

Insights

CONGRESS IMPOSES SANCTIONS AS PART OF 2020 NDAA (IRB NO. 582)

Jan 22, 2020

The new Iran sanctions imposed by the Trump Administration are not the only recent sanctions actions of note. Congress has also shown its willingness to use sanctions as a foreign policy tool, with certain sanctions provisions now passed as part of the National Defense Authorization Act for Fiscal Year 2020 (the “2020 NDAA”) and others currently under consideration in the Senate.

The 2020 NDAA (S.1790, Pub. L. No. 116-92) was signed into law on December 20, 2019, and contains multiple new sanctions and sanctions-related authorities or restrictions, including some that may impact certain business involving Russia and Venezuela, as well as certain other miscellaneous provisions.

Russia: New Sanctions on Certain Pipeline Projects

Included at Title LXXV of the 2020 NDAA is the Protecting Europe’s Energy Security Act of 2019 (PEESA). PEESA targets parties associated with certain oil pipeline projects and calls for the following:

1. Reporting to Congress

The Secretary of State, in consultation with the Secretary of the Treasury, is required to provide a report to certain congressional committees^[1] by February 18, 2020, and every 90 days thereafter, identifying:

- Vessels that engaged in pipe-laying at depths of 100 feet or more below sea level (prior to February 18, 2020, or during the relevant 90-day period) for the construction of the Nord Stream 2 or TurkStream pipelines, or any successor pipeline projects thereto;
- Non-US persons that are determined to have knowingly sold, leased, or provided those vessels for the construction of such projects; and
- Non-US persons that are determined to have knowingly facilitated deceptive or structured transactions to provide those vessels for the construction of such a project.

The initial report will list vessels and persons who have engaged in the targeted activities between December 20, 2019, and February 18, 2020; each report produced thereafter will be updated to include additional vessels and persons who have engaged in such activities during the 90-day period preceding the report.

2. Imposition of Sanctions

In addition to the sanctions that may be, but are not required to be, imposed pursuant to § 232 of the Countering America's Adversaries Through Sanctions Act against persons that knowingly engage in certain investments or other activities with respect to *any* Russian energy export pipeline, these sanctions are mandatory and specifically target the Nord Stream 2 and TurkStream pipeline projects. Following production of the reports described above, the US Government is required to impose (1) blocking sanctions to freeze all property and interests in property of persons identified in the reports that are or come within US jurisdiction, and (2) visa-related sanctions to prohibit the entry into the United States of persons identified in the reports, as well as their corporate officers and principal shareholders with controlling interests.

PEESA authorizes the President to waive the sanctions in certain circumstances. Moreover, there are some exceptions built into PEESA, including for certain safety and environmental situations, as well as to allow limited wind down of existing activities.

Although the "wind down" period does not allow a person to avoid being included in the initial report to be provided on February 18, it is an important exception to note in terms of the actual imposition of sanctions. In a new [FAQ No. 815](#), OFAC provided guidance regarding what was required to make a "good faith" effort to "wind down" targeted operations, explaining that in order to comply with the "wind down" sanctions exception, parties must have ensured that the sold, leased, or provided vessels ceased construction-related activity" within 30 days of the 2020 NDAA's enactment (i.e., by January 19, 2020).

Venezuela: Government Procurement Restriction

Though not technically a new sanctions measure, § 890 of the 2020 NDAA imposes a US Government procurement prohibition that mirrors current restrictions under the Venezuela sanctions program. As of December 20, 2019, the US Department of Defense may not enter into contracts for the procurement of goods or services with "any person that has business operations with an authority of the Government of Venezuela that is not recognized as the legitimate Government of Venezuela" by the US Government.

This procurement prohibition is a broad one and applies not only to persons engaging in "commerce in any form" (including acquiring, developing, maintaining, owning, selling, possessing, leasing, or operating equipment, facilities, personnel, products, services, personal property, or real property) but also to successors, parent entities, subsidiaries, affiliates, and "any entity under common ownership or control with" such persons.

