



## OFAC SANCTIONS : MY BUSINESS AT RISK?



The use of US economic sanctions as a tool of foreign policy dates back to the 19th century imposition by Secretary of the Treasury Albert Gallatin of sanctions against Great Britain for harassment of American sailors prior to the Anglo-American War of 1812. They are nothing new. Renewed American interest in sanctions emerged during the Trump era, with the rigorous implementation of US sanction programs a hallmark of executive power exercised without regard to Congress.

US economic sanctions are largely administered by the Office of Foreign Assets Control (OFAC) within the Treasury Department, and typically prohibit US persons from trading or transacting with sanctioned countries, regions, entities, or persons. OFAC maintains a list of individuals and companies owned or controlled by, or acting for or on behalf of, targeted countries. It also lists individuals, groups, and entities such as terrorists and narcotics traffickers, which are designated under programs that are not country specific. Collectively, such individuals and companies are called "*Specially Designated Nationals*" or "SDNs"<sup>[i]</sup>.



But the effects of sanctions do not end here. “*Secondary sanctions*”, which affect commercial transactions with no direct or apparent US nexus, seem to have far reaching and pernicious consequences, causing much uncertainty in global trade transacted beyond US borders. 2 simple examples illustrate this.

A carrier accepting cargo from a non-sanctioned and non-US entity resident in a non-sanctioned country that is bound for delivery to a non-sanctioned and non-US entity resident in a non-sanctioned country, may find themselves in a difficult spot when it later suspects that the cargo on board the ship may have originated from a sanctioned country. What should the carrier do?

A non-sanctioned and non-US crop seller from a non-sanctioned country may be aghast when his bank refuses to process payment for the cargo that he has sold to a non-sanctioned and non-US buyer in a non-sanctioned country. The bank’s refusal to process payment is due to the fact that the cargo was carried on board of a vessel that appears on OFAC’s SDN list. What recourse does the seller have?

Unfortunately there are no bright-line answers to these vexed questions. The carrier, seller, bank or other affected party faces a range of options, with varying legal and commercial consequences. Timorous legal advice is required, and the answer may differ in each case.

The problem does not seem to be abating. During Trump’s tenure, the world witnessed the US government roll out a more aggressive sanctions regime against targeted countries such as Iran and Venezuela, and a manifold expansion of OFAC’s SDN list<sup>[ii]</sup>. While analysts predict that President Biden will adopt a “*sharper*” and more targeted approach with his sanctions, in contrast to his predecessor’s “*blunt-force*” approach <sup>[iii]</sup> which largely failed to achieve its intended effect <sup>[iv]</sup>, it is arguable that both types of sanctions still have significant effect on third parties.



In the ASEAN context, President Biden recently approved an Executive Order imposing sanctions on military leaders in Myanmar linked to the recent 1st February 2021 coup, their business interests and close family members[v]. President Biden added that his government is ready to impose additional measures and that the US intends to work with their international partners to urge other nations to join in these efforts[vi]. It is noteworthy that Malaysia's 2019 exports to Myanmar totalled USD\$667.52 million[vii] (according to United Nations trade statistics).

Economic sanctions will no doubt remain potent and popular weapons in the US government foreign policy arsenal. They will almost certainly continue to pose risks to foreign companies carrying on business far beyond American shores. Business owners carrying on international trade would be well advised to seek timeous legal advice to navigate this new era of sanctions.

This article and our Firm's previous publications are available on our website (<https://www.tommythomas.net>).

[i]<https://home.treasury.gov/policy-issues/financial-sanctions/specially-designated-nationals-and-blocked-persons-list-sdn-human-readable-lists>

[ii]<https://foreignpolicy.com/2019/10/05/trump-sanctions-iran-venezuela-russia-north-korea-different-obamas/>

[iii]<https://www.reuters.com/article/us-usa-sanctions-insight-idUSKBN28Q1CV>

[iv]<https://www.aljazeera.com/news/2021/1/21/us-sanctions-under-trump-all-you-need-to-know>

[v]<https://www.whitehouse.gov/briefing-room/presidential-actions/2021/02/11/executive-order-on-blocking-property-with-respect-to-the-situation-in-burma/>

[vi]<https://www.nytimes.com/2021/02/10/us/politics/biden-sanctions-myanmar-coup.html>

[vii] <https://comtrade.un.org/data/>