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Export Controls and Economic Sanctions

Beau Barnes

John Boscariol

Randy Cook

Abigail Cotterill

Gwendolyn Jaramillo

See next page for additional authors

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Export Controls and Economic Sanctions

Authors

Beau Barnes, John Boscarol, Randy Cook, Abigail Cotterill, Gwendolyn Jaramillo, Barbara Linney, Sarah Oliai, Timothy O'Toole, Christopher Stagg, and Lawrence Ward

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BEAU BARNES, JOHN BOSCARIOL, RANDY COOK, ABIGAIL COTTERILL,
GWENDOLYN JARAMILLO, BARBARA LINNEY, SARAH OLIAI,
TIMOTHY O'TOOLE, CHRISTOPHER STAGG, LAWRENCE WARD*

This article discusses the significant legal developments that occurred in the area of export controls and economic sanctions in 2018.

I. Economic Sanctions Developments

A. RUSSIA RELATED SANCTIONS

In 2018, the driving force behind US sanctions against Russia was the Countering America's Adversaries Through Sanctions Act (CAATSA).¹ Passed in the wake of Russia's 2016 election interference, CAATSA implements or encourages sanctions for a wide array of conduct deemed malign by the US government, including oligarchs' disproportionate benefit from the Russian regime, support for the Russian intelligence and defense sectors, malicious cyber activity, and human rights violations in Russian-occupied territory. During 2018, the US Department of the Treasury's Office of Foreign Assets Control (OFAC) applied key CAATSA provisions for the first time, increasing sanctions risk associated with doing business in Russia.

About half of CAATSA's Russia provisions remain unused to date, including those targeting significant corruption, foreign sanctions evasion, or pipeline projects. Pre-CAATSA sanctions authorities have continued to play a role, with OFAC continuing to enforce the pre-CAATSA embargo on Crimea.

OFAC's so-called "oligarch" designations were the most consequential Russia sanctions of the year.² On April 6, 2018, OFAC added seven Russian billionaires to the Specially Designated Nationals and Blocked Persons List

* Contributing authors include Beau Barnes, Kobre & Kim LLP; John Boscariol, McCarthy Tétrault LLP; Randy Cook, Ankura Consulting Group, LLC; Abigail Cotterill, Miller & Chevalier Chartered; Gwendolyn Jaramillo, Foley Hoag LLP; Barbara Linney, Miller & Chevalier Chartered; Sarah Oliai, Deloitte; Timothy O'Toole, Miller & Chevalier Chartered; Christopher Stagg, Stagg PC.; and Lawrence Ward, Dorsey & Whitney LLP. Mr. Stagg and Mr. Ward served as editors of this article. This article includes developments occurring between December 1, 2017 and November 30, 2018.

1. See *generally* Countering America's Adversaries Through Sanctions Act, Pub. L. No. 115-44, 131 Stat. 886 (2017).

2. See Press Release, U.S. Dep't of the Treasury, Treasury Designates Russian Oligarchs, Officials, and Entities in Response to Worldwide Malign Activity (Apr. 6, 2018), <https://home.treasury.gov/news/press-releases/sm0338>.

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(SDN List), describing them as oligarchs who profit from Russia's corrupt system of malign activity.³ Twelve multi-national companies owned or controlled by the oligarchs were also designated. CAATSA amplifies the impact here, as section 228 introduces the possibility of secondary sanctions against non-US persons for facilitating a significant transaction for or on behalf of one of the designated oligarchs or their companies.⁴

However, these designations appear to have had unintended consequences. Most notably, Oleg Deripaska owns several companies that are well-integrated with the global economy—including the world's second-largest aluminum company, United Company RUSAL—such that many US and European companies will face economic hardship if most dealings with those companies become sanctionable. Accordingly, since April 2018, OFAC has issued, and periodically re-issued, general licenses for the maintenance and wind-down of operations with certain oligarch-owned companies, including United Company RUSAL, the global energy company EN+ Group, and the automotive conglomerate GAZ Group.⁵ OFAC is reportedly negotiating with these companies regarding removal from the SDN List, which will require, at a minimum, divestment by their current oligarch owner.⁶

Another newly implemented CAATSA provision is section 231, which is administered by the Department of State's Bureau of International Security and Nonproliferation (ISN). Section 231 requires the imposition of secondary sanctions on any person, whether US or non-US, who knowingly engages in a significant transaction with the Russian defense or intelligence sectors.⁷ ISN has compiled a list of persons deemed to be part of these two sectors, which now stands at seventy-two entities and individuals.⁸ Furthermore, on September 20, ISN invoked CAATSA section 231 to sanction the Chinese military's Equipment Development Department (EDD), as well as its director, Li Shangfu, in connection with the purchase of aircraft and missile equipment from Russian arms exporter Rosoboronexport.⁹ Accordingly, the United States will now block all EDD assets in the United States and prohibit all EDD transactions with the United States financial system, among other measures. Now that section

3. *See id.* ¶ 3.

4. *See* Countering America's Adversaries Through Sanctions Act § 228, 131 Stat. at 911.

5. *See* OFAC, *General Licenses*, U.S. DEP'T OF THE TREASURY, 12A-16D, <https://www.treasury.gov/resource-center/sanctions/Programs/Pages/ukraine.aspx> (last visited Feb. 24, 2019).

6. *See* Press Release, U.S. Dep't of the Treasury, OFAC Extends Expiration Date of General Licenses Related to EN+ and RUSAL, para. 3 (Sept. 21, 2018), <https://home.treasury.gov/news/press-releases/sm492>.

7. *See* Countering America's Adversaries Through Sanctions Act § 231(a), 131 Stat. at 916.

8. *See* Press Release, U.S. Dep't of the Treasury, Sanctions Under Section 231 of the Countering America's Adversaries Through Sanctions Act of 2017 (CAATSA), para. 2 (Sept. 20, 2018), <https://www.state.gov/r/pa/prs/ps/2018/09/286078.htm>.

9. *See id.* ¶ 3.

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231 sanctions have been deployed for the first time, it would not be surprising to see similar actions in 2019.

Two additional CAATSA provisions were utilized in 2018 to target additional malign conduct. On March 15, 2018, OFAC invoked the cybersecurity provisions set forth in CAATSA section 224 to designate nineteen individuals and five entities allegedly involved in Russia's 2016 election interference, sixteen of which had previously been indicted as part of the ongoing Special Counsel investigation.¹⁰ Similarly, in June and August 2018, OFAC designated an additional twelve Russian technology companies and executives in connection with, among other things, the massive NotPetya cyber-attack that is estimated to have inflicted \$10 billion in damage around the world.¹¹ In making these designations, OFAC also relied on the previously rarely-utilized Obama-era Executive Order 13694 targeting malicious cyber-enabled activities. On March 15, 2018, OFAC invoked CAATSA section 228—which targets human rights abuses in territories forcibly occupied by Russia—in order to sanction two individuals and an entity associated with the unrecognized governments of Crimea and Luhansk—disputed Ukrainian regions now controlled by Russia or Russian proxies.¹² Even outside CAATSA, Crimea continues to be a focus of OFAC enforcement, with several designations in January and November of Crimean government officials, Russian companies exporting electrical systems to Crimea, and Crimean business such as resorts, spas, and hotels.¹³ These designations were all made pursuant to pre-CAATSA sanctions authorities implemented in 2014.

