



U.S. Department of the Treasury
Office of Foreign Assets Control



SUDAN

What You Need To Know About U.S. Sanctions

An overview of the Sudanese Sanctions Regulations -- Title 31 Part 538 of the U.S. Code of Federal Regulations and Executive Order -- Blocking Property of Persons in Connection with the Conflict in Sudan's Darfur Region

▪ **INTRODUCTION** - On November 3, 1997, President Clinton issued Executive Order 13067, finding that the policies and actions of the Government of Sudan, including continued support for international terrorism, ongoing efforts to destabilize neighboring governments, and the prevalence of human rights violations, including slavery and the denial of religious freedom, constituted an unusual and extraordinary threat to the national security and foreign policy of the United States. E.O. 13067, issued under the authority of the International Emergency Economic Powers Act (50 U.S.C. 1701-1706) ("IEEPA"), the National Emergencies Act (50 U.S.C. 1601 et seq.) and section 301 of title 3, United States Code, imposed a trade embargo against the entire territory of Sudan and a total asset freeze against the Government of Sudan.

On March 29, 2005 and April 25, 2006, the United Nations Security Council issued Resolutions 1591 and 1672, respectively, condemning the continued violations of human rights and international humanitarian law in Sudan's Darfur region and, in particular, the continuation of violence against civilians and sexual violence against women and girls. The UN Resolutions determined that the situation in Darfur constituted a threat to international peace and security in the region and called on member states to take certain measures against persons responsible for the continuing conflict.

In response to these Resolutions, on April 27, 2006, President Bush issued Executive Order 13400, expanding the national emergency declared in Executive Order No. 13067 to block the property and interests in property of certain persons connected with the conflict in Darfur. The Annex to E.O. 13400 contained the names of four individuals subject to its provisions, and E.O. 13400 gave the Secretary of the Treasury, after consultation with the Secretary of State, the authority to designate additional individuals and entities connected with the conflict in Darfur.

On October 13, 2006, President Bush, taking into account the provisions of the Darfur Peace and Accountability Act signed on the same day, issued Executive Order 13412, in order to take additional steps to address the continued violence in Darfur created by the policies and actions of the Government of Sudan. The Executive Order continues the countrywide blocking of the Government of Sudan imposed by EO 13067, but excludes the regional Government of Southern Sudan from the definition of the Government of Sudan, thereby allowing most transactions with the Government of Southern Sudan and removing it from the scope of the blocking authority under E.O. 13067. E.O. 13412 further exempts Southern Kordofan/Nuba Mountains State, Blue Nile State, Abyei, Darfur, and marginalized areas in and around Khartoum from the trade prohibitions imposed by

E.O. 13067; these exempt areas are referred to as Specified Areas of Sudan.¹ In addition, Executive Order 13412 continues to prohibit all transactions by U.S. persons relating to Sudan's petroleum or petrochemical industries with Sudan, including in the Southern Sudan region. The Sudanese Sanctions Regulations, 31 C.F.R. Part 538 (the "Regulations") have been amended to implement E.O. 13067 and EO 13412.

▪ **SPECIALLY DESIGNATED NATIONALS** – Under E.O. 13067, all property and interests in property of the Government of Sudan located in the U.S. or within the control of a US person are blocked. This blocking includes individuals and entities that are owned or controlled by, or act on behalf of, the Government of Sudan anywhere in the world, as well as individuals and entities determined by the U.S. Treasury Department to be included in the term "Government of Sudan." These individual and entities are incorporated into OFAC's list of "Specially Designated Nationals" ("SDNs"). The SDN list, however, is not exclusive. Any U.S. individual or organization engaging in transactions with foreign nationals must take reasonable care to make certain that such foreign nationals are not owned or controlled by or acting on behalf of the SDN, regardless of whether or not they appear on the SDN list. As noted on October 2006, President Bush amended the sanctions with E.O. 13412 excluding the regional government of Southern Sudan from the term "Government of Sudan." As of July 2008, OFAC listed approximately 160 entities as meeting the definition of the Government of Sudan, with the most recent listings being made in May 2007.

Additional action was taken with Executive Order 13400 when the President imposed strict sanctions against persons responsible for the violence in Darfur. The President named four individuals in the Annex of E.O. 13400 and gave the Secretary of the Treasury authority to further block the property and interests of property of persons determined to meet certain criteria set forth in E.O. 13400. These criteria include, among others, persons who constitute a threat to the peace process and stability of Darfur. Any individual or entity determined by the Secretary of the Treasury to meet the criteria is included in OFAC's SDN list.

The names corresponding to EOs 13067, 13400, and 13412 appear on OFAC's SDN list with the codes [SUDAN] or [DARFUR] after each name. U.S. persons who violate the Regulations by transacting

¹ The Regulations define "marginalized areas in and around Khartoum" to consist of four official camps for internally displaced persons: Mayo, El Salaam, Wad El Bashir, and Soba.

business with an SDN may be subject to civil or criminal prosecution. All dealings in property in which an SDN has an interest must be authorized by OFAC unless they are exempt. Any bank subject to U.S. jurisdiction that receives instructions to make an unlicensed funds transfer involving a direct or indirect interest of the Government of Sudan (including any transfer routed through a Sudanese Government-controlled bank) is required to place such funds into a blocked interest-bearing account on its books and to notify OFAC. Such funds may only be unblocked after receipt of a specific authorization from OFAC. Setoffs against blocked accounts are prohibited.

