GIBSON DUNN

the Outlook for 2018

U.S. Economic and Trade Sanctions Against Venezuela

March 13, 2018

Panelists:

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Moderator: Judith Alison Lee

Speaker Background

Jose W. Fernandez is Co-Chair of the firm's Latin America Practice Group. He previously served as Assistant Secretary of State for Economic, Energy and Business Affairs in the Obama Administration, overseeing the bureau's work on international trade and investment policy, international finance, development and debt policy, economic sanctions, and other international business issues. His practice focuses on M&A and finance in emerging markets.

Judith Alison Lee is Co-Chair of the firm's International Trade Practice Group. She focuses her practice in the areas of international trade regulation, including USA Patriot Act compliance, FCPA, economic sanctions and embargoes, and export controls, and also assists clients with issues involving virtual and digital currencies, blockchain technologies and distributed cryptoledgers.

Adam M. Smith previously served in the Obama Administration as the Senior Advisor to the Director of OFAC and as the Director for Multilateral Affairs on the National Security Council. His practice focuses on international trade compliance and white collar investigations, including economic sanctions enforcement, FCPA, embargoes, and export controls.

Christopher T. Timura is a member of the firm's International Trade Practice Group. His practice focuses on export controls, economic sanctions, and national security compliance, licensing and investigations, and represents clients before the Departments of State (DDTC), Treasury (OFAC and CFIUS), Commerce (BIS), Homeland Security (CBP), and Justice.

Agenda

- Venezuela Country Conditions and U.S. Foreign Policy Making
- Evolution and Current U.S. Sanctions on Venezuela
- Export Controls on Venezuela
- Policy Making Through OFAC General Licenses and FAQs
- What's Next
- Hypotheticals

Venezuelan Economy
Declining Revenue and Rampant Inflation

REUTERS, November 13, 2017

Venezuela crude output hits 28-year low: OPEC

BBC News, November 14, 2017

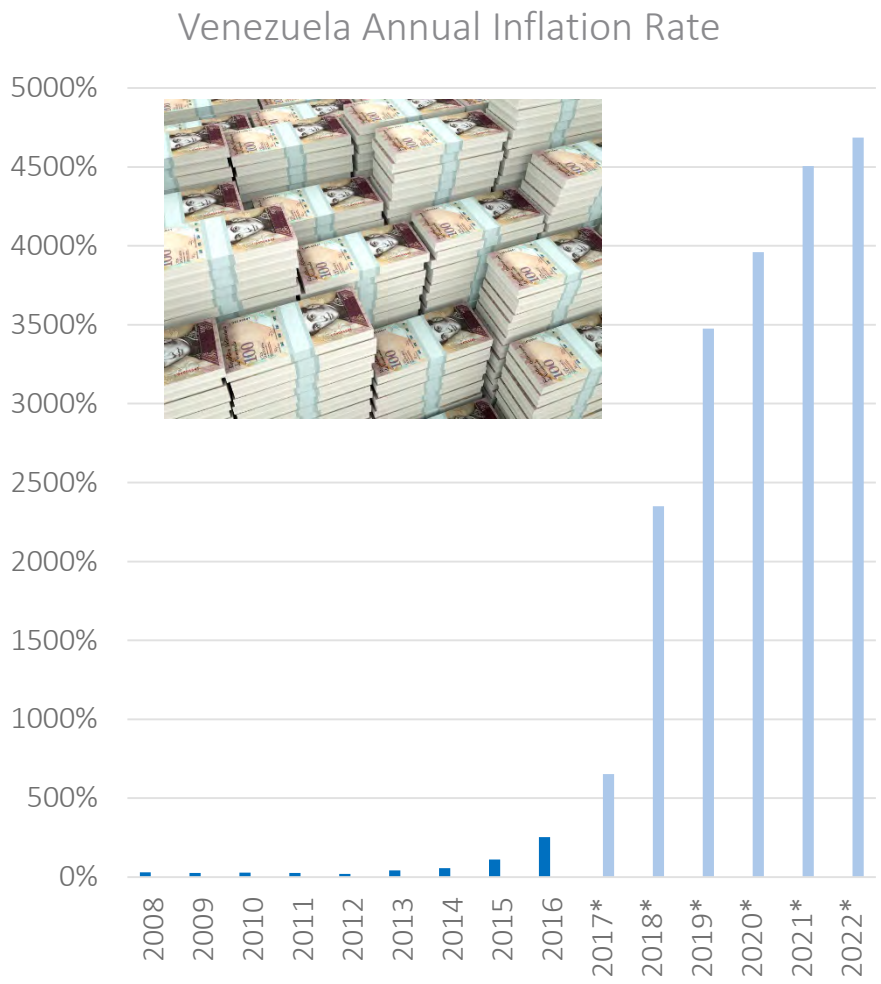
Venezuela in selective default, says credit ratings agency

NY Times, Dec. 13, 2017

Once a Cash Cow, Venezuela's Oil Company Now Verges on Collapse

CNN Money, Jan. 25, 2018

Half the Venezuelan economy has disappeared



Source: IMF. (*) indicates figure projected as of October 2017

Life in Venezuela
Severe Shortages

- Nearly 90% of Venezuelans live in poverty.