Finally, Russia may soon face more sanctions following the March 2018 Novichok chemical attack on a former FSB officer and his daughter in the U.K.¹⁴ In August 2018, the US State Department announced it had determined that the attack violated international law, thereby triggering automatic sanctions under the Chemical and Biological Weapons Control

10. See Press Release, U.S. Dep't of the Treasury, Treasury Sanctions Russian Cyber Actors for Interference with the 2016 U.S. Elections and Malicious Cyber-Attacks, para. 1 (Mar. 15, 2018), <https://home.treasury.gov/index.php/news/press-releases/sm0312>.

11. See Press Release, U.S. Dep't of the Treasury, Treasury Sanctions Russian Federal Security Service Enablers, para. 1, 3 (June 11, 2018), <https://home.treasury.gov/news/press-releases/sm0410>; see also Press Release, U.S. Dep't of the Treasury, Treasury Targets Attempted Circumvention of Sanctions, para. 1 (Aug. 21, 2018), <https://home.treasury.gov/news/press-releases/sm462>.

12. See Treasury Sanctions Russian Cyber Actors for Interference with the 2016 U.S. Elections and Malicious Cyber-Attacks, *supra* note 10, para. 5.

13. See Press Release, U.S. Dep't of the Treasury, Treasury Sanctions Additional Individuals and Entities in Connection with the Conflict in Ukraine and Russia's Occupation of Crimea, para. 1 (Jan. 26, 2018), <https://home.treasury.gov/news/press-releases/sm0266>; see also Press Release, U.S. Dep't of the Treasury, Treasury Sanctions Officials and Targets Entities Supporting Russia's Occupation of Crimea and Forcible Control of Eastern Ukraine, para. 1 (Nov. 8, 2018), <https://home.treasury.gov/news/press-releases/sm543>.

14. See Press Release, U.S. Dep't of the Treasury, Imposition of Chemical and Biological Weapons Control and Warfare Elimination Act Sanctions on Russia, para. 1 (Aug. 8, 2018), <https://www.state.gov/r/pa/prs/ps/2018/08/285043.htm>.

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and Warfare Elimination Act of 1991 (CBW Act).¹⁵ Certain sanctions under the CBW Act have already been imposed in connection with Russia—such as the termination of arms sales and denial of US government trade credit¹⁶—while others may yet be imposed—such as a prohibition on extending credit to the Russian government, a total prohibition of the export of dual-use items, or a ban on the import of Russian-origin items. A decision about the scope of additional CBW Act sanctions should be coming in December 2018 or early in 2019.

B. IRAN RELATED DEVELOPMENTS

On May 8, 2018, the United States announced its withdrawal from the so-called “Iran Deal” (the Joint Comprehensive Plan of Action or JCPOA), setting the course for the United States to return to the pre-2016 sanctions landscape.¹⁷ The Administration established two wind-down periods to allow businesses to conclude activities pursuant to JCPOA-related relief, expiring and reimposing certain sanctions on August 6, 2108, and November 4, 2018.

On August 6, 2018, E.O. 13846 began the process of re-imposing all sanctions waived or lifted in connection to the JCPOA and expanded the scope of sanctions against Iran that had been in effect before January 16, 2016 (Implementation Day under the JCPOA).¹⁸ General licenses relating to commercial aircraft, Iranian-origin carpets, and foodstuffs that were established to facilitate wind-down activities for the August 2018 deadline have expired.¹⁹

JCPOA-related sanctions re-imposed in August 2018 included restrictions on: (1) the purchase or acquisition of US bank notes by the Government of Iran; (2) Iran’s trade in gold and other precious metals; (3) graphite, aluminum, steel, coal, and software used in industrial processes; (4) transactions related to the Iranian rial; (5) activities related to Iran’s issuance of sovereign debt; and (6) Iran’s automotive sector.²⁰

15. *See id.*

16. *See* Determinations Regarding Use of Chemical Weapons by Russia Under the Chemical and Biological Weapons Control and Warfare Elimination Act of 1991, 83 Fed. Reg. 43,723, 43,723 (Aug. 27, 2018).

17. Remarks by President Trump on the Joint Comprehensive Plan of Action, 2018 DAILY COMP. PRES. DOC. 310, para. 4, 13 (May 8, 2018).

18. *See* Exec. Order No. 13846, 83 Fed. Reg. 38,939, 38,939 (2018); *see also* OFAC, *FAQs: Iran Sanctions*, U.S. DEP’T OF THE TREASURY, at 597, 601 (Aug. 6, 2018), https://www.treasury.gov/resource-center/faqs/Sanctions/Pages/faq_iran.aspx#eo_reimposing.

19. *See* OFAC, *General License No. J-1, Authorizing the Reexportation of Certain Civil Aircraft to Iran on Temporary Sojourn and Related Transactions*, U.S. DEP’T OF THE TREASURY (July 29, 2016, amended Dec. 15, 2016), https://www.treasury.gov/resource-center/sanctions/Programs/Documents/iran_glj_1.pdf; *see also* 31 C.F.R. §§ 560.534–535 (2016).

20. *See* Exec. Order No. 13846, *supra* note 17, at 38,939; *see also* Iranian Transactions and Sanctions Regulations, 83 Fed. Reg. 55269 (2018); OFAC, *Frequently Asked Questions Regarding the Re-Imposition of Sanctions Pursuant to the May 8, 2018 National Security Presidential Memorandum Relating to the Joint Comprehensive Plan of Action (JCPOA)*, U.S. DEP’T OF THE

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On November 5, 2018, OFAC implemented the second and final snapback of US sanctions waived under the JCPOA. With the end of the JCPOA wind-down periods, the provision of goods or services and the extension of additional loans or credits to an Iranian counterparty may result in enforceable violations of US sanctions. This includes activities pursuant to written contracts or agreements in place before May 8, 2018.²¹

OFAC has previously clarified that non-US, non-Iranian persons may receive payment for goods or services, or may receive repayment of loans or credits extended, under certain conditions. These conditions include that goods or services must have been provided before the end of the applicable wind-down period, or loans and credits must have been extended before the end of the wind-down period, and agreed to prior to May 8, 2018, following US sanctions in effect at the time.²² All payments must be consistent with US sanctions and may not involve US persons or the US financial system, unless exempt from regulation or authorized by OFAC.²³

Re-imposing sanctions in November 2018 included sanctions on:

- Iran's port operators and its shipping and shipbuilding sectors;
- Petroleum-related transactions, including the purchase of petroleum, petroleum products, or petrochemical products from Iran;
- Transactions by foreign financial institutions with the Central Bank of Iran and other designated Iranian financial institutions;
- Provision of specialized financial messaging services to the Iranian Central Bank and other financial institutions;
- Provision of underwriting services, insurance, or reinsurance; and
- Iran's energy sector.²⁴

OFAC's November actions also added over 700 individuals, entities, aircrafts, and vessels, including more than seventy Iran-linked financial institutions and their foreign and domestic subsidiaries, to OFAC's SDN List.²⁵ These sanction targets also include approximately 250 persons

TREASURY, at 1.2 (Aug. 6, 2018), https://www.treasury.gov/resource-center/sanctions/Programs/Documents/jcpoa_winddown_faqs.pdf.

