The Sanctions Landscape: 2017 Updates and Prospects

Coping with U.S. Export Controls and Sanctions 2017

December 14, 2017

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2017 YEAR IN REVIEW FOR SANCTIONS

- Iran: Impact of Trump Administration policy review
- New Venezuelan Sectoral Sanctions
- Status and prospects for Russia/Ukraine sanctions
- So Long Sudan Sanctions
- Unwinding Cuban sanctions relief?
- North Korea: Status and scope of UN and U.S. sanctions

Iran


0 150 300 km
0 150 300 mi
ARMENIA
AZERBAIJAN
Caspian Sea
TURKMENISTAN
Tabriz
Mashhad
TEHRAN
IRAQ
Qom
Kermanshah
Birjand
Dezful
Esfahan
Tigris
Yazd
AFGHANISTAN
Ahvaz
Euphrates
Bandar-e Khomeyni
Kerman
Abadan
Shiraz
KUWAIT
Zahedan
Bushehr
Persian Gulf
PAKISTAN
Bandar 'Abbas
BAHRAIN
Strait of Hormuz
SAUDI ARABIA
QATAR
UNITED ARAB EMIRATES
Gulf of Oman
Chabahar
OMAN

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Sanctions Overview

PRIMARY

- Sanctions imposed on U.S. persons and corporations (including subsidiaries), US origin products and those in the US, and non-US products that contain 10% or more US controlled content or are based on certain US technology

SECONDARY

- Sanctions that can be imposed on non-US companies who transact certain forms of business with Iran

SECONDARY

- FINANCIAL: Sanctions on foreign financial institutions that support certain business with Iran – sanctions consistent of denying access to US market – no correspondent accounts or payable-through accounts for sanctioned foreign institutions

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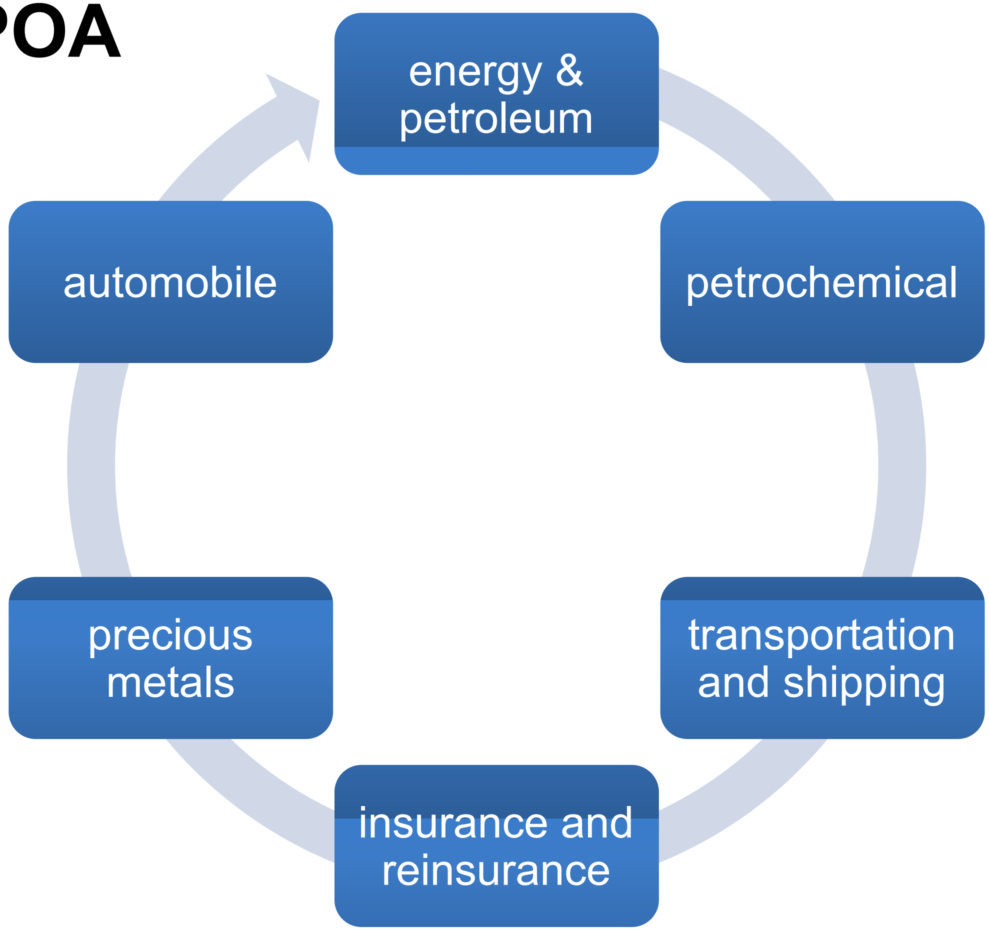
Examples of Secondary Sanctions in place pre-JCPOA



