

ENHANCED ENFORCEMENT OF U.S. ANTITERRORIST SANCTIONS

In the wake of the attacks on the World Trade Center and the Pentagon, companies must be prepared for expanded trade sanctions and increased enforcement of existing trade sanctions against international terrorists and supporting organizations and countries

As President Bush stated upon issuing his September 24, 2001 Executive Order, the war on terrorism has begun with the United States taking steps to block the financial assets of and support provided to international terrorists and related organizations. The Executive Order imposes enhanced trade sanctions on 27 individuals and entities, including Usama bin Laden, Al Qaida, and three nongovernmental, ostensibly humanitarian organizations. The immediate effect of the order is to block all of the assets of these individuals and entities under U.S. control and ban all dealings with the listed parties. In addition, the order makes clear that persons owned or controlled by or acting on behalf of those listed, and anyone found to be assisting, sponsoring, or providing material support to the listed parties will also be subject to trade sanctions.

The Treasury Department's Office of Foreign Assets Control ("OFAC") is charged with enforcing U.S. economic sanctions programs. OFAC currently administers 21 such programs. In addition to the new terrorist listings, OFAC will be actively enforcing existing sanctions programs against countries, organizations, and individuals that are believed to be involved in or providing material support to international terrorists. For example, Cuba, Iran, Iraq, Libya, North Korea, Syria, and Sudan have been designated as countries supporting international terrorism.

We expect that OFAC will increase its scrutiny and expand its enforcement of existing regulations that currently prohibit trade and transactions with any of the designated governments. Treasury has already announced an enhanced program to track financial transactions related to terrorist activities through the establishment of a new interagency team. Ultimately, this team will be transformed into a permanent Foreign Terrorist Asset Tracking Center to assist law enforcement agencies in identifying foreign terrorist groups, assessing their sources and methods of fund-raising, and learning how terrorist funds are moved.

OFAC regulations not only prohibit trade and transactions with particular countries, they also prohibit transactions with more than 5,000 Specially Designated Nationals ("SDNs") and Blocked Persons. The entities and individuals on the SDN list include financial and insurance companies owned or controlled by the designated governments, specially designated terrorists, such as bin Laden, specially designated terrorist organizations, and specially designated drug traffickers and drug kingpins. These entities may be doing business here in the United States. As a result, even wholly domestic transactions can be problematic. Each sanctions program is

unique and tailored to meet U.S. political and national security concerns. Enforcement efforts can also be tailored to meet political needs. While some of the sanctions programs contain specific, narrowly drafted restrictions, others contain extremely broad provisions that would prohibit any transaction (direct or indirect). Civil penalties up to \$275,000 and criminal penalties of up to \$1,000,000 can be imposed for each violation. Civil penalties can be imposed without regard to whether the company knew or should have known it was dealing with a prohibited party. Criminal penalties can be imposed on companies that willfully violate, neglect, or refuse to comply with the trade restrictions. Information regarding each of the current sanctions programs is available from the OFAC web site (<http://www.treas.gov/ofac/>).

This is an opportune time for clients to review their OFAC policies and compliance procedures. Because of the increased scrutiny and enforcement efforts in this area, clients need to assure full compliance with these regulations or face the very real possibility of stiff penalties. However, in addition to the potential liability associated with violating U.S. law, companies should also consider the ultimate purpose of effective compliance programs. Such programs can prevent would-be terrorists from obtaining the material support they need to carry out their activities. The OFAC regulations provide for voluntary disclosure of prior transactions and possible mitigation of penalties, in part to assist the U.S. government in tracking down those that assisted in the most recent attacks.

Willkie Farr & Gallagher's International Trade Department is in a position to advise clients concerning all aspects of OFAC regulations and enforcement measures. You can contact Russell Smith at (202) 429-4784, Miriam Bishop at (202) 429-4770, or Ray Sullivan at (202) 429-4782 with any questions or concerns.

Willkie Farr & Gallagher is headquartered at 787 Seventh Avenue, New York, New York 10019. Our telephone number is (212) 728-8000 and our facsimile number is (212) 728-8111.

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