- Food is largely imported and in severe scarcity as the Maduro government reduces imports in order to meet its debt payments.
  - Imports of food and other necessities reduced by 30% in 2017 to meet $10 billion in debt payments.
  - The average Venezuelan lost 24 pounds in 2017 due to food shortages.
  - Child malnutrition exceeds the WHO's crisis threshold.

- Severe shortages affecting the healthcare system.
  - 1/5 of medical personnel have fled the country in the past 4 years.
  - Hospitals lack basic supplies: 1/2 have shortages of beds, 3/4 are missing basic medications, and 1/5 lack drinkable water.
  - Significant effects on health, including outbreaks of preventable or treatable disease, and increasing mortality rates (e.g., a 100x increase in newborn mortality between 2012 and 2015).

Sources: Shannon K. O'Neil, Council on Foreign Relations, "A Venezuelan Refugee Crisis" (Feb. 15, 2018); "Venezuelans report big weight losses in 2017 as hunger hits," Reuters (Feb. 21, 2018); "In a Venezuela Ravaged by Inflation, 'a Race for Survival,'" NY Times (Dec. 2, 2017); "'Like doctors in a war': inside Venezuela's healthcare crisis," The Guardian (Oct. 19, 2016); "Dying Infants and No Medicine: Inside Venezuela's Failing Hospitals," NY Times (May 15, 2016).

Life in Venezuela
Emigration

- Over 1 million Venezuelans have left the country – out of a country of ~31 million.

- Over half of young adults in Venezuela want to leave the country.

- Over 600,000 Venezuelans have fled to Colombia, where officials have tightened border controls, and have traveled to camps for Syrian refugees in Turkey to learn best practices.

- Other destinations for Venezuelan refugees include Trinidad & Tobago (~40,000), Brazil (~30,000), and Aruba (~20,000).

Sources: "Over half of young Venezuelans want to flee as economy collapses, poll finds," The Guardian (Mar. 8, 2018); Shannon K. O'Neil, "Venezuela's Neighbors Can't Wait for Uncle Sam," Council on Foreign Relations (Feb. 27, 2018); "'Migrate or die': Venezuelans flood into Colombia despite crackdown," Reuters (Feb. 26, 2018); UNHCR, "Venezuela Situation" (November 2017); CIA World Factbook.

Venezuela's Collapsing Oil Production and Processing Infrastructure

The country's oil production dropped by 629,000 barrels per day from January to December 2017, according to OPEC, a loss of 28%. Of note, the figures directly communicated by PDVSA to OPEC were lower than those reported by secondary sources.

Oil exports constitute 95% of Venezuela's export revenue.

In November 2017, Maduro arrested the heads of both the Energy Ministry and PdVSA and replaced them with a general and a former housing minister, respectively.

PdVSA's refineries will operate at 43% of capacity in March 2018 due to lack of spares, feedstock, and light crude.

Underfed workers are less able to do their jobs. Some have passed out at their work stations. Others, too weak for demanding labor, are sent home. Workers who stay on the job have to do more, sending them deeper into calorie deficit. They are less able to quickly respond to the technical and mechanical problems.

Sources: H. Sonnenland, The Collapse of Venezuela's Oil Production, Americas Society / Council of the Americas, at https://www.as-coa.org/articles/chart-collapse-venezuelas-oil-production, C. Wood, The Industry Keeping Venezuela Afloat is Under Pressure Both Inside and Outside of the Country, Business Insider, Mar. 8, at http://www.businessinsider.com/venezuelas-oil-industry-under-pressure-inside-and-outside-the-country-2018-2.

History of Venezuela Sanctions

December 18, 2014:
Venezuela Defense of Human Rights and Civil Society Act of 2014 targets those undermining democratic institutions and human rights.

Traditional Freezing Sanctions

Sectoral Sanctions

March 8, 2015:
EO 13692 implements sanctions against persons implicated in human rights abuses and anti-democratic activities.

2014 **2015** **2016** **2017** **2018**

Earlier:
No Venezuela-specific OFAC program, but some Venezuelan persons designated under global programs, such as the Kingpin Act sanctions.

August 24, 2017:
EO 13808 imposes sectoral sanctions on the Government of Venezuela and PDVSA.

Venezuela Freezing Sanctions

Primarily Individuals

All Blacklisted

EO 13692

51 individuals are sanctioned under this authority as of March 2018, including current or former senior prosecutors, politicians, and members of the armed forces, national police, and/or intelligence services.