▪ **TRANSACTIONS RELATED TO THE PETROLEUM OR PETROCHEMICAL INDUSTRIES IN SUDAN** – U.S. persons are prohibited from engaging in any transactions or activities related to the petroleum or petrochemical industries in Sudan without authorization from OFAC. This prohibition extends to the entire territory of Sudan, including Southern Sudan. The prohibition also includes facilitation by U.S. persons of such transactions or activities undertaken by non-U.S. persons.

▪ **TRANSACTIONS WITH NON-SPECIFIED AREAS OF SUDAN** – With very few exceptions, goods or services originating in non-Specified Areas of Sudan may not be imported into the United States, either directly or through third countries, without a license from OFAC. Exceptions include: (1) Sudanese merchandise up to \$100 in value in non-commercial quantities may be brought into the United States either for strictly personal use as accompanied baggage or if sent as a gift to a person in the United States and (2) information or informational materials may be imported without restriction. All other imports of Sudanese origin must be authorized by OFAC.

Importation into the United States from third countries of goods containing raw materials or components of Sudanese origin is not prohibited if those raw materials or components have been incorporated into manufactured products or otherwise substantially transformed in a third country.

Except for information or informational materials and donated articles intended to relieve human suffering, such as food, clothing and medicine, no goods, technology, or services may be exported from the United States to non-Specified Areas of Sudan, either directly or through third countries, without a license from OFAC. In general, exports of goods or technology classified on the Commerce Control List under a classification other than EAR99 will also require a license from the Bureau of Industry and Security at the U.S. Department of Commerce. Exportation of goods or technology from the United States to third countries is prohibited if the exporter knows, or has reason to know, that the goods or technology are intended for transshipment to non-Specified Areas of Sudan. The exportation of goods or technology intended specifically for incorporation or substantial transformation into a third-country product is also prohibited if the particular product is to be used in non-Specified Areas of Sudan, is being specifically manufactured to fill an order from the non-Specified Areas of Sudan, or if the manufacturer's sales of the particular product are exclusively or predominantly to non-Specified Areas of Sudan. No U.S. bank, including its foreign branches, may finance, or arrange offshore financing for, third-country trade transactions where the non-Specified Areas of Sudan are known to be the ultimate destination of, or the Government of Sudan is the purchaser of, the goods. Arranging transactions that ultimately benefit non-Specified Areas of Sudan (for example, brokering third-country sales) generally constitutes facilitation, which is a violation of the Regulations. The Regulations also prohibit non-U.S. persons from re-exporting U.S. origin goods to non-Specified Areas of Sudan without authorization.

Under the Trade Sanctions Reform and Export Enhancement Act of 2000 and section 538.523 of the Regulations, exports or re-exports of agricultural commodities, medicine, and medical devices to Sudan, including both Specified Areas and non-Specified Areas, are eligible for specific licenses on a case by case basis. The licensing requirements continue to apply to all areas of Sudan, regardless of the intended destination in Sudan.

▪ **TRANSACTIONS WITH SPECIFIED AREAS OF SUDAN** – E.O. 13412 and the Regulations identify the Specified Areas of Sudan,

which are exempt from the prohibitions of EO 13067, as Southern Sudan, Southern Kordofan/Nuba Mountains State, Blue Nile State, Abyei, Darfur and marginalized areas in and around Khartoum. Marginalized areas include the following official camps for internally displaced persons: Mayo, El Salaam, Wad El Bashir and Soba. Therefore, commercial imports and exports as well as humanitarian assistance are no longer prohibited in these Specified Areas of Sudan, provided that these activities do not involve Sudan's petroleum or petrochemical industries, any property or interest in property of the Government of Sudan, or involve transshipment of goods or financial services through non-Specified Areas of Sudan, as discussed below.

Although most transactions related to trade with the Specified Areas of Sudan, including humanitarian assistance, are exempt from the prohibitions of E.O. 13067 under the revised Regulations, all other areas of Sudan continue to be subject to the prohibitions imposed by E.O. 13067. Thus, most transshipment of imports or exports through the non-Specified Areas of Sudan, such as Khartoum and Port Sudan, en route to the Specified Areas of Sudan is prohibited unless authorized. Under the revised Regulations, a general license authorizes transshipments related to humanitarian assistance for Southern Sudan or Darfur to go through non-Specified Areas of Sudan.

▪ **FINANCIAL DEALINGS WITH SUDAN** - Payments for and financing of licensed sales of agricultural commodities, medicine and medical devices may be accomplished by cash in advance, sales on open account (provided the account receivable is not transferred by the person extending the credit), or by financial institutions that are neither U.S. persons nor Government of Sudan entities. U.S. banks may advise or confirm letters of credit issued by non-Government of Sudan banks covering licensed sales.

