

SANCTIONS SCHOOL

US Sanctions

BASIC FRAMEWORK

The primary route for US sanctions is via Executive Orders (EO) issued by the President under powers granted by congress.

The key laws that form the foundation for US sanctions are 'Trading with the Enemy Act 1917 (TWEA), and the 'International Emergency Economic Powers Act 1977' (IEEPA). Like all other nations, the US also has legislation to enable UN sanctions and this is managed under the 'United Nations Participation Act'. (See paper 107 for more information on UN sanctions).

There is a significant collection of additional sanctions legislation, these additional Acts are more focussed on specific jurisdictions or sectors and will be covered in more detail in future lessons.

The sanctions regulations are set out in the Code of Federal Regulations (CFR), a significant body of legislation and regulation. The sanctions regulations are codified in CFR Title 31, Chapter V, Parts 501-599.

Each part covers a specific set of regulations and not all parts have regulations attached. As an example, part 501 sets out the reporting obligations and penalties under US sanctions,

The UK Finance sanctions school is free to everyone and builds knowledge and understanding of the international sanctions environment.

Year 1 materials cover the foundations of what sanctions are, their history, what types of sanctions are imposed, the key regulators for UK based companies and the licences, reporting, and enforcement that sanctions programmes have.

This is lesson 9 of 12, which covers US sanctions. The other lessons, tests and the larger end of year test are available on the **UK Finance website** along with links to accompanying podcasts for each lesson.

the next active part is 510 which covers North Korea sanctions regulations, then 515 which covers Cuban assets control regulations. There are over 40 active regulations managed by the US Treasury department 'Office of Foreign Assets Control' (OFAC) which oversees the issue of the relevant sanctions and undertakes any civil enforcement for breaches.

US sanctions are broadly comprehensive, asset blocking, or non-blocking.

Comprehensive sanctions are in place for Cuba, Iran, North Korea, Syria, and regions of Ukraine that have been invaded by Russia (Crimea, Donetsk people's republic, and Luhansk people's republic).

Blocking sanctions are applied to those listed on the 'Specially Designated Nationals and Blocked Persons list' (SDN) and the 'Specially Designated Global Terrorist list' (SDGT). These are held on the SDN list which imposes an asset freeze requirement.

Non-blocking sanctions are held on a number of lists such as the 'Foreign sanctions evaders list', the Non-SDN menu based sanctions list' and others. OFAC offers a single list which consolidates these lists into a single file. The SDN list and the consolidated list are required to adhere to US sanctions overseen by OFAC. Screening is covered in more detail in paper 110.

DEPARTMENT OF TREASURY

The treasury Office of Foreign Assets Control (OFAC) is the primary administrator and enforcer for US sanctions.

Empowered by the International Emergency Economic Powers Act 1977 (IEEPA) OFAC has investigative, and enforcement powers. Sanctions is complex and OFAC works with many other US departments to ensure that US sanctions are observed.

OFAC is not the only regulator that can issue fines for sanctions breaches or poor conduct. OFAC works closely with other regulators and agencies such as the 'Office of the Comptroller of the Currency' (OCC) and the Financial Crimes Enforcement Network (FinCEN).

OFAC also works closely with the State department for terrorism and military goods prohibitions. It also works closely with the Department of Commerce 'Bureau of Industry and Security' (BIS) who have responsibility for Trade controls and dual use goods which are subject to the 'Export Administration Regulations (EAR).



DEPARTMENT OF STATE

The Department of State has areas of US sanctions that it has responsibility for. Notably, **the State department oversees US exports of defence trade** via The Directorate of Defence Trade Controls (DDTC). The DDTC holds responsibility for the International Traffic in Arms Regulations (ITAR) which is enacted under the Arms Export Control Act.

The department of State also manages US designations of Foreign Terrorist Organisations (FTOs) which are designated for committing or who pose a significant risk of committing terrorist acts. The powers for this are via Executive Order 13224 which was issued in response to the attacks on the World Trade Centre, September 11 2001.

Groups, entities and individuals may be labelled as Specially Designated Global Terrorists (SDGT) a power that the Department of State shares with the Department of the Treasury.

DEPARTMENT OF COMMERCE

The Bureau of Industry and Security (BIS) enforces trade prohibitions on the export of dual use items, which may include some military items.