21. See *FAQs: Iran Sanctions*, *supra* note 18, at 630-31; see also *Frequently Asked Questions Regarding the Re-Imposition of Sanctions Pursuant to the May 8, 2018 National Security Presidential Memorandum Relating to the Joint Comprehensive Plan of Action (JCPOA)*, *supra* note 19, at 2.6.

22. See *id.* at 2.1.

23. See *id.*

24. See Exec. Order No. 13846, *supra* note 17, at 38,939; see also *Iranian Transactions and Sanctions Regulations*, *supra* note 19; *Frequently Asked Questions Regarding the Re-Imposition of Sanctions Pursuant to the May 8, 2018 National Security Presidential Memorandum Relating to the Joint Comprehensive Plan of Action (JCPOA)*, *supra* note 19, at 1.3.

25. See Press Release, U.S. Dep't of the Treasury, U.S. Government Fully Re-Imposes Sanctions on the Iranian Regime as Part of Unprecedented U.S. Economic Pressure Campaign, para. 1, 13 (Nov. 5, 2018), <https://home.treasury.gov/news/press-releases/sm541>. See generally OFAC, *Publication of Updates to OFAC's Specially Designated Nationals and Blocked Persons List and 13599 List Removals*, U.S. DEP'T OF THE TREASURY (Nov. 5, 2018), https://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/Pages/20181105_names.aspx.

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blocked pursuant to Executive Order (E.O.) 13599.²⁶ The E.O. 13599 List, which blocked specific persons and entities, has been deleted as part of the United States' withdrawal from the JCPOA.²⁷

Significantly, the end of the wind-down periods includes the re-imposition of sanctions requirements under section 1245 of the National Defense Authorization Act for Fiscal Year 2012 (NDAA).²⁸ This section authorizes the President to impose sanctions on any foreign financial institutions, public or private, that knowingly conduct or facilitate certain significant financial transactions with the Central Bank of Iran or engage in oil-related financial transactions. Certain waivers may be granted under section 1245(d)(4)(D) for foreign financial institutions in countries that have significantly reduced crude oil purchases from Iran.²⁹ While a select few countries have received temporary waivers that must be re-evaluated in 180 days, this exception is likely to be granted sparingly.³⁰

The United States does maintain humanitarian authorizations and exceptions to the Iranian sanctions program that allow for the sale of certain agricultural commodities, food, medicine, and medical devices to Iran.³¹ In the changing sanctions landscape, the applicability of these authorizations, exceptions, and the specific persons and financial channels involved require careful review.

26. See U.S. Government Fully Re-Imposes Sanctions on the Iranian Regime as Part of Unprecedented U.S. Economic Pressure Campaign, *supra* note 24, para. 3.

27. See *id.*; see also Exec. Order No. 13599, 77 Fed. Reg. 6659, 6660 (2012).

28. See Exec. Order No. 13846, *supra* note 17, at 38,941; see also National Defense Authorization Act for Fiscal Year 2012, Pub. L. No. 112-81, § 1245(d)(4)(B)–(C), 125 Stat. 1298, 1647-48 (2011) (codified at 22 U.S.C. § 8513a (2011)).

29. See National Defense Authorization Act for Fiscal Year 2012 § 1245(d)(4)(D).

30. See Michael R. Pompeo, Sec'y of State, Briefing on Iran Sanctions, para. 20 (Nov. 2, 2018), <https://www.state.gov/secretary/remarks/2018/11/287090.htm>; see also Lesley Wroughton et al., *U.S. Grants Temporary Iran Oil Waivers to Eight Countries including China: Pompeo*, REUTERS (Nov. 5, 2018 8:01 AM), <https://www.reuters.com/article/us-usa-iran-sanctions-waivers/us-grants-temporary-iran-oil-waivers-to-eight-countries-including-china-pompeo-idUSKCN1NA1OS> (naming China, India, Greece, Italy, Taiwan, Japan, Turkey, and South Korea as the eight waiver recipients); Debjit Chakraborty & Heesu Lee, *Iran Oil Waivers: How Buyers are Lining Up After U.S. Exemptions*, BLOOMBERG (Nov. 9, 2018 8:14 AM), <https://www.bloomberg.com/news/articles/2018-11-06/iran-oil-waivers-how-buyers-are-lining-up-after-u-s-exemptions>.

31. A preliminary ruling by the International Court of Justice in Iran's case challenging the U.S.'s re-imposition of sanctions ordered the U.S. to remove impediments by a method of its choosing to allow exports and related payments of food, medicine, and spare parts, equipment, and services necessary for the safety of civilian aviation. See *Alleged Violations of the 1955 Treaty of Amity, Economic Relations, and Consular Rights (Islamic Republic of Iran v. U.S.)*, Order, ¶ 98 (Oct. 3, 2018), <https://www.icj-cij.org/files/case-related/175/175-20181003-ORD-01-00-EN.pdf>. However, the U.S. argues that because it already has humanitarian authorizations and exemptions and will consider case-by-case issuance of licenses related to civil aviation safety that the order has no practical effect. See *id.* ¶ 86; see also Elena Chachko, *What to Make of the ICJ's Provisional Measures in Iran v. U.S. (Nuclear Sanctions Case)*, LAWFARE (Oct. 4, 2018 7:23 AM), <https://www.lawfareblog.com/what-make-icjs-provisional-measures-iran-v-us-nuclear-sanctions-case>.

