

Professional Perspective

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US Sanctions Developments in 2022

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The scope and complexity of US sanctions reached new pinnacles in 2022, driven primarily by unprecedented multilateral coordination in response to Russian military aggression in Ukraine. In parallel, sanctions enforcement by the US Department of the Treasury's Office of Foreign Assets Control (OFAC) rebounded after a two-year lull that coincided with the height of the Covid-19 pandemic.

With no end to the Ukrainian conflict in sight, further restrictions and stepped-up enforcement in 2023 appear inevitable, all against the backdrop of an increasingly antagonistic relationship between the world's two largest economies—the US and China. This article looks back at some of the most significant regulatory and enforcement developments over 2022 and offers some hard-learned compliance lessons for multinational businesses.

Regulatory Developments

Russia

Throughout 2022, the US—in coordination with the EU and other governments—introduced wide-ranging sanctions in response to Russia's invasion of Ukraine. Restrictions imposed by OFAC to date have included:

DNR/LNR. Imposition of an effective embargo targeting the separatist-controlled Donetsk People's Republic (DNR) and Luhansk People's Republic (LNR) regions of Ukraine. Although Executive Order 14065 authorizes OFAC to impose comparable restrictions on other regions purportedly annexed by Russia, to date, the US has not sanctioned the disputed Kherson or Zaporizhzhia regions.

Blocking Designations. Designation of hundreds of Russian entities, including many Russian financial institutions, to the Specially Designated Nationals And Blocked Persons (SDN) List. Pursuant to OFAC's "50 Percent Rule," any entity owned, directly or indirectly, 50% or more, individually or in the aggregate, by one or more SDNs also is considered blocked, even if that entity does not itself appear on the SDN List. The blocking of major Russian banks has significantly impeded US persons' ability to engage in otherwise lawful activities involving non-sanctioned Russian counterparties.

Debt/Equity Restrictions. Prohibitions on transacting in, or providing financing for, new equity or debt—of longer than 14 days' maturity—of over a dozen Russian firms. This is a familiar form of sanction, as analogous restrictions have been in place against dozens of Russian financial and energy firms for several years.

Sovereign Debt Restrictions. Additional restrictions on dealings in Russian sovereign debt issued by the Central Bank of the Russian Federation, the National Wealth Fund of the Russian Federation, or the Ministry of Finance of the Russian Federation. OFAC has published a series of general licenses authorizing transactions that otherwise would be prohibited by these restrictions, including allowances for day-to-day operational payments—e.g., taxes and fees—and payments related to intellectual property.

Import/Export Restrictions. Prohibitions on (x) the importation into the United States of certain Russia-origin energy products, seafood, alcoholic beverages, and non-industrial diamonds; and (y) the export of certain luxury goods to Russia. In parallel, the Bureau of Industry and Security (BIS) imposed extensive restrictions prohibiting the export or re-export to Russia—or Belarus—of virtually any item controlled under the US Export Administration Regulations, absent a license from BIS.

Investment Restrictions. Restrictions on "new investment" in the Russian Federation, generally prohibiting the contribution of new funds or capital to Russia. OFAC has published guidance clarifying that ordinary course commercial transactions do not constitute prohibited new investment. However, broad categories of activities, like the expansion of most operations in Russia, certain M&A activity, and acquisition of Russian securities, are prohibited.

Services Restrictions. Prohibitions on the provision of certain accounting, trust and corporate formation, management consulting, and quantum computing services to the Russian Federation.

Oil Price Cap. Prohibition on the provision of services—including trading/commodities brokering, financing, shipping, insurance, flagging, and customs brokering—related to the maritime transport of Russia-origin crude oil priced above \$60/barrel.

Collectively, the above restrictions represent the most sweeping sanctions ever imposed against a significant global economy. Still, except for the DNR and LNR regions, the sanctions imposed to date do not amount to a comprehensive embargo targeting Russia, although the combination of new restrictions has rendered dealings with Russia commercially or operationally impractical for many multinational businesses.

