

Stay Current.

December 2003

Syria Accountability Act:

Last-Minute Changes Make Impact on U.S.-Syria Trade and Investment Uncertain

By Behnam Dayanim and Patrick Togni

The Syria Accountability and Lebanese Sovereignty Restoration Act of 2003 (“the Act” or “H.R. 1828”), at first blush, signals a further worsening of trade relations and economic ties between the United States and Syria. Passed by an overwhelming margin in Congress late last month with the support of the president, the Act directs the president to impose a range of economic sanctions on Syria. However, eleventh-hour changes to the bill create wide latitude for the president to waive the Act’s restrictions and render its real impact on U.S.-Syria trade uncertain.

Background of the Act

The Act was originally introduced in the House of Representatives in April of this year. As originally proposed, the bill imposed mandatory restrictions on trade with Syria and created a significant presumption in favor of other economically restrictive measures. Not surprisingly, the Administration opposed the measure. The executive branch, regardless of administration, typically opposes any legislation that requires it to impose sanctions or unilateral economic restrictions, and H.R. 1828 was among the more rigorous bills of its genre. Moreover, in the immediate aftermath of 9.11, Syria was viewed by Administration officials as a potential ally in the war on terror.

Increasing criticism of Syrian conduct and accumulating evidence of what the U.S. claims is support for terrorist activity eventually triggered what appeared to be a reversal in Administration position on the bill. However, a series of deft political maneuvers by Administration officials and influential members of the Senate who generally dislike sanctions measures led to late changes in the bill that created broad leeway for the president to waive the bill’s punitive measures.

The Act’s Prohibitions

The Act recites a number of alleged activities by Syria that the U.S. considers objectionable, including support for Hizballah and other terrorist organizations, the continuing occupation of Lebanon, and the pursuit of weapons of mass destruction and of ballistic missile systems. The Act imposes a series of “penalties” on Syria for these activities.

Prohibition of Dual-Use and Military Exports

First, the Act prohibits all exports to Syria of “dual-use” or defense items. “Dual use” refers to items that are deemed to have both civilian and military applications. These items appear on the Commerce Control List in the Export Administration Regulations, administered by the Department of Commerce. They include a wide range of high-technology or sensitive software and products, such as high-performance computers, telecommunications and related products, encryption, chemical and biological-related items, energy infrastructure products and others. Exports of defense-related articles and services, which appear on the United States Munitions List, also are prohibited.

Menu of Additional Penalties

In addition, the Act requires the president to impose two or more among a menu of penalties against Syria:

- Prohibition on the export of all U.S. products to Syria (other than food and medicine);
- Prohibition on United States business investments or operations in Syria;
- Travel restrictions on Syrian diplomats in Washington and New York;

- Prohibition on Syrian air carrier operations in the United States (including over-flight rights);
- Reduction of U.S. diplomatic contacts with Syria (except for contacts required to protect U.S. interests); and
- Blocking of transactions in any property in which the Government of Syria has any interest, subject to U.S. jurisdictional requirements.

Steps Necessary To Remove Penalties

Absent an exercise of the president's waiver authority (discussed below), the Act directs that the penalties it prescribes must remain in effect until the president can certify Syrian compliance in four areas:

- An end to Syrian support for international terrorist groups and tolerance of terrorist groups in territory under Syrian control;
- An end to Syria's occupation of Lebanon;
- Cessation of all development and deployment of ballistic missiles and other weapons of concern, and agreement by Syria to submit to verification by the United Nations and other international observers; and
- An end to all support for, and facilitation of, terrorist activities inside of Iraq, including the use of territory under its control to support terrorist activities there.

The Act requires periodic reports by the Secretary of State to Congress describing Syria's progress toward meeting these objectives and related issues.

Key Presidential Flexibility To Waive Penalties

As already mentioned, the final version of the Act differs from, and is less restrictive than, the original House version of H.R. 1828. Unlike the original bill, the final Act authorizes the president to waive all penalties if he "determines that it is in the national security interest of the United States to do so and submits to the appropriate congressional committees [the House Committee on International Relations and Senate Committee on Foreign Relations] a report containing the reasons for the determination."

The original bill would have given the president no authority to waive the prohibition on dual-use or military exports. Moreover, the original

language would have allowed exercise of waiver authority as to the other penalties only if in the "vital" national security interests of the United States. The final Act eliminates the word "vital" from the standard for waiver. Finally, unlike the original bill, the presidential waiver authority is no longer limited to "six-month periods." Instead, a waiver can continue indefinitely. There also is no time limitation on when the president must submit his report explaining the reasons for waiver.

In sum, the changes to the Act in some ways make it consistent with other exports sanctions measures that allow for presidential waiver. Administration officials urged Congress to make these changes in order to give the president more flexibility in administering the law. In other ways, however, the modifications go beyond many other laws – most notably, in the absence of any time limit on waivers or on the submission of the presidential report necessary to justify a waiver.

Practical Impact On U.S. Business

Syria already is identified as a terrorist-supporting nation and, therefore, is subject to licensing requirements for export of dual-use and defense-related items. In many instances until now, the U.S. government has approved licenses for export of dual-use items. The principal impact on U.S. business of the new law will be to prohibit issuance of a license for those items, unless the president decides to exercise his waiver authority. The law does not address trade by foreign subsidiaries of U.S. entities, except to the extent that the goods or services provided are of U.S. origin.

As noted above, waiver authority of the sort provided here is common to this type of legislation, and presidents – regardless of party – regularly have invoked waivers wherever available. The Senate's action in winning a right of waiver for all of the penalties contained in the Act may prove to be the most significant provision of the legislation. Until President Bush signals his intentions, perhaps at the Act's signing early this month, the Act's impact on U.S.-Syria trade remains uncertain.

U.S. exporters should review their current export compliance programs and trade or investment relationships with Syria and prepare to implement mechanisms designed to stop or to adjust Syria dealings should the penalty provisions of the Act take effect.

Paul, Hastings maintains an active and prominent international trade and export controls practice, covering the full range of U.S. international trade and export controls issues. For more information on the subject covered in this Alert or on international-trade-related issues generally, please contact:

Hamilton Loeb (202)508-9535
hamiltonloeb@paulhastings.com

Scott Flicker (202) 508-9557
scottflicker@paulhastings.com

Behnam Dayanim (202)508-9564
bdayanim@paulhastings.com

Stay Current is published solely for the interests of friends and clients of Paul, Hastings, Janofsky & Walker LLP and should in no way be relied upon or construed as legal advice.

For specific information on recent developments or particular factual situations, the opinion of legal counsel should be sought. Paul Hastings is a limited liability partnership.

Momentum.

Every business needs momentum.

Our business is to apply legal knowledge

that lets you maintain yours.

PaulHastings

ATTORNEYS

www.paulhastings.com

| Atlanta
Beijing

| Hong Kong
London

| Los Angeles
New York City

| Orange County
San Diego

| San Francisco
Shanghai

| Stamford
Tokyo

| Washington, D.C.