

Aid and sanctions: Ukraine, Israel and Taiwan aid bill expands U.S. sanctions and export control authorities

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On April 24, 2024, President Biden signed into law the National Security Supplemental fiscal package,¹ which includes significant new sanctions and export controls authorities.

Companies should be ready to manage multiple regimes in their compliance programs.

Although the U.S. foreign aid commitments for Ukraine, Israel, and Taiwan headline the new law, it also (1) expands the statute of limitations for U.S. sanctions violations; (2) includes new authorities for the President to coordinate sanctions efforts with the European Union and the United Kingdom; (3) expands sanctions and export controls on Iran (including some targeted at Chinese financial institutions); and (4) includes new sanctions authorities targeting terror groups.

Key takeaways

- Sanctions violations, whether civil, criminal, or forfeiture, of the International Emergency Economic Powers Act ("IEEPA") and the Trading with the Enemy Act ("TWEA") are now subject to a 10-year statute of limitations that runs from the date of the most recent violation, potentially exposing companies to liability for periods substantially longer than 10 years. The prior statute of limitations for such violations was five years. Implications of this extension remain to be seen and will require active consideration in a range of contexts from transactions, records retention, and internal investigations.
- The expansion of the scope of the Iran Foreign Direct Product Rule means persons dealing with Iran must continue to consider whether their non-U.S.-origin products are derived from U.S.-origin technology or software.
- The United States is further integrating sanctions and export control compliance and institutions that have predominately focused on sanctions compliance (e.g., banks) should begin to develop export compliance protocols as well.

- The United States, European Union, and United Kingdom continue to coordinate on sanctions and export controls. Companies should be ready to manage multiple regimes in their compliance programs, with the expectation that equivalent agencies across governments are in communication with each other.
- Non-U.S. vessel, port, and refinery owners should exercise increased diligence to confirm that their assets are not involved with Iranian oil or risk becoming the subject of U.S. sanctions.
- Chinese banks processing Iranian oil payment are a key target for these new sanctions authorities. Persons engaging in business with Chinese banks or with accounts at such banks should develop plans of action in the event a Chinese bank is sanctioned.

Background

The bill was originally passed in the Senate in February, but stalled in the House of Representatives until Speaker Mike Johnson brought it to a vote. It passed the House of Representatives on April 20, 2024, where the additional sanctions and export provisions were included. The Senate quickly voted in favor of the amendments and the bill was promptly signed into law by President Biden.

In addition to the aid to Ukraine, Israel, and Taiwan and the sanctions and export controls authorities, the law also includes provisions that: (1) allow the President to seize Russian assets subject to U.S. jurisdiction and transfer them to a fund that can be used to support Ukraine; (2) force the sale of TikTok from ByteDance within 270 days, and, if this has not happened by that time, prohibits services to distribute, maintain, or update the application, as well as internet hosting services to enable the same; (3) prohibit data brokers from providing personally identifiable sensitive data of a U.S. individual to China, Russia, Iran, or North Korea (or entities controlled by them); and (4) suspend foreign aid, loans, or technical assistance to any governments that have provided support to identified Palestinian terror organizations or for international terrorism.

A summary of the key sanctions and export controls provisions in the new law:

I. 10-year statute of limitation for IEEPA and TWEA violations

The new law added an identical provision to both IEEPA and TWEA extending the statute of limitations for both laws from five years, to ten.

The new law authorizes OFAC to impose sanctions on the foreign persons listed in the report to Congress who are not currently sanctioned by the United States, but does not require such sanctions to be imposed.

Notably, the new law specifies that the pre-penalty notice or finding of violation is considered to be the commencement of an action for statute of limitation purposes and that the statute starts at the time of the most recent violation.

This means that if a violation was identified within the ten-year period, the U.S. Department of the Treasury Office of Foreign Assets Control ("OFAC"), which enforces these laws, could review violations extending back further than ten years.

For criminal sanctions violations, the U.S. Department of Justice must file an indictment or information within 10 years after the latest date of the violation upon which the indictment or information is based.

II. Coordination between U.S., EU and UK sanctions on Russia

The new law requires OFAC to provide a report to Congress that includes: (1) a list of foreign persons currently subject to European Union and United Kingdom sanctions (pursuant to their relevant Russian sanctions regimes), but are not subject to U.S. sanctions; and (2) an analysis of whether those persons meet any designation criteria under current U.S. sanctions authorities.

Importantly, this list is related to the Russian, not Belarussian, sanctions regimes in the EU and the UK, and the Ukraine sanctions regime (in the case of the EU).

The new law also authorizes OFAC to impose sanctions on the foreign persons listed in the report to Congress who are not currently sanctioned by the United States, but does not require such sanctions to be imposed; an earlier version of the legislation would have made such sanctions mandatory.

