

US SANCTIONS GOVERNMENT OF VENEZUELA: NOT QUITE AN EMBARGO

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ON AUGUST 5, 2019, PRESIDENT TRUMP ISSUED AN EXECUTIVE ORDER IMPOSING DIRECT “BLOCKING” SANCTIONS ON THE GOVERNMENT OF VENEZUELA (“GOV”) LED BY NICOLÁS MADURO. THE US HAD PREVIOUSLY IMPOSED MORE LIMITED SANCTIONS DESIGNED TO PREVENT THE GOV FROM OBTAINING FINANCING AND HAD IMPOSED BLOCKING SANCTIONS ON THE STATE-OWNED OIL COMPANY PETRÓLEOS DE VENEZUELA, S.A. (“PDVSA”).

GOVERNMENT OF VENEZUELA: SANCTIONED ENTITY

As a result of the sanctions, “US persons” (i.e., individual US citizens or permanent residents, entities organized in the US and any other persons in the US) will generally be prohibited from entering into transactions with the GoV and its subsidiaries. Furthermore, US banks will generally be required to “block” all payments in US dollars made to or from the GoV and its subsidiaries, effectively preventing them from using US dollars to make or receive payments.

"US persons generally cannot deal with [the GoV and its subsidiaries] and non-US persons who continue to do so face the risk of being added to the sanctions list."

In addition, non-US persons who have “materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of” any entities blocked under the Executive Order may themselves be added to the sanctions list. Thus, like the January 2019 sanctions that targeted PdVSA, the Executive Order may be thought of as akin to “secondary” or “extraterritorial” sanctions, in that they can apply to both US and non-US persons. Indeed, in April 2019, several non-US companies and vessels that traded with PdVSA were placed on the sanctions list.

As PdVSA and *its* subsidiaries were already subject to full blocking sanctions, the new sanctions most directly target other, non-PdVSA subsidiaries of the GoV, such as Petroquímica de Venezuela, S.A. (“Pequiven”), a GoV-owned petrochemical company. All such GoV subsidiaries should now effectively be considered “sanctioned persons” or “prohibited persons.” US persons generally cannot deal with such entities, and non-US persons who continue to do so face the risk of being added to the sanctions list.

LICENSES AND EXCEPTIONS

Wind-Down of Contracts

A general license to the Executive Order permits US and non-US persons to wind down their existing operations and contracts with the GoV and its subsidiaries through September 3, 2019. The wind-down applies to contracts and operations in effect prior to August 5, 2019, so it does not cover new transactions during the wind-down period. Beginning September 4, 2019, all transactions with the GoV and its subsidiaries must cease or parties will risk a sanctions violation (i.e., there is no grandfathering of pre-existing agreements).

Extension of Prior Licenses

Several previously issued licenses targeting PdVSA and its subsidiaries have been extended and expanded to cover the latest Executive Order:

- US oil and gas company Citgo is broadly exempted from the sanctions. Interestingly, Citgo is permanently exempted from the sanctions targeting the GoV, whereas its exemption from the sanctions targeting PdVSA expires after 18 months. Regardless, it seems highly unlikely that Citgo will ever become subject to these sanctions;
- Swedish oil company Nynas is exempted from the sanctions targeting both the GoV and PdVSA until October 25, 2019. Nynas remains subject to the 2017 financing restrictions that targeted the GoV and PdVSA. For GoV subsidiaries other than Nynas, these financing restrictions have now been largely rendered moot, as the new sanctions are far more restrictive; and
- Five specified companies (Chevron, Halliburton, Schlumberger Limited, Baker Hughes and Weatherford International) are permitted to continue transacting with PdVSA in Venezuela. The license only covers transactions with PdVSA and *its* subsidiaries, not other GoV entities. The license applies only to contracts in effect prior to July 26, 2019 (i.e., no new transactions), and is set to expire on October 25, 2019.

Use of Ports

A general license permits transactions with the GoV “ordinarily incident and necessary to operations or use of ports” in Venezuela. Presumably, this would cover payment to the GoV or its agents of routine port dues, docking fees, cargo handling fees, etc. It is less clear whether it would cover payments or transactions that are not in ordinary course. In addition, the GoV has mandated that all port fees be paid in the Venezuelan cryptocurrency *petros*, the use of which is itself subject to separate sanctions not covered by the license. It is unclear whether *petros* in fact exist, but US persons are generally prohibited from dealing in *petros*. Finally, the general license applies only to the sanctions imposed on the GoV, not the sanctions imposed on PdVSA. Therefore, any port services provided by PdVSA or *its* subsidiaries generally remain subject to sanctions.