Belarus

The US also imposed new sanctions targeting Belarus for its support of Russia's military operation in Ukraine, including (x) the designation of Belarusian parties to the SDN List; and (y) a prohibition on the export of certain luxury goods to Belarus. As a result, companies seeking to conduct business in or with Belarus must contend with many of the same restrictions applicable to dealings with Russian counterparties.

Nicaragua

In October 2022, President Biden issued Executive Order 14088, amending Executive Order 13851 (2018) to impose additional sanctions targeting the Ortega-Murillo regime in Nicaragua. Executive Order 14088 introduced new sectoral sanctions targeting the gold sector of the Nicaraguan economy as well as any additional sectors of the Nicaraguan economy that may be designated by the Secretary of the Treasury at a future date. In addition, Executive Order 14088 introduced authorizations for new import, export, and investment prohibitions targeting Nicaragua.

Executive Order 14088 provides an enhanced framework for the rapid escalation of sanctions targeting Nicaragua in response to human rights concerns or Nicaragua's ongoing security cooperation with Russia. In this regard, the Executive Order resembles the US' initial sanctions responses to developments in Russia and Venezuela, for which sanctions restrictions evolved—relatively quickly—into partial embargoes.

Venezuela

In November 2022, OFAC published a six-month general license authorizing Chevron Corporation to resume certain petroleum production activities in Venezuela via joint ventures involving *Petróleos de Venezuela, S.A. (PdVSA)*, Venezuela's sanctioned state oil company. Issuance of the General License followed the announcement of the resumption of negotiations in Mexico between the embattled Maduro regime and a coalition of opposition political parties.

In a press release, OFAC stated that the General License “reflects longstanding US policy to provide targeted sanctions relief based on concrete steps” to address the concerns that precipitated the imposition of sanctions. While the potential for relief is a key element of an effective sanctions policy, the timing of the General License also coincided with the implementation of a multilateral price cap on Russian oil, which the general license presumably is intended to help offset.

Enforcement Developments

To date, OFAC has announced 15 enforcement actions, settlements, and findings of violation that have collectively netted more than \$38 million in penalties and settlement payments. While modest compared to Obama- and Trump-era hauls, this total represents a nearly 100% increase over the prior two years and may portend increased enforcement in 2023 following a temporary, pandemic-induced dip.

Cryptocurrency

Building upon the [Sanctions Compliance Guidance for the Virtual Currency Industry](#) published in October 2021, OFAC resolved two notable enforcement actions against cryptocurrency companies. These enforcement actions illustrate the enhanced scrutiny that OFAC—and other regulators—have begun to apply to the cryptocurrency industry and demonstrate that US regulators expect cryptocurrency companies—like other financial services providers—to implement robust sanctions-related controls, including geolocation tools.

Bittrex, Inc. In October 2022, Bittrex, Inc., a Washington-based cryptocurrency exchange company, agreed to pay approximately \$24.28 million to resolve 116,421 apparent sanctions violations related to processing transactions involving persons located in Crimea, Cuba, Iran, Sudan, and Syria over a multiyear period. The underlying transactions allegedly totaled approximately \$263.45 million. Bittrex implemented a sanctions compliance program in December 2015—nearly two years after the company initiated operations—and used a third-party vendor to conduct limited sanctions screening against certain restricted party lists.

However, OFAC alleged that Bittrex failed to scrutinize whether customers were located in a sanctioned jurisdiction, and the company reportedly did not begin restricting accounts and screening IP and other addresses associated with sanctioned locations until OFAC issued a subpoena to investigate potential sanctions violations. OFAC found that Bittrex should have known of the apparent violations based on the customer IP and physical addresses collected during the onboarding process, which OFAC treated as an aggravating factor.

Bittrex also agreed to pay approximately \$29.28 million to the Financial Crimes Enforcement Network (FinCEN) for apparent violations of the Bank Secrecy Act—though, as is common in multiagency sanctions enforcement actions, FinCEN will credit the payment of \$24.28 million as part of Bittrex's agreement to settle its potential liability with OFAC. Collectively, the settlements represent the first parallel enforcement action by OFAC and FinCEN, potentially signally increased coordination between the agencies on a prospective basis.