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In response to the United States' withdrawal from the JCPOA and re-imposition of sanctions, the EU has taken actions to provide sanctions relief to Iran while maintaining Iranian compliance with its JCPOA obligations. These measures include updating its Blocking Statute's annex to include US sanctions re-imposed on Iran, active as of August 7, 2018, and reaffirming its commitment to establishing a Special Purpose Vehicle (SPV) to enable sanctions relief under the JCPOA to reach Iran while allowing for European exporters to pursue legitimate trade.³² The Blocking Statute provides recovery for EU operators harmed by extraterritorial sanctions, nullifies effects in the EU of any foreign court ruling based on them, and forbids EU persons from complying with those sanctions unless specifically authorized to do so.³³ The SPV would act as a type of clearing house for Iranian oil transactions, offsetting Iranian proceeds from oil and gas sales against Iranian purchases, in order to keep the EU in compliance with US sanctions and maintain Iranian compliance with the JCPOA.³⁴

While the SPV has yet to be established, its establishment would not prevent the United States from sanctioning companies that use it. Policy divergences between the United States, the EU, Russia, and China, and their respective regulations regarding sanctions on Iran, may also present compliance challenges and conflicts for companies engaged in cross-border business. Companies must carefully examine the specific laws and regulations at issue and the facts of the scenario to evaluate the risks of a failure to comply across multiple jurisdictions in an environment where enforcement of these sanctions programs is prioritized.

C. VENEZUELA RELATED DEVELOPMENTS

In 2018, the US government continued its incremental expansion of sanctions against the Venezuelan government, seeking to further isolate the Maduro regime but stopping short of imposing comprehensive sanctions on the country. The main focus of these sanctions was responding to efforts by

32. See European Commission Press Release IP/18/4805, Updated Blocking Statute in Support of Iran Nuclear Deal Enters into Force (Aug. 6, 2018), http://europa.eu/rapid/press-release_IP-18-4805_en.htm; see also Joint statement by High Representative Federica Mogherini and Foreign Ministers Jean-Yves Le Drian, Heiko Maas and Jeremy Hunt, and Finance Ministers Bruno Le Maire, Olaf Scholz and Philip Hammond, EUROPEAN EXTERNAL ACTION SERVICE (Nov. 2, 2018, 18:06), https://eeas.europa.eu/headquarters/headquarters-homepage/53230/joint-statement-high-representative-federica-mogherini-and-foreign-ministers-jean-yves-le_en.

33. See Council Regulation 2271/96, 1996 O.J. (L 309) 1 (EC); Commission Delegated Regulation 2018/1100, 2018 O.J. (L199) 1 (EC) (*amending Annex to Council Regulation 2271/96*); see also *Guidance Note – Questions and Answers: Adoption of Update of the Blocking Statute*, 2018 O.J. (C 277) 4 (Aug. 7, 2018).

34. See Ole Moehr, *JCPOA in Peril – EU SPV to the Rescue?*, ATLANTIC COUNCIL (Oct. 9, 2018), <http://www.atlanticcouncil.org/blogs/econographics/jcpoa-in-peril-eu-spv-to-the-rescue>; see also Steven Erlanger, *As U.S. Sanctions on Iran Kick In, Europe Looks for a Workaround*, N.Y. TIMES, (Nov. 5, 2018), <https://www.nytimes.com/2018/11/05/world/europe/us-iran-sanctions-europe.html>.

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the Venezuelan government to raise capital by circumventing US financial restrictions.

In December 2017, the Maduro regime announced one such effort: the future development of a state-sponsored digital currency called the “petro” to “overcome the financial blockade.”³⁵ In response, OFAC released guidance that the potential digital currency “would appear to be an extension of credit to the Venezuelan government” in violation of Executive Order 13808 because it “would carry rights to receive commodities in specified quantities at a later date.”³⁶ After the Maduro government officially launched the petro in February, the Trump Administration responded by prohibiting all transactions involving “any digital currency, digital coin, or digital token . . . issued by, for or on behalf of the Government of Venezuela.”³⁷

After Maduro was re-elected to a second term in a controversial election in May 2018, the Trump Administration again expanded sanctions. Calling out the Maduro regime’s “endemic economic mismanagement and public corruption at the expense of the Venezuelan people,” President Trump prohibited US persons from purchasing any debt owed to the Venezuela government (including accounts receivable) or entering into transactions where that debt is pledged as collateral.³⁸ Administration officials noted that the order was intended to prevent the Maduro regime from raising cash by “selling off debt held by government entities, including accounts receivable, for a pittance of what it is worth.”³⁹

The Trump Administration expanded sanctions a third time this year in November 2018 with new prohibitions on the Venezuelan gold mining industry. President Trump authorized the imposition of sanctions on individuals and entities who operate corruptly in the Venezuelan gold sector, as well as in any other economic sector as identified by the Treasury Secretary.⁴⁰ No individuals or entities have yet been designated under this authority, but National Security Advisor John Bolton announced the new sanctions authority as part of an effort to “target networks operating within corrupt Venezuelan economic sectors and deny them access to stolen

35. See Alexander Ulmer & Deisy Buitrago, *Enter the ‘petro’: Venezuela to launch oil-backed cryptocurrency*, REUTERS (Dec. 3, 2017 1:36 PM), <https://www.reuters.com/article/us-venezuela-economy/enter-the-petro-venezuela-to-launch-oil-backed-cryptocurrency-idUSKBN1DX0SQ>.

36. See OFAC, *FAQs: Other Sanctions Programs*, U.S. DEP’T THE TREASURY, 551 (Jan.19, 2018), http://web.archive.org/web/20180427031656/https://www.treasury.gov/resource-center/faqs/Sanctions/Pages/faq_other.aspx (FAQ No. 551 has since been rescinded).

37. See Exec. Order No. 13827, 83 Fed. Reg. 12,469, 12,469 (Mar. 19, 2018).

38. See Exec. Order No. 13835, 83 Fed. Reg. 24,001, 24,001 (May 21, 2018).

39. See Julie Hirschfeld Davis, *U.S. Places New Sanctions on Venezuela Day After Election*, N.Y. TIMES (May 21, 2018), <https://www.nytimes.com/2018/05/21/us/politics/trump-maduro-venezuela-sanctions.html>.

40. See Exec. Order No. 13850, 83 Fed. Reg. 55,243, 55,243 (Nov. 1, 2018).

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wealth.”⁴¹ Other officials highlighted the corruption in Venezuela’s gold mining sector and its links with Turkey and Iran.⁴²

In addition to these new sector-specific prohibitions, designations of high-ranking members of the Maduro regime continued to play an important role in US policy toward Venezuela. In 2017, OFAC sanctioned Venezuelan Vice President Tarek El Aissami, eight members of the Venezuelan Supreme Court, and President Maduro himself, among others. That trend continued in 2018. Between January and May 2018, OFAC sanctioned twelve current and former military and government officials for their involvement in corruption.⁴³ In September 2018, OFAC sanctioned President Maduro’s wife (the former attorney general), as well as Venezuela’s Executive Vice President, Minister of Communication and Information, and Minister of Defense.⁴⁴ As of November 2018, over seventy individuals and entities affiliated with the Maduro regime have been sanctioned as Specially Designated Nationals based on their involvement in corruption and anti-democratic activities.