Guaidó Administration

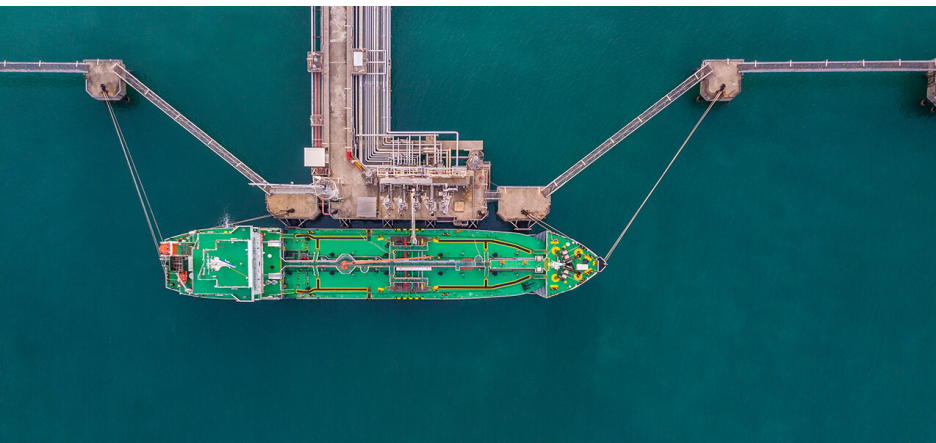
The US has recognized Juan Guaidó as the legitimate head of the Government of Venezuela, and a general license broadly exempts Guaidó and his representatives from the sanctions targeting the GoV. It is far less clear whether non-Venezuelan subsidiaries of the GoV and/or PdVSA that are under effective control by the Guaidó government rather than the Maduro government are exempted. The sanctions apply to entities “owned or controlled” by the GoV. Even where a GoV subsidiary’s board of directors takes direction from the Guaidó government and is therefore “controlled” by Guaidó, it may still be considered to be “owned” by the Maduro-led GoV. Therefore, it would be prudent to rely on a license in dealing with such entities.

BUT IS IT AN EMBARGO?

An “embargo” is generally thought of as a comprehensive ban on most or all trade with a specified country or territory. The US currently maintains an embargo on four countries: Cuba, Iran, North Korea and Syria, and one territory, Crimea.

In a literal sense, the sanctioning of the GoV should not be thought of as an “embargo” of Venezuela. Trade between US persons and non-government-owned Venezuelan parties generally remains permitted, unlike in the case of embargoed countries.

With that said, due to the outsized role that the GoV (including PdVSA) plays in the Venezuelan economy, and the high level of enforcement being exercised by the Trump administration (as evidenced by the sanctioning of several non-US ships and shipowners), the sanctions can best be thought of as a “quasi-embargo.” In many cases, it is difficult to do business in Venezuela without dealing with the GoV and its subsidiaries. Even if the sanctions technically are not an embargo, they succeed in shutting down much trade with Venezuela, which has a similar economic effect to an embargo.



IN MANY CASES, IT IS DIFFICULT TO DO BUSINESS IN VENEZUELA WITHOUT DEALING WITH THE GOV AND ITS SUBSIDIARIES.

SANCTIONS LANGUAGE IN AGREEMENTS

Loan and other agreements will often contain sanctions provisions. For purposes of these agreements, the GoV and its subsidiaries are now deemed “Prohibited Persons” or similar defined term, which may result in breaches of such agreements where a GoV entity is involved. In addition, some agreements define a “Sanctioned Country” or similar defined term to mean a country that is, *or whose government is*, subject to comprehensive sanctions. If this definition applies, Venezuela will be considered a “Sanctioned Country,” and transactions with Venezuela may be prohibited by agreement, even if permitted under law.

CONCLUSION

As the Trump administration escalates sanctions against Venezuela, it is increasingly difficult for US and non-US persons to do business with Venezuela without violating sanctions. Certainly, US persons should cease all transactions with the GoV and its subsidiaries, and non-US persons who transact with the GoV are at high risk of becoming sanctioned. Venezuela should definitely be thought of as a high-risk jurisdiction. Nevertheless, both US and non-US persons *can* continue to trade permissibly with Venezuela, so long as they do not deal with the GoV or its subsidiaries, and otherwise comply with US sanctions.

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