

THE AMERICAN CLUB BUILDING ON THE PAST, WELCOMING THE FUTURE



THE AMERICAN CLUB

SO YOU'RE THINKING OF GOING WHERE?
THE SHIPOWNER'S GUIDE TO SANCTIONS

PIRAEUS

JUNE 9, 2011

Rule no. 1: Don't do business with this man...



Sanctions : What are they?

- **Trade and economic sanctions are a key tool on the international level to put pressure on governments whose behavior is judged to be in contravention of international standards**
- **Usually with respect to human rights, international treaties, conventions or laws or in some instances a threat to the rest of the world for example in violation of laws relating to the development of nuclear weapons**



How do sanctions work?

- They impose restrictions that can target individuals such as heads of state, whole areas, countries, ports, airspace, ability to travel, types of trade, services, products, and assets by use of prohibitions, freezing orders, attachments and penalties (both civil and criminal)

Who imposes them?

There are four major categories :

1. US

2. UN

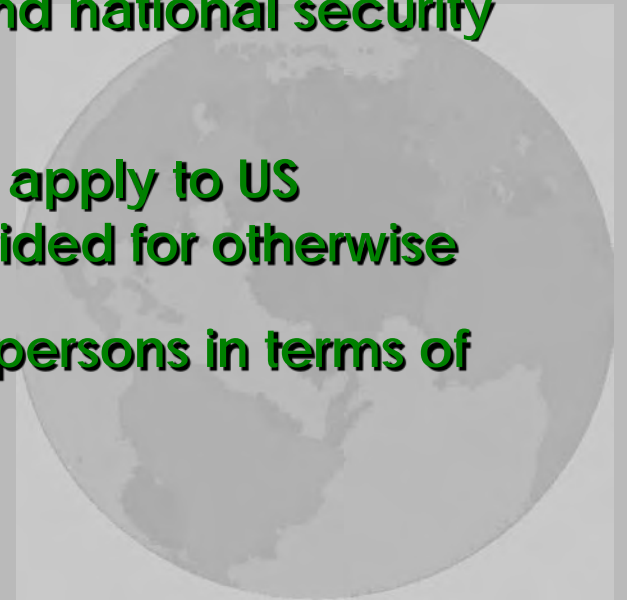
3. EU

4. Individual countries



US – OFAC

- **The Office of Foreign Assets Control is an agency of the US Department of Treasury**
- **OFAC administers and enforces economic and trade sanctions based on US foreign policy and national security goals**
- **Generally sanctions imposed by the US apply to US persons except where specifically provided for otherwise**
- **Can impose consequences on non-US persons in terms of future dealings within US jurisdiction**



US – OFAC

- **A list of all sanctions programs administered by OFAC is available at :**
<http://www.treasury.gov/resource-center/sanctions/Programs/Pages.aspx>
- **The Specially Designated Nationals (SDN) list is a publication of OFAC listing all targeted individuals and entities. This list can be accessed by the following link:**
[http://www.treasury.gov/resources-center/sanctions/SDN-list /pages/default.aspx](http://www.treasury.gov/resources-center/sanctions/SDN-list/pages/default.aspx)



UN – Security Council

- Under Chapter VII of the Charter, the Security Council is authorized to take enforcement measures to maintain or restore international peace and security
- Such measures range from economic and/or other sanctions not involving the use of armed force to international military action
- Applies to member states
- The use of mandatory sanctions is intended to apply pressure on a State or entity to comply with the objectives set by the Security Council without resorting to the use of force
- Sanctions offer the Security Council an important instrument to enforce its decisions
- The universal character of the United Nations makes it an especially appropriate body to establish and monitor such measures

EU – CFSP

- The EU applies sanctions within the Common Foreign and Security Policy (CFSP) on an autonomous basis or by implementing binding resolutions of the UN Security Council
- EU sanctions apply to EU and Non EU nationals doing business within EU territory
- The European Commission publishes a regularly updated list with names and details of all persons, groups and entities targeted
http://ec.europa.eu/external_relations/cfsp/sanctions/list/consol-list.htm
- Also a full list of target countries is available at :
http://ec.europa.eu/external_relations/cfsp/sanctions/measures.htm

Individual Countries

Individual countries which also include vessel's flag state may have political or economic reason to impose sanctions targeted at other countries or may in effect as a member state simply be implementing UN or EU sanctions on a national level



