

WITA INTENSIVE TRADE SEMINAR

Seminar VIII: Sanctions Law & Policy

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Types of U.S. Sanctions

- **Blocking sanctions (SDN List)**
 - Asset freezing
 - Travel restrictions
 - Prohibition on transactions with listed persons/entities/vessels/aircraft
 - Sanctions apply to entities owned 50% or more, in the aggregate, by one or more SDNs
- **Trade embargo and embargo-type sanctions**
 - Prohibitions on categories of trade/business
 - Embargoes may be comprehensive or limited to specific activities
- **Other types of restrictions**
 - Sectoral Sanctions Identification (SSI) List & Directives 1 to 4 target various sectors of the Russian Federation economy by denying access to financing and to certain energy equipment and services
 - Similarly, U.S. sanctions in 2017 restricted lending to Venezuela (U.S. sanctions on Venezuela were dramatically expanded in 2018 and 2019)
 - Denial of access to U.S. economy or financial system under “secondary” sanctions programs



Primary sanctions vs. secondary sanctions

- **Primary sanctions**
 - Prohibitions that govern behavior of U.S. persons and companies; use of U.S. financial system (including dollar clearing); re-export of goods, services and technology to embargoed countries or persons
 - Enforcement generally through civil monetary penalties, with penalties potentially quite large
 - Willful violations subject to criminal enforcement (fines and/or imprisonment)
- **Secondary sanctions**
 - Seek to regulate the business of foreign companies that has no nexus to the United States
 - Usually statutory but can be implemented via Executive Orders issued by the President
 - Effectively a threat to bar foreign companies who engage in activity contrary to U.S. foreign policy and national security from doing business with the United States



