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US Sanctions: Implications for Korea



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Road Map

- ▣ OFAC – Office of Foreign Assets Control
 - ▣ Treasury Department

- ▣ ITAR – International Traffic in Arms Regulations
 - ▣ State Department, Directorate of Defense Trade Controls (DDTC)

- ▣ EAR – Export Administration Regulations
 - ▣ Commerce Department, Bureau of Industry and Security (BIS)

- ▣ DOJ – Department of Justice
 - ▣ Criminal prosecutions

This talk is only a summary.
It does not substitute for obtaining proper legal advice.



Export Controls (briefly)

State

- ▣ US Munitions List
- ▣ Defense articles and services
- ▣ Export and reexport
Includes deemed exports

Commerce

- ▣ Commodity Controls List
- ▣ Dual-use goods and tech
- ▣ Export and reexport
Includes deemed exports
- ▣ BIS Entity List – Ex: ZTE, Huawei
- ▣ Duplicative penalties with OFAC



Two Main Types of Sanctions

Primary Sanctions

- ▣ Violations punished by criminal prosecution and civil penalties
- ▣ Mainly restrict activities by US persons, but with important exceptions affecting non-US persons. For some violations, BIS can cut off US suppliers.
- ▣ OFAC / some overlap w BIS

Secondary Sanctions

- ▣ Economic “sticks” to encourage 3d-country companies to avoid business with sanctioned countries and persons
- ▣ Biggest “stick”: Asset freeze and near-total bar on doing business with US
- ▣ OFAC or State Dept
- ▣ New: Lawsuits re Cuba



OFAC Overview

- ▣ Main statute – IEEPA
 - ▣ International Emergency Economic Powers Act

- ▣ Main targets today
 - ▣ Cuba
 - ▣ Iran
 - ▣ North Korea
 - ▣ Russia/Crimea
 - ▣ Syria
 - ▣ Venezuela
 - ▣ SDN List and 50% Rule

- ▣ Details vary widely and can change without notice



Common OFAC Prohibitions

- ▣ Blocking
 - ▣ Freezes assets
 - ▣ Effectively prohibits virtually all dealings
- ▣ Import and export/**reexport** restrictions
 - ▣ Includes goods, services, and tech
- ▣ Restrictions on investment, lending & other financial transactions
- ▣ Approval and facilitation
- ▣ Evasion, attempt, conspiracy, and **causing violations**
- ▣ Travel (Cuba only)



Key Term – US Person

- ▣ US citizens
- ▣ US permanent residents (green card holders)
- ▣ Entities organized under US law
 - ▣ Includes US subsidiaries of foreign companies
 - ▣ Includes foreign branches of US companies
 - ▣ Cuba and Iran sanctions reach foreign subsidiaries too
- ▣ Persons located in the US
 - ▣ Includes temporary travelers
 - ▣ Includes US branches of foreign companies



Extraterritorial Effects

- ▣ Re-export controls
 - ▣ Includes controls on certain non-US goods with US inputs
- ▣ Causing violations by US persons
 - ▣ Especially banks
 - ▣ Can include customers, suppliers, employees, etc
 - ▣ Can include own US subsidiary
- ▣ **Increasing criminal prosecution** of willful violations by non-US persons



Secondary Sanctions Triggers – Iranian Energy Sector

- Investment in Iran's energy sector
- Selling gasoline to Iran
- Buying oil or petrochemical products from Iran
- Providing certain goods or services to Iranian energy or petrochemical sectors, or to the shipbuilding, shipping, and port sectors
- Transporting Iranian crude oil
- Participating with Iran in certain oil & gas development projects outside Iran
- Supporting, assisting, or providing certain goods and services to National Iranian Oil Co (NIOC) or Naftiran Intertrade Co
- Insuring, reinsuring, or underwriting insurance for National Iranian Tanker Co



Secondary Sanctions Triggers – Iranian Sectoral Sanctions

- ▣ Sectoral sanctions spreading the last 5 years. Reached Iran in May 2019.
- ▣ Specific Iranian sectors: iron, steel, aluminum, copper
- ▣ Operating in these sectors (including through ownership or control)
- ▣ Significant transaction to sell to, or buy from, these sectors
- ▣ Materially assisting an SDN under this Executive Order
- ▣ Acting for, or being owned or controlled by, such an SDN



Impact on Korea: Oil Sanctions

- ▣ Secondary sanctions resumed for buying Iranian oil in November 2018
- ▣ Initial waiver for 8 countries - including Korea - to May 2, 2019
 - ▣ “Significant reduction exceptions”
- ▣ No waivers now
- ▣ South Korean oil imports from Iran appear to have ended

NDA 2012, § 1245(d)



More Iran-related Triggers for Secondary Sanctions

- Engaging in or facilitating a significant transaction with IRGC or its affiliates
- Dealings with many Iranian SDNs
- Providing certain goods or services to the Iranian automotive sector
- Supporting, assisting, or providing certain goods or services to the Central Bank of Iran
- Various banking transactions with Iran, including transactions in rials
- Various insurance and reinsurance transactions