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What Did the Joint Plan of Action Do for U.S. Sanctions on Iran?

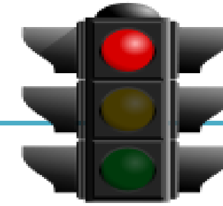
- Primary sanctions remained for U.S. Persons and persons physically in the United States
- Secondary sanctions against *non-U.S. persons* related to several industries were removed
- Only three kinds of *US person* transactions were licensed:
  – Exports of commercial passenger aircraft, spare parts and components and associated services – via Specific License:
  – Imports of Iranian origin carpets and foodstuffs including pistachios and caviar – via General License; and
  – "License non-U.S. entities that are owned or controlled by a U.S. person to engage in activities with Iran that are consistent with this JCPOA."

OFAC's General License H

- GL H authorized an entity owned or controlled by a U.S. person and established or maintained outside the United States to engage in most transactions, directly or indirectly, with the Government of Iran or any person subject to the jurisdiction of the Government of Iran that would otherwise be prohibited by the Iranian Transactions and Sanctions Regulations (ITSR).

- For most subsidiaries of U.S. companies, this required a change in U.S. parent company's corporate policy.

General License H - Still Prohibited:



- The direct or indirect export/report of goods, technology, or services from the United States without separate authorization from OFAC;
  - “agricultural commodities” have OFAC general license
- Transferring funds to, from, or through the U.S. financial system;
- Transacting with SDNs, parties on the Foreign Sanctions Evaders List, or any activity that would be prohibited by non-Iran sanctions administered by OFAC if engaged in by a U.S. person or in the United States;
- Any activity prohibited by, or requiring a license under the EAR or with a person on the Denied Persons or Entity List (unless authorized by BIS);
- Transacting with any military, paramilitary, intelligence, or law enforcement entity of the Government of Iran, or any official, agent, or affiliate thereof;
- Any activity that is sanctionable under EOs 12938, 13382, 13224, 13572, 13582, 13611, 13553 13606, and EO 13628 Sections 2 and 3; or
- Any nuclear activity that is subject to the procurement channel established in U.N. Security Council Resolution 2231, ¶16, and the JCPOA and that has not been approved through the procurement channel process.

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Update on Iran Sanctions

- President Trump has decertified Iran and has passed the ball to Congress to decide whether to stay in JCPOA
- Triggered 60 day period when Congress can introduce special fast track legislation to reimpose sanctions
- Remains to be seen but it appears that the key Congressmen and women are not going to introduce this legislation but instead alternative legislation to put pressure on Iran to come back to bargaining table on other issues
- Continuation of GL H for non-US subs will depend on JCPOA remaining in place

Countering America's Adversaries Through Sanctions Act or "CAATSA"

Signed by Trump into law on August 2, 2017

Codifies existing sanctions into law, with increased Congressional oversight making them more difficult to remove

Creates a range of new or expanded secondary sanctions grounds

- Ballistic missile program
- Human rights abuses
- Blocking sanctions on third country persons selling large weapon systems to Iran

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Venezuela

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New "Sectoral" Type Sanctions on State-Owned Companies

August 24, 2017, President Trump signed Executive Order 13808 imposing additional sanctions on Venezuela

Prohibits US persons from transaction in:

- New debt with a maturity of greater than 90 days of Petroleos de Venezuela, S.A. (PdVSA) and its subsidiaries;
- New debt with a maturity of greater than 30 days, or new equity, of the Government of Venezuela, other than debt of PdVSA;
- Bonds issued by the Government of Venezuela prior to the issuance of EO 13808; or
- Dividend payments or other distributions of profits to the Government of Venezuela, from any entity owned or controlled, directly or indirectly, by the Government of Venezuela

General license for Citgo

What is the Government of Venezuela?

