

COMMENTARY

Foreign Assets Control Regulations: The Countries Aren't Enough!

by the U.S. Office of Foreign Assets Control

What do Cuba, North Korea, Libya, Iraq, Iran, the UNITA faction in Angola, international terrorists and narcotics traffickers have in common? All are targets of U.S. economic sanctions and embargo programs, administered and aggressively enforced by the U.S. Treasury's Office of Foreign Assets Control (OFAC). Failure to comply with OFAC regulations can carry a big price tag. Depending on the program, OFAC has independent authority to impose civil penalties of up to \$250,000 per count, while criminal violations can result in corporate and personal fines of up to \$1 million and 12 years in jail.

It is important for letter of credit operations personnel to remember that U.S. sanctions go beyond the borders of the target countries listed above. OFAC has identified and named numerous front organizations as "Specially Designated Nationals" (SDNs). OFAC's master list of "Specially Designated Nationals and Blocked Persons" (SDN list) contains over 5,000 entries—variations on the names of individuals, companies, vessels and banks all over the globe. U.S. companies, for example, cannot deal with Atlas Air Conditioning Company Ltd. in London, England because of its links to Iraq. Banking transactions involving the Arab Bank for Investment and Foreign Trade in Abu Dhabi ("ARBIFT") are frozen when they come into the possession or control of U.S. banks because of Libya's involvement in ARBIFT. Banks cannot advise letters of credit listing Drogas la Rebaja, a major drug store chain in Colombia, as account party because of its connection to international narcotics trafficking.... It is, therefore, critical for L/C professionals to be familiar with OFAC's SDN list.

Each sanctions regime has its own quirks. The blocking and trade provisions of the current sanctions regimes are summarized in Appendix B. For the most part, U.S. banks may not facilitate prohibited trade with target countries and are required to "block" or "freeze" property in which target countries have an interest. Property subject to blocking could include goods, deposits, funds transfers, loans, letter of credit contracts, drafts and negotiable shipping documents -- essentially anything of value.

To assure that illicit transactions are not processed, funds transfer departments in most major banks have turned to sophisticated name-recognition "interdict" software to block questionable transactions automatically. Some of the filters contain every name on OFAC's SDN list along with geographical names for embargoed countries and cities.

It is imperative that letter of credit departments establish their own internal compliance procedures to ensure that they do not deal with "blocked" letters of credit or otherwise facilitate trade transactions benefiting target countries. Whether a bank is acting as the advising, issuing, confirming, paying, or reimbursing bank under an L/C, it should be on the look-out for OFAC references at each processing stage.

Before any bank issues, confirms, amends or even advises an L/C, it should carefully examine the instrument for clues about potential OFAC violations:

1. Is the account party, beneficiary, issuing bank or confirming bank blocked? (Refer to "Blocking Targets" - Appendix B)

2. Is the underlying trade transaction prohibited? (Refer to "Trade Restrictions" - Appendix B).

When a bank examines documents presented under a letter of credit it must look for any new evidence of an OFAC violation which may not appear on the face of the L/C:

1. Does the bill of lading indicate that goods were shipped by a blocked shipping company or aboard a blocked merchant vessel? (While it is unlikely that an individual's name from OFAC's listing of SDNs will pop up in the letter of credit area, it is quite possible that illicit ships or shipping companies may be referenced).

2. Does the certificate of origin reveal that the goods originated from a target country?

3. Does the invoice tip you off that a blocked company supplied the goods to the seller?

If a bank has reason to believe that a letter of credit involves an interest of a target country or an SDN, it must treat the letter of credit contract itself and all related documents as blocked property. It must secure drafts and other negotiable documents. Depending on the status of the L/C, it may be required to debit its customer's account and block the L/C payment. In any case, it should perform no further services with regard to the L/C without authorization from OFAC. Blocked property must be reported to OFAC's Compliance Programs Division (fax: 202/622-1657) within 10 days.

Whenever there is an update to an OFAC regulation, an addition or removal of an SDN, or any other announcement from OFAC, information can be accessed electronically via many different sources (see Appendix A). Moreover, OFAC Compliance has a toll-free number (800/540-OFAC) for banks needing additional information or advice regarding a specific L/C.

ADDITIONAL RESOURCES, APPENDIX A

The *Federal Bulletin Board* of the U.S. Government Printing Office, which is linked to the *Fed-*

eral Register and *Code of Federal Regulations*, carries all OFAC brochures in ASCII, WordPerfect, and Adobe/Acrobat "*.PDF" format, as well as the entire *Code of Federal Regulations* containing OFAC regulations, all *Federal Register* notices that OFAC puts out, and all of OFAC's current press releases. For information on the *Federal Bulletin Board* call 202/512-1530 or dial 202/512-1387 to connect [Telnet access via Internet = federal.bbs.gpo.gov 3001].

Information is also immediately uploaded onto the U.S. Treasury Department's free Electronic Library (*TEL*) on the *FedWorld* bulletin board network. *FedWorld*, a service of the National Technical Information Service, can be reached by dialing 703/321-3339 [or over Internet using one of the following protocols: Telnet Access Via Internet = fedworld.gov (192.239.93.3); FTP Site Access Via Internet = ftp.fedworld.gov (192.239.92.205); World Wide Web (Home Page) = <http://www.fedworld.gov>]. Its help desk number is 703/487-4608 and business office is 703/487-4648. Once access to *FedWorld* has been gained, option "[C]," the Business, Trade, and Labor Mall, should be chosen. Then, "[E]" should be chosen for *TEL*. OFAC's files are all prefixed with the call letters "T11" Files are available for downloading in camera-ready Adobe/Acrobat "*.PDF" format (for Mac or Windows 3.1) as well as in a self-extracting ASCII "*.EXE" format.