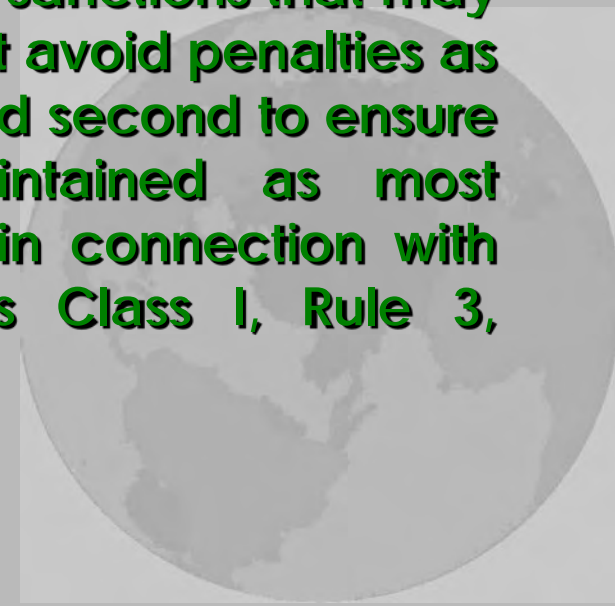
Two Main Issues for shipowners when evaluating sanctions:

- **Ensuring lawful trade of the vessel**
- **Insurance cover considerations**



Ensuring lawful trade of the vessel

Involves an analysis of the proposed voyage, the parties involved in the context of the particular sanctions that may be in place in order to first and foremost avoid penalties as a result of violations of the sanctions and second to ensure insurances for the vessel are maintained as most insurances exclude claims that arise in connection with unlawful trade (American Club Rules Class 1, Rule 3, section 1.3)



Insurance cover considerations

- Independent of the vessel's legality of trade, there is also a second level of analysis relating to insurance cover and that is the applicability of sanctions to the insurer and its own ability to cover claims that may involve sanctioned nations
- Sanctions apply not only to those directly involved in a particular trade but also indirectly to entities and parties whose backing may facilitate the trade such as banks and insurance companies
- Insurers have had to amend their covers and include exclusions that relate to sanctions where the provision of cover or payments would expose the Club or their reinsurers to penalties of sanctions
- The IG of P&I Clubs has done this and for the American Club is embodied in Class I, Rule 3, section 1.4 and 1.5

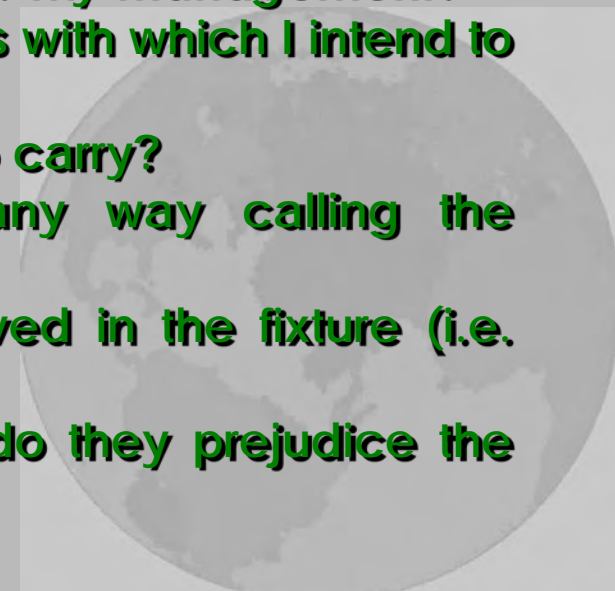
Evaluating sanctions

- **Evaluation must be done on a case by case basis**
- **Constantly evolving legislation as a result of our politically and economically volatile world**
- **Burden is on each person to ensure that they are in compliance with applicable sanctions**
- **The standard to use is DUE DILIGENCE**



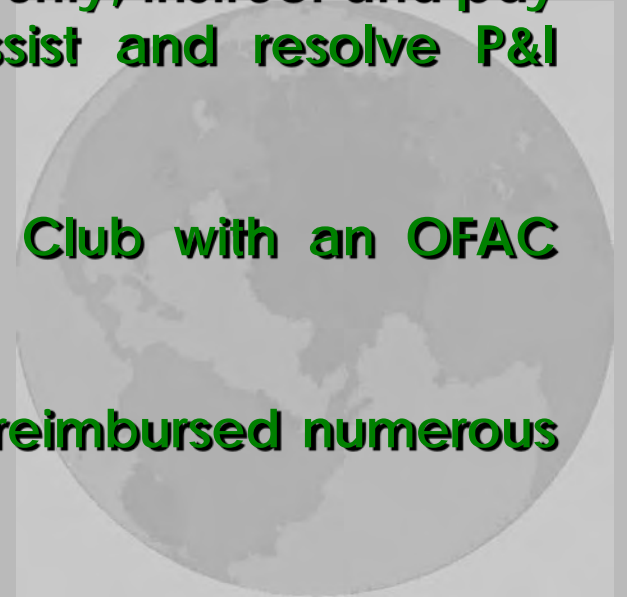
Due Diligence : What are the questions we must ask?

