United States Expands Sanctions Against Iran; Targets Cuba, Venezuela, and Nicaragua with Additional Measures

April 25, 2019

International Trade Controls

The Trump Administration has announced multiple U.S. sanctions measures over the past several weeks, further tightening the sanctions on Iran and imposing additional measures on Venezuela and its allies, Cuba and Nicaragua.

With respect to Iran, the Secretary of State announced on April 22 that the United States would end certain sanctions relief it had afforded to eight countries that previously demonstrated they were making significant reductions in Iranian crude oil purchases. Now, companies and financial institutions that participate in or support purchases by such countries could be exposed to certain U.S. secondary sanctions for purchases by such countries of Iranian petroleum or petroleum products after May 1. Financial institutions in those countries also could now be exposed to U.S. secondary sanctions for conducting or facilitating significant transactions with the Central Bank of Iran, except humanitarian trade. On April 8, the Secretary also designated Iran's Islamic Revolutionary Guard Corps ("IRGC") as a Foreign Terrorist Organization ("FTO"), further escalating the scope and severity of U.S. sanctions targeting the IRGC.

In addition, on April 17, the Trump Administration took a series of related actions that White House National Security Advisor John Bolton described as targeting the "troika of tyranny" – his term for Cuba, Venezuela, and Nicaragua. With respect to Cuba, the Administration fully activated for the first time a statutory provision that allows U.S. nationals to sue persons they contend are trafficking in confiscated Cuban property to which they have a claim. Mr. Bolton also previewed further tightening of Cuba sanctions in the areas of travel, remittances, and payments.

In parallel, the Administration added Venezuela's central bank to the Treasury Department's List of Specially Designated Nationals and Blocked Persons (the "SDN List"), and designated for sanctions a Venezuelan government official, a senior Nicaraguan political leader, the Nicaraguan subsidiary of a Venezuelan bank, and multiple non-Venezuelan vessels that had transported Venezuelan oil to Cuba.

Collectively, these measures underscore the importance of careful attention to the rapidly evolving U.S. sanctions landscape.

Iran

Expiration of All Significant Reduction Exceptions

When the United States fully reimposed sanctions targeting Iran on November 5, 2018, it simultaneously announced exceptions—known as Significant Reduction Exceptions, or "SREs"—from certain U.S. secondary sanctions for eight countries that the United States determined had significantly reduced their purchases of Iranian crude oil.[1] As described in a prior alert, U.S. secondary sanctions are retaliatory measures that the United States can, and in some cases is required to, impose on non-U.S. persons that engage in certain activities with a sanctioned country such as Iran or a sanctioned person. These SREs were granted to China, India, Italy, Greece, Japan, South Korea, Taiwan, and Turkey. The exceptions are subject to discretionary renewal every 180 days, and as Secretary of State Mike Pompeo stated at the time, granting a limited number of these exceptions was "critical to ensure that we increase our maximum pressure campaign and accelerate towards zero" Iranian oil exports.

On April 22, 2019, as the expiration of those initial SREs approached, Secretary Pompeo issued a statement announcing that "the United States will not issue any additional SREs to existing importers of Iranian oil." Pointing to increasing U.S. oil production, the Secretary also noted that the United States had held discussions with other oil producers, including Saudi Arabia, the United Arab Emirates, and other major producers, to "ensure sufficient supply" of crude oil despite the cutoff of Iranian oil exports that is expected to result from this action.

Although certain public reports (and administration officials) suggested that three importers—Greece, Italy, and Taiwan—already had reduced their purchases of Iranian crude oil to zero over the past six months, the remaining five jurisdictions are still reportedly acquiring Iranian oil and/or "condensate," a crude oil-like byproduct of gas extraction, of which Iran is a major producer. Following the expiration of the SREs on May 2, 2019, companies and banks could face exposure to certain U.S. secondary sanctions if they are involved in or support purchases by these countries of Iranian petroleum or petroleum products.[2] The available sanctions measures are severe, and include blocking sanctions which would result in a sanctioned party being added to the SDN List, as well as sanctions that would effectively cut off targeted financial institutions from the U.S. financial system.