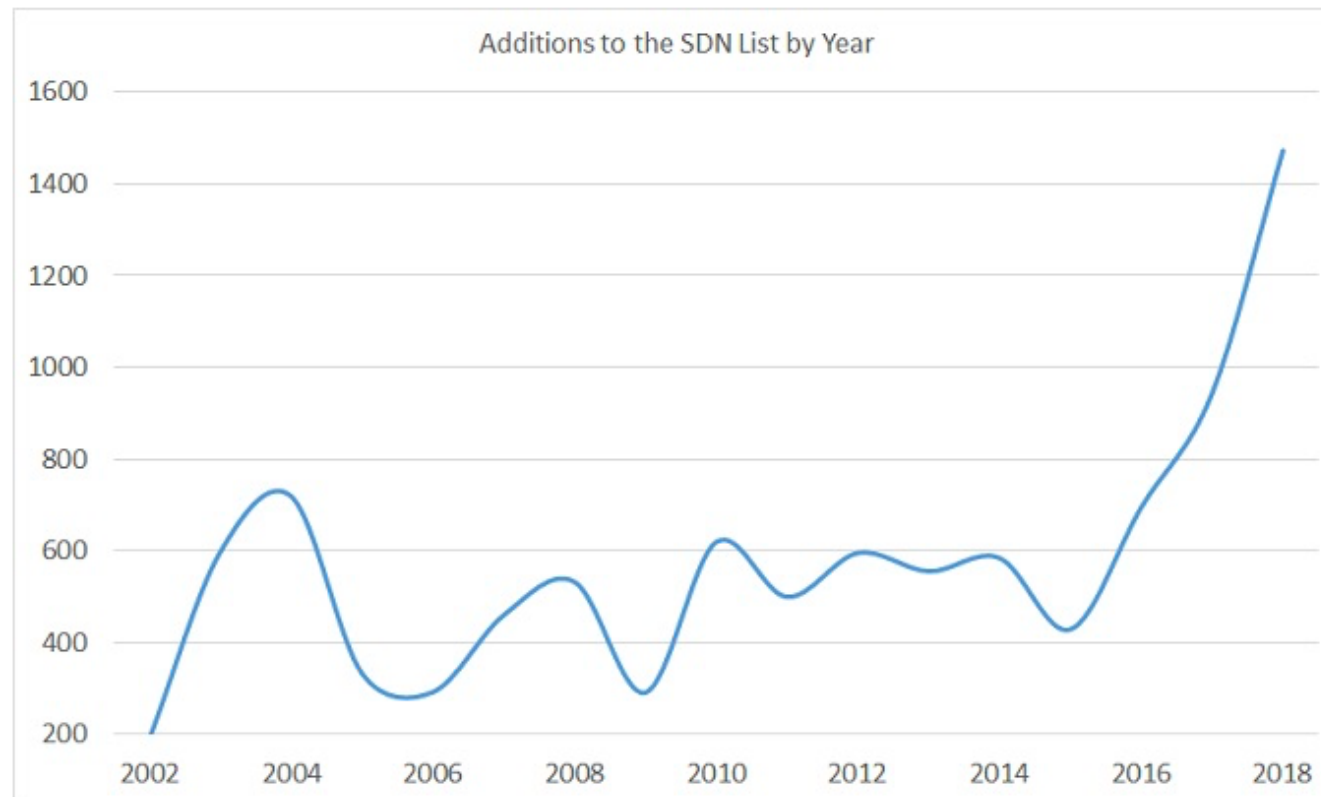
U.S. Government Sanctions Process

- President issues new sanctions under International Emergency Economic Powers Act (IEEPA) (*e.g.*, Russia, Venezuela, *etc.*), OR
- Congress passes sanctions laws that the Administration then implements (*e.g.*, Iran sanctions, human rights/corruption sanctions (Global Magnitsky Act), *etc.*)
- Note – the Cuban embargo is the last remaining sanctions program authorized under the Trading with the Enemy Act (TWEA)
- Office of Foreign Assets Control of the Department of the Treasury (OFAC) which implements sanctions and handles most civil enforcement of primary sanctions (Department of Justice handles criminal enforcement)
 - If you want a license, OFAC is the agency that issues it
 - The Department of State and the White House also play important policy-level roles in U.S. sanctions
- The process of establishing and altering sanctions programs can vary from program to program
 - In some programs the Department of State or the White House may play a larger policy role; in other programs OFAC may play a larger role
 - Implementation of the export and re-export controls associated with some programs is handled by the Bureau of Industry and Security of the Department of Commerce (*e.g.*, Crimea, Cuba)



Growth of sanctions

U.S. sanctions have grown rapidly under the Trump Administration:



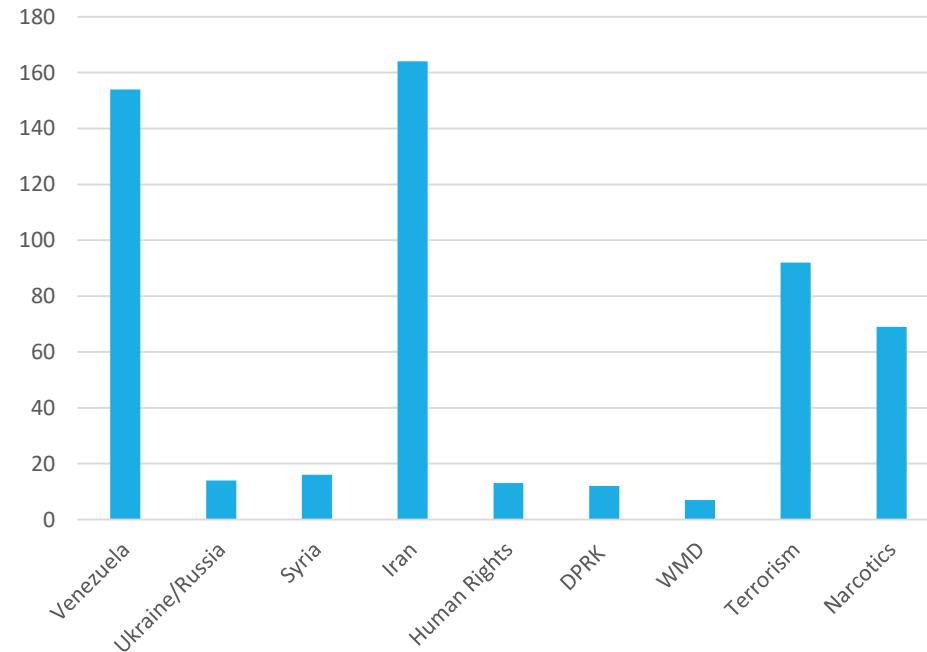
(Source: Gibson Dunn)