D. CUBA DEVELOPMENTS

In 2018, the Trump Administration continued to pursue the policy objective of ending economic practices that disproportionately benefit the Cuban government or its military, intelligence, or security agencies or personnel at the expense of the Cuban people that was identified in the National Security Presidential Memorandum on Strengthening the Policy of the United States Toward Cuba (NSPM) that was issued in June 2017.⁴⁵ Specifically, on November 15, 2018, in accordance with the NSPM’s mandate for it to identify entities and sub-entities that are under the control

41. See John R. Bolton, Nat’l Sec. Advisor, Remarks by National Security Advisor Ambassador John R. Bolton on the Administration’s Policies in Latin America, para. 70 (Nov. 2, 2018), <https://www.whitehouse.gov/briefings-statements/remarks-national-security-advisor-ambassador-john-r-bolton-administrations-policies-latin-america>.

42. See Justin Sink & Jonathan Levin, *Trump Orders Sanctions on Venezuela Gold to Pressure Maduro*, BLOOMBERG (Nov. 1, 2018 12:00 PM), <https://www.bloomberg.com/news/articles/2018-11-01/trump-orders-sanctions-on-venezuela-gold-to-pressure-maduro>.

43. See Press Release, U.S. Dep’t of the Treasury, Treasury Sanctions Four Venezuelan Government Officials Associated with Corruption and Oppression, para. 1 (Jan. 5, 2018), <https://home.treasury.gov/news/press-releases/sm0247>; Press Release, U.S. Dep’t of the Treasury, Treasury Sanctions Four Current or Former Venezuelan Officials Associated with Economic Mismanagement and Corruption, para. 1 (Mar. 19, 2018), <https://home.treasury.gov/news/press-releases/sm0318>; Press Release, U.S. Dep’t of the Treasury, Treasury Targets Influential Former Venezuelan Official and His Corruption Network, para. 1 (May 18, 2018), <https://home.treasury.gov/news/press-releases/sm0389>.

44. See Press Release, U.S. Dep’t of the Treasury, Treasury Targets Venezuelan President Maduro’s Inner Circle and Proceeds of Corruption in the United States, para. 1 (Sept. 25, 2018), <https://home.treasury.gov/news/press-releases/sm495>.

45. Originally issued by President Trump on June 16, 2017, the NSPM was published in the Federal Register on October 20, 2017. See Strengthening the Policy of the United States Toward Cuba, 82 Fed. Reg. 48,875, 48,875 (Oct. 20, 2017).

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of, or act for on behalf of, the Cuban military, intelligence, or security services or personnel, the US Department of State added twenty-six sub-entities, including sixteen hotels owned by the Cuban military, to its List of Restricted Entities and Subentities Associated with Cuba (Cuba Restricted List).⁴⁶ When publishing the updated Cuba Restricted List, the State Department reiterated that US persons are generally prohibited from engaging in direct financial transactions with certain entities identified on the Cuba Restricted List pursuant to section 515.209 of the Cuban Assets Control Regulations, and that the US Department of Commerce's Bureau of Industry and Security (BIS) will generally deny applications to export or reexport items for use by entities on the Cuba Restricted List pursuant to section 746.2 of the Export Administration Regulations (EAR).⁴⁷

II. Export Control Developments

This year witnessed impactful changes in US law relating to national security reviews of foreign direct investment (FDI) and export controls relating to critical and foundational technology. These changes reflect a bipartisan Washington policy consensus that enhanced scrutiny of FDI and technology transfers is needed in order protect US national security and strategic interests. The driver of this change is over concern that foreign countries, particularly China, are deliberately utilizing FDI and technology transfers to acquire national security-critical assets, technologies, and information to their strategic advantage.⁴⁸ Two relevant statutes were included in the omnibus National Defense Authorization Act,⁴⁹ which was signed into law on August 13, 2018: the Foreign Investment Risk Review Modernization Act (FIRRMA) and the Export Control Reform Act (ECRA).⁵⁰ Federal agencies have already begun implementing these statutes through new regulations.

A. FOREIGN INVESTMENT RISK REVIEW MODERNIZATION ACT

FIRRMA significantly expands the jurisdiction and activity of the Committee on Foreign Investment in the United States (CFIUS). CFIUS is an interagency US government committee that reviews certain forms of FDI into the United States to identify and address any consequent national

46. See Updating the State Department's List of Entities and Subentities Associated with Cuba (Cuba Restricted List), 83 Fed. Reg. 57,523, 57,523 (Nov. 15, 2018).

47. See *id.*

48. See U.S.-CHINA ECON. AND SEC. REVIEW COMM'N, 2017 ANNUAL REPORT: CHAPTER 1, SECTION 2 75 (2017), available at https://www.uscc.gov/Annual_Reports/2017-annual-report.

49. See John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. 115-232, tit. 17, 132 Stat. 1636, 1653 (2018).

50. See S. COMM. ON ARMED SERVICES, 115TH CONG., FY19 NDAA EXECUTIVE SUMMARY 6 (Comm. Print 2018), <https://www.armed-services.senate.gov/press-releases/sasc-completes-markup-of-national-defense-authorization-act-for-fiscal-year-2019>.

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security risks posed by potential foreign control of a US business.⁵¹ CFIUS is chaired by the Department of the Treasury and comprised of nine standing agency members,⁵² five observing offices,⁵³ and two non-voting, *ex officio* members.⁵⁴ CFIUS reviews seek to balance the United States' foundational commitment to maintaining a free and open investment environment with the need to protect national security.⁵⁵

FIRRMA seeks to address these concerns through several statutory reforms, including (among others):

1. *Expanded Jurisdiction*

FIRRMA explicitly extends CFIUS jurisdiction to any transaction that gives foreign persons access to material non-public information or influence over decision-making⁵⁶ in companies that: (i) own, operate, manufacture, supply, or service critical infrastructure; (ii) produce, design, test, manufacture, fabricate, or develop critical technologies;⁵⁷ or (iii) maintain or collect sensitive personal data of United States citizens.⁵⁸ It also includes any purchase, lease, or concession by a foreign person of real estate in the US proximate to a US government national security-sensitive installation or that is part of a sea, land, or airport; bankruptcy and other default on debt transactions; any change in a foreign person's rights to control or influence a US company where the foreign person already has an investment stake; and any transaction "designed or intended to evade or circumvent CFIUS jurisdiction."⁵⁹

51. See *The Committee on Foreign Investment in the United States (CFIUS)*, U.S. DEP'T OF THE TREASURY, <https://www.treasury.gov/resource-center/international/Pages/Committee-on-Foreign-Investment-in-US.aspx> (last visited Feb. 24, 2019).

52. See *Composition of CFIUS*, U.S. DEP'T OF THE TREASURY, <https://www.treasury.gov/resource-center/international/foreign-investment/Pages/cfius-members.aspx> (last visited Feb. 24, 2019) (Departments of Treasury, Justice, Homeland Security, Commerce, Defense, State, and Energy and the Offices of the U.S. Trade Representative and Science & Technology Policy).

