

July 2024

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Statute of Limitations for IEEPA and TWEA Violations Extended to 10 Years, and Additional Sanctions Developments

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Recent legislation, H.R. 815, the National Security Supplemental (“the Act”)¹ – further explained by guidance issued by the U.S. Department of the Treasury Office of Foreign Assets Control (“OFAC”) on July 22, 2024 – has extended the statute of limitations for criminal and civil violations of the International Emergency Economic Powers Act (“IEEPA”) and the Trading with the Enemy Act (“TWEA”) from five (5) to ten (10) years. As described below, however, the statute of limitations increase does not automatically provide the U.S. Government with an additional ten years in which to bring any enforcement action. Instead, due to legal restrictions on reviving civil and criminal claims on which the prior five-year limitations period had already run, the amount of time available to the U.S. Government to bring an action will vary depending on when the violation occurred and whether the statute of limitations had already run when the new legislation was enacted (April 24, 2024). The full ten-year limitations period will only apply to violations that occurred on or after the date that was five years prior to enactment (April 24, 2019).

Also of note in the Act were additional developments in U.S. sanctions and export controls laws. In particular, the Act authorized further harmonization of U.S. sanctions with those of the European Union (“EU”) and the United Kingdom (“UK”) to the extent permissible under existing U.S. sanctions laws. These changes, in addition to an array of new designation criteria, will have a direct impact on those seeking to keep pace with the evolving sanctions landscape and to mitigate current and future sanctions exposure.

Increased Statute of Limitations for Sanctions Offenses

Most notably, the Act amended the two most prominent U.S. statutory authorities for sanctions and export controls, IEEPA and TWEA, to include a ten-year statute of limitations for sanctions violations, double the previous limitations periods.² The statute of limitations amendments apply to both civil and criminal actions brought under all current and future U.S. sanctions programs authorized by IEEPA and TWEA.

Importantly, the Act does not revive liability for activity already time-barred under the previous statute of limitations – a position confirmed by OFAC guidance released on July 22, 2024.³ Instead, only violations occurring on or after April 24, 2019, five years prior to the date the Act was signed, are

subject to the new ten-year time period, meaning the timeframe for actionable activity will increase incrementally until a full, ten-year period is reached on April 24, 2029.⁴

This analysis is supported by legal precedent in relation to both civil and criminal enforcement. For civil penalties, case law suggests that reviving liability for activity already expired under a previous statute of limitations requires either: (i) express statutory language, or (ii) clear indication in the legislative history that Congress had such intention.⁵ Given the lack of such express statutory language in the Act, coupled with the absence of legislative history supporting such an intent, courts are very unlikely to accept any regulatory interpretation attempting to revive the government's ability to bring enforcement actions based on such expired activity. For criminal actions, constitutional protections against *ex post facto* laws likewise prohibit the retroactive revival of criminal liability for violations for which the previous five-year statute of limitations has already run.⁶ Notably, although the document does not set out the reasoning specifically, OFAC appears to have taken the same position in its July 22, 2024 guidance.

As a result, sanctions compliance programs will need to be reviewed and modified to account for potential exposure to a universe of conduct growing from five to ten years as time goes on. Companies should be sure to account for the increasing statute of limitations when evaluating and documenting commercial transactions, including as part of the due diligence review process and when crafting sanctions-related provisions in financing and purchase agreements.

Potential Harmonization with EU and UK Sanctions

A less-discussed portion of the Act also grants the President the power to align U.S. sanctions against Russia with certain sanctions imposed by the EU or the UK, where such sanctions are permissible under standing U.S. sanctions authorities. In particular, the law provides that if a foreign person is currently subject to sanctions pursuant to the Russian-related sanctions under EU or UK sanctions authorities, then the President may impose sanctions on such foreign persons if they meet the criteria for imposition of U.S. sanctions under (i) the Global Magnitsky Human Rights Accountability Act of 2016, (ii) Executive Order 14024 (relating to blocking property with respect to specified harmful foreign activities of the Government of the Russian Federation), (iii) Executive Order 14068 (relating to prohibiting certain imports, exports, and new investment with respect to continued Russian Federation aggression), or (iv) Executive Order 14071 (relating to prohibiting new investment in and certain services to the Russian Federation in response to continued Russian Federation aggression). Given the already high degree of alignment among the U.S., UK and EU sanctions regimes, the extent to which this authority is used by OFAC will remain to be seen.