1. **Are there currently sanctions in place for the area/country I wish to call?**
2. **If yes then, what are the sanctions in place and by whom?**
3. **Do these sanctions apply to me? My vessel? My management?**
4. **Do the sanctions apply to any of the entities with which I intend to contract with directly or indirectly?**
5. **If not, do they apply to the cargo I intend to carry?**
6. **If not, do they apply or prohibit in any way calling the contemplated loadport(s) / disport(s)?**
7. **Do they apply to any other parties involved in the fixture (i.e. banks)?**
8. **If despite all the above being negative, do they prejudice the vessel's insurance cover?**



American Club License

- **Applies to primary OFAC sanctioned countries: Iran, Cuba, Myanmar and Sudan**
- **Allows the American Club to post security, instruct and pay lawyers and correspondents, to assist and resolve P&I covered risks**
- **The American Club is the only P&I Club with an OFAC license**
- **The American Club has settled and reimbursed numerous P&I claims in each of these countries**



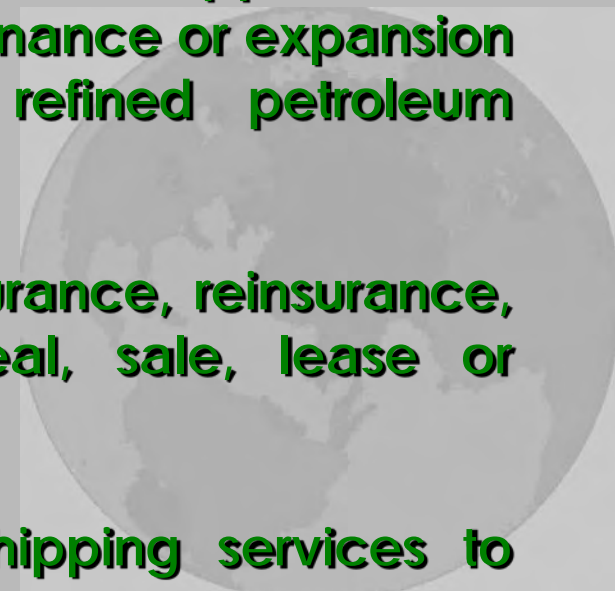
IRAN

US – OFAC Regulations

- **General prohibition for US persons to trade with Iran (unless specially authorized)**
- **July 2010 – CISADA – The Comprehensive Iran Sanctions Accountability and Divestment Act came into force to strengthen existing US sanctions against Iran by restricting access to refined petroleum products and aims to impede Iran's ability to develop nuclear weapons**
- **CISADA extends the reach of US sanctions to non US entities and persons by providing for penalties within US control against any parties that engage in certain sanctions-triggering trade/transactions involving Iran (in effect makes them sanctioned targets)**

IRAN - CISADA

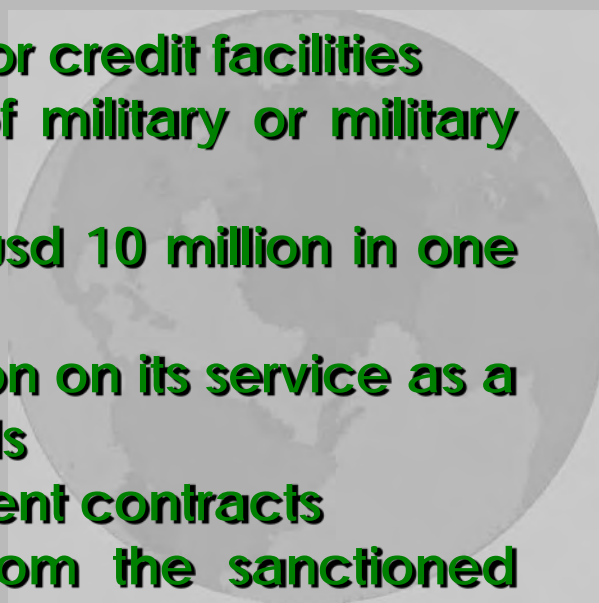
- **Refined petroleum products – diesel, gasoline, jet fuel, and aviation gasoline**
- **Prohibits knowingly selling, leasing, or providing to Iran goods, services, technology, information or support which could significantly facilitate the maintenance or expansion of Iran's domestic production of refined petroleum products or their ability to import r.p.p.**
- **Specifically prohibits underwriting, insurance, reinsurance, financing or broking a relevant deal, sale, lease or provision of such goods**
- **Prohibits the provision of ships or shipping services to deliver refined petroleum products to Iran**