Kraken. In November 2022, Kraken (Payward, Inc.), a Delaware-based cryptocurrency exchange, agreed to pay \$362,158.70 to resolve its apparent liability for processing 826 transactions on behalf of individuals located in Iran at the time they initiated the transactions. Kraken also agreed to invest an additional \$100,000 in enhancing its sanctions compliance controls.

Kraken maintained an anti-money laundering and sanctions compliance program, which included screening customers at onboarding and daily thereafter, as well as review of IP address information generated at the time of onboarding to prevent users in sanctioned jurisdictions from opening accounts. However, OFAC alleged that Kraken's screening procedures did not include IP address blocking on transactional activity across its platform, allowing account holders who established their accounts outside of a sanctioned jurisdiction to access their accounts and transact on Kraken's platform from a sanctioned jurisdiction, such as Iran.

Upon identifying the apparent violations, Kraken took remedial actions to enhance its sanctions procedures, including by implementing automated blocking for IP addresses linked to sanctioned jurisdictions and multiple blockchain analytics tools to assist with its sanctions monitoring. Such remedial actions helped reduce the final penalty amount from the applicable base amount of \$840,288.55.

Toll Holdings

In April 2022, OFAC announced a \$6.1 million settlement with Toll Holdings Limited, an Australian freight forwarding and logistics company. OFAC alleged that Toll conducted shipments to, from, and through Iran, North Korea, and Syria involving property of entities on OFAC's SDN List. Although Toll is a non-US entity, these activities implicated US sanctions because they involved US dollar payments routed through the US financial system, a common pitfall for non-US companies.

OFAC alleged that Toll failed to implement controls to prevent the company from conducting transactions that involved sanctioned parties or jurisdictions. The absence of such controls resulted, in part, from Toll's rapid expansion and acquisition of smaller freight forwarding companies. For example, OFAC observed that, in 2017, Toll had almost 600 invoicing, data, payment, and other system applications spread across its business units. Although Toll maintained a written sanctions policy, its associated controls had not kept pace with the growing complexity of its operations.

The Toll enforcement action underscores that non-US parties' activities outside of the US can trigger US jurisdiction if they involve US dollar-denominated transactions—which typically are routed through accounts subject to US jurisdiction. OFAC repeatedly has demonstrated its willingness to pursue enforcement actions against non-US entities where the sole US jurisdictional nexus is the involvement of the US financial system.

Nodus International Bank

In October 2022, OFAC issued a finding of violation to Nodus International Bank, Inc., a Puerto Rican financial institution, for alleged violations of the Venezuelan Sanctions Regulations and the Reporting, Penalties, and Procedures Regulations (RPPR). The apparent violations related to accounts held by an individual who was added to the SDN List in 2017. Nodus promptly blocked the individual's accounts and submitted a Report of Blocked Property to OFAC.

In addition, in an effort to sever its ties with the sanctioned individual, Nodus redeemed the SDN's securities and placed the proceeds of the redemption into a blocked account. However, Nodus did not obtain a license from OFAC prior to executing the redemption. In addition, due to human error, Nodus allowed an automatic debit from one of the blocked accounts in order to credit a blocked credit card account. OFAC alleged that Nodus submitted several inconsistent Annual Reports of Blocked Property to OFAC and failed to maintain records required under the RPPR.

OFAC did not impose a financial penalty, accounting for several mitigating factors, including Nodus's small size, self-disclosure, subsequent compliance enhancements, and lack of previous violations. However, publication of the finding of violation is notable as OFAC historically has not aggressively enforced compliance with the RPPR. Given the recent proliferation of Russia-related SDN designations, the Nodus matter is a timely reminder that failure to comply with administrative aspects of U.S. sanctions requirements can result in liability.

Conclusion

Dominated by Russia-related developments, 2022 was a resurgent year in terms of both new sanctions restrictions and enforcement. All geopolitical indicators point to a similarly active 2023, with continued emphasis on targeted, novel sanctions programs that mitigate collateral consequences for non-sanctioned parties—but complicate compliance efforts for multinational businesses.

Junsuk Lee, Ropes & Gray, contributed to this article.