

## International Trade Alert

August 4, 2017

### United States Imposes Sanctions on Venezuela's President and 13 Current and Former Government Officials

On July 31, 2017, the U.S. Department of the Treasury, Office of Foreign Assets Control (OFAC) announced the addition of Venezuelan President Nicolas Maduro to its list of Specially Designated Nationals and Blocked Persons (the "SDN List"). The action follows the addition of 13 current and former government officials to the SDN List on July 26, 2017 (collectively, the "July designations"). Pursuant to these sanctions, U.S. persons cannot engage in transactions with President Maduro or the other listed parties, and all of their assets subject to U.S. jurisdiction are frozen.

In light of this recent action, this client alert discusses (i) the political background in Venezuela, including OFAC's decision to designate President Maduro and key government officials; (ii) the operation of U.S. sanctions on Venezuela; and (iii) the possibility of future sanctions targeting Venezuela.

#### Political Background of U.S. Sanctions on Venezuela

President Obama issued [Executive Order 13692](#), Blocking Property and Suspending Entry of Certain Persons Contributing to the Situation in Venezuela, on March 9, 2015 in response to the government of Venezuela's erosion of human rights guarantees, persecution of political opponents, curtailment of press freedoms, use of violence in response to protests and the presence of significant public corruption. OFAC most recently announced the July designations pursuant to this Executive Order.<sup>1</sup>

At the time of the July designations, OFAC indicated that it was acting in response to the recent decision by the Venezuelan government to proceed with elections for a National Constituent Assembly (ANC)—an assembly that will be tasked with rewriting Venezuela's constitution.<sup>2</sup> According to OFAC, the individuals targeted for sanctions worked for agencies associated with the elections, or played a role in government corruption or violence against opposition protestors. In a statement to the press, Treasury Secretary Steven Mnuchin stated that the sanctions "highlight the high costs and personal repercussions that enablers of the [Maduro] regime could face" for undermining Venezuelan democracy through the ANC.<sup>3</sup>

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<sup>1</sup> OFAC also recently designated eight members of the Venezuelan Supreme Court of Justice for their role in undermining the democratic process. OFAC Press Center, *Treasury Sanctions Eight Members of Venezuela's Supreme Court of Justice* (May 18, 2017), <https://www.treasury.gov/press-center/press-releases/Pages/sm0090.aspx>.

<sup>2</sup> OFAC Press Center, *Treasury Sanctions the President of Venezuela* (July 31, 2017), <https://www.treasury.gov/press-center/press-releases/Pages/sm0137.aspx>.

<sup>3</sup> OFAC Press Center, *Remarks by Treasury Secretary Steven T. Mnuchin on Sanctions* (July 31, 2017), <https://www.treasury.gov/press-center/press-releases/Pages/sm0140.aspx>.

President Maduro originally announced the decision to convene the ANC on May 1, 2017, and justified the move as a necessary measure to overcome conflict and restore peace in Venezuela.<sup>4</sup> Opponents of President Maduro, who claim that his administration is responsible for the civil unrest and severe economic crisis afflicting the country, characterize the ANC as a maneuver that will undermine Venezuela's democracy by consolidating power in the hands of the Maduro administration under a new constitution.<sup>5</sup> The Trump administration also issued a statement denouncing President Maduro and signaling the possibility of "swift economic actions" should the ANC process move forward.<sup>6</sup> The July designations therefore may be only one step among multiple actions taken by the U.S. government should the ANC process continue, as discussed further below.

### **Operation of U.S. Sanctions on Venezuela**

Executive Order 13692 is codified in the Venezuela Sanctions Regulations (VSR), 31 C.F.R. Part 591. It is a list-based program in which the U.S. government identifies specific individuals or entities that it deems to be engaging in the activities described in the Executive Order and includes them on the agency's SDN List. Once a person is designated on the SDN List, U.S. persons (which include U.S. citizens, legal permanent residents, entities organized under the laws of the United States or a U.S. jurisdiction (including foreign branch offices), and anyone located in the United States) must block that person's property and interests in property, unless an exception applies or the activities are otherwise authorized by OFAC. Entities that are owned, directly or indirectly, 50 percent or more by persons on the SDN List must also be blocked by U.S. persons.

**Restrictions Related to Designations.** As a result of these designations, U.S. persons may not:

- engage in transactions involving SDNs
- engage in transactions with entities that are 50 percent or more owned by an SDN, directly or indirectly
- engage in transactions involving third parties that are acting on behalf of SDNs or that are otherwise designed to evade or avoid the sanctions restrictions.

**Limitations on Effect of Designations.** As with other similarly constructed list-based sanctions programs, these designations do not prevent U.S. persons from engaging with entities that designated persons work for or control without an ownership interest, except to the extent that a U.S. person is engaging with a designated individual, such as in cases where the SDN signs a contract on behalf of an employer. Furthermore, the designations do not extend to family members of designated individuals, unless they act on the designated individual's behalf.

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<sup>4</sup> Cawthorne & Ulmer, *After Month of Protests, Venezuela's Maduro Triggers Shakeup of Powers*, Reuters (May 1, 2017), <http://www.reuters.com/article/us-venezuela-politics-idUSKBN17X203>.

<sup>5</sup> Id.