Limited exceptions are available under certain circumstances, including for activities authorized by OFAC.

For nearly a year, the US Government has recognized Juan Guaidó as the Interim President of Venezuela and his government as the official Government of Venezuela. With the passage of this new procurement prohibition, and given its far-reaching scope, parties that choose to deal with the Maduro regime, or that are part of a corporate structure that deals with the Maduro regime, will jeopardize their ability to obtain US Government contracts (unless an exception is applicable).

Other Sanctions Provisions

The 2020 NDAA also contains a number of other sanctions provisions, including

Syria Sanctions

Section 7412 of the 2020 NDAA, as part of the Caesar Syria Civilian Protection Act of 2019, also imposes additional mandatory sanctions against non-US persons. Such persons will be subject to blocking and visa-related sanctions if they are determined to have knowingly engaged in certain transactions with or involving the Government of Syria related to certain military, mercenary, and paramilitary activities, certain construction or engineering activities, or the Government of Syria's ability to produce natural gas, petroleum, and petroleum products. Certain transactions involving senior political figures of the Government of Syria will also trigger the imposition of such sanctions.

North Korea Sanctions

Incorporated as Title LXXI to the 2020 NDAA is the Otto Warmbier North Korea Nuclear Sanctions and Enforcement Act of 2019. Specifically, §§ 7121 and 7122 amend the North Korea Sanctions and Policy Enhancement Act of 2016 to require:

- Additional blocking and accounts-related sanctions against foreign financial institutions that knowingly provide significant financial services to persons designated under North Korea sanctions imposed by the United States or UN Security Council;
- A prohibition on entities that are owned or controlled by US financial institutions but established or maintained outside of the United States from knowingly engaging in certain transactions, directly or indirectly, with the Government of North Korea or persons designated under North Korea sanctions imposed by the United States or UN Security Council; and
- Additional designations under the US sanctions against persons that, among other things, knowingly engage in (i) transactions involving imports to and exports from North Korea of certain goods, services, or technology, or (ii) certain vessel and vessel-related transactions.

Opioid Sanctions

The 2020 NDAA also includes at Title LXXII the Fentanyl Sanctions Act, which requires the imposition of multiple menu-based sanctions against (1) foreign persons that are identified in reports submitted by the President to Congress as “foreign opioid traffickers,” and (2) foreign persons that are owned, controlled, or directed by, knowingly supplying or sourcing precursors for, or knowingly acting for or on behalf of, an identified “foreign opioid trafficker.”

Organizations with business activities in areas targeted by these sanctions should take steps to assess and mitigate any associated risks they may present. Further, because the provisions related to Russia, Syria, North Korea, and opioids each introduce new designation criteria for blocking sanctions, companies should continue to conduct due diligence and restricted party screening of customers, vendors, and other business partners to take account of any applicable secondary sanctions risks, including those involving entities owned, directly or indirectly, 50% or more by one or more designated parties.

Our next update will address additional sanctions-related legislation that is still pending in Congress. For more information about this update, please contact the professionals linked above.

1. The report is to be provided to the Senate Committee on Foreign Relations, the Senate Committee on Banking, Housing, and Urban Affairs, the House Committee on Foreign Affairs, and the House Committee on Financial Services.

RELATED CAPABILITIES

- International Trade

MEET THE TEAM



David C. Russell

Washington

dave.russell@bclplaw.com

[+1 202 508 6353](tel:+12025086353)

This material is not comprehensive, is for informational purposes only, and is not legal advice. Your use or receipt of this material does not create an attorney-client relationship between us. If you require legal advice, you should consult an attorney regarding your particular circumstances. The choice of a lawyer is an important decision and should not be based solely upon advertisements. This material may be “Attorney Advertising” under the ethics and professional rules of certain jurisdictions. For advertising purposes, St. Louis, Missouri, is designated BCLP’s principal office and Kathrine Dixon (kathrine.dixon@bclplaw.com) as the responsible attorney.