Haringhton Padron
Dep. Prosecutor

Benavidas Torres
Former Nat'l Guard

González López
Nat'l Intelligence

Nicolás Maduro
President

Zerpa Delgado
VP PDVSA

Kingpin Act

25 Venezuelan individuals or entities are sanctioned under this authority as of March 2018, including large corporations, airlines, and senior government officials.

Bernal Rosales
Min. Agriculture

Rodríguez Chacín
Fmr. Minister

Makled Garcia

El Aissam
VP of Venezuela

Venezuela Sectoral Sanctions (EO 13808)

Organizations

Not Blacklisted

Federal Register
Vol. 82, No. 166
Tuesday, August 29, 2017

Presidential Documents

Title 3—

The President

Executive Order 13808 of

Imposing Additional S
in Venezuela

By the authority vested i
laws of the United States o
Economic Powers Act (50
gencies Act (50 U.S.C. 16
States Code,

I, DONALD J. TRUMP, Pre
to take additional steps w
in Executive Order 13692
recent actions and policies
abuses of human rights a
deepening humanitarian cri
Constituent Assembly, whi
elected National Assembly
ezuela; rampant public cor
of, and violence toward, t

Section 1. (a) All transact
other dealings in the follo
United States are prohibited

(i) new debt with a ma
Venezuela, S.A. (PdVSA);

(ii) new debt with a m
of the Government of V
subsection (a)(i) of this se

(iii) bonds issued by the
date of this order; or

(iv) dividend payments o
of Venezuela from any e
by the Government of Ve

(b) The purchase, direct
within the United States,
other than securities quali
or equal to 90 or 30 day
this section, respectively, is

(c) The prohibitions in su
to the extent provided by
or licenses that may be iss
any contract entered into or any license or permit granted before the effective date of this order.

Sec. 2. (a) Any transaction that evades or avoids, has the purpose of evading or avoiding, causes a violation of, or attempts to violate any of the prohibitions set forth in this order is prohibited.

(b) Any conspiracy formed to violate any of the prohibitions set forth in this order is prohibited.

Sec. 3. For the purposes of this order:

(a) the term "person" means an individual or entity;

Section 1. (a) All transactions related to, provision of financing for, and other dealings in the following by a United States person or within the United States are prohibited:

(i) new debt with a maturity of greater than 90 days of Petroleos de Venezuela, S.A. (PdVSA);

(ii) new debt with a maturity of greater than 30 days, or new equity, of the Government of Venezuela, other than debt of PdVSA covered by subsection (a)(i) of this section;

(iii) bonds issued by the Government of Venezuela prior to the effective date of this order; or

(iv) dividend payments or other distributions of profits to the Government of Venezuela from any entity owned or controlled, directly or indirectly, by the Government of Venezuela.

(b) The purchase, directly or indirectly, by a United States person or within the United States, of securities from the Government of Venezuela, other than securities qualifying as new debt with a maturity of less than or equal to 90 or 30 days as covered by subsections (a)(i) or (a)(ii) of this section, respectively, is prohibited.

PDVSA

What Activities Does EO 13808 Prohibit?

- EO 13808 prohibits certain transactions by U.S. persons related to:
  - new debt of Petróleos de Venezuela, S.A. (PdVSA);
  - new debt and new equity of the Government of Venezuela;
  - bonds issued by the Government of Venezuela before August 25, 2017;
  - the purchase of securities from the Government of Venezuela; and
  - the payment of dividends and other distribution of profits to the Government of Venezuela by entities owned or controlled by the Venezuelan government.

What EO 13808 Does Not Do…

- It does not block *all* transactions with the Government of Venezuela or PdVSA.
- It does not add the Government of Venezuela or PdVSA to the SDN List.
- It does not prohibit *all* transactions involving nor does it block the property of the Government of Venezuela or PdVSA.

Why did the Administration opt to impose "half measures" like these? Why didn't OFAC blacklist major companies (like PdVSA) or even the jurisdiction of Venezuela?