Notably, the effect of an SRE was not limited to shielding from U.S. secondary sanctions activities relating to the purchase or transport of Iranian petroleum and petroleum products to the countries receiving the SREs. In addition, non-U.S. financial institutions from countries that received SREs also could conduct or facilitate otherwise sanctionable "significant financial transactions" (including with the Central Bank of Iran) without exposure to U.S. secondary

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[1] The exceptions were issued pursuant to Section 1245(d)(4)(D) of the National Defense Authorization Act for Fiscal Year 2012, which permits the President to issue an exception every 180 days for a country determined to have "significantly reduced its volume of crude oil purchases from Iran."

[2] Natural gas is specifically excluded from the definition of "petroleum products," but that term does include products *derived from* natural gas. Although the SREs did not apply to purchases of Iranian natural gas, separate secondary sanctions measures do apply to such purchases.

sanctions, provided that such transactions involved bilateral trade in non-sanctioned goods and services or certain humanitarian purposes, and that Iran's income from any such trade was deposited in the non-U.S. financial institution from the country in possession of the SRE and not repatriated to Iran.

Following the expiration of the existing SREs, the conduct or facilitation by non-U.S. financial institutions of significant financial transactions with the Central Bank of Iran may now be sanctionable, even if they relate to bilateral trade in otherwise non-sanctioned goods and services (other than transactions involving agricultural commodities, food, medicine, or medical devices). Dealings by foreign financial institutions with Iranian banks designated as a result of their involvement in Iran's terrorism or weapons proliferation activities are (and have remained, even when SREs were in effect) separately sanctionable under Section 104(c) of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010.

Thus, both companies involved in or supporting the purchase or transport of petroleum and petroleum products from Iran to a country formerly granted an SRE and non-U.S. financial institutions facilitating trade between Iran and such countries should plan for the expiration of this safe harbor from U.S. secondary sanctions in the coming week.

Designation of the IRGC as a Foreign Terrorist Organization

In a separate step targeting Iran, on April 8, 2019, the Trump Administration announced its intent to designate the IRGC as an FTO pursuant to Section 219 of the Immigration and Nationality Act (8 U.S.C. § 1189). The designation became effective on April 15, 2019. The IRGC already had been designated for a variety of U.S. sanctions, including "specially designated global terrorist" (or "SDGT") sanctions that resulted in its inclusion on the SDN List. Notably, however, the FTO designation represents a significant escalation in the measures the U.S. government is using to target the IRGC—which is active in many areas of Iran's economy—principally because of the extraterritorial application of the pertinent U.S. criminal law and the broad range of conduct prohibited by that law.

The IRGC's FTO designation has several effects. Similar to the asset freeze already in effect with respect to the IRGC as an SDGT, U.S. financial institutions that become aware they have funds in which the IRGC has an interest must block those funds and report them to the U.S. Department of the Treasury. In addition, pursuant to the FTO designation (but similar to the effect of existing designations), IRGC members are inadmissible to, and removable from, the United States.

Most importantly, however, federal law criminalizes the knowing provision of "material support or resources to a foreign terrorist organization," as well as attempts and conspiracies to provide such material support.[3] Although the intentional violation of existing Office of Foreign Assets Control ("OFAC") sanctions also carries criminal penalties under the International Emergency Economic Powers Act ("IEEPA"), the separate criminal prohibition on providing "material support

[3] 18 U.S.C. § 2339B(a)(1).

or resources" to a designated FTO is extremely broad, and reaches activities beyond even the scope of the IRGC's existing SDN designation in two key respects.[4]

First, the definition of "material support or resources" encompasses a wide range of conduct that even the IRGC's prior SDGT (and other sanctions) designations did not. It criminalizes the knowing provision to the IRGC of:

> any property, tangible or intangible, or service, including currency or monetary instruments or financial securities, financial services, lodging, training, expert advice or assistance, safehouses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel (1 or more individuals who may be or include oneself), and transportation, except medicine or religious materials[.][5]