- The Government of Venezuela, any political subdivision, agency, or instrumentality thereof, including the Central Bank of Venezuela and PdVSA,
- any person owned or controlled by, or activing for or on behalf of, the Government of Venezuela.
- OFAC FAQ -- Executive Order prohibitions automatically apply to "entities owned 50 percent or more, individually or in the aggregate, by the Government of Venezuela."

What is "debt"?

- Debt includes extensions of credit, in addition to more traditional debt such as bonds, loans, loan guarantees, letters of credit, drafts, bankers acceptances, discount notes or bills or commercial paper.
- a U.S. company that sells to a state-owned Venezuelan company, other than CITGO, needs to make sure that
  - it does not offer terms of credit longer than 30 days (or 90 days for PdVSA), and that
  - it is actually paid in no longer than 30 days (or 90 days for PdVSA).
- Unless the Venezuelan state-owned customer is willing to pay cash in advance, there is a certain degree of risk for the U.S. exporter, as any payments received beyond the applicable 30 or 90 day limitation will be prohibited.
- Moreover other forms of trade financing, such as letters of credit, must be carefully reviewed to ensure that they do not violate the Executive Order.

Military End-Use/End-User Controls

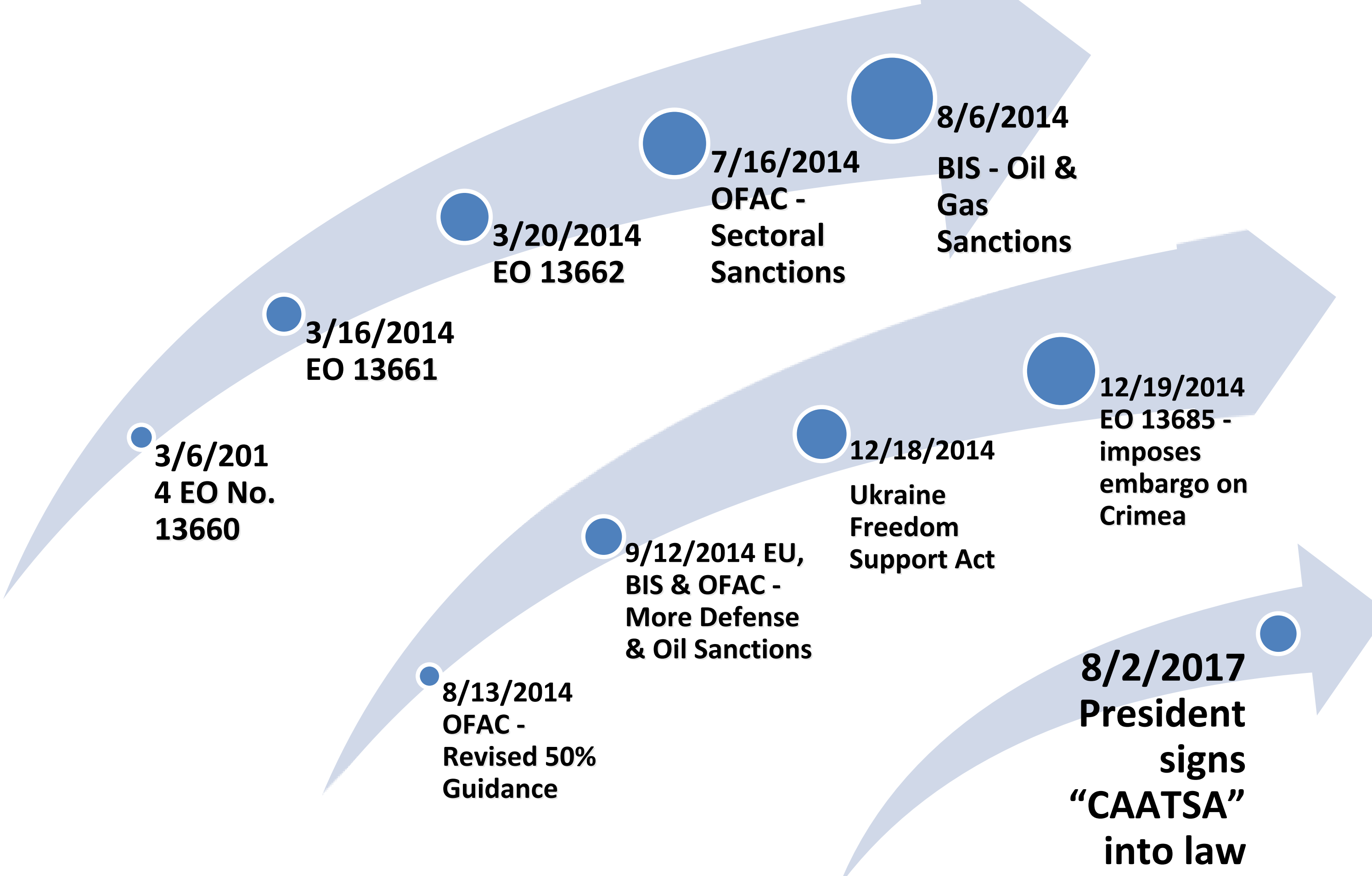
Computers (4A994, 4D993, 4D994) and Telecom (5A991, 5D991 and 5E991) other AT Items in **Supplement No. 2 to Part 744** require license for export/reexport to “military end-uses” and “military end users” in Venezuela, Russia and the PRC

