

## The Implications Of Lifting Sanctions Against Sudan

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*Law360, New York (January 26, 2017, 10:41 AM EST)* -- On Jan. 13, 2017, the Obama administration announced that the long-standing comprehensive sanctions against Sudan would be suspended effective Jan. 17, 2017, and that the sanctions would be revoked in six months if the progress of the past six months continued with respect to bilateral cooperation, cessation of internal hostilities, regional cooperation and improvements to humanitarian access. This article discusses the history of the Sudan sanctions and the implications of the actions taken by the Obama administration.

### The History of the Sudan Sanctions Program

Relations between the United States and Sudan have been problematic since 1967, shortly after Sudan became an independent state.[1] Due to Sudan's support of Islamist terrorist groups and its attempts to destabilize neighboring governments,[2] the United States designated Sudan as a State Sponsor of Terrorism in 1993.[3]

A few years later, in 1997, the U.S. government imposed a comprehensive trade embargo on Sudan and an asset freeze against the government of Sudan, deeming the latter's record of human rights violations and support of terrorism an unusual and extraordinary threat to the national security and foreign policy of the United States.[4] In 2006, due to the persistent violence against civilians in Sudan's Darfur region, the U.S. government blocked the property of certain persons involved in the conflict and imposed additional restrictions to prohibit all transactions involving Sudan's petroleum and petrochemical industries by U.S. persons (i.e., U.S. citizens, U.S. permanent residents, entities organized under U.S. law (and their foreign branches) and individuals and entities located in the United States).[5] For many years, these comprehensive sanctions prohibited U.S. persons from engaging in virtually any transactions involving Sudan or its government. South Sudan, which became an independent country in 2011, has not been subject to the comprehensive restrictions imposed upon Sudan, though some designated parties in South Sudan and certain South Sudanese activities intertwined with Sudan's economy have been



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restricted.[6]

On Jan. 13, 2017, the president of the United States signed Executive Order 13761 (“EO 13761”).[7] EO 13761 recognizes positive actions by the government of Sudan and provides for the suspension and possible revocation of certain Sudan-related sanctions.[8] Previous executive orders that imposed a trade embargo against Sudan blocked the property of its government and prohibited certain activities relating to Sudan’s petroleum and petrochemical industries are now suspended.[9] Effective July 12, 2017, the suspended sanctions will be revoked if the government of Sudan sustains the positive actions it has taken over the second half of 2016.[10] In conjunction with EO 13761, the U.S. Treasury Department’s Office of Foreign Assets Control announced an amendment to the Sudanese sanctions regulations.[11] Pursuant to this amendment, a new general license authorizes U.S. persons generally to engage in transactions with individuals and entities in Sudan and unblocks the property of the government of Sudan subject to U.S. jurisdiction.[12] These changes do not, for the time being, alter Sudan’s status as a State Sponsor of Terrorism, which entails certain export restrictions.[13]

### **The Implications of the Suspension of Comprehensive Sanctions**

The U.S. government’s recent executive action changes U.S. sanctions against Sudan from a comprehensive program to a list-based one. Sanctions remain in place against specific entities and individuals or specially designated nationals (“SDNs”). U.S. persons are generally prohibited from engaging in any transactions, directly or indirectly, involving SDNs or their property interests, including any entity owned 50 percent or more by one or more SDNs, whether within or outside of Sudan.[14] OFAC maintains a non-exhaustive list of Sudanese SDNs, including those listed in relation to the Darfur conflict, on its website.[15]

As of January 2017, seven individuals and a cargo airline were listed as SDNs in connection with the Darfur conflict.[16] In addition, 156 entities from numerous sectors, including energy, construction and finance, among others, remain listed as Sudanese SDNs. U.S. businesses that wish to engage in transactions with Sudan must carefully examine OFAC’s SDN list to avoid running afoul of the remaining U.S. sanctions.[17] The penalties for sanctions violations are severe and can include fines of up to \$1 million, imprisonment of up to 20 years and/or designation of the violator as an SDN, among others.[18]

Furthermore, U.S. businesses conducting business with Sudan must closely follow further developments. EO 13761 only suspends sanctions against Sudan; whether they will be terminated on July 12, 2017, or re-imposed on or before that date depends on developments in Sudan.[19] Furthermore, the status of the suspended sanctions will now depend on the Trump administration and its assessment of the appropriate course of action to serve U.S. interests.

### **The Associated Changes in Controls on Exports to Sudan**

Pursuant to the changes announced by OFAC, U.S. persons may now be involved in the exportation of goods to Sudan, to the extent that such exportation is permitted under applicable export controls. However, the sweeping changes announced by former President Obama generally do not extend to the area of export controls. Indeed, at least for the time being, export controls involving Sudan remain quite restrictive.