III. Iran-related provisions

Act	Brief Description
Stop Harboring Iranian Petroleum Act ("SHIP Act")	The SHIP Act requires OFAC (within 180 days) to impose sanctions (i.e., asset freeze, or visa ban) on foreign persons that knowingly: <ul style="list-style-type: none"> • Own or operate a foreign port and knowingly permit a vessel to dock; • That is included on OFAC's List of Sanctioned National or Blocked Person ("DN List") and was designated for transporting Iranian oil; or • Where the operator or owner of such vessel otherwise knowingly engages in a significant transaction involving such vessel to transport, offload, or deal in significant transactions in Iranian origin condensate, refined, or unrefined petroleum products, or other petrochemical products; • Own or operate a vessel through which the owner knowingly conducts a ship-to-ship ("STS") transfer involving a significant transaction of Iranian origin petroleum products. <ul style="list-style-type: none"> • Own or operate a refinery through which the owner knowingly engages in a significant transaction to process, refine, or deal in any Iranian origin petroleum product; or • Is a covered family member or is owned or controlled by persons described above. There is an exemption if a foreign person relies on a certificate of origin that states that the petroleum and related products are not Iranian origin (and there is no knowledge that the certificate is false).
Fight and Combat Rampant Iranian Missile Exports Act ("Fight CRIME Act")	The Fight CRIME Act requires OFAC (within 120 days) to impose sanctions (i.e., asset freeze or visa ban) on any foreign persons that: <ul style="list-style-type: none"> • Knowingly engage in any effort to acquire, possess, develop, transport, transfer, or display "Covered Technology" to, from, or involving the Government of Iran ("GoI") or Iran-aligned entities; • Knowingly provide entities owned or controlled by the GoI or Iran-aligned entities with goods, technology, parts, or components, that may contribute to the development of "Covered Technology"; • Knowingly participate in joint missile or drone development, including development of "Covered Technology", with the GoI or Iran-aligned entities, including technical training, storage, and transport; • Knowingly import, support, or re-export to, into, or from Iran, whether directly or indirectly, any significant arms or related material prohibited under certain UN Security Council resolutions; • Knowingly provide significant financial, material, or technological support to, or knowingly engages in a significant transaction with, a foreign person subject to sanctions for conduct described above; • Are an adult family member of a person subject to sanctions for conduct described above. "Covered Technology" is defined as goods, technology, software, or related material specified in the Missile Technology Control Regime Annex.
The Mahsa Amini Human Rights and Security Accountability Act ("MAHSA Act")	The MAHSA Act requires OFAC (within 90 days) to identify if any of the following persons meet the sanctions designation criteria under the Iran sanctions regime, and, if so, impose sanctions on them. This includes: <ul style="list-style-type: none"> • The Supreme Leader of Iran and any official in the Office of the Supreme Leader of Iran; • The President of Iran and any official in the Office of the President of Iran or the President's cabinet, including cabinet ministers and executive vice presidents; • Any entity, including foundations and economic conglomerates, overseen by the Office of the Supreme Leader of Iran which is complicit in financing or resourcing of human rights abuses or support for terrorism; • Any official of any entity owned or controlled by the Supreme Leader of Iran or the Office of the Supreme Leader of Iran; and • Any other person the President determines: <ul style="list-style-type: none"> • Is a person appointed by the Supreme Leader of Iran, the Office of the Supreme Leader of Iran, the President of Iran, or the Office of the President of Iran to a position as a state official of Iran, or as the head of any entity located in Iran or any entity located outside of Iran that is owned or controlled by one or more entities in Iran; • Has materially assisted a person sanctioned under Iran sanctions authorities; • Is owned or controlled by, or acting on behalf of, any person sanctioned under Iran sanctions authorities; or • Is a member of the board of directors or a senior executive officer of an entity sanctioned under Iran related sanctions authorities.
No Technology for Terror Act	The No Technology for Terror Act expands the Foreign Direct Product Rules on Iran. It expands the scope of the prohibition (without a license) to export or reexport to, or transfer within Iran, items made outside the United States to include items that meet both the following product and destination scopes. <p>Product Scope:</p> <ul style="list-style-type: none"> • The non-U.S. made item is the direct product of U.S.-origin technology or software subject to the Export Administration Regulations ("EAR"), and (1) has a "Covered Export Control Classification Number" or (2) is identified on Supplement No. 7 to Part 746 of the EAR, or • Is produced by any plant or major component of a plant that is located outside the United States, if the plant or major component of a plant, whether made in the United States or a foreign country, itself is a direct product of United States-origin technology or software subject to the EAR that is specified in a Covered Export Control Classification Number. <p>In this context, a "Covered Export Control Classification Number" means an Export Control Classification Number ("ECCN") in product group D or E of Category 3, 4, 5, 6, 7, 8, or 9 of the Commerce Control List ("CCL").</p> <p>Previously, the product scope of the Iran Foreign Direct Product Rule only applied to non-U.S. items that were:</p> <ul style="list-style-type: none"> • The direct product (or indirect via a plant or major component of plant similar to above) of U.S.-origin software or technology specified with an ECCN in product groups D or E of Category 3, 4, 5, or 7 of the CCL, and • And the item itself is specified in any ECCN in Category 3, 4, 5, or 7 of the CCL or in Supplement No. 7 to Part 746 of the EAR. <p>Destination Scope:</p> <ul style="list-style-type: none"> • There is knowledge that the foreign-produced item: <ul style="list-style-type: none"> • Is destined to Iran; or • Will be incorporated into or used in the production or development of any part, component, or equipment subject to the EAR and produced in or destined to Iran; • There is an exception for: <ul style="list-style-type: none"> • Food, medicine, medical devices that are designated as EAR99 or not designated or listed on the CCL, and • Communication devices that are EAR99, SAR922, or SD992 (as long it is not for the GoI) and it is subject to a general license from OFAC.
Iran-China Energy Sanctions Act of 2023	The Iran-China Energy Sanctions Act expands a prior sanctions authority from 2012 to require OFAC (within 180 days) to impose sanctions (i.e., asset freeze and correspondent prohibitions) on: <ul style="list-style-type: none"> • Chinese financial institution (without regard to the size, number, frequency, or nature of the transaction) involving the purchase of petroleum or petroleum products from Iran; and • Any foreign financial institution (without regard to the size, number, frequency, or nature of the transaction) involving the purchase of Iranian drones, drone parts, or related systems.

