U.S. Economic Sanctions

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Terence Gilroy, Partner

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U.S. Sanctions Overview
Sanctions Overview

What Are Economic Sanctions?

- Sanctions are a foreign policy tool designed to influence behavior of sanctions targets
  - Earliest example of the use of economic sanctions as a foreign policy tool is the Cuba embargo in response to actions by Fidel Castro in 1959
  - Generally restrict or attempt to limit commercial engagement with sanctions targets by both US persons and non-US persons in furtherance of a foreign policy objective
Sanctions Overview

Two Types of U.S. Sanctions

- Direct or Primary
  - US Persons
- Secondary or Extraterritorial
  - Non-US Persons engaged in activity with sanctions targets
Sanctions Overview

Who Is a US Person?

- Entities organized under US laws and their non-US branches
- US citizens and permanent resident aliens ("Green Card" holders) wherever located or employed
  - e.g., US expats living and working outside the United States
- Any individual or entity physically in the United States, even temporarily

Cuba and Iran primary sanctions also apply to non-US entities owned or controlled by US Persons (e.g., foreign subs)
Sanctions Overview

Sanctions Toolbox

**Direct (U.S. Persons)**
- Restrictions on almost all commercial engagement with certain sanctions targets
- Targeted restrictions as to certain dealings with sanctions targets ("sectoral")
- Prohibition against facilitation of transactions by non-U.S. persons involving sanctions targets and circumvention

**Secondary (Non-U.S. Persons)**
- *Consequences* for engaging in certain activity with sanctions targets
- Enforcement for “causing” a sanctions violation
- Designation for “evading” U.S. sanctions
Sanctions Overview

Consequences for Secondary Sanctions Violations

• Collateral Designation as an SDN
• Exclusion from the US and revocation of visa
• Restrictions on access to US financial system (“menu-based sanctions”):
  • Prohibition the opening or maintaining of a correspondent or a payable-through account in the US
  • Prohibition on receipt of loans from US financial institutions
  • Limitations on U.S. export-import bank assistance
  • Debarment
  • Etc.
Sanctions Overview
Current U.S. Sanctions Targets

- Afghanistan
- Lebanon
- Belarus
- Ukraine
- Crimea & Sevastopol
- Syria
- Iraq
- Russia
- Iran
- Afghanistan
- China
- North Korea
- Burma
- Yemen
- Eritrea
- EU and US
- US only (*arms embargo only)
- Cyprus* (blue)
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- Lebanon
- Belarus
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- Eritrea
- EU and US
- US only (*arms embargo only)
## Sanctions Overview

### US Sanctions Target Groupings

<table>
<thead>
<tr>
<th>Classification</th>
<th>Target Groupings</th>
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<tbody>
<tr>
<td><strong>Comprehensive</strong></td>
<td>Crimea, Cuba, Iran, North Korea, Syria</td>
</tr>
<tr>
<td><strong>Significant</strong></td>
<td>Russia, Venezuela</td>
</tr>
<tr>
<td><strong>Limited</strong></td>
<td>Belarus, Burundi, Central African Republic, DR Congo, Iraq, Lebanon, Libya, Somalia, Ukraine, W. Balkans, Yemen, Zimbabwe</td>
</tr>
<tr>
<td><strong>List-Based</strong></td>
<td>Specially Designated Nationals (&quot;SDNs&quot;)</td>
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<td></td>
<td>Terrorists, WMD proliferators, human rights violators, transnational criminal organizations, narcotics traffickers, Magnitsky, rough diamonds, foreign sanctions evaders, etc.</td>
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Sanctions Primer

Key US Government Agencies

- Office of Foreign Assets Control ("OFAC") at the US Treasury Department
- US State Department
- Other Relevant Agencies
  - US Department of Justice
  - Bureau of Industry and Security ("BIS") at the US Commerce Department
  - Directorate of Defense Trade Controls ("DDTC") at the US State Department
  - FBI, ICE, other federal (e.g., FinCEN) and state enforcement agencies (e.g., NY Dep't of Financial Services, NY District Attorney)
Sanctions Primer
Potential Criminal and Civil Penalties

- **Criminal** – Up to $1 million and 20 years imprisonment, per violation
- **Civil** – Up to the greater of $289,238 or twice the value of the transaction, per violation
  - Strict Liability
  - Civil penalties adjusted annually for inflation
- **Other potential consequences**
  - Collateral designation as SDN or Foreign Sanctions Evader
  - Inclusion on Entity List or Denied Parties List
  - Revocation of export or OFAC licenses
## Sanctions Primer