By criminalizing the provision to the IRGC of nearly anything but medicine and religious materials, the FTO designation reaches beyond even the "informational materials" exception applicable in most U.S. sanctions programs.[6]

Second, the criminal prohibition on providing material support to FTOs is explicitly extraterritorial, and reaches virtually any conduct within the ambit of the provision. Enforcement jurisdiction extends to offenders "brought into or found in" the United States "even if the conduct required for the offense occurs outside the United States," as well as to any offense that "occurs in or affects . . . foreign commerce."[7] Thus, non-U.S. entities that have not previously been reached by existing primary sanctions against the IRGC, could, in addition to the ongoing risk of exposure to U.S. secondary sanctions, face risk of U.S. criminal enforcement under the material support statute.

The cumulative effect of this designation is to impose broad new criminal deterrence on parties considering transacting with the IRGC and any entities or persons who might be considered to be acting on behalf of the IRGC.[8] This may prove significant, given the difficulties non-Iranian

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[4] The intent required for prosecution under the material support statute, 18 U.S.C. § 2339B, differs from that required under IEEPA, 50 U.S.C. § 1705(c). Whereas criminal IEEPA violations require evidence of "willfully violat[ing] the trade restrictions," *United States v. Amirnazmi*, 645 F.3d 564, 589 (3d Cir. 2011), the material support statute requires "that the aid be intentional" and that the defendant know the relevant group is a FTO or other group that "engages in acts of terrorism," *United States v. Al Kassar*, 660 F.3d 108, 129 (2d Cir. 2011).

[5] 18 U.S.C. § 2339A(b)(1); *see also id.* § 2339B(g)(4).

[6] The U.S. Supreme Court upheld the breadth of this provision against constitutional challenge. *See Holder v. Humanitarian Law Project*, 561 U.S. 1 (2010) (holding that it did not violate the First or Fifth Amendments to criminalize providing "monetary contributions, other tangible aid, legal training, and political advocacy" even to support the "lawful, nonviolent purposes of" designated FTOs).

[7] 18 U.S.C. § 2339B(d)(1); *see also id.* § 2339B(d)(2) ("There is extraterritorial Federal jurisdiction over an offense under this section.").

[8] *See United States v. Jama*, 217 F. Supp. 3d 886 (E.D. Va. 2016) (holding that a person is part of an FTO "if that person is engaged in significant activity on behalf of a FTO relative to that FTO's goals and objectives," a determination which is based on a list of seven factors).

businesses often face in determining the relationship, if any, between Iranian commercial counterparties and the IRGC.

Latin America

As noted above, the Trump Administration also has announced a number of new sanctions in Latin America this month, framing these measures as an interrelated set of actions targeting the governments of Cuba, Venezuela, and Nicaragua.

Cuba

Reversing a policy in place for more than 20 years, the Trump Administration announced on April 17, 2019 that it would allow lawsuits under Title III of the Cuban Liberty and Democratic Solidarity ("LIBERTAD") Act of 1996, also known as the "Helms–Burton Act" (22 U.S.C. §§ 6082–85), against traffickers in property confiscated by the Cuban government. Until now, prior administrations had exercised their discretion under the statute to suspend the Act's private right of action (with the exception of a limited waiver that the Trump Administration initially announced in March). For more information on this policy change, please see the related alerts issued in March and April of 2019 by Covington's international disputes team.

Also on April 17, in a speech commemorating the unsuccessful 1961 Bay of Pigs invasion, Mr. Bolton announced several upcoming expansions of the U.S. sanctions against Cuba. First, the Trump Administration reportedly will limit remittances to Cuba to $1,000 per person per quarter, whereas the Obama Administration had previously removed the caps on such remittances. Second, Mr. Bolton reportedly announced new restrictions on non-family travel to Cuba. (Because the specific policy has not yet been released, it is not yet clear which of the 12 currently authorized categories of travel to Cuba will be affected, or how.) Finally, the Administration will reportedly rescind OFAC authorizations for so-called "U-turn" transactions,[9] under which U.S. banks may process transactions originating and terminating outside the United States when neither the originator nor the beneficiary is a person subject to U.S. jurisdiction. We will be closely following these developments as the specific regulatory changes are announced.

