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Russia Sanctions: Implications for China

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Russia Sanctions: Implications for China



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Renmin University – March 14, 2022

Personal Introduction

- ▣ > 25 years as international lawyer, mainly international trade and investment
- ▣ Started career at US Treasury, long experience at top global firms
- ▣ Former law professor
- ▣ Current focus mainly sanctions (OFAC) and investment reviews (CFIUS)
- ▣ Boutique firm with international focus





Summary

- ▣ Introduction to US sanctions
 - ▣ OFAC – Office of Foreign Assets Control
 - ▣ BIS – Bureau of Industry and Security
- ▣ Start and evolution of Russia sanctions, 2014-21
- ▣ New Russia sanctions, 2022
- ▣ Implications for China of Russia sanctions

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

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Introduction to US Sanctions

Part 1



Two Main Types of Sanctions

Primary Sanctions

- ▣ Violations punished by criminal prosecution and civil penalties
- ▣ Mainly restrict activities by US persons, but with important applications to non-US persons
- ▣ BIS can cut off US suppliers
- ▣ OFAC / some BIS

Secondary Sanctions

- ▣ Economic “sticks” to encourage 3d-country companies to avoid business with sanctioned countries and persons
 - ▣ Often “menu-based”
- ▣ Biggest “stick”: Asset freeze and near-total bar on doing business with US
 - ▣ **SDN List**
- ▣ OFAC or State Dept



OFAC Overview

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

- ▣ Main targets today
 - ▣ Cuba
 - ▣ Iran
 - ▣ North Korea
 - ▣ Russia/3 regions of Ukraine
 - ▣ 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 and permanent residents
 - ▣ Includes employees, officers & directors of non-US entities
- ▣ 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

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Russia Sanctions

Part 2



Overview

- Ukraine-Related sanctions, 2014
 - Sectoral sanctions
 - Crimea regional sanctions
- CAATSA, 2017
 - **Countering America's Adversaries Through Sanctions Act**
- Chemical Weapons sanctions
- Pipeline sanctions
- SDN designations – oligarchs, election interference, human rights (Magnitsky), cyber sanctions, Syria, Venezuela



Sectoral Sanctions

- ▣ Innovative
- ▣ Easy to add new sanctions targets
- ▣ Can be SDN or non-SDN "menu based"
 - ▣ **SSI List**
- ▣ Followed in Venezuela, Iran, Belarus
- ▣ Restrict dealings in new debt and new equity
 - ▣ Includes payment terms
 - ▣ Listed entities in defense, energy, financial sectors
- ▣ Energy sector – prohibiting goods and services to certain projects in deepwater, offshore, and shale oil production



Crimea

- ▣ Regional sanctions
- ▣ Broad prohibitions on trade in goods and services, and investments
 - ▣ Limited exceptions
 - ▣ BIS role
- ▣ Compliance challenges - Not a separate country
 - ▣ Difficult to screen
 - ▣ Questions about border
 - ▣ Risks of diversion



CAATSA

- ▣ Prevented repeal of Obama-era sanctions
- ▣ Tightened sectoral sanctions
- ▣ Added numerous triggers for secondary sanctions
- ▣ Oligarch sanctions



Invasion of Ukraine, Feb. 2022

- ▣ Strenuous reaction
 - ▣ Number of countries
 - ▣ Speed – abrupt reversal
 - ▣ Sanctions designations
 - ▣ Voluntary exits
 - ▣ Notable SDN designations, including Vladimir Putin and several major banks



New Regional Sanctions

- ▣ Donetsk and Luhansk separatist regions
 - ▣ Not well defined
 - ▣ More regions may be added
- ▣ Like Crimea sanctions
- ▣ License to winddown pre-existing contracts and operations by March 22.
- ▣ New license to engage in certain humanitarian activities



New Financial Sanctions # 1

- ▣ SDN Designations for some banks
 - ▣ VTB, VEB, Sovcombank, Promsvyazbank, Otkritie, Novicombank
- ▣ Prohibits US persons from “any transaction involving the Central Bank ..., the National Wealth Fund ..., or the Ministry of Finance ..., including any transfer of assets to such entities or any foreign exchange transaction for or on behalf of such entities”
- ▣ No correspondent banking relations for Sberbank
- ▣ EU excludes from SWIFT the 6 banks above + Rossiya



New Financial Sanctions #2

- ▣ Restrictions on dealings in new debt and equity of some banks to begin March 26
- ▣ No investment in sectors to be identified
- ▣ Restrictions on sending USD banknotes to Russia or GOR
 - ▣ Limited exceptions



New Energy Sanctions

- ▣ Nord Stream 2 – SDN designation
- ▣ Restrictions on dealings in new debt and equity of some companies to begin March 26
- ▣ New energy restrictions:
 - ▣ Ban imports of oil, LNG, coal, coal products
 - ▣ No new investment in Russian energy sector
 - ▣ Approval or facilitation
 - ▣ Performance of pre 3/8 contracts allowed through 4/21 unless involve SDNs



Trade Sanctions

- ▣ EAR99 items restricted for Entity List and military end-uses/military end-users
- ▣ New requirements for various non-EAR99 items
- ▣ New foreign direct product rules, similar to Huawei rules
- ▣ Arms embargo
- ▣ Ban on luxury good exports

