

**Alert | Export Controls & Economic Sanctions/
White Collar Defense & Special Investigations**



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New Venezuela Restrictions and Framework for a Peaceful Democratic Transition Announced Among New Criminal Charges Against Venezuelan President and Political Affiliates

On March 26, 2020, the Trump Administration announced significant new criminal charges targeting Venezuelan President Nicolas Maduro and his regime. Additionally, the administration indicated that it is considering implementing additional sanctions against Venezuela, signaling the U.S. government's commitment to continuing the sanctions in pursuit of a political transition in Venezuela, in direct opposition to recent calls to lift the restrictions out of humanitarian concern.

In a press conference led by Attorney General William Barr, the Department of Justice announced the coordinated filing of criminal charges in five separate judicial districts against Maduro and 14 other current and former high-ranking Venezuelan officials for narco-terrorism, drug trafficking, corruption, and money laundering. Prosecutors allege that Maduro and his colleagues engaged in a decades-long conspiracy with leaders of the Fuerzas Armadas Revolucionarias de Colombia (FARC) to flood the United States with cocaine, with the dual purpose of enriching themselves and injuring U.S. communities.

Prosecutors also allege that corrupt Venezuelan officials looted their government of billions of dollars and then laundered those funds through bank accounts and real estate transactions in the United States. Among others, the current Chief Justice of the Venezuelan Supreme Court, Maikel Jose Moreno Perez,

was charged with laundering millions of dollars in bribe payments through bank accounts in South Florida. And Venezuela's former Minister and Vice Minister of Energy were charged with laundering bribes paid by U.S. companies to secure energy contracts in violation of the Foreign Corruption Practices Act (FCPA).

In a separate indictment, Venezuela's vice president for the economy, Tareck Zaidan El Aissami Maddah, and others were alleged to have conspired with unnamed U.S. nationals and entities to provide services for the benefit of Maduro's 2018 presidential campaign, in violation of OFAC's sanctions targeting Maduro.

These new charges are in line with the Trump Administration's efforts to, in the words of Attorney General Barr, "root[] out the extensive corruption within the Venezuelan government."

State Sponsor of Terrorism (SSOT) Designation

In addition, the Administration is considering adding Venezuela to the State Department's "State Sponsors of Terrorism" list, which identifies countries found to have repeatedly supported acts of international terrorism. The SSOT designation has been used only in rare circumstances since it was first used in 1979, as it carries the practical effect of an almost complete embargo.

While the State Department has not yet taken this measure, it has been under consideration for some time and would be consistent with the escalation of sanctions against Venezuela over the past year. If listed, Venezuela would join the four countries currently on the list: North Korea, Syria, Sudan, and Iran. Cuba, which was added to the list in 1982, was removed in 2015.

As noted, an SSOT designation has significant implications under U.S. export controls and sanctions laws, which would be added to the current prohibitions and restrictions to create a near-complete U.S. embargo of Venezuela. Export controls restrictions on Venezuela already include an arms embargo prohibiting exports of military use items and, as further described below, most transactions between the government of Venezuela and U.S. persons are prohibited under current U.S. sanctions. An SSOT designation would cover many of the gaps in the current restrictions on transactions with or exports to Venezuela, imposing heightened export license requirements for almost all dual-use items controlled under the Export Administration Regulations (EAR). The EAR commodities which would become subject to a licensing requirement include any commodity listed on the Commerce Control List and subject to control for "anti-terrorism" reasons. When combined with the existing export restrictions in place against Venezuela, an SSOT designation would have the practical effect of a near-complete embargo, as all commodities other than those designated as EAR99 would be prohibited or require an export license. In addition, U.S. sanctions regulations administered by OFAC prohibit U.S. persons from participating in any financial transactions involving SSOT governments, so the Venezuelan government would be further cut off.

Notably, the above restrictions have the potential to take effect immediately upon Venezuela's designation as an SSOT. Unlike other export controls and sanctions restrictions, which often come with a "wind-down" period to allow companies to cease prohibited business, U.S. persons with Venezuela-related business should be aware of the possibility that no-wind down period will be offered. Thus, U.S. businesses with Venezuela touchpoints may wish to prepare for possible restrictions now by classifying their products for export purposes and evaluating any new restrictions and licensing requirements that would apply.

Venezuela Sanctions

The sanctions regime placed on Venezuela continues to be one of the more restrictive administered by the United States. All property and interests in property of the government of Venezuela in the United States have been blocked and may not be transferred. U.S. citizens are prohibited from conducting transactions with the government of Venezuela, including with any entities owned or controlled by the government of Venezuela. As the government of Venezuela is highly active in the local economy, and has ownership in many local entities, this is a far-reaching prohibition. Additional restrictions have been focused on individuals or entities as well as entire sectors of the Venezuelan economy such as the oil and gas sector or the gold sector, the Central Bank of Venezuela, or government related entities such as Petroleos de Venezuela, S.A. (PdVSA).

Recent actions taken by the administration in the first quarter of 2020 have mostly enlarged the list of prohibited transactions. These have involved adding individuals or aircraft to the list of Specially Designated Nationals (SDN). Inclusion on the SDN list means that the individual's or entity's assets are blocked and U.S. persons are generally prohibited from dealing with them. Recent additions to the SDN list include a variety of individuals, entities, and even aircraft. Notably, Rosneft Trading S.A. (Rosneft), a Russian controlled oil brokerage firm, as well as the president of Rosneft were recently placed on the SDN list for operating in the Venezuelan oil and gas sector.

The sanctions regime on Venezuela continues to evolve and remains highly complex. General licenses for transactions related to the provision of certain agricultural products, food, medicine, medical devices including certain hospital goods, and certain medical services are currently in place, but many banks are still unwilling to process payments for transactions involving Venezuela. Practically this means that all parties, including but not limited to local distributors, suppliers, in country agents, and employees at local subsidiaries must be continuously screened against the most up-to-date lists of sanctioned entities.

Conclusion and U.S. Actions to Monitor

On March 31, 2020, the United States proposed a Framework for a Peaceful Democratic Transition in Venezuela (the Framework). The Framework calls for the establishment of a transitional government and a "pathway to lifting Venezuela-related U.S. sanctions." For sanctions to be lifted, both Maduro and Juan Guaidó (who is recognized as the acting president of Venezuela by the United States) would need to step down, a transition council in charge of overseeing the next presidential election would need to be established and functioning, and all foreign military forces would need to leave the country. Under the plan, those accused of grave human rights abuses or drug trafficking would not be eligible for sanctions relief. On the other hand, those currently included on the SDN list because of a position in the Maduro government could potentially see restrictions lifted. The Framework requires buy-in from several Maduro government officials as well as other international actors and therefore may be difficult to implement. Further, the actions described in this report may show that the United States sees sanctions and criminal charges as a means to apply pressure for a regime change in Venezuela. Accordingly, it may be some time before any of the restrictions described in this alert are softened.

Though the prospect of easing sanctions under the Framework is possible, for the foreseeable future all U.S. businesses will need to carefully review their Venezuela touchpoints. The Framework makes no mention of the United States easing sanctions due to the current world-wide health crisis and the criminal charges targeting Maduro along with the possibility of an SSOT designation may underline an interest in further increasing these restrictions.

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