IRAN - CISADA

Sanctions that can be imposed on violators of the Act:

- prohibition of payments within US
- bar from US foreign exchange transactions
- blocking of property within the US
- denial of US export-import bank loans or credit facilities
- denial of licenses for the US export of military or military useful technology
- denial of US bank loans in excess of usd 10 million in one year
- if a financial institution then a prohibition on its service as a primary dealer in US Government bonds
- barred from US Government procurement contracts
- prohibition on imports into the US from the sanctioned person



IRAN - CISADA

As a result of CISADA the US has recently impose sanctions on 7 companies for their activities in support of Iran's energy sector:

PCCI, Royal Oyster Group, Speedy Ship, Tanker Pacific, Ofer Brothers Group, Associated Shipbrokers and PDVSA

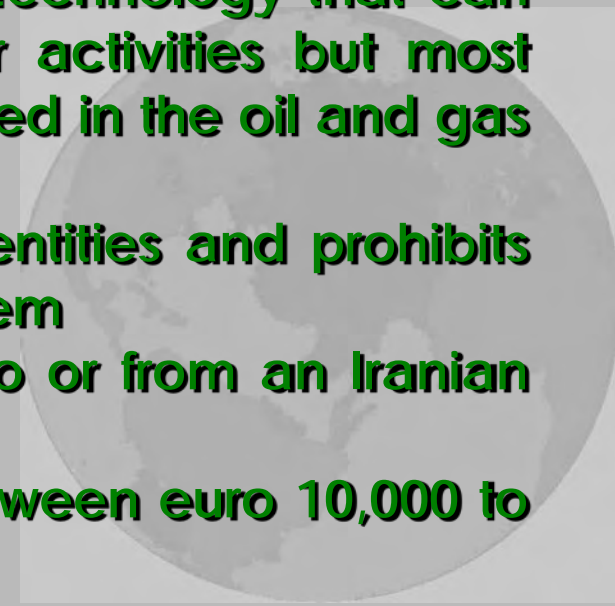


IRAN - EU

EU

“The Iran Regulation” – October 2010 (implements UN sanctions)

- **Embargoes on arms and goods and technology that can contribute to civil or military nuclear activities but most importantly equipment that can be used in the oil and gas sector**
- **Freezes assets of listed persons and entities and prohibits making funds or assets available to them**
- **Requires authorization for payments to or from an Iranian entity over Euro 40,000**
- **Requires notification for payments between euro 10,000 to eur 40,000**



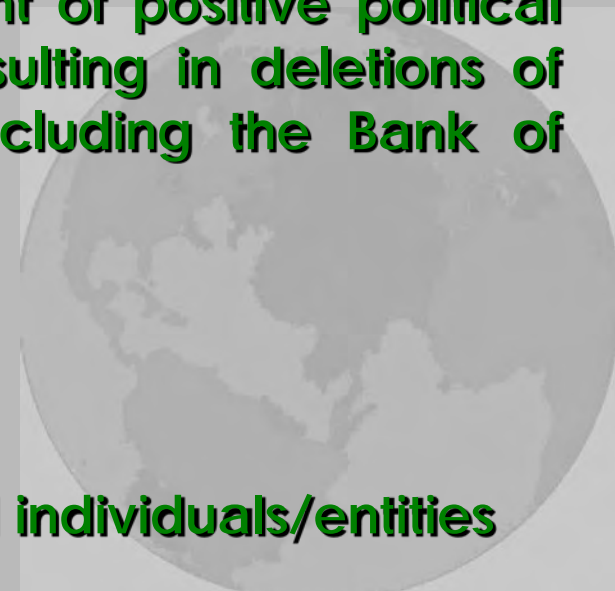
SUDAN

US

- Economic sanctions in place restricting imports/exports due to finding of their past general support to terrorists
- Now gradually being relaxed in light of positive political development in Southern Sudan resulting in deletions of entities from the OFAC SDN list including the Bank of Khartoum

EU

- Implementation of UN sanctions
- Arms embargo on Darfur
- Travel ban and assets freeze on listed individuals/entities



CUBA

US

- **General commercial, economic and financial embargo imposed**
- **Applies to US interests but includes foreign subsidiaries of US companies**



NORTH KOREA

US

- Prohibits transactions which facilitate trafficking in arms and related material, facilitating the procurement of luxury goods, activities that involve or support the government or its senior officials and other SDN listed individuals and/or entities
- Prohibits North Korean vessel registration
- Prohibits import to US of NK products/services

