to US jurisdiction; or
 - Is in US dollars or otherwise utilizes US banking institutions.
- The regulations also prohibit “any transaction for the purpose or which has the effect of evading or avoiding” those prohibitions.

“Person subject to the jurisdiction of the United States”

- Any entity that is organized under the laws of a US jurisdiction, including its non-US branches and offices, plus any entity “owned or controlled” directly or indirectly by a US person (i.e., a subsidiary);
- Any individual who is a US citizen or permanent resident, wherever located or employed;
- Any person or entity physically present in the US.



Blocking Laws

- Some jurisdictions, e.g., EU and Canada, have “blocking” laws targeting certain activities that persons or entities undertake in order to comply with the US embargo of Cuba.
- Laws are designed to conflict with US law.
- Limited implementation and enforcement of “blocking” laws, but care should be taken to avoid these conflicts.



Iranian Transactions Regulations (ITR)

- **The ITR prohibit, with limited exceptions:**
 - Dealing by US persons in property and interests in property of the Iranian government;
 - Imports of Iranian-origin goods and services into the US;
 - Dealing by US persons in goods or services of Iranian origin, or destined for Iran or the Iranian government;
 - Exports of goods, services, and technology to Iran from the US or by US persons;
 - Reexports to Iran of certain US-origin or US-content goods, services, or technology by non-US persons;
 - Investments by US persons in Iran or in property owned or controlled by the Iranian government;
 - The financing, processing, or facilitating of any transaction involving Iran by a US person or through a US financial institution.

“US Person”

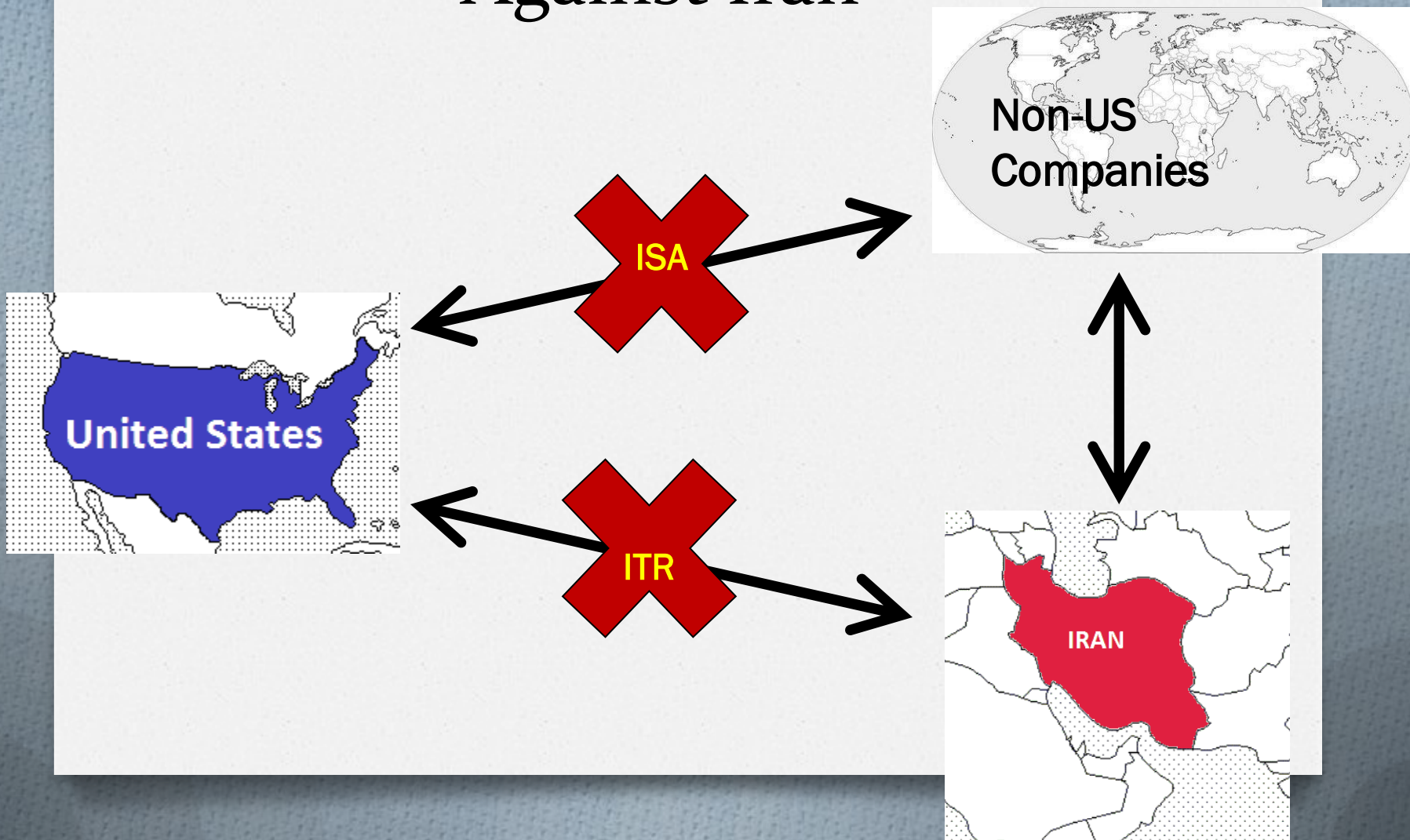
- Any entity organized under the laws of a US jurisdiction, including non-US branches/offices of a US entity (but not its non-US subsidiaries);
- Any individual who is a US citizen or permanent resident, wherever located or employed;
- Any person or entity physically present in the US.