Watch out for Venezuelan SDNs – there are now a number of them

Watch out for persons who are SDNs who sign documents – see $2 million fine from OFAC

Russia/Ukraine/Crimea

Sanctions Related to the Situation in Ukraine



Countering America's Adversaries Through Sanctions Act or "CAATSA"

- Signed by President Trump into law August 2, 2017

- What are the key changes?
  - Codifies the Obama EOs into law – need Congress to repeal them
  - Imposes 30 day Congressional review of any Administration decision to terminate or waive sanctions on a sanctioned person or take any licensing action that significantly alters US foreign policy towards Russia
  - Slightly expands Directives 1, 2 and 4

Executive Order No. 13662 – July 16, 2014 as amended by CAATSA

- Directives 1 imposes sanctions on entities listed on the "Sectoral Sanctions Identifications List" (SSIL)
- NOT all transactions with Directive 1 SSIL entities are prohibited – only:
  - New debt issued between July 16, 2014 and September 11, 2014 with a maturity of longer than **90 days**
  - New debt issued between September 12, 2014 and November 27, 2017 with a maturity of longer than **30 days**; or
  - New debt issued on or after November 28, 2017 with a maturity of longer than **14 days**.
  - New equity (for some but not all SSIL entities)
  - All financing in support of new debt or new equity
  - Any dealing in, including provision of services, of new debt or new equity for the persons in Directive 1

Executive Order No. 13662 – July 16, 2014 as amended by CAATSA

- Directive 2 imposes sanctions on entities listed on the SSIL
- NOT all transactions with Directive 2 SSIL entities are prohibited – only:
  – New debt issued between July 16, 2014 and November 27, 2017 with a maturity of longer than **90 days**; or
  – New debt issued on or after November 28, 2017 with a maturity of longer than **60 days**
  – All financing in support of new debt or new equity

Executive Order No. 13662 – July 16, 2014

What were the changes to Directive 1?