EU

- Basically implements UN sanctions
- Arms embargo
- Export ban of listed goods and technologies
- Prohibition of financial transactions, services relating to arms or any of the goods listed and with any parties listed



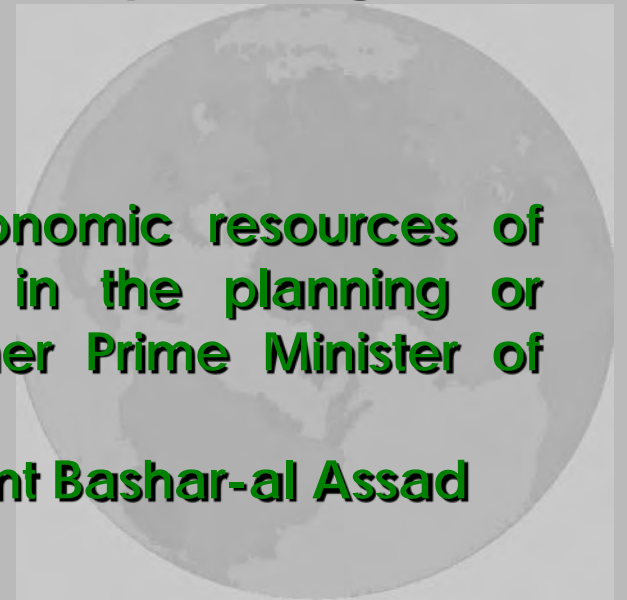
SYRIA

US

- Prohibits exportation of US products to Syria
- Blocks property and transactions with or involving any Syrian listed SDN but otherwise does not prohibit general trade to the country

EU

- Requires freezing of funds and economic resources of persons suspected of involvement in the planning or perpetuating of the murder of former Prime Minister of Lebanon Rafik Hariri
- Recent addition to the EU list – President Bashar-al Assad



IVORY COAST

- **Sanctions now eased by UN and likewise US and EU**
- **Assets freezes limited to specifically listed SDNs**



LIBYA

US

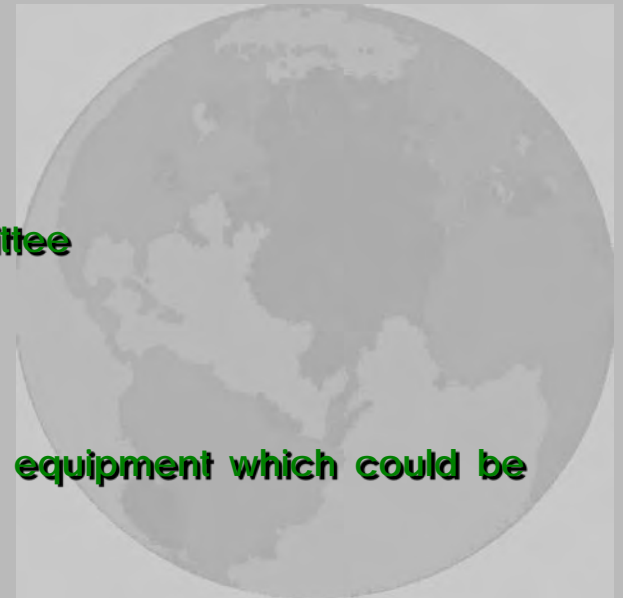
- Aimed at the Qadhafi regime and government
- Blocks assets and prohibits transactions with or involving the Government of Libya, its agencies, instrumentalities, and controlled entities, and the Central Bank of Libya, as well as listed individuals (OFAC SDN List), including but not limited to, Muammar Qadhafi and members of his family and his regime
- Not a ban on trade to Libya except to the extent they involve a person on the OFAC SDN List or the Government of Libya

UN

- Arms embargo – NATO Navigation warning
- Travel ban
- Assets freeze of those parties listed by the UNSC committee
ban on flights of Libyan aircraft

EU

- Implements the UNSC resolution on Libya
- Additional restrictive measures by banning supply of equipment which could be used for internal repression – Annex I to the regulation



Other Considerations:

Other insurances besides P&I

- **Geographical restrictions**
- **Warranties**
- **Conditions/exclusions relating to sanctions**
- **Additional premium**



Other Obstacles:

Inability to foresee or control the acts of third parties such as banks when processing payments involving sanctioned nations



Conclusion

- **Check in advance of making the decision**
- **Consult the Club and notify all insurers**
- **Collect all relevant information**
- **“Due Diligence” - document the steps taken and advice received as well as results of all searches**
- **If in doubt at all seek comprehensive legal advice based on your particular circumstances before making the final decision**



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