



WITA INTENSIVE TRADE SEMINAR

Part 3, Session 1: Sanctions Law & Policy

Monday, September 21, 2020

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What is a sanction?

When we talk about “U.S. sanctions” we generally refer to measures administered by the U.S. Department of the Treasury’s Office of Foreign Assets Control (OFAC)

- Blocking sanctions (SDN List) (sometimes called “targeted sanctions”)

- 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, in 2017 the United States 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 (some “secondary” sanctions are administered by the U.S. Department of State)



Office of Foreign Assets Control

In addition to sanctions, the Trump Administration has increasingly deployed other coercive economic tools, notably the Commerce Department’s “Entity List” and recent Executive Orders banning certain transactions involving WeChat and TikTok



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
 - Initially deployed in 1990s; rapid expansion of use in recent years



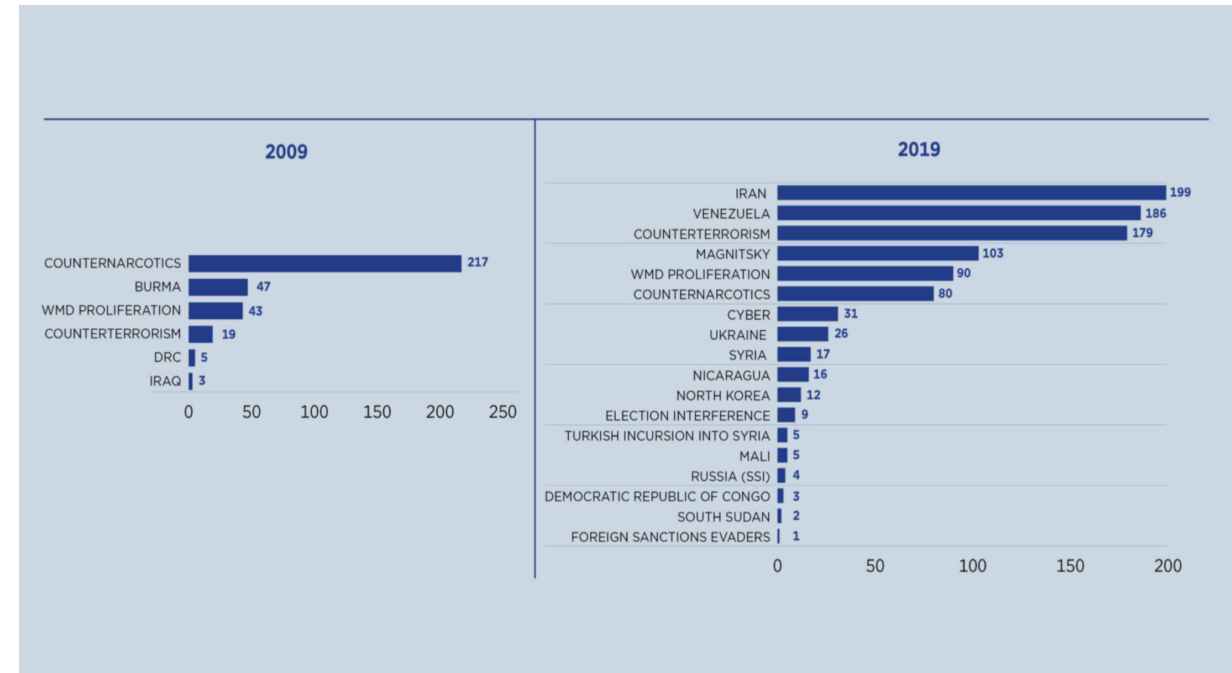
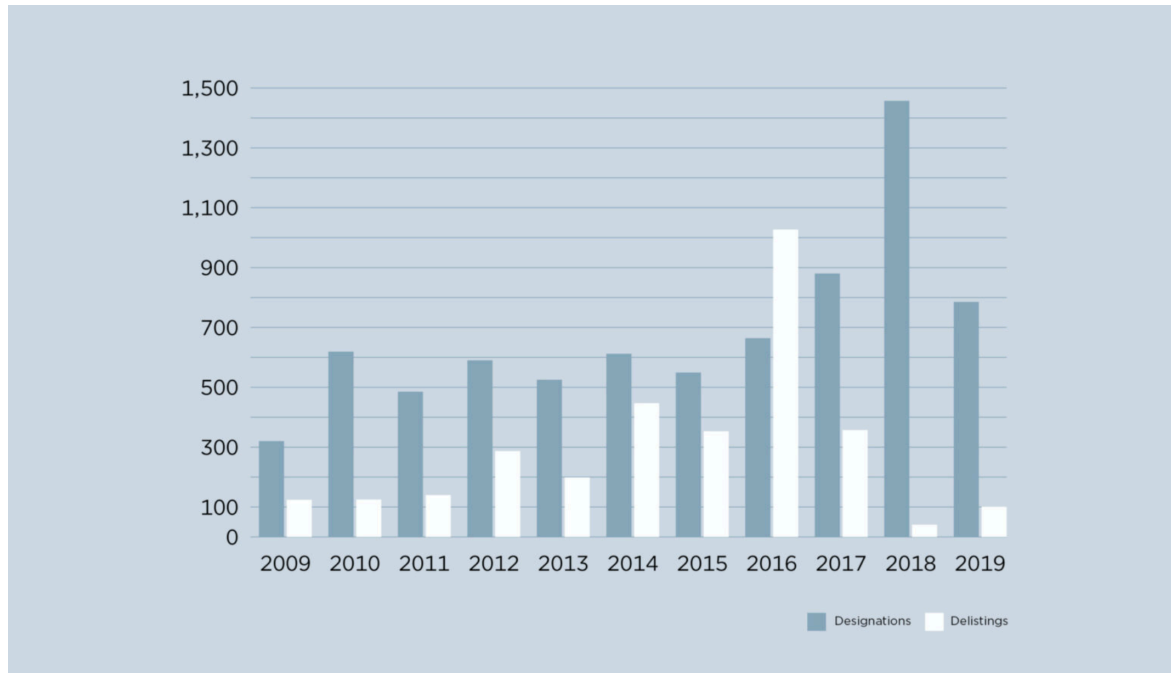
U.S. Government Sanctions Process