Most importantly, the suspension of comprehensive sanctions does not alter Sudan’s designation as a State Sponsor of Terrorism. As such, there are strict controls on the export and re-export of many U.S.-origin goods to Sudan. Restrictions also apply to the export or re-export of most foreign-made goods

with more than 10 percent controlled U.S. content by value. Foreign-made goods that exceed 10 percent controlled U.S.-origin content by value are controlled pursuant to the Export Administration regulations.[20]

To date, only modest changes in export controls have been implemented. The U.S. Commerce Department's Bureau of Industry and Security did announce revisions to its Sudan licensing policy with respect to two types of applications.[21] In both instances, review of applications will now be considered under a general policy of approval rather than a general policy of denial.

The first scenario in which the new licensing policy will apply concerns applications for the export or re-export to Sudan of aircraft parts, components, materials, equipment and related technology.[22] Assuming that these items are controlled only for anti-terrorism reasons and that they are intended to ensure the safety of civil aviation or the safe operation of commercial passenger aircraft, applications for their export or re-export will be reviewed under a general policy of approval.[23]

The revised general policy of approval also applies to license applications for the export or re-export to Sudan of items controlled only for anti-terrorism reasons that will be used in Sudanese railroads.[24] The new policy applies to items that are to be used to inspect, design, construct, operate, improve, maintain, repair, overhaul or refurbish railroads in the country.[25]

In both instances, the new general policy of approval will only apply to applications for civil uses by "non-sensitive" end users. Applications for use of items by the military, police or other "sensitive" end users will still be reviewed according to a general policy of denial.[26]

U.S. businesses engaged with Sudan, and non-U.S. businesses that source U.S.-origin items, will need to examine the impact of these sanctions and export controls changes on their dealings with Sudan. And they will need to keep an eye on both the Trump administration's sanctions pronouncements and on developments in Sudan to assess the prospects for a permanent revocation of the sanctions against Sudan this coming July.

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[1] Bureau of African Affairs, US Department of State, U.S. Relations with Sudan, Fact Sheet, November 3, 2015, available at: <https://www.state.gov/r/pa/ei/bgn/5424.htm> (last visited January 19, 2017).

[2] Id.

[3] Office of Foreign Assets Control of the US Department of the Treasury, Sudan Sanctions Program at 3, available at: <https://www.treasury.gov/resource-center/sanctions/Programs/Documents/sudan.pdf> (last visited January 19, 2017).

[4] Id.

[5] Exec. Order No. 13400 (2006), available at: <https://www.treasury.gov/resource-center/sanctions/Documents/13400.pdf> (last visited January 19, 2017).

[6] Exec. Order No. 13412 (2006), available at: <https://www.treasury.gov/resource-center/sanctions/Documents/13412.pdf>. (last visited January 19, 2017).

[7] Office of Foreign Assets Control of the US Department of the Treasury, Treasury to Issue General License to Authorize Transactions with Sudan, available at: [https://www.treasury.gov/resource-center/sanctions/Programs/Documents/sudan\\_fact\\_sheet.pdf](https://www.treasury.gov/resource-center/sanctions/Programs/Documents/sudan_fact_sheet.pdf) (last visited January 19, 2017).

[8] Id.

[9] Id.

[10] Id.

[11] Id.

[12] Sudanese Sanctions Regulations, 31 C.F.R. § 538.540 (2017).

[13] Bureau of Counterterrorism and Countering Violent Extremism, US Department of State, State Sponsors of Terrorism, available at: <https://www.state.gov/j/ct/list/c14151.htm> (last visited January 19, 2017).

[14] Office of Foreign Assets Control of the US Department of the Treasury, OFAC FAQs: General Questions, available at: [https://www.treasury.gov/resource-center/faqs/Sanctions/Pages/faq\\_general.aspx#50\\_percent](https://www.treasury.gov/resource-center/faqs/Sanctions/Pages/faq_general.aspx#50_percent) (last visited January 19, 2017).

[15] See Office of Foreign Assets Control of the US Department of the Treasury, Sanctions List Search, available at: <https://sanctionssearch.ofac.treas.gov/> (last visited January 19, 2017).

[16] See id.

[17] See id.

[18] Exports Administration Regulations, 15 C.F.R. § 764.3 (2017).

[19] Office of Foreign Assets Control of the US Department of the Treasury, Treasury to Issue General License to Authorize Transactions with Sudan, available at: [https://www.treasury.gov/resource-center/sanctions/Programs/Documents/sudan\\_fact\\_sheet.pdf](https://www.treasury.gov/resource-center/sanctions/Programs/Documents/sudan_fact_sheet.pdf) (last visited January 19, 2017).

[20] 15 C.F.R. § 734.4(c) (2017).

[21] Revisions to Sudan Licensing Policy, Fed. Reg. 4781 (Jan. 17, 2017) (to be codified at 15 C.F.R. pt. 742).

[22] Id.

[23] Id.

[24] Id.

[25] Id.

[26] Id.