Iran: Retaliatory Sanctions



- The Iran Sanctions Act (ISA), as amended in 2010 by the Comprehensive Iran Sanctions, Accountability, and Divestment Act (CISADA), established a basis for sanctions on non-US companies that support the development of Iran's energy sector; sanctionable activities include:
 - Investing in Iran's petroleum sector
 - Providing refined petroleum products to Iran
 - Furthering Iran's ability to import or produce refined petroleum products (including through supply of products/technology) or petroleum resources
 - Providing to Iran goods, services, technology, or support that could contribute to maintenance or expansion of Iran's domestic production of petrochemical products
- Under ISA and CISADA, 3 sanctions from a menu of 9 must be imposed on parties found to be engaging in sanctionable conduct:
 - Denial of Export-Import Bank financing
 - Denial of export licensing
 - Denial of US bank credits in excess of \$10mm per year
 - Ineligibility to serve as primary dealer, agent for the US government, or repository for government funds
 - Ineligibility to contract with the US government
 - Prohibition of any US transactions in foreign exchange
 - Prohibition on transfers of credit or payments involving US
 - Blocking of assets subject to US jurisdiction
 - Restrictions on imports into the US

Impact of US Economic Sanctions Against Iran





Syria

- International sanctions significantly strengthened in mid-2011.
- Syria – comprehensive embargo prohibits:
 - Export to Syria of goods or services from the US or by US persons
 - Reexport of US-origin/US-content goods or services from a foreign country by non-US persons
 - Importation into US of goods or services of Syrian origin
 - Dealing by US persons in property and interests in property of the Syrian government
 - Dealing by US persons in Syrian energy products
 - New investment in Syria by or involving US persons
- Facilitation restrictions not express in regulation, but likely to be implied.



Republic of Sudan

Comprehensive embargo prohibits:

- Export or reexport to Republic of Sudan of goods, technology, or services from the US or by a US person;
- Importation into the US of goods or services of Sudanese origin;
- Dealing in property and interests in property of the Sudanese government.

Facilitation restrictions similar to Iran.

Republic of South Sudan

- July 2011 creation of separate Republic of South Sudan.
- Economic sanctions generally do not apply to the Republic of South Sudan.
- US allows transshipment of goods subject to US law through Republic of Sudan to the Republic of South Sudan.

Other Major US Sanctions Programs



North Korea

These sanctions:

- Block property and interests in property of certain North Korean government officials and entities;
- Prohibit imports of North-Korean-origin items into US;
- Prohibit registration of vessels in North Korea or owning, leasing, operating, or insuring any vessel flagged by North Korea; and
- Prohibit some exports and reexports to North Korea.



These sanctions:

- Block property and interests in property of certain Burmese government officials and entities;
- Prohibit new investment in Burma;
- Prohibit imports into US of Burmese-origin goods; and
- Prohibit exports of financial services from US to Burma, but allow customary financing in connection with sale of goods not involving blocked persons or otherwise prohibited.

Facilitation: A Broad Prohibition

- The comprehensive sanctions programs broadly prohibit US persons from facilitating activities by non-US persons that would be prohibited for US persons.
- For example, the Iranian Transactions Regulations define facilitation as occurring when a company, *inter alia*:
 - “Alters its operating policies or procedures, or those of a foreign affiliate, to permit a foreign affiliate to accept or perform a specific contract, engagement or transaction . . . [that] would be prohibited . . . if performed directly by a United States person or from the United States”;
 - “Refers to a foreign person purchase orders, requests for bids, or similar business opportunities . . . to which the United States person could not directly respond”;
 - “Changes the operating policies and procedures of a particular affiliate with the specific purpose of facilitating transactions that would be prohibited.”