Current U.S. sanctions priorities

- Iran
- Russia
- Venezuela
- Other country-based sanctions programs
 - Cuba
 - North Korea
 - Syria

Designations by program in 2019 (as of Sept. 23)



NOTES: Not all programs shown. WMD and Terrorism statistics exclude targets also designated under Iran authorities. Does not include individuals/entities subsequently delisted. Data compiled from C4ADS/Archer Sanctions Explorer.



Iran

- Maximum pressure campaign
- Extension of primary embargo to non-U.S. entities owned or controlled by U.S. persons
- Most trade with Iran banned at this point
 - Most significant exception is trade under general licenses related to medicine, medical devices, agricultural commodities, and personal telecommunications
- Aggressive use of secondary sanctions
- Sanctions appear to have had a chilling effect on global trade with Iran notwithstanding “blocking” laws in the European Union and various other jurisdictions
- Many other challenges to doing business with Iran impact commercial decisions
- Current challenge is finding ways to ramp up sanctions as an alternative to military response to recent developments



Russia

- Date back to 2014 with both blocking and “sectoral” (SSI List) sanctions
- Comprehensive embargo against U.S. trade with the Crimea region
- Numerous secondary sanctions created by statute
- Rusal / Deripaska and related designations and subsequent delistings
- Recent sanctions under CBW Act (Chemical and Biological Weapons Control and Warfare Elimination Act of 1991)
- Potential near-term congressional interest in additional Russia sanctions



Venezuela

- Targeted sanctions started in 2016; sanctions ramped up in 2017, 2018 and 2019
- Blocking sanctions on PDVSA and ban on oil imports imposed in January 2019
- Recent Executive Order 13884 blocked assets of Government of Venezuela
 - Still not a comprehensive embargo against doing business with Venezuela but many challenges remain due to limited ability to engage in dealings with the government
 - General licenses issued by OFAC do not cover all situations
- Stated goal is to bring an end to the Maduro regime
- Trump Administration also concerned about connections between Cuba and Venezuela



Other country-based sanctions programs

- Cuba
 - Trump Administration has re-imposed many restrictions lifted during the Obama era
 - Lawsuits under Title III of the Helms-Burton Act now authorized
- North Korea
 - Supply chain implications
- Syria
 - Focus on oil transfers intersects with other programs



Other sanctions programs / uses of sanctions

- Human rights and corruption (active under this Administration)
- Terrorism
- WMD proliferation (North Korea)
- Potential use for cyber attacks / IP theft
- Potential use for election interference



Sanctions diplomacy

- Trump Administration has engaged in multilateral sanctions diplomacy with respect to North Korea and to some degree Venezuela
- Administration has also engaged in diplomacy with Europe on Russia sanctions
- But the Trump Administration has also demonstrated a clear willingness to act aggressively and unilaterally when it decides doing so is in U.S. interest
- Apparent increased willingness to wield secondary sanctions against companies based in U.S.-allied countries?



Trends in enforcement

- Substantial recent focus on non-financial companies (*e.g.*, shipping industry)
- Continued focus on banks and financial institutions
- Regular use of enforcement actions against foreign companies for violations of U.S. primary sanctions
- Compliance framework and use of settlements to provide guidance

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Questions?

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