IV. New sanctions regimes

Act	Brief Description
Fentanyl Eradication and Narcotics Deterrence Off Fentanyl Act ("FEND Off Fentanyl Act")	The FEND Off Fentanyl Act requires OFAC to impose (within 180 days) sanctions (i.e., asset freeze) on foreign persons that: <ul style="list-style-type: none"> • Are knowingly involved in significant trafficking of fentanyl, fentanyl precursors, or other opioids; or • Otherwise are knowingly involved in significant activities of transnational criminal organization related to trafficking of fentanyl, fentanyl precursors, or other opioids.
Hamas and Other Palestinian Terrorist Groups International Financing Prevention Act	This act requires OFAC to impose (within 180 days) sanctions (i.e., asset freeze) on foreign persons that knowingly: <ul style="list-style-type: none"> • Assist in sponsoring or providing financial, material, or technological support for, or goods or other services to enable, acts of terrorism; or • Engage, directly or indirectly in a transaction with (1) a senior member of Hamas, Palestinian Islamic Jihad, Al-Aqsa, Martyrs Brigade, the Lion's Den, or any affiliate or successor thereof; or (2) a senior member of a designated "Foreign Terrorist Organization" that is responsible for providing, directly or indirectly, support to one of the organizations listed above.
Strengthening Tools to Counter the Use of Human Shields Act	This act updates a law from 2017 targeting Hezbollah and now requires OFAC to impose (within 120 days) sanctions (i.e., asset freeze, visa ban) on foreign persons that are (1) a member of Palestine Islamic Jihad (or knowingly acts on behalf of the group), and (2) knowingly orders, controls, or otherwise directs the use of civilians to shield military objectives from attack.
Illicit Captagon Trafficking Suppression Act of 2023	The Illicit Captagon Trafficking Suppression Act requires OFAC to impose sanctions (i.e., asset freeze, visa ban) on foreign persons that: <ul style="list-style-type: none"> • Engage in (or attempt to engage in) activities or transactions that have materially contributed to, or pose a significant risk of materially contributing to, the illicit production and international illicit proliferation of captagon, an illicitly produced amphetamine; or • Knowingly receive any property or interest that they know (1) constitutes or is derived from proceeds of activities or transactions described above (or pose a significant risk of materially contributing to the activities or transactions described above); or (2) was used (or intended to be used) to commit or facilitate activities or transactions that have materially contributed to, or pose a significant risk of materially contributing to the activities described above.

What's next?

OFAC and the U.S. Department of Commerce will have a number of regulations to implement as a result of the National Security Supplemental fiscal package. The aspects that will be critical to watch are:

- Whether any exceptions to these rules are included. Currently the bill includes a number of exceptions for each regime (e.g., humanitarian activities, activities tied to the United Nations), but the relevant agencies might add to that list;
- Whether OFAC will utilize its waiver capabilities for the mandatory sanctions. OFAC can waive the "mandatory sanctions" for limited periods of time;
- Whether OFAC will amend its recordkeeping requirements, which today generally only require records to be kept for

five years, to align the requirements with the new statute of limitations of 10 years for IEEPA / TWEA authorized programs;

- Whether OFAC will issue guidance on how it will implement its new extended statute of limitations and how that will apply to in-progress enforcement actions that had been operating on a five-year analysis; and
- More generally, how enforcement will come to pass. The agencies may enforce different aspects of these regulations differently, which will inform the private sector where to focus diligence and compliance efforts.

Notes:

¹ <https://bit.ly/4ajQSO2>

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