Simultaneous uploads are made to the U.S. Department of Commerce *Economic Bulletin Board*. For information on the Commerce *EBB*, call 202/482-1986 or dial into 202/482-3870 with a 2400 bps modem or 202/482-2584 with a 9600 baud modem [Telnet access via Internet = ebb.stat-usa.gov]. OFAC material can be found in file area #17. Commerce also operates a monthly CD-Rom service (the *National Trade Data Bank*) with OFAC data in ASCII format (call 202/482-1986 for information), and a fee-based fax-on-demand service, called *STAT-USA/FAX* (call 202/482-0005 from a fax machine's handset).

All of OFAC's program "brochures," as well as SDN information, are available free in downloadable camera-ready Adobe Acrobat "*.PDF" format over the Treasury Department's World Wide Web Server.

OFAC's Home Page site is "http://www.ustreas.gov/treasury/services/fac/fac.html." The Page also contains a free self-extracting ASCII file of the SDN list in DOS, delimited, and fixed-field versions and free Adobe Acrobat Readers® to view and print "*.PDF" files. Whenever there is a change in any of the data at the site, the [DATE] changes on the face of the Page; users can structure their Internet connection to watch for that date change, check a "What's new?" file to get the details about changes, and download OFAC's latest information.

Information is disseminated to banks on the U.S. Council on International Banking's *INTERCOM* Bulletin Board in New York and the IBOA Bulletin

Board (International Banking Operations Association) in Miami. The Office of the Comptroller of the Currency operates a special 24 hour a day "fax-on-demand" service for National banks and examiners. The computer-based system, called *OCC Information Line*, provides documents from any touchtone phone by calling 202/479-0141 and following voice prompts. OCC's Communications Division may be reached at 202/874-4960. (Note that OFAC's SDN list on the OCC system is split into two separate documents [A-K] and [L-Z]). Major announcements are also distributed to U.S. financial institutions through Fedwire bulletins and CHIPS system broadcasts, as well as, from time to time, in printed format through the various Federal bank supervisory agencies.

U.S. ECONOMIC SANCTIONS AND EMBARGO PROGRAMS, APPENDIX B

PROGRAM	BLOCKING TARGETS	TRADE RESTRICTIONS (goods and services)
Cuba ¹	Cuban nationals, wherever located Persons and entities located in Cuba Government of Cuba Specially Designated Nationals of Cuba	No exports to Cuba No imports from Cuba No dealing in Cuban origin goods No brokering of Cuban trade contracts Informational materials exempted Humanitarian exports licensed
North Korea ²	N. Korean nationals, wherever located Persons and entities located in N. Korea Government of North Korea Specially Designated Nationals of N. Korea	No exports to N. Korea No imports from N. Korea No dealing in N. Korean origin goods No brokering of N. Korean trade contracts Informational materials exempted
Libya ³	Government of Libya Specially Designated Nationals of Libya	No exports to Libya No imports from Libya No brokering of Libyan trade contracts Informational material exempted Donated humanitarian goods exempted

¹ Cuban Assets Control Regulations, 31 C.F.R. Part 515.

² Foreign Assets Control Regulations, 31 C.F.R. Part 500.

³ Libyan Sanctions Regulations, 31 C.F.R. Part 550.

U.S. ECONOMIC SANCTIONS AND EMBARGO PROGRAMS, APPENDIX B (Continued)

PROGRAM	BLOCKING TARGETS	TRADE RESTRICTIONS (goods and services)
Iraq ⁴	Government of Iraq Specially Designated Nationals of Iraq	No exports to Iraq No imports from Iraq No dealing in Iraqi origin goods No brokering of Iraqi trade contracts Humanitarian exports licensed
Yugoslavia ⁵	Entities organized or located in Serb-controlled areas of Bosnia and Herzegovina Bosnian Serb military and paramilitary forces Authorities in Serb-controlled areas of Bosnia and Herzegovina	With regard to Serb-Occupied Areas of Bosnia and Herzegovina: No exports No imports No transshipments through restricted area No dealing in restricted area origin goods Informational materials exempted
	Sanctions against Federal Republic of Yugoslavia (Serbia and Montenegro) suspended by general license in December 1995; new transactions permitted, but assets of FRY S&M blocked prior to that time can only be unblocked by OFAC	
Iran ⁶	No blocking provisions; but no export of banking services and no servicing of Iranian accounts	No exports to Iran No imports from Iran No dealing in Iranian origin goods Exports of informational materials exempted
Angola ⁷	No blocking provisions	No exports of arms and related material and petroleum and petroleum products to the territory of Angola other than through certain designated points of entry

⁴ Iraqi Sanctions Regulations, 31 C.F.R. Part 575.

⁵ The Federal Republic of Yugoslavia (Serbia and Montenegro) and the Bosnian Serb Controlled Areas of the Republic of Bosnia and Herzegovina Sanctions Regulations, 31 C.F.R. Part 585.

⁶ Iranian Transactions Regulations, 31 C.F.R. Part 560.

⁷ UNITA (Angola) Sanctions Regulations, 31 C.F.R. Part 590.

U.S. ECONOMIC SANCTIONS AND EMBARGO PROGRAMS, APPENDIX B (Continued)

PROGRAM	BLOCKING TARGETS	TRADE RESTRICTIONS (goods and services)
Terrorism ⁸	Specially Designated Terrorists	No dealings in support of Specially Designated Terrorists; their assets are blocked
Narcotics ⁹	Specially Designated Narcotics Traffickers	No transactions with Specially Designated Narcotics Traffickers currently centered in Colombia; their assets are blocked

⁸ Terrorism Sanctions Regulations, 31 C.F.R. Part 595.

⁹ Executive Order 12978, "Blocking Assets and Prohibiting Transactions With Significant Narcotics Traffickers."

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