Payments for licensed sales of agricultural commodities, medicine and medical devices, which must reference an appropriate OFAC license, may not involve a debit to a blocked account on the books of a U.S. depository institution. Before a U.S. bank initiates a payment, or credits its customer for a licensed transaction, it must determine that the transfer is authorized.

As a rule, all other financial dealings with Sudan (with the exception of the Specified Areas of Sudan) are prohibited, including the performance by any U.S. person of any contract, including a financing contract, in support of an industrial, commercial, public utility, or governmental project in Sudan.

Financial transactions involving third country banks or non-SDN Sudanese banks located in the Specified Areas of Sudan are not prohibited and do not require authorization from OFAC, provided that: the transaction does not involve activities in the non-Specified Areas of Sudan, the Government of Sudan does not have an interest in the transaction, and the transaction is not related to Sudan's petroleum or petrochemical industries. However, any financial transactions that involve depository institutions that are located in the non-Specified Areas of Sudan, e.g., Khartoum, anywhere in the routing process remain prohibited and require authorization from OFAC regardless of the underlying transaction.

U.S. depository institutions, U.S. registered broker-dealers and U.S. registered money transmitters are authorized to send and receive non-commercial personal remittances to and from Sudan, provided that such transfers are not processed through a bank owned or controlled by the Government of Sudan and do not otherwise involve assets subject to blocking. Non-commercial personal remittances do not include charitable donations to non-governmental organizations. U.S. financial institutions are authorized to operate accounts for individuals normally resident in Sudan, provided that all transactions processed through the account are personal in nature, not related to operating a business, and not otherwise in violation of the Regulations. Transfers to Sudan are subject to the additional restrictions noted above.

▪ **PROHIBITED FACILITATION** - The Regulations prohibit the facilitation by a U.S. person of the direct or indirect exportation or reexportation of goods, technology or services to or from non-Specified Areas of Sudan. Facilitation of a trade or financial transaction that could be lawfully engaged in directly by a U.S. person or from the United States is not prohibited. Likewise, performance of services of a

purely clerical or reporting nature, such as reporting on the results of a subsidiary's trade, that does not further trade or financial transactions with Sudan or the Government of Sudan will not violate the prohibition on exportation of services to Sudan.

▪ **NON-GOVERNMENTAL & INTERNATIONAL ORGANIZATIONS** – E.O. 13412 and the amended Regulations allow non-governmental organizations (“NGOs”) involved in humanitarian or religious activities to provide assistance in the Specified Areas of Sudan without a specific license, unless their transactions involve the use of the financial infrastructure in the non-Specified Areas of Sudan. NGOs involved in humanitarian or religious activities in the non-Specified Areas of Sudan may apply to OFAC for authorization pursuant to a specific license or to a registration issued under 538.521 of the Regulations.

In addition, the Regulations have been amended to generally authorize activities of contractors or grantees of the United States Government or the United Nations and its specialized agencies, programmes, and funds, provided the activities are for the conduct of official business of the U.S. Government or UN agency, programme, or fund. Previously, only the conduct of the official business of the U.S. Government or the

United Nations by their employees was exempt from the prohibitions. Authorized transactions may not involve a debit to a blocked account, and must satisfy certain documentary requirements.

▪ **EXPIRATION OF CERTAIN SPECIFIC LICENSES AND NGO REGISTRATIONS** -- If no expiration date is specified in a specific license or registration, then the authorization remained in effect until June 30, 2008.

▪ **PENALTIES** - Criminal fines for violating the Regulations range, upon conviction, up to \$1,000,000; individuals may also face imprisonment of up to 20 years. In addition, civil penalties of up to \$250,000 or twice the amount of the underlying transaction may be imposed administratively for each violation.

If you have information regarding possible violations of any of these regulations, please call the Treasury Department's Office of Foreign Assets Control at 202/622-2430. Your call will be handled confidentially.

This document is explanatory only and does not have the force of law. The Executive Orders related to Sudan and implementing regulations and directives contain the legally binding provisions governing the sanctions against Sudan. This document does not supplement or modify the April 27, 2006 EO, E.O. 13607 or any implementing regulations and directives.

The Office of Foreign Assets Control also administers sanctions programs involving the Balkans, Burma (Myanmar), Cuba, Diamond Trading, Iran, Iraq, Liberia, North Korea, Syria, Zimbabwe as well as highly enriched uranium transactions, diamond trading, designated terrorists and international narcotics traffickers, Foreign Terrorist Organizations, and designated foreign persons who have engaged in activities relating to the proliferation of weapons of mass destruction. For additional information about these programs or about the Sudanese Sanctions Regulations, please contact the:

OFFICE OF FOREIGN ASSETS CONTROL
U.S. Department of the Treasury
Washington, D.C. 20220
202/622-2520
<http://www.treas.gov/ofac>

07-25-08