

Sudan No Longer Designated as State Sponsor of Terrorism, Impacting Export Restrictions

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On December 14, 2020, the State Department officially rescinded Sudan's State Sponsors of Terrorism (SST) designation, because Congress did not issue a joint resolution of disapproval. Originally on October 26, 2020, President Trump certified that the Government of Sudan no longer supports terrorism, triggering a 45-day period for Congress to review the Government of Sudan's designation on the SST list. With the change in designation, certain export controls and other restrictions on Sudan should now be lifted. The rescission was part of a larger agreement in which Sudan agreed to normalize relations with Israel and to pay U.S. victims of terrorist attacks in which the prior Sudanese regime played a role.

Sudan has been listed on the SST list since 1993. Although the Department of the Treasury's Office of Foreign Assets Control (OFAC) lifted the comprehensive sanctions targeting Sudan in early 2017, due to its SST designation, Sudan remained subject to stringent export controls. U.S. commodities, software, and technology on the Commerce Control List—i.e., everything classified above the EAR99 level for export purposes—still required a license or license exception from the Department of Commerce, Bureau of Industry and Security (BIS) to be exported to Sudan.

Although BIS has not yet published any official rule changes, one of the most significant upshots of the removal of Sudan from the SST list is that Sudan should no longer be subject to these restrictive, antiterrorism (AT) export controls in the Export Administration Regulations (EAR). While Sudan will still be subject to other export licensing requirements, the move should allow the export of many

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less sensitive items, including commercial electronics and software, to Sudan without a license. Additionally, lifting the SST designation allows for certain financial and humanitarian transactions with Sudan that had previously required OFAC authorization under the Terrorism List Governments Sanctions Regulations. Practically, the removal of most of these restrictions is more of an optics issue, as OFAC had broadly permitted the export of agricultural commodities, medicine, and medical devices to Sudan as well as nearly all financial transactions with the Government of Sudan. The change in designation also allows for U.S. support of debt relief at international financial institutions such as the World Bank and International Monetary Fund (IMF).

As part of the October agreement, Sudan agreed to pay \$335 million to the victims of U.S. embassy bombings in Kenya and Tanzania and the attack on the USS Cole, in which the past Sudanese regime played a role. According to the White House, these funds will be held in escrow unless Congress can resolve Sudan's liability for its role in past terrorist attacks, a so-called "legal peace" legislation. Earlier this year, the Supreme Court upheld approximately \$10.2 billion in damages against Sudan for its role in the 1998 U.S. embassy bombings in Nairobi and Dar es Salaam. While the Fiscal Year (FY) 2021 National Defense Authorization Act (NDAA) conference agreement would update U.S. policy toward Sudan and provide support for development programs, debt relief, and other financial assistance, it does not resolve the liability/sovereign immunity issue. Without the immunity issue resolved, foreign investors may be reluctant to do business with Sudan out of fear that they could be left on the hook for providing compensation to terror victims.

On October 26, 2020, President Trump also certified that Sudan had "taken demonstrable steps" to meet certain criteria related to humanitarian concerns in the Darfur region, which could ultimately lead to the removal of remaining sanctions on Sudanese individuals and entities. The following week, however, the President notified Congress he was continuing the national emergency with respect to Sudan, which the United States relies on to implement UN sanctions obligations related to the Darfur conflict. Secretary Pompeo stated that the "United States is committed to working with the Sudanese government and our international partners to identify circumstances that could result in lifting sanctions related to the Darfur conflict at the earliest opportunity."

Wiley has unparalleled experience representing clients in trade, OFAC, and export control matters. Should you have any questions, please do not hesitate to contact one of the attorneys listed on this alert.

Nicole Hager, a Law Clerk at Wiley Rein LLP, contributed to this alert.