BIS publishes the Commerce Control List (CCL) which categorises goods into 10 broad classes and there are prohibited, regulated, and items not covered by the lists which come under the Export Administration Regulations.

Items not covered by the list are primarily civilian items and are specified with the code EAR99, while EAR99 items may be fine to export from the US, they are still subject to sanctions prohibitions and if the destination is a country or region subject to restrictions, or the end user is subject to restrictions then a licence must be requested from OFAC.

BIS also maintains a 'Denied Persons List' which contains those that have been denied export privileges and an 'Entity list' which contains those prohibited from receiving items subject to the EAR unless a licence is granted.

Some of the entries on the BIS lists are also on the OFAC SDN list, but not all so it is important to ensure the BIS lists form part of your sanctions screening. Screening is covered in more detail in paper 110.

DEPARTMENT OF JUSTICE

The Department of Justice (DOJ) prosecutes violations of federal criminal laws, this includes 'willful' violations of sanctions and/or export control laws.

IEEPA makes it a crime to willfully violate or attempt to violate any regulation issued under the act.

The DOJ works closely with OFAC, BIS, the DDTC and others to ensure US sanctions and export control laws are upheld.

A criminal prosecution by the DOJ does not automatically replace civil investigation and potential fines from other agencies.

DEPARTMENT OF HOMELAND SECURITY

The Homeland Security Investigations (HSI) has an investigation and detection remit for potential sanctions violations.

HSI runs a program that combats any illegal export of WMD, military technology or equipment, dual use goods infringements, and transactions that may involve terrorist organisations or prohibited regions.

STATE PROHIBITIONS

Under US legislation, individual states are empowered to impose sanctions and these generally take the form of purchase or contract prohibitions, preventing state agencies from engaging with companies that undertake business with a named country. There are also investment prohibitions which prevent State agencies from investing in such companies.

The Comprehensive Iran Sanctions Accountability and Divestment Act 2010 (CISADA) led to a number of States imposing selective investment laws that were aimed at Iran.

The Sudan Accountability and Divestment Act 2007 allowed States to impose restrictive measures for investments in Sudan.

These State level laws can be problematic for international companies, who may find themselves caught between losing valuable state business if they undertake other business that has an Iran or Sudan nexus.

OWNERSHIP

The US sanctions regimes capture entities owned by those on the SDN list.

Ownership has a threshold of 50%, but this can be an aggregation of two or more designated parties. So if 2 sanctioned individuals both own **25%** of Company A, then company A is treated as sanctioned as the aggregation of **2 x 25% = 50%**.

Ownership also cascades, so if company A owns **50%** or more of company B, then this too becomes subject to sanctions. Ownership and control is covered in more detail in year 2.

LICENCES

The US has the ability to issue both individual licences and general licences.

OFAC will issue a general **licence that allows all parties to undertake prohibited actions subject** to the restrictions and limits of the licence. General licences are often time bound and include an expiry date.

General licences do not require any referral to OFAC.

Individual licences are to allow an individual or entity to undertake a specific transaction, trade or work which is prohibited by sanctions restrictions. These are not public documents and are specific to the applicant.

ENFORCEMENT

OFAC manages the civil enforcement, and this has four stages as set out in CFR title 31, subtitle b, chapter V, part 501.

NO ACTION

If OFAC does not have evidence to conclude that a violation has occurred, or concludes that the conduct does not warrant an administrative response then no action will be taken.

CAUTIONARY LETTERS

If OFAC does not have evidence to conclude that a violation has occurred, but believes that the conduct could lead to a violation in other circumstances, or that the person subject to the investigation does not appear to be exercising due diligence then a cautionary letter may be issued.

FINDING OF VIOLATION

If OFAC concludes a violation has occurred and that it is important to document it, but concludes that a monetary penalty is not the appropriate response, then a Finding of Violation may be issued. These are also published under the recent actions section of the OFAC website.

CIVIL PENALTY

If OFAC concludes that a violation has occurred and that the conduct warrants the imposition of a monetary penalty, then OFAC may impose a penalty. Monetary penalty amounts are set out in CFR 501, appendix A part five (V).

The applicable statutory maximum civil penalty per violation, which could be a single transaction, for each statute enforced by OFAC is as follows (April 2023 values):

International Emergency Economic Powers Act (IEEPA) - greater of **\$330,947** or twice the amount of the underlying transaction.