- There were two prior versions of Directive 1 – issued on July 16, 2014 and September 12, 2014, which prohibited the issuance of debt of longer than 90 days maturity (July 16, 2014 version) and 30 days maturity (September 12, 2014 version) if involving an entity determined to be subject to Directive 1. Since Directive 1 was amended on September 29, 2017, U.S. companies are prohibited from issuing new debt on or after November 28, 2017 with a maturity of longer than **14 days**.

What were the changes to Directive 2?

- For Directive 2 SSIL listed entities the September 2017 sanctions amendments to "Directive 2" further restrict the extension of credit terms from up to 90 days for any extension of credit issued on or before July 16, 2014 to no more than **60 days** for any extension of credit issued on or after November 28, 2017.

Executive Order No. 13662 – July 16, 2014 As Amended by CAATSA

- Directive 4 imposes sanctions on entities listed on the SSIL
- NOT all transactions with Directive 4 SSIL entities are prohibited – only:
  - Provision, exportation, or reexportation, directly or indirectly, of goods, services (except for financial services), or technology in support of exploration or production for deepwater, Arctic offshore, or shale projects:
    - that have the potential to produce oil in Russia, or in maritime area claimed by Russia and extending from its territory, and that involve any person identified on the SSIL as subject to Directive 4; or
    - that are "initiated" on or after January 29, 2018, that have the potential to produce oil in anywhere (NOT limited to Russia), and in which any person identified on the SSIL as subject to Directive 4 has (a) a 33% or greater ownership interest, or (b) ownership of a majority of the voting interests.

Executive Order No. 13662 – July 16, 2014 as amended by CAATSA

What were the changes to Directive 4?

- U.S. companies are prohibited from selling products to Directive 4 SSIL entities for any deepwater (greater than 500 feet) or Arctic offshore or shale formation projects "initiated" on or after **January 29, 2018** and ***located in any country*** (no longer limited to Russian territory), if the direct or indirect ownership share of a Directive 4 SSIL entity, either individually or in the aggregate exceeds 33% or more in interest or owns a majority of the voting interests of the project in question.
- Prior to the recent 2017 sanctions U.S. companies could sell to Russian-participation projects outside of Russia if they could show, through due diligence, that the products would not be transshipped into Russia – this is no longer the case.

CAATSA Secondary Sanctions for Russia

- Requires/permits a range of additional secondary sanctions on companies doing business with certain Russian sectors/areas
  - Supporting persons who undermine cybersecurity
  - Making significant investment in Russian crude oil projects
  - Cases of significant corruption, foreign sanctions evaders, human rights abusers
  - Engaging in “significant” transactions with Russian defense and intelligence sectors
  - Making investments in or supporting Russian pipelines (discretionary)
  - Supporting Syria in acquiring WMD or conventional weapons

CAATSA Section 231 – Targeting Russia's Defense and Intelligence Sectors

- Section 231 requires the imposition of 5 or more sanctions on persons identified as operating for or on behalf of the defense or intelligence sectors of Russia
  - The five or more sanctions described in Section 235 include prohibitions on property transactions, export license restrictions, Export-Import Bank assistance restrictions, debt and equity restrictions, visa ramifications for corporate officers, and U.S. government procurement prohibitions
- The persons identified under Section 231 are listed at https://www.state.gov/t/isn/caatsa/275116.htm
- U.S. persons are prohibited from engaging in "significant transactions" with the listed persons
- The prohibitions do not apply to subsidiaries of persons identified under section 231

CAATSA Section 231 – what is “significant?”

- Considers totality of the facts and circumstances on a case-by-case basis.
- The factors considered in the determination may include, but are not limited to:
    1. the significance of the transactions to U.S. national security and foreign policy interests, in particular where the transaction has a significant adverse impact on such interest;
    2. the nature and magnitude of the transaction; and
    3. the relation and significance of the investment to the defense or intelligence sector of the Russia government.
- Initially, focus on significant transactions of a defense or intelligence nature with persons named in the Guidance.
- If a transaction for goods or services has purely civilian end-uses and/or civilian end-users, and does not involve entities in the intelligence sector, these factors will generally weigh heavily against a determination that such a transaction is significant