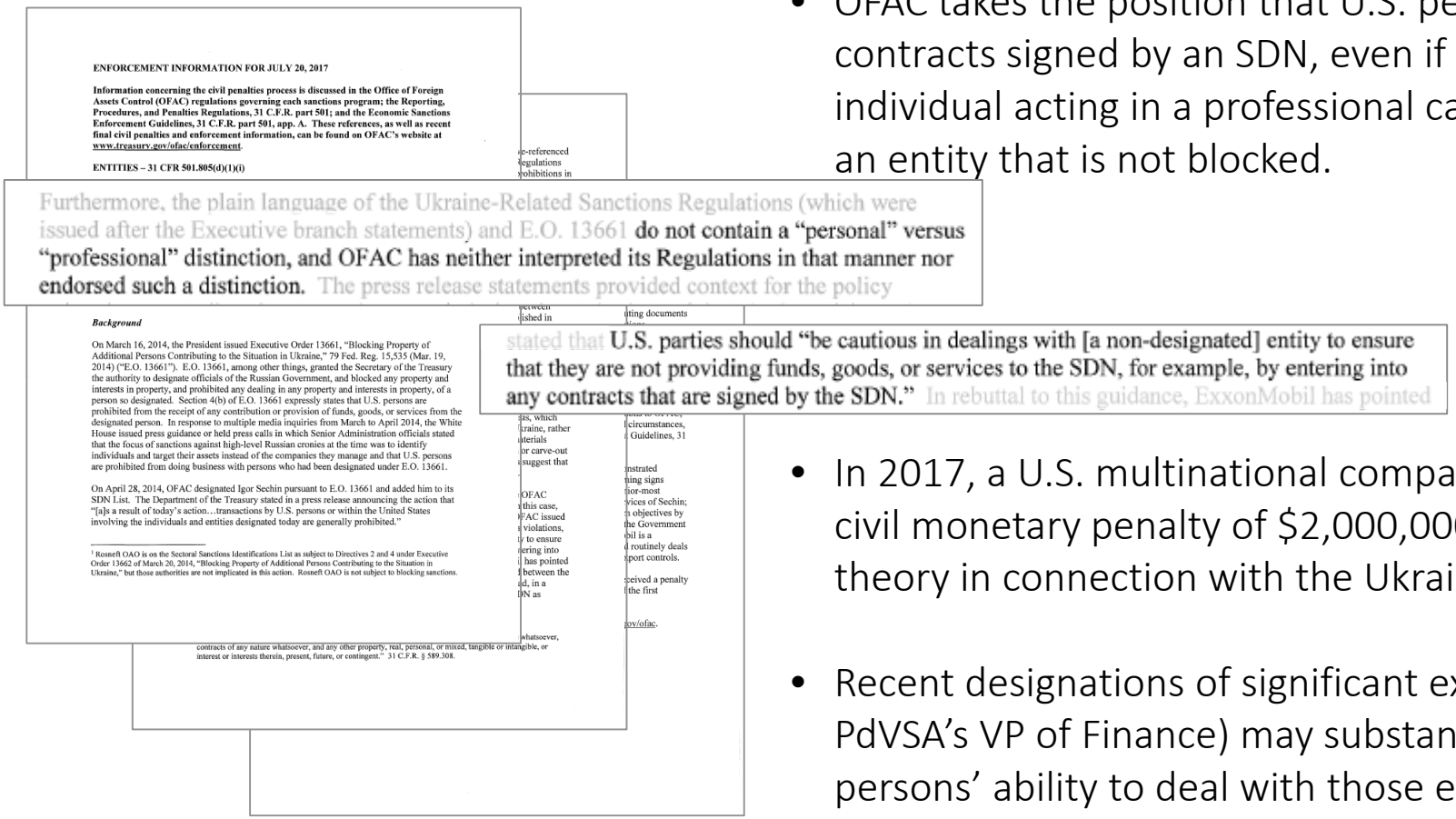
OFAC faced a very similar problem with respect to Venezuela as it has with respect to Russia – how to impose the strongest possible sanctions while limiting the negative collateral consequences?

In Russia the concern was blowback against our European allies (so many of which remain reliant on Russian energy).

In Venezuela the concern was a combination of continued U.S. reliance on Venezuelan oil, the protection of U.S. jobs in refineries on the Gulf coast, and concerns about the impact of a possibly failed stated in Latin America (if the country imploded).

Broader Effects of Freezing Sanctions

- The potential impact of a broader set of freezing measures can be seen in the more limited case of how can U.S. persons deal with PdVSA when some of its leadership are sanctioned parties?



ENFORCEMENT INFORMATION FOR JULY 20, 2017

Information concerning the civil penalties process is discussed in the Office of Foreign Assets Control (OFAC) regulations governing each sanctions program; the Reporting, Procedures, and Penalties Regulations, 31 C.F.R. part 501; and the Economic Sanctions Enforcement Guidelines, 31 C.F.R. part 501, app. A. These references, as well as recent final civil penalties and enforcement information, can be found on OFAC's website at www.treasury.gov/ofac/enforcement.

