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Enforcement of Economic Sanctions: An Overview

The United States imposes economic restrictive measures (“economic sanctions”) on foreign states or non-state actors that engage in objectionable conduct. The sanctions may encompass individuals, sectors, and entities that are financing or otherwise connected to the targeted states or entities. The imposition of economic sanctions, which includes the blocking (freezing) of assets and restrictions on trade to deter financing that conduct, is meant to accomplish foreign policy and national security goals. This In Focus provides a brief overview of how economic sanctions are imposed and enforced.

Imposition of Economic Sanctions

Most economic sanctions are imposed using authority delegated to the President in the International Emergency Economic Powers Act (IEEPA) and the National Emergencies Act. The President may, upon declaring a national emergency involving any “unusual and extraordinary threat, which has its source in whole or substantial part outside the United States,” restrict or prohibit a wide range of transactions involving “property in which any foreign country or a national thereof has any interest by any person, or with respect to any property, subject to the jurisdiction of the United States.” “Person” includes natural persons and entities.

During periods when the United States “is engaged in armed hostilities or has been attacked by a foreign country or foreign nationals,” the President’s authority to block and prohibit transactions in designated persons’ property is expanded to include *confiscation* of property. The President may order that the property of any foreign person be confiscated, with title to such property vesting in an agency or person designated by the President. The President may also establish the terms on which the confiscated property may be held or sold, among other things. (Similar authority is available during a declared war under the Trading with the Enemy Act.)

To exercise authorities under IEEPA, the President issues an executive order that (1) declares that conditions constitute a national emergency under the National Emergencies Act, (2) designates targeted persons and sets out criteria by which the Secretary of the Treasury or other officials (e.g., the Secretary of State) may designate specific foreign persons who will be subject to the sanctions, and (3) establishes the types of transactions or other prohibitions that shall apply to a designated foreign state or person. For example, Executive Order 14024, related to countering “harmful foreign activities of the Government of the Russian Federation,” blocks a designee’s property within the United States and prohibits any U.S. person from engaging in transactions related to that property. The grounds on which the Secretary of the Treasury, in

consultation with the Secretary of State, may designate individuals under Executive Order 14024 include that the foreign person is “a political subdivision, agency, or instrumentality of the Government of the Russian Federation” or has engaged in “activities that undermine the peace, security, political stability, or territorial integrity of the United States, its allies, or its partners.”

Based on intelligence and other information, the Department of Treasury (Treasury) or the Department of State may identify specific persons that meet the criteria of the relevant executive orders and statutes. Persons whose assets are blocked and with whom U.S. persons may generally not deal appear on the Specially Designated Nationals and Blocked Persons List (SDN List). Persons whose assets are not blocked, but with whom certain transactions are prohibited, appear on non-SDN lists, collectively arranged by Treasury’s Office of Foreign Assets Control (OFAC) in a Consolidated Sanctions List.

OFAC administers these economic sanctions programs targeting malign activities in several jurisdictions as well as other types of conduct that are harmful to U.S. national security. Regulations pertaining to the sanctions programs are found in 31 C.F.R. Chapter V.

For further information on IEEPA, see CRS Report R45618, *The International Emergency Economic Powers Act: Origins, Evolution, and Use*.

Enforcement of Economic Sanctions

Sanctions implementation is shared across the executive branch, primarily among the Department of State, Treasury (through OFAC), the Department of Commerce, and the Department of Justice (DOJ).

OFAC

If OFAC suspects that a person or entity may be acting in violation of economic sanctions, it may open enforcement proceedings. Based on the evidence, OFAC may issue a finding of no violation, a request for further information, a cautionary letter, a finding of a violation, a finding of a violation with civil monetary penalty, or a criminal referral. Should OFAC have reason to believe that the sanctions violation may be ongoing or recur, it may also issue a cease-and-desist order. Where relevant, OFAC may also revoke, suspend, modify, withhold, or deny licenses to engage in certain transactions.

If OFAC imposes a monetary penalty, the amount varies depending on the relevant statutory authority and an evaluation of the circumstances. To calculate the penalty, OFAC first determines the “base amount” by considering whether the violation qualifies as “egregious” and whether

the individual voluntarily self-disclosed the violation. The egregiousness determination is based on a consideration of factors including the violator's willfulness, harm to the sanctions program's objectives, and individual characteristics (e.g., commercial sophistication). Then OFAC considers aggravating and mitigating factors, including whether the violator took remedial action or cooperated with OFAC's investigation to calculate a final penalty. Should OFAC believe that a particular case might warrant criminal penalties, it may refer the case to DOJ.