- 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)
- OFAC 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 U.S. sanctions

Sanctions have grown both in terms of numbers of people/entities targeted and in range of programs:



(Source: CNAS Dataset)



Types of activity targeted by U.S. sanctions:

- Nuclear/WMD proliferation (North Korea, Iran)
- Human rights abuses/repression (Venezuela, Syria, Cuba, Global Magnitsky Program, *etc.*)
- Crime (drug trafficking; cybercrime; *etc.*)
- Terrorism
- Border disputes (Russia/Ukraine)
- Election interference
- Illicit economic activities (intellectual property theft; cyberattacks; surveillance)



Current U.S. sanctions policy priorities

- Iran
- Venezuela
- Russia
- China
- Other country-based sanctions programs
 - Cuba
 - North Korea
 - Syria
- Global Magnitsky (human rights/corruption) implementation



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



Venezuela

- “Maximum pressure” campaign
- 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
 - Continuing aggressive push to both block Venezuela from selling oil and block Venezuela from importing refined product (diesel, *etc.*)
- 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
- Administration also is concerned about connections between Cuba and Venezuela



Russia

- Date back to 2014 with both blocking and “sectoral” (SSI List) sanctions
 - SSI list sanctions prohibit lending to a number of Russian banks, energy companies, and defense companies, and prohibit the provision of goods and services related to certain Russia-linked unconventional energy projects
- Comprehensive embargo against U.S. trade with the Crimea region
- Targeted ban on new lending to Russian sovereign in response to Russia’s use of chemical weapons
- Numerous secondary sanctions created by statute
 - Significant secondary sanctions focus on the Nord Stream II and TurkStream pipelines, including July 2020 revisions that ended “grandfathering” of the projects
- Multiple policy goals of sanctions: Ukraine-related issues; chemical weapons use; election interference; human rights/repression
- Congress unlikely to enact new sanctions prior to November elections; future direction of Russia sanctions may depend on election outcome.



China

- Given rising U.S.-China tensions and escalating measures on both sides, China sanctions have become a major topic of discussion in Washington
- Some of the Administration's actions to date, such as the actions against Huawei, are actually export control actions, not sanctions, but are often perceived as sanctions by the international community
- We have also seen use of sanctions, particularly over the past several months:
 - For a number of years we have seen sanctions on Chinese companies involved in Iran and North Korea activities. (*e.g.*, last year's Cosco Tanker Dalian sanctions)
 - Some sanctions on Chinese officials involved in IP theft
 - Recent sanctions actions have focused on human rights issues, including Xinjiang and Hong Kong-related designations and the Xinjiang-related import ban
 - These actions have significant supply chain implications
 - Continuing broad, bipartisan Congressional support for sanctions
 - Congress overwhelmingly passed sanctions related to both Xinjiang and Hong Kong.
 - Information and communications technology (ICT) sanctions an emerging critical issue (*e.g.*, TikTok; WeChat)
 - What is next?
 - Sanctions regarding other policy areas, *e.g.*, South China Sea?
- Potential for Chinese retaliation?



Other country-based sanctions programs

- Cuba
 - Lawsuits under Title III of the Helms-Burton Act now authorized
- North Korea
 - Supply chain implications
- Syria
 - Caesar Act implementation/expanded focus on pro-Assad “oligarchs” and on secondary sanctions



Sanctions diplomacy

- Trump Administration has engaged in multilateral sanctions diplomacy with respect to North Korea and to some degree Venezuela
- The Administration has also engaged in diplomacy with Europe on Russia sanctions
- But the Trump Administration has also demonstrated a clear willing to act aggressively and unilaterally when it decides doing so is in U.S. interest
- Significant willingness to wield secondary sanctions against companies based in U.S. allied countries (*e.g.*, Nord Stream II)



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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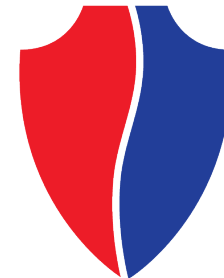
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Questions?

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