ENTITIES – 31 CFR 501.805(d)(1)(i)

Furthermore, the plain language of the Ukraine-Related Sanctions Regulations (which were issued after the Executive branch statements) and E.O. 13661 do not contain a "personal" versus "professional" distinction, and OFAC has neither interpreted its Regulations in that manner nor endorsed such a distinction. The press release statements provided context for the policy

Background

On March 16, 2014, the President issued Executive Order 13661, "Blocking Property of Additional Persons Contributing to the Situation in Ukraine," 79 Fed. Reg. 15,535 (Mar. 19, 2014) ("E.O. 13661"). E.O. 13661, among other things, granted the Secretary of the Treasury the authority to designate officials of the Russian Government, and blocked any property and interests in property, and prohibited any dealing in any property and interests in property, of a person so designated. Section 4(b) of E.O. 13661 expressly states that U.S. persons are prohibited from the receipt of any contribution or provision of funds, goods, or services from the designated person. In response to multiple media inquiries from March to April 2014, the White House issued press guidance or held press calls in which Senior Administration officials stated that the focus of sanctions against high-level Russian cronies at the time was to identify individuals and target their assets instead of the companies they manage and that U.S. persons are prohibited from doing business with persons who had been designated under E.O. 13661.

On April 28, 2014, OFAC designated Igor Sechin pursuant to E.O. 13661 and added him to its SDN List. The Department of Treasury stated in a press release announcing the action that "[a]s a result of today's action…transactions by U.S. persons or within the United States involving the individuals and entities designated today are generally prohibited."

[1] Rosneft OAO is on the Sectoral Sanctions Identifications List as subject to Directives 2 and 4 under Executive Order 13662 of March 20, 2014, "Blocking Property of Additional Persons Contributing to the Situation in Ukraine," but those authorities are not implicated in this action. Rosneft OAO is not subject to blocking sanctions.

stated that U.S. parties should "be cautious in dealings with [a non-designated] entity to ensure that they are not providing funds, goods, or services to the SDN, for example, by entering into any contracts that are signed by the SDN." In rebuttal to this guidance, ExxonMobil has pointed

contracts of any nature whatsoever, and any other property, real, personal, or mixed, tangible or intangible, or interest or interests therein, present, future, or contingent." 31 C.F.R. § 589.308.

- OFAC takes the position that U.S. persons may not enter contracts signed by an SDN, even if the SDN is an individual acting in a professional capacity on behalf of an entity that is not blocked.

- In 2017, a U.S. multinational company was assessed a civil monetary penalty of $2,000,000 based on this theory in connection with the Ukraine-related sanctions.

- Recent designations of significant executives (such as PdVSA's VP of Finance) may substantially affect U.S. persons' ability to deal with those entities, even though the entities are not blocked.

"New Debt" Restrictions

- EO 13808 prohibits U.S. person involvement in any transaction related to:
  - new debt with a maturity of greater than 90 days of PdVSA;
  - new debt with a maturity of greater than 30 days, or new equity, of the Government of Venezuela

- What does OFAC mean by "debt"?
  - OFAC interprets the term "debt" very broadly.
  - For example, OFAC considers a party that provides goods or services and then bills the recipient by issuing an invoice requiring payment by a certain date to be extending credit, so requiring payment within 30 days would be considered "debt with a maturity date of 30 days."

  - NOTE: Though the sectoral sanctions imposed against Russia are similar to those imposed against Venezuela, OFAC has warned parties against assuming that the interpretations and guidance provided in one program are applicable in any other program.

What happens to debt pre-dating the sanctions?

- All the prohibitions extend to rollover of existing debt, if such rollover results in the creation of new debt with a maturity of longer than 90 days for PdVSA and 30 days for the Government of Venezuela.

- The terms for old debt are still valid even after sanctions were implemented, but once the old debt "matures" and enters a new term, the debt cannot exceed the 90 day and 30-day requirement.

- It is only the extension of the new debt post-August 25 that triggers the new sanction prohibitions, and must be compliant with the 30 days (GoV) or 90 days (PdVSA).

When does "old debt" become "new debt"?

