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March 6, 2020

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US Sanctions Today: A Brief Overview



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March 6, 2020



Road Map

- ▣ OFAC – Office of Foreign Assets Control
 - ▣ Treasury Department
 - ▣ State Department
 - ▣ Foreign policy
 - ▣ Administration of some “secondary sanctions”
 - ▣ DOJ – Department of Justice
 - ▣ Criminal prosecutions
-

This talk is only a summary.
It does not substitute for obtaining proper legal advice.

Two Main Types of Sanctions

Primary Sanctions

- ▣ Violations punished by criminal prosecution and civil penalties
- ▣ Mainly restrict activities by US persons, but with important exceptions affecting non-US persons. For some violations, BIS can cut off US suppliers.
- ▣ OFAC / some overlap w BIS

Secondary Sanctions

- ▣ “Sticks” to encourage 3d-country companies to avoid business with sanctioned countries and persons
- ▣ Biggest stick: Asset freeze & near-total bar on US business
- ▣ OFAC or State Dept
- ▣ Ban on travel to US
- ▣ New: Lawsuits re Cuba (Surprise: US defendants too!)

OFAC Overview

- ▣ Main statute – IEEPA
 - ▣ International Emergency Economic Powers Act
- ▣ Main targets today
 - ▣ Cuba
 - ▣ Iran
 - ▣ North Korea
 - ▣ Russia/Crimea
 - ▣ Syria
 - ▣ Venezuela
 - ▣ SDN List and 50% Rule
- ▣ Details vary widely and can change without notice

Common OFAC Prohibitions

- Blocking
 - Freezes assets
 - Effectively prohibits virtually all dealings
 - Can even arise with some domestic transactions
- Import and export/reexport restrictions
 - Includes goods, services, and tech
- Restrictions on investment, lending & other financial transactions
- Approval and facilitation
- Evasion, attempt, conspiracy, and causing violations
- Travel (Cuba only)

Exceptions

- ▣ Exemptions
 - ▣ Statutory – beyond OFAC’s legal authority
 - ▣ Limited to certain activities and certain statutory authorities
 - ▣ Travel-related (except Cuba)
 - ▣ Information and informational materials
 - ▣ Shrinking in practice
- ▣ Licenses
 - ▣ General licenses
 - ▣ Specific licenses
 - ▣ Statements of licensing policy



Key Term – US Person

- ▣ US citizens & permanent residents (green card holders)
- ▣ Entities organized under US law
 - ▣ Includes US subsidiaries of foreign companies
 - ▣ Includes foreign branches of US companies
 - ▣ Cuba and Iran sanctions reach foreign subsidiaries too
- ▣ Persons located in the US
 - ▣ Includes temporary travelers
 - ▣ Includes US branches of foreign companies
 - ▣ Almost any touch will do now

Smart & Sectoral Sanctions

- ▣ More targeted than old, “dumb” country-based sanctions
- ▣ SDN List over 1000 pages. Changes almost daily. Heightened importance for the 50% rule.
- ▣ Hard to tailor this precisely in reality.
 - ▣ Due diligence
 - ▣ “Over compliance”
- ▣ Russia 2014: energy, finance, and defense sectors. Trend: more countries, more sectors, more sanctions.



Compliance

- OFAC expects businesses – including non-US businesses – to have compliance programs based on self assessment of sanctions risks
 - Living programs, implemented in practice, with updates and training
 - Senior leadership support
- Need internal controls capable of assuring compliance with legal obligations and voluntary commitments.
- Non-US persons should either refrain from business lawful under home law or take care with all US connections. Need different policies for US subsidiaries.
- Beware conflicts with foreign law



Extraterritorial Effects

- ▣ Re-export controls
 - ▣ Includes controls on certain non-US goods with US inputs
- ▣ Causing violations by US persons
 - ▣ Especially banks
 - ▣ Can include customers, suppliers, employees, etc
 - ▣ Can include own US subsidiary
- ▣ Increasing criminal prosecution of willful violations by non-US persons
- ▣ Financial transactions and securities offerings

Proliferating Secondary Triggers

- Iran: Over 20 triggers now
- Russia: Facilitating a significant transaction for a sanctioned person or close relative
- North Korea: Materially assisting an SDN or engaging “in at least one significant importation from or exportation to North Korea of any goods, services, or technology”
- Venezuela: Materially assisting, supporting, or providing goods or services to or in support of, an SDN or acting on behalf of GOV
- Terrorism: Materially assisting, supporting, or providing goods or services to or in support of, an SDN
- Cuba: “Trafficking” in expropriated property

Sanctions & the China Trade War

- ▣ IEEPA Sanctions threatened twice
 - ▣ Ban on Chinese investment in US
 - ▣ Force US investment out of China
- ▣ Chinese companies designated as SDN's
 - ▣ Ex: COSCO Shipping subsidiaries, some delisted within months
- ▣ Elf Case – Points to heightened diligence to screen NK inputs from Chinese supply chains
- ▣ DHID Case – Criminal charges and forfeiture suit
- ▣ Huawei Case – Criminal charges and seeking extradition of CFO Meng Wanzhou

Other Trends: More is more

- ▣ More sanctions programs
- ▣ More SDN designations
- ▣ More enforcement, especially secondary sanctions
- ▣ More legislation
- ▣ More controversies
- ▣ More compliance costs
- ▣ And ... it's an election year!



Thank you!

More writings and talks on sanctions and other topics are available at https://works.bepress.com/perry_bechky/. Please do not hesitate to contact me:



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