OFAC enforces an expansive interpretation of the facilitation prohibition.

Specific facilitation restrictions vary by country, but US government may impose broad restrictions even if not expressly stated in the law.

Avoid all activity that could be construed as facilitation.

Examples of Facilitation

Approvals

- US officer approving high-value transaction
- US person approving new headcount for SST salesperson

Processing

- Using US data system to process orders
- Processing payments through US

Support

- Providing US financial guarantee for SST contract
- Arranging insurance or transportation for SST transaction

Advice

- US person advising how to structure transaction
- US attorney drafting clause to include in contract with SST

Referrals

- US person referring SST business to non-US competitor
- US entity finding alternate supplier for non-US entity with SST contract

Policy

- US parent changing policy so non-US sub can pursue business that US person can't perform
- US person allowing policy exception for non-US sub to perform contract that would be prohibited for US person

Penalties for Sanctions Violations

FT .COM
FINANCIAL TIMES

Barclays fined \$298m over sanctions breach

By Sharlene Goff, Banking Correspondent
Published: August 16 2010 21:13 | Last updated: August 17 2010 01:25

- Civil Penalties
 - The greater of \$250,00 or twice the value of the transaction *for each violation*.
- Criminal Penalties
 - Fines up to \$1 million and/or jail terms up to 20 years *for each violation*.
 - Individual as well as corporate liability.
- Other consequences:
 - Denial of export privileges.
 - Negative publicity.

CNN Money.com

JPMorgan Chase in \$88.3 million settlement with Treasury

THE SCOTSMAN

RBS fined record £5.6m for breaking rules on terror links
Goodwin

**THE TIMES
THE SUNDAY TIMES**

From The Times
June 6, 2008

Lloyds TSB expects £180m bill for US blacklist breach

REUTERS

Credit Suisse to pay \$536 mln for U.S. violations

Thu, Dec 17 2009

REUTERS

LONDON | Tue May 11, 2010 7:32am EDT

U.S. says ABN turned "blind eye" to evade sanctions

- August 2011, JPMorgan, \$88.3 million
- August 2010, Barclays, \$176 million (as part of a \$298 million settlement with multiple government agencies)
- February 2010, Balli Group, \$15 million
- December 2009, Credit Suisse, \$536 million
- August 2009, DHL, \$9.4 million

Comparison of Application of US Economic Sanctions Programs

Sanctions apply to	Cuba	Iran	Sudan	Syria
US companies?	Yes	Yes	Yes	Yes
Non-US branches and offices of US companies?	Yes	Yes	Yes	Yes
Non-US subsidiaries of US companies?	Yes	No	No	No
US citizens and US lawful permanent residents (green-card holders)?	Yes	Yes	Yes	Yes
Persons physically present in the US, whether US persons or non-US persons?	Yes	Yes	Yes	Yes
Non-US companies not owned or controlled by US persons/companies?	No	No, unless subject to sanctions under ISA	No	No

NOTE: US almost always has jurisdiction when US-origin goods/technologies are involved.

Overview of US and EU Regimes

- Aligned goals.
- Both rooted in multilateral regimes.
- Differences in implementation and enforcement.

US

- ★ Single federal regime with multiple agencies.
- ★ Extraterritorial jurisdiction that broadly impacts non-US entities with ties to the US, e.g., banking, financing.
- ★ Generally effective immediately; no “grandfathering” of pre-existing contracts.
- ★ Numerous US watchlists; also restricts entities owned by listed entities.
- ★ Extensive enforcement, with high fines and negative publicity, including non-US companies; either criminal or civil.
- ★ Complex licensing requirements with multiple US agencies involved; lengthy leadtimes.
- ★ Formal relationships.

EU

- ★ Single EU regime implemented by member states.
- ★ Narrower jurisdiction; sanctions broader than UN, but often narrower than US.
- ★ More likely to exempt pre-existing contracts.
- ★ Numerous EU and member state watchlists; generally does not include subs of listed entities; can restrict making funds available to listed entities
- ★ Enforcement left to member states; limited enforcement but increasing; often only civil.
- ★ Less complex licensing; shorter leadtimes.
- ★ Less formal relationships; authorities more approachable.