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Navigating the Sudan Sanctions Regime

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On May 29, 2007, the Bush administration unveiled a long-anticipated package of sanctions against Sudan, designating thirty Sudanese companies for their ties to the regime of President Omar al-Bashir, as well as two government officials, a rebel leader, and a transportation company for their role in the Darfur genocide. In announcing the targeted companies and individuals, Treasury Secretary Henry Paulson stated that Washington was "calling attention to their horrific acts" and attempting to "further isolate them from the international community." Although these sanctions do not impose significant additional legal restrictions on business dealings with Sudan, they could nevertheless have some impact if they are effectively implemented.

Background

For last month's designations, the Treasury Department used two separate Sudan-related executive orders (EOs) issued in 2006 -- EO 13400 and EO 13412 (itself an update of EO 13067, discussed below). Under EO 13400, which focuses on the situation in Darfur, the department targeted two senior Sudanese government officials who served as liaisons between the government and the Janjaweed militia in Darfur, as well as one rebel leader. The Azza Air Company was also designated under this EO for transporting weapons to the militia and Sudanese government forces in Darfur.

The remaining thirty companies were listed under EO 13067/13412, a more general order focused on terrorism, human rights, and threats to U.S. national security. This brought the total number of Sudanese companies blacklisted by Treasury to more than 160. The recent additions included five petrochemical companies, Sudan's national telecommunications company, and a firm that produced armored vehicles for the regime and its allies. According to Treasury, these companies all "supplied cash to the Bashir regime, enabling it to purchase arms and further fuel the fighting in Darfur."

The latest designations build on the comprehensive unilateral sanctions that the United States has had in place against Sudan for nearly a decade. Sanctions were first imposed in 1997 when President Bill Clinton issued EO 13067, which identified Sudan's support for international terrorism and human rights violations as a threat to U.S. national security and foreign policy. The order restricted almost all trade with Sudan and froze any Sudanese government assets within U.S. jurisdiction. As a result, the current sanctions are somewhat hybrid in that they treat Sudanese assets/transactions differently depending on whether they originate from the government or private sector. That is, U.S. financial institutions are required to freeze or "block" any transactions in which the Sudanese government is a party, but all other transactions relating to Sudan must instead be rejected (unless the entity in question has been specifically designated by the Treasury Department).

In April 2006, President Bush issued EO 13400, relating specifically to the situation in Darfur. The order gave the treasury secretary, in consultation with the secretary of state, authority to designate any individual or entity involved in the ongoing violence against civilians. Four individuals previously sanctioned by the UN -- a Janjaweed militia leader, a Sudanese military commander, and two others -- were named in the annex to the order.

The Sudan sanctions regime was amended again in October 2006 with EO 13412, superseding EO 13067 in an effort to coordinate executive authority with measures laid out in the Darfur Peace and Accountability Act adopted by Congress that same month. This order maintained comprehensive sanctions against the Sudanese government but exempted the regional government in southern Sudan in order to facilitate reconstruction efforts in that war-torn region. It also outlawed transactions related to Sudan's petroleum or petrochemical industries, since the government has a pervasive role in that sector.

No Significant Legal Impact

Although the latest round of designations appears to be wide ranging, in reality it does not impose any significant additional legal restrictions on U.S. firms. The existing broad sanctions already prohibited U.S. entities from dealing with the newly designated Sudanese entities. In fact, Washington has only limited ability to ramp up unilateral legal restrictions on business dealings with Sudan. In particular, the United States does not have jurisdiction over the countries and companies currently most involved in Sudan's energy sector, which include Chinese, Indian, and Malaysian parastatal corporations.

How Targeted Measures Can Help

Despite their limitations, the latest sanctions against Sudan can still be effective tools. For example, they can have a potentially significant symbolic effect. As U.S. special envoy to Sudan Andrew Natsios acknowledged, "The purpose of these sanctions . . . is to send a message to the Sudanese government to start behaving differently when they deal with their own people. That's what this is about." Indeed, the designations did bring renewed international focus on Sudan, and could perhaps create additional pressure and momentum for the next round of UN sanctions.

The latest measures could also have some economic impact, particularly on whether and how foreign financial institutions will deal with the newly designated entities. As Secretary Paulson recently noted, "When we use targeted financial measures aimed at explicit wrongdoing, the private sector around the world tends to support these measures, thereby amplifying their effectiveness. Rather than grudgingly complying with, or even trying to evade our sanctions, we have seen the banking industry in particular voluntarily go above and beyond their legal requirements because they do not want to do business with terrorist supporters, money launderers, or proliferators."

Moving Sudan Sanctions Forward

Although further strengthening the UN's broader, multilateral Sudan sanctions program is essential for success, U.S. officials can still do more to make Washington's unilateral sanctions more effective. First, the United States can devote additional resources and focus to enforcing the existing sanctions. After the recent designations, Office of Foreign Assets Control director Adam Szubin stated that the United States intends to step up enforcement of the Sudanese sanctions "across the board," including more aggressive investigation and prosecution of attempts to circumvent the restrictions. The financial sector certainly took note of this statement, and following through on that pledge will be key to ensuring that the sanctions have a measurable economic impact.

Second, the Treasury Department should conduct the same type of senior-level outreach to foreign governments and the private sector that it has used successfully in the Iran context. The department should explain how the Sudanese government is using funds from business deals to support its dangerous and illicit activities, and why dealing with Sudan presents a risk to financial institutions' reputations. Treasury may face an even greater uphill struggle than it has with Iran, given that few countries regard Sudan as a threat to their national security. With China possibly standing in the way of further UN sanctions, however, the United States must do everything it can to maximize the impact of its own unilateral sanctions programs.

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