Import bans

- ▣ Fish and seafood, alcohol, non-industrial diamonds
- ▣ Winddown by 3/24

More sanctions coming

- ▣ Raise tariffs (no MFN rate)
- ▣ **Many bills in Congress**

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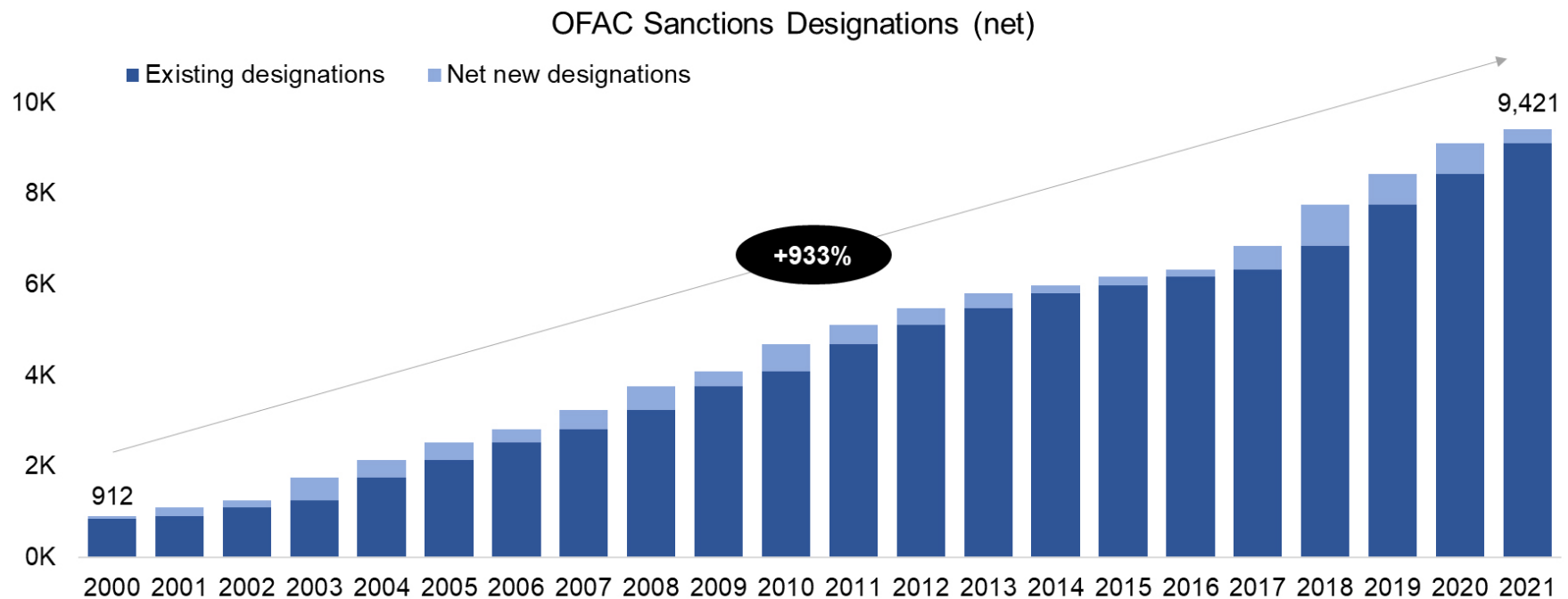
Implications for China

Part 3



More SDN Designations

Sanctions use has increased over the last 20 years



Source: Treasury Sanctions Review, Oct 2021



China Focus: 2021

SDN Designations by Country

100 – China

96 – Belarus

95 – Russia

76 – Burma

35 – Iran

Chinese designations continue recent trend

Reasons for China Sanctions

Chinese Military Industrial Complex

Hong Kong

Iran

North Korea

Magnitsky (Human Rights)

Narcotics

Terrorism

Source: CNAS, 2021 Year in Review



Proliferating Secondary Triggers

- ▣ Iran: Over 20 triggers now
- ▣ **Russia: Facilitating significant transaction for 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”
- ▣ Venezuela: Materially assisting, supporting, or providing goods or services to or in support of, an SDN or acting on behalf of GOV
- ▣ SDN and Entity List designations resembling secondary sanctions, including sectoral sanctions
- ▣ **Examples only. Expect more.**



Significant Transaction

Totality of the facts and circumstances, which **may** include:

- ▣ size, number, and frequency of the transaction
- ▣ nature of the transactions
- ▣ level of awareness of management / pattern of conduct
- ▣ nexus between the transactions and a blocked person
- ▣ impact on statutory objectives
- ▣ involve deceptive practices?
- ▣ **such other factors deemed relevant on a case-by-case basis**



Examples

National Security Adviser Jake Sullivan

“We are communicating directly, privately to Beijing that there will absolutely be consequences for large-scale sanctions evasion efforts or support to Russia”

Commerce Secretary Gina Raimondo

[I]f the US were to find that a company like [SMIC] was selling its chips to Russia, “we could essentially shut SMIC down because we prevent them from using our equipment and our software”

Sources: NY Times



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
- ▣ Contractual commitments / securities disclosure



Case Study

- 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



Thank you!

Please do not hesitate to contact me:



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