CAATSA Section 231: List Regarding Russia's Defense Sector

- Admiralty Shipyard JSC
  Almaz-Antey Air and Space Defense Corporation JSC
  Dolgoprudny Research Production JSC
  Federal Research and Production Center Titan Barrikady JSC (Titan Design Bureau)
  Izhevsk Mechanical Plant (Baikal)
  Izhmash Concern JSC
  Kalashnikov Concern JSC
  Kalinin Machine Building Plant JSC (KMZ)
  KBP Instrument Design Bureau
  MIC NPO Mashinostroyenia
  Molot Oruzhie
  Mytishchinski Mashinostroitelny Zavod
  Novator Experimental Design Bureau
  NPO High Precision Systems JSC
  NPO Splav JSC

CAATSA Section 231:
List Regarding Russia's Defense Sector

- Oboronprom OJSC
  Radio-Electronic Technologies (KRET)
  Radiotechnical and Information Systems (RTI) Concern
  Research and Production Corporation Uralvagonzavod JSC
  Rosoboronexport OJSC (ROE)
  Rostec (Russian Technologies State Corporation)
  Russian Aircraft Corporation MiG
  Russian Helicopters JSC
  Sozvezdie Concern JSC
  State Research and Production Enterprise Bazalt JSC
  Sukhoi Aviation JSC
  Tactical Missiles Corporation JSC
  Tikhomirov Scientific Research Institute JSC
  Tupolev JSC
  United Aircraft Corporation
  United Engine Corporation
  United Instrument Manufacturing Corporation
  United Shipbuilding Corporation

CAATSA Section 231: List Regarding Russia's Intelligence Sector

- Autonomous Noncommercial Professional Organization/Professional Association of Designers of Data Processing (ANO PO KSI)
  Federal Security Service (FSB)
  Foreign Intelligence Service (SVR)
  Main Intelligence Directorate of the General Staff of the Russian Armed Forces (GRU)
  Special Technology Center
  Zorsecurity

CAATSA Section 232: Focus on Energy Export Pipelines

- The president is authorized to impose sanctions on any person determined to make an investment that directly and significantly contributes to Russia's ability to construct energy export pipelines or sell, lease, or provide to Russia related goods, services, technology, information, or support of **$1 million or more** (or **$5 million in a 12-month period**)

- The focus is on energy export pipelines that:
  1. originate in the Russian Federation, and
  2. transport hydrocarbons across an international land or maritime border for delivery to another country.

CAATSA Section 232: Focus on Energy Export Pipelines

- Pipelines that originate outside Russia and transit through Russia are not the focus of implementation.
- Focus is on persons the State Department determines knowingly, on or after ugust 2, 2017
  1. made an investment that meets the fair market value thresholds and directly and significantly enhances the ability of Russia to construct energy export pipeline projects initiated on or after August 2, 2017, or
  2. sells, leases, or provides to Russia goods or services that meet the fair market value thresholds and that directly and significantly facilitate the expansion, construction, or modernization of energy export pipelines by Russia
- Section 232 does not target investments or other activities related to the standard repair and maintenance of pipelines in existence on August 2, 2017.

CAATSA Section 241: Targeting Russia's Oligarchs

- Requires that the OFAC identify – no later than January 29, 2018 – the most significant senior foreign political figures and oligarchs in Russia.
- OFAC will identify those who have accumulated wealth in significant part due to ties to President Putin and other senior Russian government officials
- OFAC will assess several factors, including:
  - contractual awards from President Putin or other senior Russian government officials;
  - banking or other services performed for or on behalf of President Putin or other senior Russian government officials;
  - close advising relationships with President Putin or other senior Russian government officials; and
  - appointments to senior posts within the government or state-owned enterprises by President Putin or other senior Russian government officials.
- The Section 241 report will not have the same consequence as placement on the SDN List. U.S. and foreign persons will not be required to refrain from transactions with or block identified individuals or entities