<sup>6</sup> The White House, Office of the Press Secretary, *Statement from President Donald J. Trump* (July 17, 2017), <https://www.whitehouse.gov/the-press-office/2017/07/17/statement-president-donald-j-trump>.

Important also, the VSR do not, at this time, ban imports from Venezuela; prevent U.S. persons from entering into contracts involving Venezuelan businesses; or otherwise restrict U.S.-person engagement in projects with Venezuelan industries, such as the energy sector, separately from the constraints placed on the designated parties' property and interests in property as described above.

### **Potential for Future Sanctions on Venezuela**

The sanctions imposed on President Maduro in particular signal that the Trump administration is willing to act in response to actions of the Venezuelan leadership that it views as undermining democratic institutions through the ANC process. OFAC only rarely designates heads of state under its sanctions programs, which underlines this point. Thus, the July designations suggest the possibility that the Trump administration, or members of Congress, could consider and impose broader economic sanctions on Venezuela if President Maduro continues with the ANC process.

Administration officials have indicated that they have not foreclosed the possibility of issuing new sanctions targeting Venezuela's oil sector.<sup>7</sup> For practical reasons, at this stage, it appears unlikely that such sanctions would encompass a total ban on oil shipments from Venezuela to the United States due to the drastic domestic and international repercussions that would have, particularly because Venezuela remains one of the largest suppliers of oil to the United States. However, the administration has signaled that escalating sanctions might include restrictions on sales of U.S. light crude to Venezuela (which Venezuela uses to process its heavy crude prior to export) and banking restrictions, including on Venezuela's state-owned oil company PDVSA.<sup>8</sup> However, even measured action could result in significant disruptions to international oil markets, as well as negative impacts on the general economy and population of Venezuela.

The U.S. Congress has been deeply engaged in promulgating other sanctions programs (most recently, Russia, North Korea and Iran (see our alert [here](#))), with broad bipartisan support. Since Maduro's antidemocratic actions leave the Venezuelan regime without allies in Congress, members might take the opportunity to demand additional sanctions on Venezuela. There is bipartisan support in Congress for legislating actions against Venezuela, as evidenced by the introduction in the Senate of the Venezuela Humanitarian Assistance and Defense of Democratic Governance Act of 2017, which directs the President to impose sanctions on any current or former official of the Venezuelan government who is determined to have perpetrated significant acts of public corruption, or actions or policies that undermine democratic processes or institutions.

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<sup>7</sup> The White House, Office of the Press Secretary, *Press Briefing by Press Secretary Sarah Sanders, Treasury Secretary Steven Mnuchin, and National Security Advisor H.R. McMaster*, 7/31/2016 #3 (July 31, 2017), <https://www.whitehouse.gov/the-press-office/2017/07/31/press-briefing-press-secretary-sarah-sanders-treasury-secretary-steven>.

<sup>8</sup> Parraga, *U.S. Oil Sale Ban to Venezuela's PDVSA Would Hit Refining, Blending*, Reuters (July 31, 2017), <http://www.reuters.com/article/us-venezuela-politics-exports-idUSKBN1AG07G?il=0>.

Nevertheless, it remains to be seen whether the imposition of economic sanctions will be effective or if they may instead embolden President Maduro's regime. Indeed, following his addition to the SDN List, Maduro reportedly described the action as a reflection of the United States' "desperation" and "hatred" for Venezuela's socialist government and told his supporters that he does not "take orders from the empire."<sup>9</sup> There are some indications that U.S. allies, such as Colombia, Panama, Mexico and Canada, are considering similarly targeted sanctions in coordination with the U.S. actions last week.<sup>10</sup> If taken, those actions may undercut President Maduro's argument that the recent measures form part of the United States' imperialist agenda. Broader coordination, particularly from major Latin American countries like Brazil, and countries in the European Union, could help make the sanctions more effective and may shape any further action on the part of the United States.

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<sup>9</sup> Savransky, *Venezuela's Maduro Says U.S. Sanctions Show Trump's "Desperation" and "Hate,"* The Hill (August 1, 2017), <http://thehill.com/homenews/administration/344725-venezuelas-maduro-says-us-sanctions-against-him-show-trumps>.

<sup>10</sup> See *Colombia Se Une a Las Sanciones de EEUU a Venezuela*, Hispantv (July 28, 2017), <http://www.hispantv.com/noticias/colombia/348791/apoyo-sanciones-eeuu-funcionarios-venezuela-cardenas>; *México Se suma a Sanciones de Estados Unidos Contra Funcionarios Venezolanos*, Runrunes (July 27, 2017), <http://runrun.es/internacional/319292/mexico-se-suma-a-sanciones-de-estados-unidos-contra-funcionarios-venezolanos.html>; *Panamá Apoya Sanciones de EEUU Contra Venezuela*, TVN Noticias (July 29, 2017), [https://www.tvn-2.com/nacionales/Gobierno-Panamá-sanciones-EEUU-Venezuela\\_0\\_4813768604.html](https://www.tvn-2.com/nacionales/Gobierno-Panamá-sanciones-EEUU-Venezuela_0_4813768604.html); Zilio, *Canada Reviewing U.S. Sanctions on 13 Venezuelan Government Officials*, The Globe and Mail (July 27, 2017), <https://www.theglobeandmail.com/news/politics/canada-reviewing-us-sanctions-on-13-venezuelan-government-officials/article35814501/>.

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