Imposition of Additional Sanctions

The Act also imposed new sanctions by adding and expanding activity for which persons may become sanctioned. As with most sanctions laws, the measures generally do not list specific persons, but set out the criteria which the President (typically through OFAC and/or the U.S. Department of State) will use to identify and designate individuals, corporations, or organizations. The additional sanctions criteria set forth in the Act are summarized below.

1. Fentanyl and Captagon Sanctions

The Act imposes additional sanctions on the trafficking of fentanyl, including on foreign persons who are knowingly involved in significant activities of transnational criminal organizations relating to fentanyl and fentanyl products. The measures are intended to focus on cartels, particularly in Mexico, and precursor products originating in China.

Other measures impose sanctions on persons involved in illicit captagon trafficking in Syria linked to the Bashar al-Assad regime. The measures impose sanctions on persons engaged in the production or proliferation of the drug and those knowingly receiving any property derived from proceeds of such activity.

2. Iran-Related Sanctions

Additional sanctionable activity related to Iran includes involvement in the shipment of Iranian petroleum, including on the owners or operators of ports, vessels, and refineries involved in transactions related to petroleum products originating in Iran. The Act also requires the government to report to Congress on a strategy, potentially including additional sanctions, to combat evasion of Iranian petroleum-related sanctions by China.

Sanctions will also be imposed on parties the U.S. determines to be involved in the proliferation of Iranian missiles, and on the office of the Supreme Leader of Iran and related government officials, individuals, and entities.

The Act also adds further criteria under which foreign financial institutions may be subject to U.S. banking restrictions, including Chinese financial institutions involved in the purchase of Iranian petroleum products and any foreign financial institutions involved in the purchase of unmanned aerial vehicles (“UAVs”) from Iran.

3. Anti-Terrorism Sanctions

Sanctions have also been imposed on foreign persons engaging with Hamas or other Palestinian terrorist organizations. The sanctions cover activity including support for acts of terrorism or other significant transactions involving the terrorist organizations named in the Act. Previous legislation imposing sanctions on persons using human shields has also been updated to include members of Palestinian Islamic Jihad who are known to engage in such activity.

4. Malicious Cyber Activity

The Act includes a broad set of designation criteria allowing the imposition of sanctions on foreign persons determined to be involved in cyber activities “reasonably likely to result in, or [that] have materially contributed to, a significant threat to the national security, foreign policy, or economic health or financial stability of the United States.”

5. Threats

The Act allows for the imposition of sanctions on foreign persons who attempt or threaten violence towards current or former U.S. officials.

Paul Hastings regularly works with clients on sanctions compliance and enforcement issues and is following updates in the space closely. Please do not hesitate to reach out if you would like to discuss how the Act impacts your sanctions compliance program, and to discuss potential risk mitigation strategies.

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If you have any questions concerning these developing issues, please do not hesitate to contact any of the following Paul Hastings lawyers:

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¹ Pub. L. No. 118-50 (2024).

² 28 U.S.C. § 2462.

³ *GUIDANCE ON EXTENSION OF STATUTE OF LIMITATIONS*, Office of Foreign Assets Control, (July 22, 2024), <https://ofac.treasury.gov/media/933056/download?inline>.

⁴ We note that considerations for companies who have previously entered into tolling agreements may be different.

⁵ See the Supreme Court's test for retroactivity set forth in *Landgraf v. USI Film Products*, 511 U.S. 244 (1994).

⁶ See, e.g., *Stogner v. California*, 539 U.S. 607 (2003).

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