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BLOG

# U.S. Government to Ramp Up Sanctions Compliance Pressure on Worldwide Maritime Industry

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The U.S. State Department (State) previewed on March 9, 2020, new U.S. Government economic sanctions compliance measures that will have a substantial effect on the worldwide maritime industry. The measures were set out by David Peyman, the Deputy Assistant Secretary (DAS) of State for Counter Threat Finance and Sanctions in an interview at the Foundation for Defense of Democracy. During the interview, DAS Peyman announced notable developments in several significant areas:

- A Global Maritime Sanctions Advisory is scheduled to be published in April;
- Bunkering guidance focused on storage facilities for Iranian-origin oil and the broader supply chain for bunkers is to be published on the Department of State's website;
- A Registry Information Sharing Compact (RIS Compact) has been established; and
- A renewed emphasis will be placed on the industry knowing with whom they are dealing through assessments of beneficial ownership of entities.

The message from these actions is that the U.S. Government expects the maritime industry in its entirety to develop risk-based compliance programs designed to detect and mitigate risk of exposure to U.S.-sanctioned parties and jurisdictions. The expectation applies to both U.S. and non-U.S. entities. Additional compliance costs are to be absorbed by the private sector – particularly with respect to identifying and stopping those engaged in sanctions evasion or avoidance (North Korea, Iran, Venezuela). To emphasize the U.S. Government's focus on the maritime sector, DAS Peyman reminded his audience that in three years, the Administration has brought close to 800 shipping-related actions.

## Global Maritime Sanctions Advisory

As to State's plan to publish a Global Maritime Sanctions Advisory likely in April, the advent of COVID-19 may change the timing. We anticipate the Advisory to establish rigorous expectations for the entire maritime sector, including vessel owners, vessel registries, insurance providers, port and terminal operators, vessel managers, and financial institutions.

**AIS Transponders – Duty to Monitor**

DAS Peyman explicitly called out the Advisory's focus on automatic identification system (AIS) transponders and the U.S. Government's expectation that they never be turned off and that all industry participants play an active role in ensuring continuous and accurate AIS information is available. For example, DAS Peyman explained that he expects vessel registries to ask for AIS histories when registering vessels. Any apparent manipulation of the AIS systems, he explained, should be grounds for denying registration to a vessel. Similar requirements will apply to insurance companies and financial institutions. AIS monitoring and documentation is likely to be a challenge for insurers given the frequency with which a vessel can be chartered during the life of its insurance cover. In order to confirm each incident where AIS "goes dark," the insurer (or reinsurer) would have to have contact information for the charter party. It would seem a more reasonable approach might be to continue what some in the industry are doing, which is to include clauses in insurance contracts that require compliance with law and exclude from insurance coverage illicit activity and sanctioned conduct.

**Ship-to-Ship Transfers**

In accordance with prior Office of Foreign Assets Control (OFAC) guidance, DAS Peyman also focused on the need to monitor for illicit trading through ship-to-ship transfers. For example, OFAC calls out the risks posed by ship-to-ship transfers in its September 4, 2019 Advisory relating to Shipping Petroleum and Petroleum Products from Iran. This Advisory reiterates the same warning from the March 21, 2019 Updated Guidance on Addressing North Korea's Illicit Shipping Practices and the March 25, 2019, Syria Shipping Advisory. It also mirrors the United Nations Panel of Experts Report on North Korea (August 30, 2019), which addresses North Korea's use of ship-to-ship transfers to acquire refined petroleum, weapons of mass destruction, and luxury goods, and to export tons of coal in violation of the United Nations Security Council Resolutions. While flagging ship-to-ship transfers as a means through which to engage in sanctions evasion or avoidance is helpful, it is not clear how all parties in the maritime sector will implement efficient monitoring for illicit ship-to-ship transfers.

Given that these OFAC sanctions compliance programs—all based on OFAC's May 2, 2019 Compliance Framework—are supposed to be risk-based, one would expect that State's Maritime Advisory also will honor the concept that various industries will have different risk-based means through which to address compliance obligations.

DAS Peyman also called out port operators and indicated that State expect them to use Long Range Identification and Tracking Radar to monitor vessels in their area of operation to identify ship-to-ship transfers. Where any vessels are engaged in permissible ship-to-ship transfers, State also expects that vessels will document the activity through photography and other written logs that can be provided to government authorities upon request.

# Registry Information Sharing Compact (RIS Compact)

According to DAS Peyman, who announced the establishment of the RIS Compact in his March 9 interview, the RIS Compact is an agreement between vessel registries to establish information sharing amongst signatories regarding "bad" actors. The goal is to discourage "flag-hopping" by sanctioned parties. As of March 9, the RIS Compact has been signed by Panama, the Marshall Islands, Liberia, St. Kitts and Nevis, Comoros, Honduras, and Palau – with others likely to follow.

As State is aware, a specially designated national (SDN) designation of a vessel without corresponding licenses from OFAC to permit continued service is a death sentence for the vessel. When a vessel is designated, the Protection and Indemnity Clubs (P&I Clubs) will drop insurance cover, the vessel will almost certainly lose its vessel registration certification, U.S. financial institutions will block/freeze transactions, and EU financial institutions will also consider taking actions in order to de-risk. The end result is that the vessel and its owner will become a pariah, which is the intended purpose of an SDN designation. DAS Peyman explained that the U.S. Government's intent in sanctions designations is to change behavior; he identified as an example the COSCO designation and de-listing.

The problem not being addressed is that the U.S. Government's concept of acting quickly is not the same as what is commercially feasible. The PB Tankers case is a good example. PB Tankers was designated as an SDN on April 12,

2019 for carrying oil products from Venezuela to Cuba. PB Tankers, according to Treasury's press release announcing its July 3, 2019 de-listing, warranted removal from the SDN List because it terminated its charter with Cubametales and supplemented its OFAC compliance program. The de-listing process for PB Tankers moved at lightning speed for OFAC, which typically can take more than 12 months to accomplish. Even a three-month turnaround can be commercially devastating. PB Tankers, according to press reports, filed for bankruptcy around June 25, 2019, in Italy.

A second potential consequence of an OFAC designation is the potential for environmental damage with persons harmed having no financial recourse. For vessel owners facing an SDN designation, we suggest a speedy outreach to OFAC and State in order to understand what is necessary to achieve de-listing, obtain temporary operating licenses, and begin to move forward.

## Guidance on Bunkering

New guidance on bunkering is also in the works. We expect that State's guidance will be focused specifically on the Iranian oil sector and those in the supply chain involved in moving vessel fuel from refineries to vessels that will consume the fuel. State has indicated that the pressure campaign on Iran will continue to increase, and it appears that the new "maximum" pressure campaign will continue to be focused on non-Iranian parties involved in transferring Iranian oil and gas products throughout the world.

## Collection of Beneficial Ownership Information

As far as DAS Peyman's assertion that there is a need to collect beneficial ownership information on counterparties in order to detect potential illicit front companies, each maritime industry segment will, of course, have different exposure to different parties, and the ability to collect and screen beneficial ownership information will also vary. The retrocessionaire or reinsurer for a global insurance policy will have less access to beneficial ownership of the ultimate insured than would the vessel owner or manager.

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