53. See *id.* (Office of Management & Budget, Council of Economic Advisors, National Security Council, National).

54. The Director of National Intelligence and Secretary of Labor.

55. See *Evaluating CFIUS: Administration Perspectives: Hearing on H.R. 4311 Before Subcomm. on National Security, International Development and Monetary Policy*, 115th Cong. 1 (2017) (statement by Heath P. Tarbert, Assistant Secretary of the Treasury), https://financialservices.house.gov/uploadedfiles/03.15.2018_heath_tarbert_testimony.pdf.

56. FIRRMA extensively defines "indirect" investment to carve out non-controlling investments through funds and other arrangements. See John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. 115-232 § 1702(c), 132 Stat. 1636, 2176-77 (2018).

57. Critical technologies are defined to include items subject to international arms controls and other emerging and foundational technologies designated through a semi-annual review process created by the ECRA. See *id.* § 1703(a)(6)(A)(vi).

58. See *id.* § 1703(a)(4)(B)(iii).

59. See *id.* § 1703(a)(4)(B)(iv)(II).

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2. *Mandatory Declarations*

FIRRMA provides for an expedited declaration process, where parties may file a brief description of a transaction with CFIUS and obtain a determination whether CFIUS intends to conduct a full review. The declaration provisions also authorize CFIUS to specify classes of deals that will require mandatory declarations. CFIUS used this authority in November 2018, together with its expanded jurisdiction over critical technology-related transactions, to implement pilot program regulations requiring declarations for transaction involving non-passive FDI in critical technology companies in specified strategic industries.⁶⁰

B. EXPORT CONTROL REFORM ACT

The ECRA addresses concerns that the current US export control regime does not sufficiently protect US technological leadership in critical technologies from exploitation and theft by foreign strategic competitors.⁶¹ The ECRA establishes a formal, recurring interagency process, led by the Commerce Department, to identify and review “emerging and foundational technologies that are essential to the national security of the United States.”⁶² The ECRA directs that identified critical technologies be subject to heightened export controls within the context of the existing Export Administration Regulations. In November 2018, the Commerce Department issued a Notice of Proposed Rule Making to identify fourteen emerging technologies.⁶³

Taken together, FIRRMA and the ECRA mark a significant increase in US national security-related scrutiny of and expectations regarding FDI and technology exports. Foreign investors and US firms seeking foreign capital will now operate in an environment with significantly expanded CFIUS authority and energy to review and intervene in transactions. Similarly, US companies that work with critical technologies will see increased export licensing and compliance requirements, particularly where parties or joint venture partners include nationals of countries subject to a US embargo (including China and Russia).

C. UPDATES TO THE INTERNATIONAL TRAFFIC IN ARMS REGULATIONS

In 2018, the US Department of State’s Directorate of Defense Trade Controls (DDTC) continued to forward several long-standing policy goals: it took steps toward reform of US export controls; worked to establish positive control lists that maintain a bright line between the US Munitions

60. *See id.* § 1727(c).

61. *See id.* § 1741.

62. *See id.* § 1703(a)(6)(A)(vi).

63. *See* Review of Controls for Certain Emerging Technologies, 83 Fed. Reg. 58,201, 58,201 (Nov. 19, 2018).

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List (USML) and the Commerce Control List (CCL); and implemented sanctions to address foreign policy and national security concerns related to countries including South Sudan, Russia, and China.

In response to the escalating violent conflict in South Sudan, on February 14, DDTC designated South Sudan as an International Traffic in Arms Regulations (ITAR) section 126.1 country.⁶⁴ This designation, which amounts to a prohibition on the export of ITAR-controlled defense articles and services to South Sudan, is consistent with the prior efforts of the Obama Administration to impose restrictions on the African nation's access to US-origin weaponry in light of its ongoing civil war. The action was followed by a July 2018 resolution of the U.N. Security Council to impose a multilateral arms embargo on South Sudan.⁶⁵

On May 24, DDTC published to the Federal Register long-awaited Proposed Rules for revision of USML Categories I, II, and III.⁶⁶ The Proposed Rules would shift jurisdictional controls over several types of firearms and ammunition from the USML to the BIS under the EAR.⁶⁷ BIS published a similar Proposed Rule on the same day, which contained corresponding proposals for revisions to the CCL that would allow for the proposed transition of non-automatic and semi-automatic firearms and other widely commercially available guns and ammunition from the USML to the CCL.⁶⁸ The BIS Proposed Rule noted that transfer of defense articles from Categories I, II, and III would not affect permanent import controls under the US Munitions Import List (USMIL) and included a proposed revision to the ITAR section 129.2 list of enumerated brokering activities, which would establish continued USML brokering controls over brokering activities involving those defense articles transferred to the CCL.⁶⁹

DDTC's Defense Trade Advisory Group (DTAG) proposed revisions to the ITAR definition of defense services in February 2018 and continued work through the spring on further refinements to the scope of that definition which would apply a catch and release approach to imposing ITAR controls.⁷⁰ Of note, the May 2018 refinements proposed narrowing the scope of activities involving technical data that would be caught by the

64. See Amendment to the International Traffic in Arms Regulations: Addition of South Sudan, 83 Fed. Reg. 6457, 6457-58 (Feb. 14, 2018).

65. See S.C. Res. 2428, ¶¶ 3-4 (July 13, 2018).

66. See International Traffic in Arms Regulations: U.S. Munitions List Categories I, II, and III, 83 Fed. Reg. 24,198, 24,198-205 (May 24, 2018).

67. See *id.*

68. See Control of Firearms, Guns, Ammunition and Related Articles the President Determines No Longer Warrant Control Under the United States Munitions List (USML), 83 Fed. Reg. 24,166, 24,166-95 (May 24, 2018).

69. See *id.* at 24,167.

70. See DEFENSE TRADE ADVISORY GROUP, PLENARY MEETING MINUTES: DEFENSE SERVICES DEFINITION WORKING GROUP 2 PRESENTATION 5 (Feb. 1, 2018), available at https://www.pmdt.state.gov/sys_attachment.do?sysparm_referring_url=tear_off&view=true&sys_id=c0e40a86bb95f4044f9ff621f96199d.