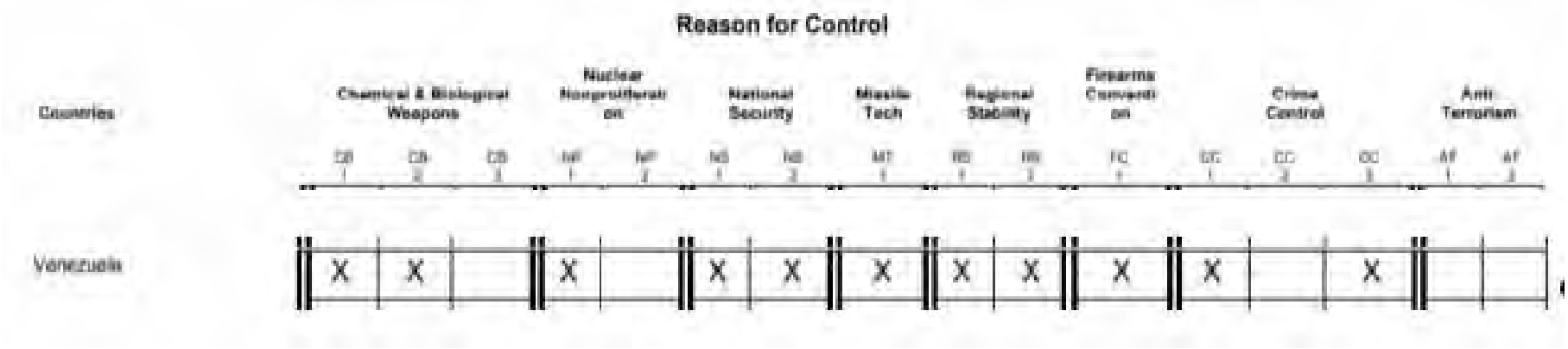
- Old debt = debt predating August 25, 2017
  - Ex: Unpaid PdVSA invoice dated February 1, 2016 with maturity date of 150 days
    - Not subject to EO sanctions. If payment received on e.g. December 1, 2017, bank can process the payment even though payment received post-sanctions and past-due.
    - But, only if the terms of the debt (payment deadlines, interest rate, etc.) have not changed subsequent to August 25, 2017.
- New debt = debt (bills, credit, loan agreements) post-August 25
  - Ex: Unpaid PdVSA invoice for a service received August 27, 2017
    - Subject to EO sanctions and payment must be received within 90 days.
- Rollover = when an old debt with a due date post-August 25, 2017 is not paid, the debt "rolls over" into a new term and is considered a new debt.
  - Ex: Unpaid GoV invoice dated May 1, 2017 with October 1, 2017 due date. PdVSA does not pay until October 5, 2017. The debt rolled over after October 1, but payment was received within 30 days of the roll-over date.
  - Ex: Same facts as above, but payment is not received until November 5, 2017. The payment was not received until past the 30-day requirement and is in violation of sanctions.

U.S. Export Controls On Venezuela
Item-based Controls

- Venezuela is an International Traffic in Arms Regulations (ITAR), Section 126.1 country – which means that exports to Venezuela are subject to a policy of denial for all ITAR-controlled defense articles and services. The State Department first imposed this restriction in August 2006.

- Only items subject to Export Administration Regulations (EAR) can be exported or reexported to Venezuela

- EAR Exports and reexports are subject to Item-based, Policy Driven Controls



U.S. Export Controls On Venezuela
Military End-Use and End-User Controls

- The EAR also impose Military End-Use and End-User Controls on Venezuela, 15 C.F.R. 744.21

- What are Military End-Use and End-User controls?

Independent licensing requirement on a set of additional items subject to the EAR if you have knowledge – i.e. you know or have reason to know – that items will be put to a military end-use or end-user

  - "Military End Use" means incorporation into military item on Wassenaar Arrangement Munitions List, incorporation into "A018" or "600 Series" ECCNs; "development," "production," or "use" of military items described on the USML or the Wassenaar Arrangement, or deployment of items classified under ECCN 9A991.

  - "Military End Users" include national armed services (army, navy, marine, air force, or coast guard), as well as the national guard and national police, government intelligence or reconnaissance organizations, or any person or entity whose actions or functions are intended to support 'military end uses.'

U.S. Export Controls On Venezuela
Interagency Licensing Review

If either Item-based or End-User or End-Use Controls apply, then Bureau of Industry (BIS) and Security authorization is required

Interagency Review

BIS is only the "front office" for licensing applications; actual review is interagency

Which other agencies are involved can vary, but generally

- **Department of Commerce** reviews

Technical issues (National Security, non-proliferation and others)

Economic issues

- **Department of Defense** reviews

National security issues – Brings the technical expertise of the Services focused on an individual export/re-export

- **Department of Energy** reviews; and

Nuclear and missile issues

- **Department of State** reviews

Foreign policy issues

EU Sanctions and Export Control Developments

Regulation (EU) 2017/2063 (the "EU Venezuela Sanctions Regulation")

On November 13, 2017 the EU Council decided to impose an arms embargo on Venezuela.

Regulation also includes a prohibition on the sale, supply, transfer or export, directly or indirectly, of equipment which might be used for internal repression, including equipment, software and technology that can be used to track and monitor opponents' use of the Internet, email, texting and instant messaging.

It is also prohibits, without authorization, provision of technical and financial services for such items.

- to provide, directly or indirectly, technical assistance or brokering services related to the equipment, technology and software;
- to provide, directly or indirectly, financing or financial assistance related to the equipment, technology and software; and
- to provide any telecommunication or internet monitoring or interception services of any kind to, or for the direct or indirect benefit of, Venezuela's government, public bodies, corporations and agencies or any person or entity acting on their behalf or at their direction.

EU Sanctions and Export Control Developments

Regulation (EU) 2017/2063 (the "EU Venezuela Sanctions Regulation")

The Regulation also introduced a legal framework for travel bans and asset freezes against those involved in human rights violations and non-respect for democracy or the rule of law.

