

Reference Sheet on Economic Sanctions

Overview

Economic sanctions are primarily exercises of Congress’s constitutional authority over foreign commerce, though they also implicate the President’s constitutional authority to manage U.S. foreign relations. As such, they are generally implemented by the president pursuant to statutory delegations from Congress.

While there are differences across regimes, individuals and entities targeted by U.S. economic sanctions are generally subject to similar consequences. Their assets are often “blocked” or “frozen,” meaning that banks and other entities holding those assets that are subject to U.S. jurisdiction are legally obligated to withhold access to and control of those assets from the designated entity. In addition, individuals and entities subject to U.S. jurisdiction are generally prohibited from engaging in significant transactions with designated entities. Some sanctions regimes also allow for “secondary sanctions,” which impose economic sanctions on any third parties that continue to engage in prohibited transactions with sanctioned entities, including those located overseas. Others impose more specific types of restrictions or pair economic sanctions with other measures, such as immigration restrictions.

Failure to comply with these restrictions can result in both civil and criminal penalties for third parties. Under certain regimes, it may also make third parties eligible for designation themselves. That said, licenses issued by the Treasury Department often allow for certain types of transactions in many cases (e.g., humanitarian transfers, payment of legal fees).

While several agencies—including, most notably, the State Department—play a substantial role in sanctions determinations, the Treasury Department’s Office of Foreign Assets Control (OFAC) administers most economic sanctions programs and consolidates most of the individuals, groups, and entities subject to U.S. economic sanctions on to a list of Specially Designated Nationals (SDNs). This SDN List is made publicly available in various formats at <http://www.treasury.gov/sdn/>.

Designated individuals and entities may generally pursue an administrative challenge of their designation, which can in turn be subject to judicial review on a deferential standard. Those with sufficient ties to the United States may also pursue constitutional challenges to their designation.

International Emergency Economic Powers Act

Most U.S. economic sanctions are implemented pursuant to the International Emergency Economic Powers Act (IEEPA) (codified at 50 U.S.C. § 1701 *et seq.*), which authorizes the president to exercise broad discretionary authority over property and economic activities subject to U.S. jurisdiction in response to “any unusual and extraordinary threat, which has its source in whole or substantial part outside the United States, to the national security, foreign policy, or economy of the United States[.]”

Before the President can invoke IEEPA, he or she must declare a national emergency under the National Emergencies Act (NEA) (codified at 50 U.S.C. § 1601 *et seq.*) and renew it annually. The NEA provides expedited procedures through which Congress can seek to revoke a national emergency declaration but doing so requires a joint resolution that is subject to presidential veto.

IEEPA is used to pursue sanctions regimes on issues ranging from narcotics trafficking to terrorism to human rights violations. Notable regimes include:

- The Specially Designated Global Terrorist (SDGT) regime (most recently updated by Executive Order 13,886 on Sept. 19, 2019), which imposes sanctions—including select secondary sanctions—on foreign individuals and entities believed to pose a significant risk of committing

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terrorism as well as foreign and U.S persons who provide them with material support;

- The regime enacted by Executive Order 13,757 (Dec. 28, 2016) imposing sanctions on foreign individuals and entities who have engaged in malicious cyber activities; and
- The regime enacted by Executive Order 13,928 (June 11, 2020) imposing sanctions on anyone who participates in or assists efforts by the International Criminal Court to investigate or arrest U.S. or allied personnel without state consent, as well as those materially supporting them.

While IEEPA provides presidents with broad authority—up to and including the ability to impose sanctions during the pendency of an investigation into whether an individual or entity is eligible for sanctions—it also contains certain statutory limitations, including on the regulation of communications and related materials and humanitarian goods (absent a special certification by the president).

United Nations Participation Act

Section 5 of the U.N. Participation Act (UNPA) as amended (codified at 22 U.S.C. § 287(c)) also provides separate statutory authorization to the president to regulate economic exchanges as well as communications between individuals and entities outside the United States and individuals, entities, or property subject to U.S. jurisdiction, but only “to the extent necessary to apply” “measures which [the U.N. Security Council] has decided, pursuant to article 41 of [the U.N.] Charter, are to be employed to give effect to its decisions under said Charter[.]” This allows the president to implement the variety of sanctions measures that the Security Council often adopts. In practice, the UNPA is generally used to authorize sanctions regimes alongside IEEPA, though it is sometimes cited as grounds to disregard certain limitations imposed by IEEPA.

Other Statutory Economic Sanctions Regimes

Congress has frequently enacted statutes that authorize economic sanctions separate from IEEPA and the UNPA. Some of these regimes simply direct the president to make certain use of his authority under IEEPA, while others provide independent authorization for certain sanctions measures. Some notable examples of statutory sanctions regimes include:

- The regime for designating Foreign Terrorist Organizations (FTOs) (codified at 8 U.S.C. § 1189), which provides independent authority for sanctions on foreign organizations who engage in terrorist activity that threatens U.S. national security;
- The Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (CISADA) (Pub. L. No. 111-194), which, among other measures, directs the president to impose an array of sanctions related to Iran and its nuclear weapons program;
- The Countering America’s Adversaries Through Sanctions Act of 2017 (CAATSA) (Pub. L. No. 115-44), which, among other measures, codified various IEEPA sanctions related to the Russian Federation, limiting the president’s authority to reduce or limit them; and
- The Global Magnitsky Human Rights Accountability Act (codified at 22 U.S.C. § 2656 note), which allows for the imposition of various measures on foreign persons believed to have committed gross violations of internationally recognized human rights, including economic sanctions under IEEPA that are not subject to IEEPA’s normal NEA requirements.