### Largest U.S. Sanctions Fines

<table>
<thead>
<tr>
<th>Company</th>
<th>Industry</th>
<th>Fine</th>
<th>Year</th>
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<tbody>
<tr>
<td>1 BNP Paribas S.A.</td>
<td>Financial Services</td>
<td>$8.96 Billion</td>
<td>2014</td>
</tr>
<tr>
<td>2 HSBC Bank</td>
<td>Financial Services</td>
<td>$2.29 Billion</td>
<td>2012</td>
</tr>
<tr>
<td>3 Commzerbank AG</td>
<td>Financial Services</td>
<td>$1.45 Billion</td>
<td>2015</td>
</tr>
<tr>
<td>4 ZTE Corporation</td>
<td>Telecommunications</td>
<td>$1.19 Billion</td>
<td>2017</td>
</tr>
<tr>
<td>5 Standard Chartered Bank</td>
<td>Financial Services</td>
<td>$967 Million</td>
<td>2012/2014</td>
</tr>
<tr>
<td>6 Credit Agricole Corporate and Investment Bank</td>
<td>Financial Services</td>
<td>$787 Million</td>
<td>2015</td>
</tr>
<tr>
<td>7 ING Bank N.V.</td>
<td>Financial Services</td>
<td>$619 Million</td>
<td>2012</td>
</tr>
<tr>
<td>8 Bank of Tokyo - Mitsubishi UFJ</td>
<td>Financial Services</td>
<td>$574 Million</td>
<td>2013/2014</td>
</tr>
<tr>
<td>9 Credit Suisse AG</td>
<td>Financial Services</td>
<td>$536 Million</td>
<td>2009</td>
</tr>
<tr>
<td>10 Royal Bank of Scotland (formerly ABN Amro Bank, N.V.)</td>
<td>Financial Services</td>
<td>$500 Million</td>
<td>2010</td>
</tr>
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</table>

*Includes civil penalties paid by banks to NY regulators (e.g., NYDFS, DANY)*
Russia
Russia

Escalation of Russia Sanctions

- Initial sanctions imposed following Russia occupation and subsequent annexation of Crimea in 2014
  - Comprehensive embargo on Crimea and imposition of “sectoral sanctions” (and SDN designations)
- Countering America’s Adversaries Through Sanctions Act (“CAATSA”) signed into law in August 2017
  - Addition of secondary sanctions measures (among other things)
- April 6 Designations
  - Designation of 7 Russian oligarchs, 17 Russian government officials, and 12 entities on the SDN List (including Rusal, EN+ Group)
- September 20 Actions
  - Further implementation of CAATSA, imposition of secondary sanctions against EDD, 33 SDN designations
Crimea Embargo

• Broad prohibition against US person economic engagement in or relating to Crimea pursuant to E.O. 13685

Section 1. (a) The following are prohibited:
   (i) new investment in the Crimea region of Ukraine by a United States person, wherever located;
   (ii) the importation into the United States, directly or indirectly, of any goods, services, or technology from the Crimea region of Ukraine;
   (iii) the exportation, reexportation, sale, or supply, directly or indirectly, from the United States, or by a United States person, wherever located, of any goods, services, or technology to the Crimea region of Ukraine; and
   (iv) any approval, financing, facilitation, or guarantee by a United States person, wherever located, of a transaction by a foreign person where the transaction by that foreign person would be prohibited by this section if performed by a United States person or within the United States.
Sectoral Sanctions, pursuant to 4 Directives

- Includes entities that are 50% or more owned by SSI entities
- Restriction on dealings in new debt of longer than 30 days for Directive 1 & 3 entities and 90 days for Directive 2 entities / ban on new equity for Directive 1 banks
  - Directive 1 new debt period: 14 days as of November 28, 2017
  - Directive 2 new debt period: 60 days as of November 28, 2017
- Directive 4 prohibits the provision of goods, non-financial services, or technology in support of exploration or production projects that have the capacity to produce oil in the Russia or the maritime area claimed by Russia and involve a Directive 4 entity
  - As of January 29, 2018, Directive 4 applies to projects anywhere in the world in which a Directive 4 entity has a 33% or greater ownership interest or a majority of the voting interest
- Certain derivatives transactions involving new debt authorized under GL 1B
## Russia