Venezuela

The Trump Administration also made a number of significant Venezuela-related sanctions designations in recent days. On April 17, OFAC designated the Caracas-based Banco Central de Venezuela, the Central Bank of Venezuela, as an SDN pursuant to Executive Order 13850 (as amended). Arguing that the Administration was "designating the Central Bank of Venezuela to prevent it from being used as a tool of the illegitimate Maduro regime," Secretary of the Treasury Steven Mnuchin also noted that, pursuant to OFAC authorizations announced alongside the designation, "regular debit and credit card transactions can proceed and personal remittances and humanitarian assistance continue unabated." These authorizations take the form of amended General Licenses 3E, 4B, 9D, 15A, and 16A, and new General Licenses 19 and 20. In addition, OFAC issued a new FAQ noting that, pursuant to these amended

[9] *See* 31 C.F.R. § 515.584(d).

authorizations, "U.S. persons may continue to engage in and facilitate non-commercial, personal remittances and the provision of humanitarian assistance to the people of Venezuela."

In addition to designating Banco Central de Venezuela, OFAC added Iliana Josefa Ruzza Terán, one of the Bank's directors and a senior official at other Venezuelan entities, to the SDN List pursuant to Executive Order 13692 (as amended).

These designations follow the SDN designation on January 28, 2019 of Petróleos de Venezuela, S.A. ("PdvSA"), Venezuela's state oil company (which we described in a prior alert), as well as the more recent sanctions designations on April 12, 2019 of four non-Venezuelan companies operating vessels determined by OFAC to be operating in the oil sector of Venezuela's economy, and specifically to have delivered oil from Venezuela to Cuba. The vessel designations are particularly significant because they demonstrate that OFAC and the Trump Administration are not limiting the use of Venezuela-related sanctions authorities to Venezuelan entities alone—in this case, for example, the designated entities are based in Liberia and Italy, and collectively own nine tanker vessels that OFAC identified in making its designations.

Given these designations, and the potential risk of further escalation of sanctions, non-U.S. companies operating in or with Venezuela's oil sector should take special note of Section 1(a) of Executive Order 13850 (as amended), which provides the Administration with broad sanctions authorities, including the authority to sanction any person determined "to have materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of" certain persons sanctioned or sanctionable activities/transactions under the Executive Order.

Nicaragua

Finally, also on April 17, 2019, OFAC added the Nicaraguan bank Banco Corporativo SA (also known as "BanCorp") to the SDN List pursuant to Executive Order 13851. BanCorp is a subsidiary of the Venezuelan bank Alba de Nicaragua, S.A. ("ALBANISA"), itself a PdVSA subsidiary and thus already designated for sanctions. In its announcement, OFAC explained that it was formally designating BanCorp for materially assisting Nicaragua's Vice President Rosario Murillo, herself an SDN under the same sanctions authority.

OFAC also designated Laureano Ortega Murillo, the son of Nicaraguan President Daniel Ortega and Nicaraguan Vice President (and first lady) Rosario Murillo. OFAC explained that "[i]n his role as the Investment Promotion Advisor of the Nicaraguan government agency, ProNicaragua, Laureano acts as an extension of President Ortega and Vice President Murillo, overseeing investment proposals and projects." The designations of both BanCorp and Mr. Ortega impose asset-blocking measures, under which the property and interests in property of these parties, and any entity they own 50% or more, individually or in the aggregate with other SDNs, must be blocked when it comes into the United States or the possession or control of a U.S. person.

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Covington has deep experience advising clients on the legal, policy, and practical dimensions of U.S. trade controls, including the Iran, Cuba, Venezuela, and Nicaragua sanctions, and matters at the intersection of national security and the criminal law. We will continue to monitor developments in this area, and are well-positioned to assist clients in understanding how these recent announcements may affect their business operations.

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