Sudan

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Sudan (North) Sanctions

- Until January 17, 2017, nearly all business activities (e.g. investments, contracts, trade) by U.S. persons with Sudan (North) were prohibited:
  - Direct/indirect exports from the United States to, and imports from, Sudan (North) through third countries
  - Exports of non-U.S. products with 10% or more U.S. controlled content
  - Dealings with SDNs
  - “Facilitation” by U.S. persons of transactions by foreign persons that would be prohibited if undertaken by U.S. persons

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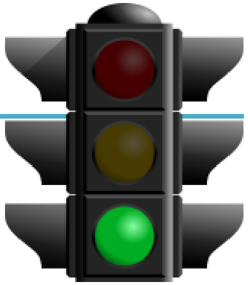
So Long Sudan Sanctions!



- On October 6, 2017, the US Government announced that it will revoke Sudan Sanctions on October 12, 2017.
- As a result, US persons are no longer be subject to the prohibitions of the Sudanese Sanctions Regulations, 31 C.F.R. 538
- On October 12, OFAC removed a long list of SDNs which were only designated under the [SUDAN] designation.
- BUT US EXPORT CONTROLS ON ITEMS ON THE US COMMERCE CONTROL LIST, INCLUDING ITEMS SUBJECT TO ANTI-TERRORISM CONTROLS (e.g 4A994, 5A991, 5A992)
  - BUT YOU CAN USE LICENSE EXCEPTION CCD (IF IT APPLIES)
- And still have to watch out for other SDNs

Cuba

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Trump Policy changes

- On June 16, 2017, President Trump announced changes – small roll back to Obama relaxation
- People-to-people travel must in future take place under the auspices of an organization that is subject to US jurisdiction that sponsors such exchanges
- Transactions with the Cuban military monopoly, Grupo de Aministracion Empresarial (GAESA)
- State Department issued list of GAESA and other restricted military entities
- OFAC published regulations to implement changes – changes are effective as of November 9, 2017

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North Korea Sanctions

- Restrictions on trade with North Korea are increasing
- All exports and reexports of US products need license from BIS (except food and medicines classified as EAR99)
- Includes foreign products that have 10% or more controlled US content
- 2 United Nations Security Resolutions in past two months
- Korean Interdiction and Modernization of Sanctions Act (or "KIMSA") – part of CAATSA – authorizes a long list additional secondary sanctions
- And…

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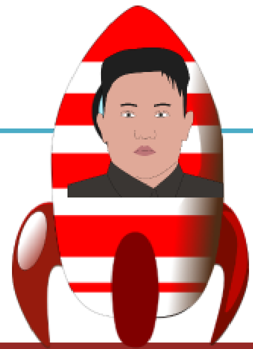
Executive Order of Sept 21, 2017



Authorizes OFAC to block any person determined by OFAC and State:

(i) to operate in the **construction, energy, financial services, fishing, information technology, manufacturing, medical, mining, textiles, or transportation industries** in North Korea;

(ii) to own, control, or operate any **port in North Korea**, including any seaport, airport, or land port of entry;

(iii) to have engaged in at least **one significant importation from or exportation to North Korea of any goods, services, or technology**;

(iv) **to be a North Korean person**, including a North Korean person that has engaged in commercial activity that generates revenue for the Government of North Korea or the Workers' Party of Korea;

(v) to have **materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, any person whose property and interests in property are blocked** pursuant to this order; or

(vi) to be owned or controlled by, or to have acted or purported to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked pursuant to this order.

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Executive Order of Sept 21, 2017

Aircraft and vessels who have landed/called in a port in No. Korea cannot land/call into a US port for 180 days

All funds that are in the US or the possession or control of any US person and that originate from, are destined for, or pass through a foreign bank account that has been determined by the Secretary of the Treasury to be owned or controlled by a North Korean person, or to have been used to transfer funds in which any North Korean person has an interest, are blocked

Sanctions on foreign financial institutions who knowingly conducted or facilitated significant transaction with SDNs or “any significant transaction in connection with trade with North Korea.”

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Questions?

(View from Montalbano Elicano, Sicily, looking towards Aeolian Islands)

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