### Sectoral Sanctions Identification (SSI) List

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<thead>
<tr>
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<tbody>
<tr>
<td>Bank of Moscow</td>
<td>Gazpromneft</td>
<td>Rostec</td>
<td>Gazprom</td>
</tr>
<tr>
<td>Gazprombank</td>
<td>Novatek</td>
<td></td>
<td>Gazpromneft</td>
</tr>
<tr>
<td>Sberbank</td>
<td>Rosneft</td>
<td></td>
<td>Lukoil</td>
</tr>
<tr>
<td>VTB Bank</td>
<td>Transneft</td>
<td></td>
<td>Rosneft</td>
</tr>
<tr>
<td>Vnesheconombank</td>
<td></td>
<td></td>
<td>Surgutneftegas</td>
</tr>
<tr>
<td>Russian Agricultural Bank</td>
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Russia
Practical Impact of Sectoral Sanctions – Case Study (1)

• OFAC applies a broad interpretation of the term “new debt”
• “New debt” includes payment terms associated with the sale of a good to an SSI entity
  • On the theory that a payment term is an extension of credit
FAQ 419

419. How should U.S. persons account for the debt prohibitions under Directives 1, 2, and 3 as they relate to payment terms for the following types of transactions: (1) the sale of goods to an SSI entity, (2) the provision of services to and subscription arrangements involving SSI entities, and (3) progress payments for long-term projects?

U.S. persons may engage in commercial transactions with SSI entities provided that any such transactions do not represent a direct or indirect dealing in prohibited debt or equity. Because offering payment terms of longer than the applicable tenor specified in the relevant Directive to an SSI entity generally constitutes a prohibited dealing in debt of the SSI entity, U.S. persons should ensure that payment terms conform with the applicable debt prohibitions.

For sales of goods to an SSI entity, U.S. persons may extend payment terms of up to the applicable tenor specified in the relevant Directive from the point at which title or ownership of the goods transfers to the SSI entity. For example, for a Directive 1 SSI entity, if the title or ownership of the goods transfers to the SSI entity on December 1, 2017, the U.S. person may give the SSI entity 14 days from December 1 to pay for those goods.

For the provision of services to, subscription arrangements involving, and progress payments for long-term projects involving SSI entities, U.S. persons may extend payment terms of up to the applicable tenor specified in the relevant Directive from the point at which a final invoice (or each final invoice) is issued. Payments made under these types of payment terms should utilize a value date of not later than the applicable tenor specified in the relevant Directive from either the point at which title or ownership has transferred (for payments relating to sales of goods) or the date of each final invoice (for payments relating to services, subscription arrangements, and progress payments). For example, if a U.S. person is providing services for a long-term project involving a Directive 2 SSI entity, and a final invoice is dated December 1, then the SSI entity must pay the invoice within 60 days of December 1 (i.e. the value date of the payment should be not later than 60 days from December 1).

In the event that a U.S. person believes that it may not receive payment in full by the end of the relevant payment period, the U.S. person should contact OFAC to determine whether a license or other authorization is required. [11-28-2017]
Russia

CAATSA Secondary Sanctions – All Persons

- Sanctions targeting Russian energy export pipelines (Section 232)
  - Targets both investments and supply of goods/services for construction, modernization, or repair of such pipelines; e.g., Nordstream 2 NG Pipeline from Russia to Germany (“in coordination with” U.S. allies)

- Sanctions targeting involvement in privatization of Russia’s state-owned assets (Sec 233)
  - Focus on privatizations that contribute to Russia’s ability to privatize state-owned assets in a manner that unjustly benefits Russian official or their close associates

- Sanctions targeting non-U.S. persons who engage in transactions with the intelligence or defense sector of the Russian government (Section 231)
  - “[T]hough we can’t speak about them publicly, we have had real successes – in the form of something on the order of billions of dollars in announced or expected Russian arms transactions that have quietly been abandoned as a result of our diplomatic outreach about Section 231.”
Russia
CAATSA Secondary Sanctions – Non-US Persons

- Sanctions targeting individuals who engage in activities undermining cybersecurity (Section 224)
- Sanctions targeting Russian government officials and their close associates and family members for act of “significant corruption” in Russia or elsewhere (Section 227)
- Sanctions targeting non-U.S. persons who facilitate significant transactions with Russian sanctions targets (e.g., April 6 designations) (Section 228)
Russia

Recent Developments

• April 6 Designations
  • SDN designation of 7 Russian oligarchs, 17 Russian officials, 12 entities (Rusal, EN+ Group, etc.)
  • Particularly strong impact given the SDNs investments and assets in the United States and Europe
  • Issuance of several general licenses to allow for orderly wind-down of relationships with certain of the designated entities

• CBW Act (Chemical and Biological Weapons Control and Warfare Elimination Act)
  • Sanctions imposed under CBW in response to nerve agent attack on Soviet dissidents in UK
  • Potential to be significant – restriction on financial assistance and exports to Russia, restrictions on imports from Russian, etc. - depending on 90-day findings of President
Russia