Still More

- ▣ Helping Iran evade sanctions
- ▣ Selling Iran goods or tech that can be used for human rights abuses
- ▣ Buying, or facilitating dealings in, Iranian bonds and other sovereign debt
- ▣ Helping Iran acquire US banknotes
- ▣ Selling, supplying, or transferring to or from Iran precious metals, graphite, aluminum, steel, certain other metals, coal, and software for integrating industrial processes
- ▣ Sales to Iran of certain weapons or tech for developing WMDs
- ▣ Mining, producing, or transporting Iranian uranium



Impact on Korea

- ▣ South Korean firms have been active in energy infrastructure construction in Iran, and its exports to Iran are mainly iron, steel, consumer electronics, and appliances

- ▣ The following firms have announced their postures:
 - ▣ Daelim terminated a \$2 billion contract to expand an Iranian oil refinery. Hyundai cancelled a \$500 million contract to build a petrochemical plant in Iran, citing “financing difficulties”
 - ▣ Hyundai suspended joint ventures to produce cars in Iran
 - ▣ Woori Bank and Industrial Bank of Korea have partly suspended transactions with Iran
 - ▣ POSCO withdrew from a 2016 deal to build a steel plant in Iran’s free trade zone at the port of Chahbahar

CRS Report, April 2019 (excerpted)



South Korean Examples

- ▣ Korea Automation Industry and Joseph Choi on BIS Entity List for supporting purchases by Iranians involved with developing ballistic missiles
 - ▣ Presumption of denial for all items subject to EAR
- ▣ Kenneth Zong, US citizen living in Seoul, criminally charged with exporting services from Korea to Iran through 3 Korean companies and related money laundering. Imprisoned in Korea for tax violations.
- ▣ Sea Tel paid small OFAC fine in 2014 for selling marine antennas to a South Korean distributor with knowledge (or reason to know) they were intended for export to Iran
 - ▣ Now, distributor might be charged with causation or conspiracy



Proliferating Secondary Triggers

- ▣ Russia: Facilitating a significant transaction for a sanctioned person or close relative
- ▣ North Korea: Materially assisting an SDN or engaging “in at least one significant importation from or exportation to North Korea of any goods, services, or technology”
- ▣ Venezuela: Materially assisting, supporting, or providing goods or services to or in support of, an SDN or acting on behalf of GOV
- ▣ Terrorism: Materially assisting, supporting, or providing goods or services to or in support of, an SDN
- ▣ Cuba: “Trafficking” in expropriated property



North Korea Case Study 1

- 31 Jan 2019 – ELF Cosmetics paid \$1MM penalty for importing 156 shipments of false eyelashes from China containing DPRK-origin materials
- No actual knowledge of the DPRK-origin materials
- Failed to exercise “sufficient supply chain due diligence while sourcing products from a region that poses a high risk to the effectiveness” of sanctions against DPRK
- ELF started supply chain audits to verify origin of materials (including checking suppliers’ bank records) and requires suppliers to sign certificates of OFAC compliance



North Korea Case Study 2

- 2016 - Dandong Hongxiang Industrial Development Co. Ltd. (DHID) and 4 associated individuals criminally charged for helping DPRK bank send payments through the US
- Named as SDNs
 - Can be named as an SDN (among other reasons) for materially assisting an SDN or for engaging “in at least one significant importation from or exportation to North Korea of any goods, services, or technology” (EO13810)
- Forfeiture suit to seize funds in 25 Chinese accounts



More Extraterritorial Effects

- ▣ Contractual commitments to comply
 - ▣ Especially required by banks
 - ▣ ELF case likely to accelerate

- ▣ Securities offerings
 - ▣ Use of proceeds restrictions
 - ▣ Enhanced disclosures



Compliance

- OFAC expects businesses – including non-US businesses – to have compliance programs based on self assessment of sanctions risks
 - Living programs, implemented in practice, with updates and training
 - Senior leadership support

- Need internal controls capable of assuring compliance with legal obligations and voluntary commitments. Either refrain from business lawful for non-US persons or take care with all US connections
 - Ensure that US persons are not involved, including recusal policies
 - Due diligence
 - Segregate funds
 - Segregate US-origin or target-origin goods
 - Account for percentage of US-origin input
 - Account for percentage of sales to target countries

- Need different policies at level of US subsidiary and non-US parent



Context: National Security Rising 1

CFIUS

- Committee on Foreign Investment in the US
- National security reviews of foreign investment
- Expanding concerns and increasing rigor
- New: mandatory filings, penalties, noncontrolling investments covered
- Coming: Real estate transactions, significant regulatory changes, probable changes to the rules on mandatory filings



National Security Context 2

Section 232

- ▣ Allows President to “adjust the imports” of goods found to threaten to impair national security
- ▣ Previously, used rarely and only for oil
- ▣ Tariffs on steel and aluminum
- ▣ No tariffs yet on autos, auto parts, uranium
- ▣ Non tariff barriers also possible
- ▣ Legal and political controversies - How much discretion?



Thank you!

Please do not hesitate to contact me:



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