



CLIENT ALERT:

**U.S. SANCTIONS AGAINST VENEZUELA STEPPED UP –
INTERNATIONAL SHIPPING LARGELY UNAFFECTED**

September 5, 2017

Introduction

The first U.S. sanctions against Venezuela, in response to human rights abuses and other concerns, were contained in Executive Order 13692 dated March 8, 2015. That E.O. blocked the property in the U.S., or under U.S. control, of those persons listed in the Annex to the E.O., or of persons determined to be responsible for any of the abuses in question, and subsequently designated pursuant to the E.O. In addition, the E.O. called for the blocking of the property in the U.S. of any person (not just a U.S. person) determined to have materially assisted or provided financial, material or technological support for, or goods or services to, any person named under the E.O.

In July and August of 2017 the U.S. designated additional persons pursuant to E.O. 13692 and issued another Executive Order expanding the sanctions against Venezuela. However, to date none of the U.S. sanctions appear to have had a direct effect on international shipping.

Individuals Designated Under E.O. 13692

Executive Order 13692 initially designated seven individuals to the U.S. Specially Designated Nationals List (“SDN List”). On May 15, 2017 eight members of the Venezuelan Supreme Court of Justice were placed on the SDN List, followed by an additional thirteen persons on July 26, 2017. Among those designated on July 26th was Simon Alejandro Zerpa Delgado, who is listed as the Vice-President of Finance of Petroleos de Venezuela S.A. (“PDVSA”). On July 31, 2017 the U.S. Department of the Treasury added the President of Venezuela, Nicolas Maduro Moros, to the SDN List and on August 9 another eight individuals were added to the List. Other than potentially Simon Alejandro Zerpa Delgado none of the individuals designated to the SDN List appear to have any direct connection to the shipping trade.

Effect of Designation

All the personal assets of those named to the SDN List, including President Maduro and Mr. Zerpa Delgado, which are in the U.S. or under U.S. jurisdiction are now blocked, which effectively means that any bank accounts or properties those individuals have in the U.S. are frozen and they cannot personally access the U.S. banking system. It also means that U.S. persons cannot deal with any of the persons designated as SDNs.

However, both President Maduro and Mr. Zepa Delgado have been designated as individuals and their designations do not impact the ability of U.S. persons or non-U.S. persons to transact business with PDVSA or with the Government of Venezuela. OFAC some time ago posted an FAQ addressing the effect of the designation of an official of the Venezuelan government to the SDN List:

“505. If an official of the Government of Venezuela is designated as a Specially Designated National (SDN), does that mean that the Government of Venezuela is blocked? What are the prohibitions on U.S. persons dealing with a designated government official or the Government of Venezuela?”

No. The designation of an official of the Government of Venezuela does not mean that the government itself is also blocked. The prohibitions apply to transactions or dealings only with the individuals and entities whose property and interests in property are blocked. However, U.S. persons should be cautious in dealings with the government to ensure that they are not engaged in transactions or dealings, directly or indirectly, with an SDN, for example by entering into contracts that are signed by an SDN, entering into negotiations with an SDN, or by processing transactions, directly or indirectly, on behalf of the SDN, absent authorization or an applicable exemption. “

Based on the FAQ above, in any dealings with PDVSA, it would be prudent to ensure that Mr. Zepa Delgado is not signing any contracts. While none of the other designated persons appear to be actively involved in shipping, caution should be exercised to ensure that no contracts are entered which are executed by those individuals.

Executive Order 13808 of August 24, 2017

Further sanctions were imposed against Venezuela and PDVSA on August 24th through the issuance of Executive Order 13808, which can be found [here](#). The primary thrust of this E.O. is to restrict access to U.S. financing, credit or investment.

With one exception, this latest E.O. does not impose any sanctions that would directly impact shipping. The exception relates to PDVSA. Section 1(a)(i) of the E.O. provides that no U.S. person, nor any person within the U.S., can engage in any transaction with PDVSA for new debt with a maturity greater than 90 days. OFAC has issued FAQs on the E.O., which can be viewed [here](#). The FAQs define “debt” to include “extensions of credit.” Therefore, if any U.S. entity, or an entity acting from within the U.S., entered a charter party with PDVSA which gave PDVSA more than 90 days to pay freight or demurrage that would be a violation of this E.O.

Section 1(a)(ii) of the E.O. is a similar provision prohibiting U.S. persons or any person within the U.S. from engaging in any transaction with the Government of Venezuela for new debt with a maturity of greater than 30 days, or new equity. The E.O. defines the Government of Venezuela as the Government, plus “... any political subdivision, agency, or instrumentality thereof, including the Central Bank of Venezuela and PDVSA, and any person owned or controlled by, or acting for or on behalf of, the Government of Venezuela.” As mentioned above, the E.O. sets a separate debt maturity threshold for PDVSA of 90 days, as opposed to the 30 day limit for the Government.

Citgo, the U.S. oil company which is owned by the Government of Venezuela, would be included in the definition of the "Government of Venezuela" and, therefore, would normally be subject to the 30 day limit on debt maturity, except for the fact that by a General License 2 issued by OFAC in conjunction with the E.O., all transactions with the Government of Venezuela which are prohibited in the E.O. are authorized with respect to Citgo. Therefore, Citgo has been effectively exempted from the prohibitions of the E.O. OFAC also issued General License 1, which applies to contracts that were in effect prior to the effective date of the E.O. and provides for a 30 day winding down period for such contracts.

Further Sanctions

As yet there are no U.S. sanctions which target specific cargoes in relation to Venezuela. It has been reported that the U.S. might take action against the Venezuelan oil industry, specifically either banning the purchase of Venezuelan oil by U.S. persons or banning the sale of U.S. light crude to Venezuela. At this point neither step has been taken and either would impact not only the Venezuelan economy, but also the U.S. economy. At a press conference late on July 31st U.S. Secretary of the Treasury Steven Mnuchin was asked if there would be further economic sanctions and he responded: "We don't comment on future sanctions, but we will continue to monitor the situation and determine what is appropriate."

Summary

The U.S. sanctions against Venezuela have been expanded in the last few months. As yet none of those sanctions appear to have a direct impact on international shipping. We will continue to monitor developments and will report on any additional sanctions.

Disclaimer: This Client Alert provides only a general summary of the current U.S. sanctions against Venezuela and is not intended to constitute comprehensive legal advice. Specific legal advice should be taken with respect to each individual inquiry regarding the new legislation. For additional clarification, please feel free to contact Bill Juska (juska@freehill.com), Gina Venezia (venezia@freehill.com) or Bill Pallas (pallas@freehill.com).

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