Trading with the Enemy Act (TWEA) - **\$97,529**.

Foreign Narcotics Kingpin Designation Act (FNKDA) - **\$1,644,396**.

Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) - greater of **\$87,361** or twice the amount of which a financial institution was required to retain possession or control.

Clean Diamond Trade Act (CDTA) - **\$14,950**.

The civil penalty amounts are subject to annual adjustment pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990. The values given above are correct as at April 2023.

FinCEN and NYDFS may also impose civil penalties for failures to maintain specific controls.

OFAC do not give consideration to any fines paid to other regulators.

The Department of Justice pursues criminal prosecutions for sanctions violations.

Under section 1705 of IEEPA, the maximum criminal penalty is \$1million, or 20 years imprisonment, or both.

BIS

Bureau of Industry and Security. The BIS Mission: is to advance U.S. national security, foreign policy, and economic objectives by ensuring an effective export control and treaty compliance system and promoting continued U.S. strategic technology leadership.

CCL

Commerce Control List. The CCL contains all Export Control Classification Numbers. The CCL is divided into ten broad categories, and each category is further subdivided into five product groups.

CFR

Code of Federal Regulations. The Code of Federal Regulations is the codification of the general and permanent rules published in the Federal Register by the departments and agencies of the Federal Government.

CISADA

Comprehensive Iran Sanctions Accountability and Divestment Act 2010.

DDTC

The Directorate of Defense Trade Controls ensures commercial exports of defense articles and defense services advance U.S. national security and foreign policy objectives.

DOJ

Department of Justice. Officially coming into existence on July 1, 1870, the Department of Justice was empowered to handle all criminal prosecutions and civil suits in which the United States had an interest. The DOJ is the chief enforcer of federal laws.

EAR

The Export Administration Regulations govern the export and re-export of some commodities, software and technology.

EO

Executive Orders are official documents ... through which the President of the United States manages the operations of the Federal Government.

FinCEN

Financial Crimes Enforcement Network. FinCEN is a bureau of the U.S. Department of the Treasury. FinCEN's mission is to safeguard the financial system from illicit use and combat money laundering and promote national security through the collection, analysis, and dissemination of financial intelligence and strategic use of financial authorities.

FTO

Foreign Terrorist Organizations are foreign organizations that are designated by the Secretary of State in accordance with section 219 of the Immigration and Nationality Act (INA), as amended.

HSI

Homeland Security Investigations. This is the principal investigative arm of the U.S. Department of Homeland Security, responsible for investigating transnational crime and threats, specifically those criminal organizations that exploit the global infrastructure through which international trade, travel and finance move

IEEPA

The International Emergency Economic Powers Act codified presidential national emergency powers to investigate and impose controls on transactions as well as freeze foreign assets under the jurisdiction of the United States.



ITAR

International Traffic in Arms Regulations. These are administered by the Directorate of Defense Trade Controls within the State Department and the goal behind these is to regulate defense products.

NYDFS

The New York State Department of Financial Services (NYDFS) is the department of the New York state government responsible for regulating financial services and products, including those subject to the New York insurance, banking and financial services laws.

OCC

The Office of the Comptroller of the Currency (OCC) is an independent bureau of the U.S. Department of the Treasury. The OCC charters, regulates, and supervises all national banks, federal savings associations, and federal branches and agencies of foreign banks.

OFA

The Office of Foreign Assets Control is the US Treasury department that administers and enforces US economic sanctions programs.

SDGT

A Specially Designated Global Terrorist (SDGT) is a person or entity that has been designated as such by the United States Department of State or the US Department of the Treasury.

SDN

Specially Designated National. As part of its enforcement efforts, OFAC publishes 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 designated under programs that are not country-specific. Collectively, such individuals and companies are called "Specially Designated Nationals" or "SDNs." Their assets are blocked and U.S. persons are generally prohibited from dealing with them.

UN


United Nations. The United Nations is an international organization founded in 1945. Currently made up of 193 Member States, the UN and its work are guided by the purposes and principles contained in its founding Charter.

TWEA

Trading With the Enemy Act 1917. An Act to define, regulate, and punish trading with the enemy, and for other purposes. Still in force.

WMD

A weapon of mass destruction is a nuclear, radiological, chemical, biological, or other device that is intended to harm a large number of people.



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