

CLIENT ALERT

U.S. Announces Intent To Lift Remaining Sanctions Against Burma

September 15, 2016

On Wednesday, September 14, 2016, President Obama announced two major improvements to U.S.-Burma relations during his first in-person meeting with Aung San Suu Kyi since she became Burma's *de facto* leader in April. First, the U.S. will fully terminate its current sanctions on Burma (Myanmar) in the coming days. Second, it will add Burma to the list of beneficiary countries for preferential imports under the Generalized System of Preferences (GSP).

Sanctions Relaxations

President Obama's announcement represents a major policy shift for the U.S., which has maintained a sanctions program on Burma since May 1997. Despite the president's announcement, no changes have taken effect yet. Instead, the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) has explained in a newly-issued Frequently Asked Question (No. 480) that no changes will take effect until the president issues a new Executive Order (EO) that terminates the existing national emergency with respect to Burma and revokes all current Burma EOs.

OFAC stated that it will formally repeal the Burmese Sanctions Regulations (BSR) after the new EO is issued. While the precise scope of the relaxations will not be clear until the new EO is issued, this will likely involve the removal of all or most of the 111 persons (38 individuals and 73 entities) currently on OFAC's List of Specially Designated Nationals (SDNs) pursuant to the BSR and designated with the tag "[BURMA]."

The removal of the SDN designations will remove one of the largest risks facing investors in Burma who, despite substantial sanctions relaxations since 2012, have struggled to verify that any counterparties or potential investments in Burma are not owned or controlled by, or associated with, current SDNs, given often opaque corporate ownership structures there. It will also remove barriers to increased financing, as financial institutions have currently only been able to transact with the four Burmese financial institutions on the SDN list pursuant to the limited scope of a general license.

However, even if OFAC does repeal the BSR and de-list all of the current [BURMA] designees, there are still a number of open questions, including:

- **Prohibition on Import of Jade and Rubies:** The Administration has not yet clarified whether the relaxations will involve a waiver of the statutory import prohibitions on Burmese jade, rubies, and jewelry made therefrom pursuant to the Tom Lantos Block Burmese JADE Act of 2008. The JADE Act does contain presidential waiver authority for requests received from "a democratically elected government in Burma" provided the president makes several human rights and democratic governance related certifications to Congress.
- **Reporting Obligations:** Currently, the BSR requires companies to file reports related to investments in excess of \$5,000,000 (raised in May from a previous threshold of \$500,000). There has not yet been a public indication of whether the reporting requirement will be fully repealed, amended in some way, or maintained.

- **Section 311:** Burma is a jurisdiction of “primary money laundering concern” subject to special measures pursuant to Section 311 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act, which depend on the BSR for their operation. Because of how the respective provisions are drafted, it is not currently clear exactly how the repeal of the BSR would affect the operation of the special measures. The designation of Burma as a jurisdiction of primary money laundering concern would, however, remain until removed by the Financial Crimes Enforcement Network, a sister agency to OFAC. This might deter U.S. financial institutions wary of the effect on their anti-money laundering program obligations of doing business in a jurisdiction that remains designated by Treasury as a haven for money laundering.
- **Retention of Certain SDNs:** The Administration has indicated that some restrictions will remain in place, including those related to drug trafficking. This is significant because some key [BURMA] SDNs were designated not just for human rights abuses or anti-democratic actions, but as a result of their involvement in drug trafficking - these include Steven Law, a Burmese tycoon and the owner of Asia World. At this point, it is unclear whether OFAC will remove these persons from the SDN list as well or, perhaps, designate them under a separate program (*e.g.*, the narcotics trafficking or drug kingpin programs). If the latter, OFAC would need to simultaneously re-issue a new general license (to replace General License 20 issued pursuant to the BSR) to authorize trade through the Burmese ports controlled by Asia World; if it did not, trade through these ports could once again become prohibited.

These developments come on the heels of several substantial relaxations the U.S. issued in May 2016 that had issued or modified several general licenses to facilitate certain trade, financing, and in-country transactions.

As Burma transitions to a less closed economy, it will remain an anti-money laundering and corruption risk, and anyone exploring the Burmese market should continue to conduct enhanced due diligence to mitigate against money laundering or corruption concerns. This is especially true if Burma remains designated as a primary money laundering concern following any repeal of the BSR. Further, even where persons are removed from the SDN list, many financial institutions may continue to treat these parties as higher risk. Given the current tendency of financial institutions to de-risk customers engaging in business with higher risk jurisdictions or parties even where such business is legally permissible, companies should consider seeking careful instructions from their financial institution relationship managers about the diligence needed to establish and maintain business relationships in Burma before entering the market.

Generalized System of Preferences

Simultaneously with the termination of sanctions, the president also issued a Presidential Proclamation restoring preferential treatment for Burma as a beneficiary developing country under the GSP program. The GSP program provides for the duty-free importation of designated articles imported from designated beneficiary developing countries. Importantly, the president also designated Burma as a least-developed beneficiary developing country under GSP, enabling a substantially broader range of duty-free imports (tariff lines with the symbol “A+”) than for other beneficiary developing country (tariff lines with the symbol “A”).

The president’s announcement comes just after the Office of the U.S. Trade Representative formally initiated the 2016/2017 Annual Review, providing an opportunity for interested parties to seek changes to the list of tariff lines eligible for GSP treatment. Importers currently, or considering, sourcing from Burma should review the current GSP eligibility for any imported

tariff lines and consider using the Annual Review process to seek any changes necessary to maximize the potential opportunity. Petitions are due October 4, 2016.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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