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defense services definition to the provision of assistance or training of foreign persons using traceable US-origin technical data.⁷¹

2018 was also notable for the significant activity in the ongoing Defense Distributed litigation, which centers on DDTC's ability to prevent a web-based US company from engaging in the unauthorized online distribution of computer-aided design (CAD) files for printing 3D weapons and, more broadly, whether those files should be subject to the ITAR. On June 29, 2018, the Company reached a settlement with the US Departments of State and Justice that approved the CAD files for public release online and temporarily modified the USML to allow such publication pending revision of the USML to exempt the files from ITAR control.⁷² On July 31, 2018, the Western District of Washington issued a Temporary Restraining Order ("TRO") to prevent the temporary modification of the USML.⁷³ Defense Distributed began selling CAD blueprints in August 2018, arguing that such activity would not violate the terms of the TRO.⁷⁴

The passage of FIRRMA in August 2018 also signaled key changes for ITAR registrants seeking acquisition by foreign corporations or investors. FIRRMA requires mandatory CFIUS filings for transactions involving critical technologies, including USML defense articles and defense services.⁷⁵ Such critical technologies filings, which form part of the CFIUS Pilot Program that took effect on November 10, 2018, signal the US government's continued interest in keeping strict control over the export of defense articles and services to China and other countries seeking access to cutting-edge US technology, including in circumstances where such exports may occur due to ultimate foreign ownership or control.

D. UPDATES TO THE EXPORT ADMINISTRATION REGULATIONS (EAR)

After a relatively quiet year in 2017, BIS was very active in 2018, making numerous revisions to the EAR. BIS implemented several changes to the EAR as a result of amendments to multilateral agreements, including the imposition of license requirements for products and technology for the

71. See *id.*; see also International Traffic in Arms Regulations: U.S. Munitions List Categories I, II, and III, 83 Fed. Reg. at 24,199.

72. See Clif Burns, *Why Was the State Department Ever Involved With the Debate Over 3D-Printed Guns?*, SLATE (Aug. 2, 2018, 3:42 PM), <https://slate.com/technology/2018/08/defense-distributed-why-the-state-department-was-involved-with-3d-printed-guns.html>.

73. See Deanna Paul et al., *Federal judge blocks posting of blueprints for 3-D-printed guns hours before they were to be published*, THE WASHINGTON POST (July 31, 2018), https://www.washingtonpost.com/news/morning-mix/wp/2018/07/31/in-last-minute-lawsuit-states-say-3-d-printable-guns-pose-national-security-threat/?noredirect=on&utm_term=.81fe653f0e16.

74. See Deanna Paul, *Defense Distributed founder Cody Wilson says he's selling 3-D printed gun blueprints online*, THE WASHINGTON POST (Aug. 28, 2018), https://www.washingtonpost.com/nation/2018/08/28/defense-distributed-founder-cody-wilson-says-hes-now-selling-d-printed-gun-blueprints-online/?utm_term=.f953a0c77a5d.

75. See John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. 115-232 § 1703(a)(6)(A), 132 Stat. 1636, 2181-82 (2018).

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production of tritium;⁷⁶ the amendment of ECCNs 1C350, 2B350, 2B351, and 2B352 to add new items controlled and to clarify certain definitions;⁷⁷ and most recently, the amendment of fifty-four ECCNs across nine categories and revisions to several license exceptions in a final rule published October 24, 2018.⁷⁸

In addition, BIS published rules reflecting the addition of India as a Major Defense Partner of the United States, a participating country in the Australia Group, and member of the Wassenaar Group by removing India from Country Group A:6 and placing it in Country Group A:5 and making related conforming amendments.⁷⁹

BIS also published several important proposed rules and requests for public comment this year, none of which have resulted in final rules as of the time of this writing. In a significant and long-anticipated development, BIS published (simultaneously with the DDTC) a proposed rule to effect the amendment of the three ITAR categories (I, II, and III) that had not been revised as part of the Obama Administration-era Export Control Reform process.⁸⁰ The proposed rule would amend the three categories of the ITAR to remove certain commercial firearms, ammunition, and related parts, accessories and attachments, and transfer them to the Commerce Control List. Two parameters were used to identify articles *not* appropriate for removal to the EAR: articles that (a) are either inherently military or otherwise warrant control under the ITAR, and (b) if not inherently military, either (i) possess parameters or characteristics that provide a critical military or intelligence advantage to United States, and (ii) are almost exclusively available from the United States.⁸¹ The proposed rule would create seventeen new ECCNs and revised seven others, in order to include in the EAR items that are principally: (1) commercial items widely available in retail outlets, and (2) less sensitive military items.

Under its ECRA mandate to establish an interagency process to identify emerging and foundational technologies, BIS on November 19, 2018, published an Advance Notice of Proposed Rulemaking seeking public comment on criteria for identifying emerging technologies that are essential

76. Reclassification of Targets for the Production of Tritium and Related Development and Production Technology Initially Classified under the OY521 Series, 83 Fed. Reg. 14,580, 14,580 (April 5, 2018).

77. Implementation of the February 2017 Australia Group (AG) Intersessional Decisions and the June 2017 AG Plenary Understandings; Addition of India to the AG, 83 Fed. Reg. 13,849, 13,849 (April 2, 2018).

78. Wassenaar Arrangement 2017 Plenary Agreements Implementation, 83 Fed. Reg. 53,742, 53,742 (October 24, 2018).

79. *See id.*; *see also* U.S.-India Major Defense Partners: Implementation Under the Export Administration Regulations of India's Membership in the Wassenaar Arrangement and Addition of India to Country Group A:5, 83 Fed. Reg. 38,018, 38,018 (August 3, 2018).

80. *See* Control of Firearms, Guns, Ammunition and Related Articles the President Determines No Longer Warrant Control Under the United States Munitions List (USML), 83 Fed. Reg. 24,166, 24, 166 (May 24, 2018).

81. *Id.*

to US national security, in order to inform the interagency process.⁸² In that Advance Notice, BIS outlined fourteen representative categories of technology in which BIS will seek to identify any specific emerging technologies that are essential to the national security, including biotechnology, artificial intelligence, robotics, and advanced materials, among others.⁸³

In addition, during the course of the year, BIS made numerous changes to the Entity List in furtherance of US policy toward, in particular, certain actors and groups in Russia, and also the Chinese telecommunications giant ZTE as part of the multi-agency enforcement effort with respect to that entity that began in 2017. As a result of the US government's increasing concern regarding civil war and human rights violations in South Sudan, consistent with controls implemented under the ITAR, BIS added South Sudan to Country Group D:5 (United States arms embargoed countries) and imposed a restrictive licensing policy of denial for exports of 9x515 and 600-series items to that country, with a case-by-case review policy applicable to six categories of items.⁸⁴

III. Canadian Export Control and Economic Sanctions Developments

During 2018, there were a number of significant developments in Canada's export controls and economic sanctions regimes:

1. Canada Creates Sanctions Policy and Operations Coordination Division.

In August, the Sanctions Policy and Operations Coordination Division (Sanctions Division) was established within Global Affairs Canada. The Sanctions Division has already made several important changes with the goal of providing more guidance as to the requirements for compliance with the sanctions regime, in accordance with recommendations of a House of Commons Committee examining the administration of Canada's economic sanctions laws.⁸⁵ Already, the Sanctions Division has reworked the sanctions Q&A on the Global Affairs website and introduced a hotline, and it is expected to launch consultations shortly.