- Article 8 of the EU Venezuela Sanctions Regulation also sets up the legal framework for an asset freeze and prohibits that no funds or economic resources shall be made available, directly or indirectly, to or for the benefit of natural or legal persons, entities or bodies listed in Annexes IV and V of the EU Venezuela Sanctions Regulation. This approach is similar to an SDN listing in the U.S.

- On January 22, 2018 an initial list of seven individuals was published who were subject to these sanctions (the asset freeze and the prohibition that no funds or economic resources shall be made available, directly or indirectly, to or for the benefit of these listed individuals).

EU Sanctions and Export Control Developments

Regulation (EU) 2017/2063 (the "EU Venezuela Sanctions Regulation")

EU designated officials include

- Diasdado Cabello Rondon – Former National Assembly President

- Nestor Luis Reverol Torres – Interior Minister

- Maikel Jose Moreno Perez – Chief Justice

- Gustavo Enrique Gonzalez Lopez – Head of National Intelligence Service

- Tibisay Lucena Ramirez – President of the National Electoral Council

- Antonio Jose Benavides Torres – Chief of the Capital District Government

- Tarek William Saab Halabi – Attorney General

All have been sanctioned by OFAC, with one exception

Calibration of U.S. Sanctions – Licenses and FAQs

- An increasingly common strategy for U.S. sanctions has been to impose very broad sanctions on entities or jurisdictions and then modulate restrictions over time by issuing licenses (both "General" and "Specific") and Frequently Asked Questions (FAQs) that provide the agency's interpretations on aspects of the regulations.
- OFAC has done both in the context of Venezuela sanctions.
- Core General Licenses (regulatory exemptions) include:
  - **GL 1:** provided a grace period through 09/24/17 authorizing transactions otherwise prohibited by the E.O. that were necessary to winding down contracts.
  - **GL 2:** authorizes most, but not at all, transactions involving new equity, debt, and other securities for CITGO Holding, Inc. and any of its subsidiaries.
  - **GL 3:** authorizes all transactions related to particular Venezuelan government bonds specifically listed by OFAC.
  - **GL 4:** authorizes transactions related to new debt related to the exportation or reexportation from the U.S. or by a U.S. person of agricultural commodities, medicine, medical devices, or replacement parts.

Limited "Business as Usual" General Licenses Due to Ongoing Significant U.S.-Venezuela Business

"To mitigate harm to the American and Venezuelan people, the Treasury Department is issuing general licenses that allow for transactions that would otherwise be prohibited by the Executive Order…."
White House, August 25, 2017

GL 1 Allowed for an orderly wind-down

GL 2 Aims to allow for continued operations of CITGO – but eliminates the ability to of CITGO to serve as a source of funding for the Venezuelan Government

GL 3 Recognizes the dozens of outstanding bonds worth billions of dollars held by U.S. Persons and seeks to protect the assets of innocent U.S. investors

GL 4 A near-standard general license in sanctions programs that exempts the provision of food and medical goods from restrictions

Note: It is uncommon for any Administration to have explicitly called out U.S. investors and its desire to mitigate any harm investors may suffer due to sanctions.

Limited "Business as Usual" Statement of Licensing Policy to allow for Specific Licenses – Allowing Receipt of New Debt

1. PdVSA is in debt to the applicant

2. The debt is "new debt" created before March 14, 2018

> *"To mitigate potential harm to U.S. persons who have not received payment related to new debt incurred by PdVSA or another segment of the Government of Venezuela within the applicable maturity period, OFAC will, on a case-by-case basis, grant specific licenses to U.S. persons to deal in the collection or receipt of such payment…."*
>
> OFAC – FAQ 554

3. Relevant segment of the Government of Venezuela/PdVSA has failed to pay within the agreement upon, authorized payment period

4. Transaction is not otherwise prohibited by sanctions (no sanctioned persons, etc.)

If so, a Specific License *could* be issued

Note: It is not clear what happens after March 14, 2018 (require pre-payment?) nor the impact of an ever greater number of senior Venezuelans being sanctioned.

Limited "Business as Usual" Statement of Licensing Policy to allow for Specific Licenses – Allowing Renegotiation of Debt

In November 2017 Venezuela went into "technical default" as it was late on certain bond payments. While the country appears to have managed to pay its bonds since November 2017 (and it remains for now not in default and bond holders have not launched legal action) there are numerous questions regarding the ability of U.S. Persons who hold much of this debt to enter into debt renegotiation with Venezuela to secure at least part of their investment. The problem for U.S. persons is two fold:

1. Renegotiation of a bond that would allow for a greater than 30- or 90-day term would be the creation of "new debt" – OFAC issued FAQ 547 to address this issue. The FAQ states that U.S. persons can enter in discussions with Venezuela regarding renegotiation so long as the bonds in question are listed under General License 3. However, U.S. persons still need an OFAC license to actually transact in any new debt that is created.