Practical Impact of Rusal Designation – Case Study (1)

- Second largest manufacturer of aluminum in the world
- GL 14 authorized transactions with Rusal during a wind-down period:

(a) Except as provided in paragraphs (b) and (c) of this general license, all transactions and activities otherwise prohibited by the Ukraine Related Sanctions Regulations, 31 C.F.R. part 589, that are ordinarily incident and necessary to the maintenance or wind down of operations, contracts, or other agreements, including the importation of goods, services, or technology into the United States, involving United Company RUSAL PLC or any other entity in which United Company RUSAL PLC owns, directly or indirectly, a 50 percent or greater interest and that were in effect prior to April 6, 2018, are authorized through 12:01 a.m. eastern standard time, December 12, 2018.
Russia
Practical Impact of Rusal Designation – Case Study (2)

- Under the license, two types of transactions are authorized:
  - Wind-down transactions
    - Transactions and activities “necessary to the . . . wind down of . . . contracts or other agreements . . . involving Rusal . . . that were in effect prior to April 6, 2018.”
  - Maintenance transactions
    - Transactions and activities “necessary to the maintenance . . . of operations . . . involving Rusal . . . that were in effect prior to April 6, 2018.”
      - No pre-April 6 agreement required; transaction must be “consistent with past practices” between the parties (FAQ 625)
Russian Countermeasures

- Federal Law No. 127-FZ - “On Measures (Countermeasures in Response to Unfriendly Actions of the USA and (or) other Foreign States” – Effective June 4, 2018
  - Proposed countermeasures include:
    - Suspension of international cooperation with unfriendly states
    - Restriction on imports of certain items from unfriendly states
  - Draft bill providing for criminal liability for compliance with US sanctions
    - “Second reading” of draft in Russian parliament has been postponed
Iran
Short History of Iran Sanctions

- First blocking order issued in 1979
- U.S. State Department designates Iran as a State Sponsor of Terror in 1984
- In 1996, Iran Sanctions Act targets non-US companies who invest in Iran’s petroleum sector
- CISADA comes into force in 2010, providing for additional sanctions against companies who engage in Iran’s petroleum sector, among other industries, and non-US banks who transact with designated Iranian financial institutions
- Joint Comprehensive Plan of Action entered into by P5+1 and Iran on January 16, 2016
Iran Nuclear Agreement

- Joint Comprehensive Plan of Action ("JCPOA") provided for only limited U.S. primary or direct sanctions relief
  - U.S. persons remained generally restricted from engaging in commercial activity with or relating to Iran
  - Limited relief in the form of GL H, favorable licensing policy with respect to commercial passenger aviation, importation of Iranian origin carpets and certain foodstuffs
- Key benefit for Iran under JCPOA was secondary sanctions relief to non-U.S. persons
  - Significant impact on purchases of Iranian crude oil
  - Iranian market “open for business” to non-U.S. persons (in theory)
U.S. Pulls Out of JCPOA

- On May 8, 2018, President Trump announced that the United States would pull out of the JCPOA

- All U.S. sanctions relief provided for under JCPOA to be rescinded in a phased process that started on August 6, 2018
  - At the conclusion of a 180-day “wind-down period,” U.S. sanctions will be “re-set” to pre-JCPOA status
  - No significant impact to restrictions on U.S. persons as direct sanctions remained under JCPOA

- In response to U.S. withdrawal, the EC amended the EU “Blocking Regulation” prohibiting EU persons from complying with U.S. sanctions targeting Iran
Secondary Sanctions - 90-day Wind-down Period

- The following sanctions were re-imposed after the 90-day wind-down period ended on August 6, 2018:
  - Restrictions on the purchase or acquisition of US dollar banknotes by the Government of Iran and on Iran’s trade in gold or precious metals
  - Sanctions on the direct or indirect sale, supply, or transfer to or from Iran of graphite, raw, or semi-finished metals such as aluminum and steel, coal, and software for integrating industrial processes
  - Sanctions on significant transactions related to the purchase or sale of Iranian rials, or the maintenance of significant funds or accounts outside the territory of Iran denominated in the Iranian rial
  - Sanctions relating to the purchase, subscription to, or facilitation of the issuance of Iranian sovereign debt
  - Sanctions relating to Iran’s automotive sector
Primary Sanctions - 90-day Wind-down period

The following primary sanctions were re-imposed after the 90-day wind-down period ended on **August 6, 2018**:

- The importation into the US of **Iranian-origin carpets and foodstuffs** and certain related financial transactions pursuant to general licenses under the **Iranian Transactions and Sanctions Regulations ("ITSR")**