82. Review of Controls for Certain Emerging Technologies, 83 Fed. Reg. 58,201, 58,201 (2018).

83. Emerging Technology Technical Advisory Committee (ETTAC); Notice of Recruitment of Private-Sector Members, 83 Fed. Reg. 39,054, 39, 054 (August 8, 2018).

84. Revision of Export and Reexport License Requirements for Republic of South Sudan Under the Export Administration Regulations, 83 Fed. Reg. 38,021, 38,022 (August 3, 2018).

85. See STANDING COMMITTEE ON FOREIGN AFFAIRS AND INTERNATIONAL DEVELOPMENT, A COHERENT AND EFFECTIVE APPROACH TO CANADA'S SANCTIONS REGIMES: SERGEI MAGNITSKY AND BEYOND 25 (April 2017), available at <http://publications.gc.ca/site/eng/9.834916/publication.html>.

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2. *Canada Continues to Expand Magnitsky List.*

On October 18, 2017, Canada passed The Justice for Victims of Corrupt Foreign Officials Bill (Sergei Magnitsky Law) (Magnitsky Law).⁸⁶ The Magnitsky Law permits Canadian officials to issue orders prohibiting dealing with any property of, engaging in transactions with, or providing financial services to designated foreign officials that are involved in gross violations of internationally recognized human rights or are complicit in actions of significant corruption. Shortly afterwards, on November 3, 2017, fifty-two foreign officials from Russia, Venezuela, and South Sudan were added to the list. The list has continued to expand in 2018, with Myanmar Major-General Maung Soe being added on February 16, 2018. Further expansion of the list is likely. Following the murder of Saudi journalist Jamal Khashoggi, the US government announced Magnitsky sanctions on seventeen Saudi officials. On November 15, 2018, the Canadian government reported that it was actively considering doing the same.⁸⁷

3. *Canada Adopts United Nations Sanctions on Mali.*

On October 10, 2018, the Regulations Implementing the United Nations Resolutions on Mali, SOR/2018-203 came into force in Canada.⁸⁸ Per the regulation, Canada will impose a travel ban and asset freeze on individuals and entities designated by the U.N. Committee established under U.N. Resolution S/RES/2374. The potential of UN sanctions is designed to provide a deterrent to those who would disrupt the Malian peace process.⁸⁹ To date, however, the UN has designated no individuals or entities to which the sanctions apply.

4. *Canada Expands Sanctions Against Myanmar (Burma)*

In 2012, the Canadian government substantially scaled back its sanctions on Myanmar following moves towards democracy by the military junta. However, on June 25, the Canadian government in concert with the European Union implemented targeted sanctions against seven Burmese

86. See Justice for Victims of Corrupt Foreign Officials Act (Sergei Magnitsky Law), SC 2017, c 21 (Can.) (providing greater protection for foreign nationals and amending the Special Economic Measures Act to reflect the similar principles).

87. See Peter Zimonjic, *Canada considering sanctions against Saudis over murder of journalist Jamal Khashoggi*, CBC NEWS (Nov. 15, 2018 3:46 PM), <https://www.cbc.ca/news/politics/saudi-khashoggi-magnitsky-sanctions-freeland-1.4907529>.

88. See *Canadian Sanctions Related to Mali*, GOVERNMENT OF CANADA (date modified Nov. 27, 2018), https://www.international.gc.ca/world-monde/international_relations-relations_internationales/sanctions/mali.aspx?lang=eng.

89. See Press Release, Security Council, Security Council Renews Sanctions Regarding Mali, Panel Monitoring Implementation, Unanimously Adopting Resolution 2432 (2018), U.N. Press Release SC/13478, para. 5 (Aug. 30, 2018), <https://www.un.org/press/en/2018/sc13478.doc.htm>.

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military leaders who were reportedly involved in military attacks against the Rohingya people.⁹⁰

5. *Canada Expands Sanctions on Venezuela*

The Canadian government described the May 20, 2018 Venezuelan presidential elections as undemocratic and, on May 30, 2018, levied additional targeted sanctions against fourteen members of the Maduro regime.⁹¹ These sanctions are in addition to the targeted sanctions on forty individuals that were announced in September 2017.⁹²

6. *Canada Expands Sanctions on Libya*

On June 16, 2018, Canada amended its sanctions against Libya to implement certain UN Security Council resolutions. In particular, the amendments to the Regulations Implementing the United Nations Resolution on Libya impose measures against the illegal export of oil from Libya and require UN Security Council approval for the sale of any weapons in Libya, except non-lethal weapons sold for humanitarian purposes.⁹³

7. *Canada Strengthens Sanctions on North Korea*

On January 11, 2018, Canada amended its sanctions on North Korea by incorporating four Resolutions of the UN Security Council issued during 2016 and 2017.⁹⁴ This catch-up amendment tightens an already aggressive sanctions regime applied by Canada against North Korea.

8. *Export Controls*

On January 9, 2018, the Federal Court of Appeal dismissed an appeal from a lower court's refusal to overturn the decision of the Minister of Foreign Affairs to issue permits for the export of light armoured vehicles to Saudi Arabia.⁹⁵ The applicant had argued that the Minister ought to have declined to issue the export permits because there was a reasonable risk that Saudi Arabia might use the vehicles in operations against civilian populations, particularly in Yemen. In 2017, Canada tabled Bill C-47—An Act to amend the Export and Import Permits Act and the Criminal Code (amendments permitting the accession to the Arms Trade Treaty and other amendments). Among its many provisions, Bill C-47 implements the Arms

90. *Regulations Amending the Special Economic Measures (Burma) Regulations*, SOR/2018-135 (Can.).

91. *Regulations Amending the Special Economic Measures (Venezuela) Regulations*, SOR/2018-114 (Can.).

92. *Special Economic Measures (Venezuela) Regulations*, SOR/2017-204 (Can.).

93. *Regulations Amending the Regulations Implementing the United Nations Resolutions on Libya*, SOR/2018-101 (Can.).

94. *Regulations Amending the Regulations Implementing the United Nations Resolutions on the Democratic People's Republic of Korea (DPRK)*, SOR/2018-1 (Can.).

95. *See Turp v. Canada (Foreign Affairs)*, [2018] F.C. 12, ¶ 123 (Can.).

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Trade Treaty by amending the Export and Import Permits Act and Criminal Code to add the offense of brokering—defined as arranging or negotiating a transaction relating to the movement of designated goods or technology between two foreign countries.⁹⁶ Bill C-47 is presently before the Standing Senate Committee on Foreign Affairs and International Trade, having been passed by the House of Commons on June 11, 2018. It is expected to come into force in 2019.

⁹⁶ See An Act to amend the Export and Import Permits Act and the Criminal Code (amendments permitting the accession to the Arms Trade Treaty and other amendments), S.C. 2018, c. 26 (Can.), *available at* <http://www.parl.ca/DocumentViewer/en/42-1/bill/C-47/third-reading>.

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