2. However, U.S. Persons are not allowed to engage in any dealings with persons who are sanctioned. Venezuela has asked two persons who are sanctioned to lead any renegotiation effort on behalf of the State.

This unlikely constellation of factors has led some to conclude that a "successful [debt] restructuring by the Maduro regime appears impossible." *Economist Intelligence Unit,* November 16, 2017

And providing interpretations to restrict trade that may circumvent sanctions…

After many months of hinting that it was about to do so, on Tuesday, February 22, 2018 Venezuela launched a new "cryptocurrency." Though most observers suggest that the currency is more likely to fail than to succeed, one of its primary purposes is an attempt by President Maduro to unshackle his U.S. dollar-based economy from U.S. sanctions.

Unlike other digital currencies whose value fluctuates based on demand, the Petro is based on the value of Venezuela's hydro-carbons Maduro claimed that the country raised $735 million in the Petro's first day and that he seeks to raise $6 billion in total from foreign investors as they seek a way out of sanctions restrictions.

OFAC's Response: the agency published an FAQ holding that a U.S. person that deals in this digital currency may be exposed to U.S. sanctions risks.

While this was OFAC's first-ever formal statement regarding its jurisdiction over cybercurrencies the fact that the Petro is structured as a mini-bond (as it allows holders a call on future production) likely made it much easier for OFAC to determine that dealing in the Petro was akin to dealing in long-term debt of the Government of Venezuela (which is already prohibited).

Where next?

Difficult to predict, but here are some “guard rail” policy factors that would normally inform decision making.

The Trump Administration

"We will not stand by as Venezuela crumbles."

-- White House, August 25, 2017 (announcing E.O. 13808)

September 19, 2017

"The circumstances described in Executive Order 13692 and Executive Order 13808 have not improved, and they continue to pose an unusual and extraordinary threat to the national security and foreign policy of the United States."

-- White House, March 2, 2018

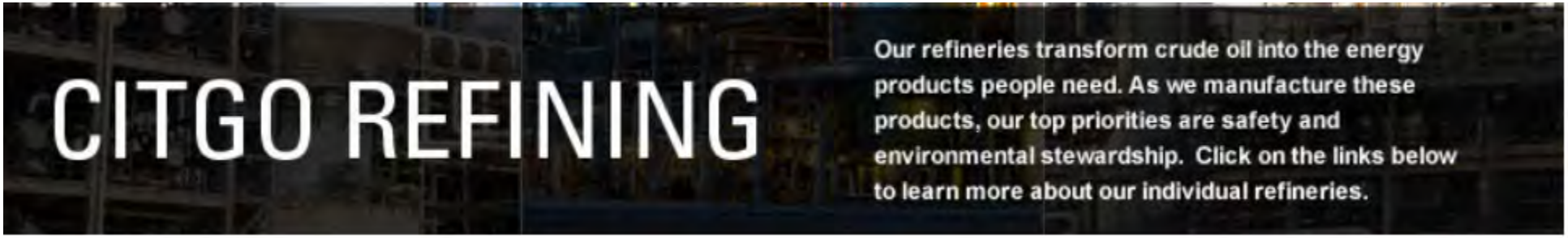
The Trump administration is reportedly considering further sanctions, such as targeting Camimpeg or restricting insurance coverage for Venezuelan oil shipments.

Reuters, "Exclusive: U.S. considering broad oil sanctions on Venezuela – source," (Feb. 28, 2018).

The *Empresas Mixtas* Problem

Source: Ministerio del Poder Popular de Petroleo, http://www.mpetromin.gob.ve/portalmenpet/secciones.php?option=view&idS=36

Citgo



CORPUS CHRISTI

LAKE CHARLES

LEMONT

Source: http://citgorefining.com/

Refugee Crisis

Hypothetical One

I am a U.S. person investor and owed $3.2 million on a VZ bond, which is now past due 60 days. There is a 90 day window before certain default provisions in the bond offering are triggered and I was just invited to attend a meeting with a VZ government official in Caracas to discuss the payment. Can I go?

Hypothetical Two

I am an oil services provider and we entered into a contract with an entity owned 31 percent by PdVSA and 69 percent owned by Citgo Holdings. The contract date was dated just before the effective date of the Executive Order 13808. I will soon complete the service contract and the contract allows payment within 120 days. The entity I contracted with has now asked whether I could accept payment in three installments over the next 180 days. Can I accept this new payment plan?

Hypothetical Three

I just read in the papers that the PdVSA and Russian oil company Rosneft negotiated a deal to allow Rosneft to develop two new VZ offshore blocks. I sell exploration and production equipment. Can I sell my equipment and services to support this new venture?

Gibson Dunn Global Sanctions Team

Unparalleled Experience and Global Reach

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