Violators face civil penalties of up to \$250,000 (which, as annually adjusted under the Federal Civil Penalties Inflation Adjustment Act of 1990, now amounts to \$368,136) or "an amount that is twice the amount of the transaction that is the basis of the violation." See Economic Sanctions Enforcement Guidelines. Seventy-five percent of the civil penalties and net proceeds of forfeitures related to violation of sanctions and other criminal provisions involving designated state sponsors of terrorism go into the United States Victims of State Sponsored Terrorism (USVSST) Fund. Otherwise, civil fines are deposited into the General Fund of the U.S. Treasury. Proceeds of the remaining 25% and most other civil forfeitures for sanctions violations are deposited into the DOJ Asset Forfeiture Fund or the Treasury Forfeiture Fund.

U.S. Department of Justice

DOJ handles criminal violations of sanctions as well as civil forfeitures. It also investigates conduct that may facilitate sanctions violations, such as money laundering and export control violations. DOJ's National Security Division leads sanctions violations prosecutions, while other prosecutions may be led by other offices, including the Money Laundering and Asset Recovery Section within the Criminal Division.

Because most sanctions are imposed using IEEPA or other sanctions laws that incorporate its authorities, DOJ sanctions prosecutions often rely on IEEPA's penalty provision. Violators face criminal fines of up to \$1 million or up to 20 years' imprisonment for willful violations. Criminal fines associated with designated state sponsors of terrorism are deposited into the USVSST Fund. Otherwise, fines may go into the Crime Victims Fund.

Sanctions-related charges. The DOJ may also seek to address the conduct that enables sanctions violations through other available authority. For example, Attorney General Merrick Garland in 2022 announced the creation of Task Force KleptoCapture to enforce sanctions imposed by the United States in response to Russia's 2022 expanded invasion of Ukraine. In addition to investigating sanctions violations, the task force investigates efforts to undermine economic sanctions, including money laundering and export control violations, often seeking forfeiture of assets identified as the proceeds of unlawful conduct. DOJ and Treasury are also participating in the multilateral Russian Elites, Proxies, and Oligarchs Task Force created to allow allied countries to "share information to take concrete actions, including sanctions, asset freezing, civil and criminal asset seizure, and criminal prosecution."

The Consolidated Appropriations Act of 2023 temporarily authorizes the Attorney General to transfer to the Secretary of State proceeds from certain assets forfeited prior to May 1, 2025, in connection with the Russian Harmful Foreign Activities Sanctions program implementing Executive Order 14024 for transfer to Ukraine "to remediate the harms of Russian aggression towards Ukraine."

Asset forfeiture. The United States' authority to confiscate assets within its jurisdiction generally derives from civil and criminal forfeiture statutes. Cooperation with foreign allies may enable the United States to seize and subject to forfeiture assets located abroad.

Criminal forfeiture authorities are found in various parts of the *U.S. Code* and require a defendant to forfeit "tainted" property—that is, property involved in or derived from certain illegal activity. These "statutes serve important governmental interests such as 'separating a criminal from his ill-gotten gains,' [and] 'returning property, in full, to those wrongfully deprived or defrauded of it.'" *Honeycutt v. United States*, 581 U.S. 443, 447 (2017). For example, 18 U.S.C. § 982 provides for criminal forfeiture of real or personal property following a defendant's criminal conviction if that property was involved in or traceable to a variety of offenses, including money laundering, securities fraud, and mail or wire fraud.

Civil forfeiture allows the government to bring an action against *property* rather than a *person*, generally on the theory that the property is suspected of being involved in a crime. For instance, the United States can seek civil forfeiture of real or personal property if that property was involved in or traceable to, among other things, money laundering, securities fraud, or mail or wire fraud. Property involved in IEEPA violations is subject to civil forfeiture under 18 U.S.C. § 981 as "specified unlawful activity."

Unlike in criminal cases, the government need not obtain a criminal conviction against the individual whose property the government seeks to civilly forfeit. Under 18 U.S.C. § 983, an "innocent owner" may contest a civil forfeiture on the grounds that he or she did not know of the illegal conduct giving rise to the forfeiture or, on learning of the illegal conduct, took all reasonable steps to terminate the property's involvement in such conduct.

Although Congress retains significant discretion in crafting criminal and civil forfeiture provisions, the Constitution's Excessive Fines Clause limits the scope of forfeiture laws. In the criminal context, the forfeiture must not be "grossly disproportionate to the gravity of a defendant's offense." *United States v. Bajakajian*, 524 U.S. 321, 334 (1998). In the civil context, the Excessive Fines Clause applies only when the relevant statutory provision's purpose is at least partly punitive rather than strictly remedial (e.g., ties forfeiture to the commission of certain crimes). *Austin v. United States*, 509 U.S. 602, 622 (1993).

Jennifer K. Elsea, Legislative Attorney

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