- Activities undertaken pursuant to specific licenses issued in connection with the **Statement of Licensing Policy for Activities Related to the Export or Re-export to Iran of Commercial Passenger Aircraft and Related Parts and Services ("JCPOA SLP")**
  - OFAC also expects to revoke specific licenses issued pursuant to JCPOA SLP and issue authorizations to provide for a wind-down period that will end on August 6, 2018

- Activities undertaken pursuant to **General License I** relating to contingent contracts for activities eligible for authorization under the JCPOA SLP
The following sanctions will be re-imposed after the 180-day wind-down period ends on November 4, 2018:

- Sanctions on Iran’s port operators, and shipping and shipbuilding sectors, including on the Islamic Republic of Iran Shipping Lines (IRISIL), South Shipping Line Iran, or their affiliates
- Sanctions on petroleum-related transactions with, among others, the National Iranian Oil Company (NIOC), Naftiran Intertrade Company (NICO), and National Iranian Tanker Company (NITC), including the purchase of petroleum, petroleum products, or petrochemical products from Iran
- Sanctions on transactions by foreign financial institutions with the Central Bank of Iran and designated Iranian financial institutions under Section 1245 of the National Defense Authorization Act for Fiscal Year 2012 (NDAA)
- Sanctions on the provision of specialized financial messaging services to the Central Bank of Iran and Iranian financial institutions described in Section 104(c)(2)(E)(ii) of the Comprehensive Iran Sanctions and Divestment Act of 2010
- Sanctions on the provision of underwriting services, insurance, or reinsurance
- Sanctions on Iran’s energy sector
Additional actions during the 180-day wind-down period

- Revoke General License H, which authorized US-owned or -controlled foreign entities to engage in certain activities involving Iran.
  - GL H was revoked on June 27, 2018 and a wind-down authorization applies through November 4, 2018
- Re-List Specially Designated Nationals (SDNs) that were delisted to implement JCPOA sanctions relief pursuant to Executive Order 13599 (the “E.O. 13599 List,” covering various Government of Iran and Iranian financial institution entities)
  - US persons are already broadly prohibited from engaging in transactions with these entities but on November 5, 2018, activities with most of the entities will be subject to secondary sanctions
Key Issues for Non-U.S. Persons

- Renewed threat of U.S. secondary sanctions for certain Iran-related activities
- Revocation of General License H
- Uncertainty for FFIs relating to exports of Iranian crude
  - Section 1245 of the 2012 NDAA mandates sanctions against any FFI who knowingly conducts or facilitates a significant transaction with the CBI or any other designated Iranian financial institutions
  - Waivers available for FFIs in countries that have reduced crude exports from Iran
  - Trump administration has signaled that it will not issue waivers
Responses to US JCPOA Withdrawal

- Statements from EU and France/Germany/UK on/after 8 May 2018:
  - “As long as Iran continues to implement its nuclear related commitments, as it is doing so far, the European Union will remain committed to the continued full and effective implementation of the nuclear deal”
  - “We urge the US to ensure that the structures of the JCPOA can remain intact, and to avoid taking action which obstructs its full implementation by all other parties to the deal”
- Similar positions from Canada, Russia, Switzerland, Japan and elsewhere
- Iran statements to the UN and remaining JCPOA participants:
  - “…urge the United Nations to keep the United States accountable for its unilateral and irresponsible conduct which will detrimentally affect the rule of law, multilateralism, and the very foundations of diplomacy”
  - “..it is Iran’s unquestionable right – recognised also under the JCPOA and UNSCR 2231 to take appropriate action in response to persistent, numerous unlawful acts by the U.S.; particularly its withdrawal and re-imposition of all sanctions”
  - “If the JCPOA is to survive, the remaining JCPOA participants need to ensure that Iran is unconditionally compensated”
EU Blocking Regulation: Overview

- EU Blocking Regulation first introduced in 1996 to counter extraterritorial effects of US sanctions
- Primary purpose to act as political signal and protective shield for EU companies, rather than enforcement tool
- Following US decision to reimpose sanctions against Iran and withdraw from JCPOA, European Commission began process to update the Regulation on 6 June 2018
- Revised Annex restricts compliance with US Iran sanctions
- Updates entered into force on 7 August 2018
- Outstanding Question:
  - Will the EU enforce the blocking regulation this time around?
  - Will EU companies choose the US “rock” or the EU “hard place?”
Iran
Blocking Regulation Key Considerations

- EU compliance vs. US compliance?
- Declining Iranian business lawfully with a prospective customer?
- Enforcing Iran-related contractual restrictions?
- Messaging of Iran-related policies?
Questions